2006

HOUSE
JUDICIARY I

COMMITTEE
MINUTES

House Judiciary I

Representative Joe Hackney
Chairman

Representative Deborah Ross
Vice Chairman

Representative Bonner Stiller
Vice Chairman

Short Session
2005-2006 Session

House Judiciary I

Staff

Erika Churchill, Committee Counsel
Tim Hovis, Committee Counsel
Brad Krehely, Committee Counsel
Susan Sitze, Committee Counsel

Emily Reynolds Freeman
Committee Assistant

Short Session
2005-2006 Session

HOUSE JUDICIARY I COMMITTEE

2005-2006 SESSION

MEMBERSHIP

NAME	OFFICE	PHONE	LEGISLATIVE ASSISTANT
REPRESENTATIVE JOE HACKNEY, CHAIRMAN	2207	733-5752	EMILY FREEMAN
REPRESENTATIVE DEBORAH ROSS, VICE CHAIR	2223	733-5773	MARGIE PENVEN
REPRESENTATIVE BONNER STILLER, VICE CHAIR	301B	733-5974	CARLA FARMER
REPRESENTATIVE MARTHA ALEXANDER	2208	733-5807	ANN FAUST
REPRESENTATIVE JOHN BLUST	1420	733-5806	BETTY CHILDRESS
REPRESENTATIVE RUSSELL CAPPS	501	733-5903	NANCY FOX
REPRESENTATIVE DEBBIE CLARY	303	715-2002	SHIRLEY WINSTEAD
REPRESENTATIVE MELANIE WADE GOODWIN	1305	733-5823	JANE MCMILLAN
REPRESENTATIVE PRICEY HARRISON	2119	733-5771	ANNE WILSON
REPRESENTATIVE VERLA INSKO	2121	733-7208	PAM EVANS
REPRESENTATIVE PAUL MILLER*	417B	733-5872	ERYN GEE
REPRESENTATIVE LARRY HALL**			
REPRESENTATIVE PAUL STAM	502	733-5780	JANNA ESTES
REPRESENTATIVE ROGER WEST	1004	733-5859	LINDA C. JOHNSON

*RESIGNED JULY 7, 2006
**MEMBER OF COMMITTEE AS OF JULY 18, 2006

NORTH CAROLINA GENERAL ASSEMBLY

COMMITTEE NAME
2005 – 2006 SESSION



Rep. Joe Hackney
Chair



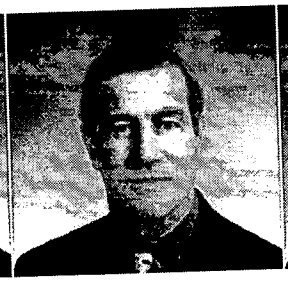
Rep. Deborah Ross
Vice chair



Name
Vice chair



Rep. Martha Alexander



Rep. John Blust



Rep. Russell Capps



Rep. Debbie Clary



Rep. Melanie Goodwin



Rep. Larry Hall *



Rep. Pricey Harrison



Rep. Verla Insko



Rep. Paul Stam



Rep. Roger West



Rep. Cunningham

Ex-officio



Rep. Eddins

Ex-officio

* As of July 18, 2006

NORTH CAROLINA GENERAL ASSEMBLY

House Judiciary I Committee
2005 – 2006 SESSION



Rep. Joe Hackney
Chair



Rep. Deborah Ross
Vice chair



Rep. Bonner Stiller
Vice chair



Rep. Martha Alexander



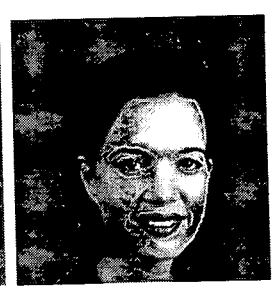
Rep. John Blust



Rep. Russell Capps



Rep. Debbie Clary



Rep. Melanie Wade Goodwin



Rep. Pricey Harrison



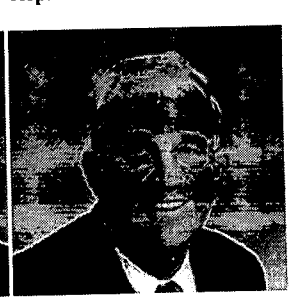
Rep. Verla Insko



Rep. Paul Miller



Rep. Paul Stam



Rep. Roger West



Rep. Culpepper
Ex-officio



Rep. Cunningham
Ex-officio



Rep. Eddins
Ex-officio

HOUSE JUDICIARY I COMMITTEE

2005-2006 SESSION

STAFF

NAME	Office	Telephone
SUSAN SITZE COMMITTEE COUNSEL	201DD LOB	733-2578
ERIKA CHURCHILL COMMITTEE COUNSEL	545 LOB	733-2578
BRAD KREHELY	545 LOB	733-5752
TIM HOVIS COMMITTEE COUNSEL	545 LOB	733-2578
EMILY REYNOLDS FREEMAN COMMITTEE ASSISTANT	2207 LB	733-5752

ATTENDANCE

HOUSE JUDICIARY I COMMITTEE

(Name of Committee)

DATES	May 10	May 11	May 16	May 18	May 23	May 25	May 30	June 1	June 6	June 8	June 20	June 22	June 27	June 29	June 29
Representative Hackney, Chair	✓	✓	✓	✓	✓	✓	✓	✓			✓	✓	✓	✓	
Representative Ross, Vice Chair	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Representative Stiller, Vice Chair	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Representative Alexander	✓		✓	✓		✓	✓	✓	✓	✓		✓	✓	✓	✓
Representative Blust	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Representative Capps	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Representative Clary			✓	✓					✓						
Representative Goodwin	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Representative Harrison	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Representative Insko	✓	✓	✓	✓	✓	✓			✓		✓		✓	✓	
Representative Miller	✓	✓	✓		✓	✓		✓	✓	✓					
Representative Stam	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Representative West		✓	✓	✓	✓	✓		✓		✓	✓		✓	✓	✓
Rep. Cunningham, Ex-officio															
Rep. Eddins, Ex-officio															

ATTENDANCE

HOUSE JUDICIARY I COMMITTEE

(Name of Committee)

DATES	June 30	July 6	July 11	July 12	July 18	July 19	July 25							
Representative Hackney, Chair		✓	✓	✓	✓	✓	✓							
Representative Ross, Vice Chair	✓	✓	✓	✓	✓	✓	✓							
Representative Stiller, Vice Chair	✓	✓	✓		✓	✓	✓							
Representative Alexander		✓	✓		✓	✓								
Representative Blust		✓	✓	✓		✓								
Representative Capps	✓	✓	✓	✓	✓	✓	✓							
Representative Clary			✓											
Representative Goodwin	✓	✓	✓	✓	✓	✓	✓							
Representative Hall as of July 18, 2006					✓	✓	✓							
Representative Harrison	✓	✓	✓	✓	✓	✓	✓							
Representative Insko	✓	✓	✓	✓	✓									
Representative Stam		✓	✓	✓	✓	✓	✓							
Representative West		✓	✓	✓	✓	✓	✓							
Rep. Cunningham, Ex-officio														
Rep. Eddins, Ex-officio														

2005-2006 Biennium

Bill	Introducer	Short Title		Latest Action	In Date	Out Date
H0006	**Hackney**	**AMEND LOBBYING LAWS.**	**H**	**Ref To Com On Judiciary I**	**04-20-05**	
H0035	Alexander	ADET SCHOOL/FEE/ QUALIS. INCREASE.	*HR	Ch. SL 2005-312	02-02-05	04-12-05
H0055	Moore	DEFENSE OF MARRIAGE.	H	Ref To Com On Judiciary I	02-03-05	
H0058	Moore	SECURITIES TRANSFER ON DEATH.	*H	Re-ref Com On Finance	02-03-05	04-12-05
H0076	Holliman	BAN SMOKING IN RESTAURANTS.	*HF	Failed 2nd Reading	05-18-05	05-31-05
H0135	Capps	MV ACCIDENT IMPACT FEES.	H	Ref To Com On Judiciary I	02-09-05	
H0217	Harrison	DRIVING FROM/LEAVING SCENE OF ACCIDENT.	*HR	Ch. SL 2005-460	02-14-05	03-15-05
H0231	Tolson	ST. CONTROLLER/ COMPLIANCE REVIEW/ PUB. RECORDS.	*HR	Ch. SL 2005-65	03-15-05	03-28-05
H0362	Allred	VOTE ON ETJ EXTENSIONS.	H	Ref To Com On Judiciary I	02-24-05	
H0477=	Tolson	NC ENERGY POLICY REWRITE.	H	Ref To Com On Judiciary I	03-07-05	
H0510	Stam	ENFORCEMENT OF POWER OF ATTORNEY.	*HR	Ch. SL 2005-178	03-07-05	04-04-05
H0529	Hackney	STUDY DEATH PENALTY (NEW).	*H	Re-ref Com On Judiciary I	03-14-05	05-31-05
H0529	Hackney	STUDY DEATH PENALTY (NEW).	*H	Re-ref Com On Judiciary I	06-30-05	07-12-05
H0529	Hackney	STUDY DEATH PENALTY (NEW).	*H	Re-ref Com On Judiciary I	09-02-05	
H0532	Stam	ADJUST ADOPTION PROCEDURE.-AB	*HR	Ch. SL 2005-166	03-09-05	04-07-05
H0624	Holloway	LICENSE SUSPENSION FOR PENDING DWI CHARGE.	H	Ref To Com On Judiciary I	03-14-05	
H0643	Miller	INTERCHANGE DISTRICTS.	*H	Pres. To Gov. 7/ 28/2006	03-15-05	05-12-05
H0680	Capps	MANDATORY JAIL FOR B.A.C. OVER 0.20.	H	Ref To Com On Judiciary I	03-17-05	
H0681	Capps	RELIGIOUS FREEDOM RESTORATION ACT.	H	Ref To Com On Judiciary I	03-17-05	
H0702	Crawford	PERSONAL WATERCRAFT CHANGES.	*HR	Ch. SL 2005-161	03-17-05	03-31-05
H0714	Coleman	STATE AGENCIES MAY WITHHOLD CERTAIN INFO.	*H	Re-ref Com On Judiciary I	05-03-05	
H0715	Coleman	PROTECT STATE EMPLOYEE RECORDS.	*H	Re-ref Com On Judiciary I	05-02-05	
H0725	Ross	REAL ESTATE RESALE DEALERS.-AB	*H	Ref To Com On Judiciary I	03-17-05	05-31-05
$ H0788	**Eddins**	**CRIME VICTIMS RESTITUTION IMPROVEMENT ACT.**	***H**	**Re-ref Com On Appropriations**	**03-17-05**	**07-27-05**
H0804	Hackney	ORDER OF PAYMENT/ EQUITABLE DISTRIBUTION.	*HR	Ch. SL 2005-180	03-21-05	03-31-05
H0829	Capps	DISPLAY OF OFFICIAL GOVERNMENT FLAGS.	*HR	Ch. SL 2005-360	03-22-05	06-01-05

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2005-2006 Biennium

Bill	Introducer	Short Title		Latest Action	In Date	Out Date
H0891	Alexander	MASTER KEYS/LOCK-PICKING DEVICES REGULATED.	*HR	Ch. SL 2005-352	03-24-05	04-12-05
H0919	Alexander	CHARLOTTE SPEED CAMERA SUNSET EXTENDED.	H	Ref To Com On Judiciary I	03-28-05	
H0923	Hackney	AMEND POSTSEPARATION SUPPORT LAWS.	*HR	Ch. SL 2005-177	03-28-05	04-26-05
H0967	Tucker	HEALTH CARE POWER OF ATTY/DISPOS. OF REMAINS.	*HR	Ch. SL 2005-351	03-29-05	05-18-05
H1015	Hackney	CLERKS MAY ORDER MEDIATION.	*HR	Ch. SL 2005-67	03-31-05	04-21-05
H1048	Hackney	GOVERNOR'S DWI TASK FORCE RECOMMENDATIONS.	*H	Pres. To Gov. 7/27/2006	03-31-05	06-08-05
H1048	Hackney	GOVERNOR'S DWI TASK FORCE RECOMMENDATIONS.	*H	Pres. To Gov. 7/27/2006	07-10-06	07-11-06
H1053	Stam	REALIGN WAKE SUPERIOR COURT DISTRICTS.	H	Ref To Com On Judiciary I	03-31-05	
H1054	Stam	SWIFT CREEK MGT. PLAN/ STANDING TO ENFORCE.	HR	Ch. SL 2005-89	03-31-05	04-14-05
H1085	Insko	CARE OF DOGS ILLEGALLY USED FOR FIGHTING.	*HR	Ch. SL 2005-383	04-04-05	05-02-05
H1106	Weiss	LOBBYIST/REVOLVING DOOR.	H	Ref To Com On Judiciary I	04-20-05	
H1117	Ross	PUBLIC FINANCE CHANGES.	*HR	Ch. SL 2005-238	04-05-05	04-20-05
H1150	Goodwin	EXPEDITE JUV. PROCEEDINGS/GUARDIANS AD LITEM.	*HR	Ch. SL 2005-398	04-07-05	05-04-05
H1157	Hackney	CUSTODY/BEST INTEREST OF CHILD/FACTORS.	H	Ref To Com On Judiciary I	04-07-05	
H1175	Vinson	NC DISABLED PERSONS PROTECTION ACT.	H	Ref To Com On Judiciary I	04-12-05	
H1199	Holliman	INVOLUNTARY COMMITMENT AFFIDAVIT.	*HR	Ch. SL 2005-135	04-13-05	05-16-05
H1209	Goodwin	SEXUAL BATTERY/SEX OFFENDER REGISTRY/DNA	*HR	Ch. SL 2005-130	04-13-05	05-25-05
H1221	Hackney	PARENTING COORDINATOR ESTABLISHED.	*HR	Ch. SL 2005-228	04-14-05	05-25-05
H1245	Hill	CIVIL ACTIONS REGARDING FOOD PRODUCTS.	H	Ref To Com On Judiciary I	04-18-05	
H1295	Harrison	NEW MOTOR VEHICLES WARRANTIES.	*HR	Ch. SL 2005-436	05-09-05	05-31-05
H1297	Hackney	MRC AND CERT VOLUNTEERS QUALIFIED IMMUNITY.	*HR	Ch. SL 2005-273	04-20-05	04-27-05
H1318	Hackney	CONSIDER TAX CONSEQUENCES/EQUIT. DISTRIBUTION.	*HR	Ch. SL 2005-353	04-20-05	05-31-05
H1319	Hackney	AMEND FAMILY LAW ARBITRATION ACT.	*HR	Ch. SL 2005-187	04-20-05	05-04-05
H1327	Harrison	CRIM. RECORD CHECKS/ PSYCHOLOGY PRACTICE	*HR	Ch. SL 2006-175	04-20-05	05-25-05

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2005-2006 Biennium

Bill	Introducer	Short Title		Latest Action	In Date	Out Date
		ACT.				
1328	Harrison	PARDON/EXPUNCTION OF RECORD.	HR	Ch. SL 2005-319	04-20-05	05-12-05
H1351	Almond	THREATEN PERSONS IN CERTAIN GOV'TAL ACTIVITY.	*H	Re-ref Com On Rules, Calendar, and Operations of the House	04-21-05	05-31-05
H1361	Stam	HOMEOWNER ASSOCIATION ATTORNEYS' FEES.	H	Ref To Com On Judiciary I	04-21-05	
H1407	Barnhart	CONSCIENCE PROTECTION.	H	Ref To Com On Judiciary I	04-21-05	
H1432	Stam	NOTARY PUBLIC CORRECTIONS.	*HR	Ch. SL 2006-59	04-21-05	05-11-05
H1432	Stam	NOTARY PUBLIC CORRECTIONS.	*HR	Ch. SL 2006-59	06-22-06	06-29-06
H1435	Johnson	CRIMINAL RECORD CONSIDERED IN DWI SENTENCING.	H	Ref To Com On Judiciary I	04-21-05	
H1445	Blust	SEX OFFENDER AMENDMENTS.	H	Ref To Com On Judiciary I	04-21-05	
H1447=	Blust	GOVERNMENT AGENCIES LIMIT RELEASE OF SSNS.	H	Ref To Com On Judiciary I	04-21-05	
H1451	Blust	REFORM DRIVERS LICENSE ISSUANCE CRITERIA.	H	Ref To Com On Judiciary I	04-21-05	
H1455	Blust	UNIFORM APPORTIONMENT OF TORT RESPONSIBILITY.	H	Ref To Com On Judiciary I	04-21-05	
H1466	Hackney	EXPLOITATION/ELDERLY OR DISABLED ADULT.	*HR	Ch. SL 2005-272	04-21-05	05-26-05
1467	Hackney	ATTORNEYS' FEES/ TRANSFERS TO MINORS.	*H	Ref To Com On Judiciary II	04-21-05	05-11-05
H1509	Blust	BORN ALIVE INFANT PROTECTION ACT.	H	Ref To Com On Judiciary I	04-21-05	
H1520	McComas	CERT. OF MERIT/CIVIL ACT./ENGINEER/ ARCHITECT.	H	Ref To Com On Judiciary I	04-21-05	
H1538	Jones	MUNICIPAL TORT CLAIMS ACT.	H	Ref To Com On Judiciary I	04-21-05	
$ H1664	**Capps**	**COVENANT MARRIAGE ACT OF 2005/FUNDS.**	**H**	**Ref to the Com on Judiciary I and, if favorable, to the Com on Appropriations**	**05-12-05**	
$ H1709	**Miller**	**VOLUNTARY DNA DATABASE.**	**H**	**Ref to the Com on Judiciary I and, if favorable, to the Com on Appropriations**	**05-12-05**	
$ H1759	**McComas**	**DRUG DEALER LIABILITY ACT.**	**H**	**Ref to the Com on Judiciary I and, if favorable, to the Com on Appropriations**	**05-12-05**	
H1843	Hackney	STATE GOVERNMENT ETHICS ACT - 1.	*HR	Ch. SL 2006-201	05-10-06	05-16-06

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2005-2006 Biennium

Bill	Introducer	Short Title		Latest Action	In Date	Out Date
H1843	Hackney	STATE GOVERNMENT ETHICS ACT - 1.	*HR	Ch. SL 2006-201	07-19-06	07-19-06
H1844	Hackney	EXECUTIVE BRANCH ETHICS ACT - 1.	*H	Re-ref Com On Judiciary I	05-10-06	05-11-06
H1845	Hackney	PERMITTED USE OF CAMPAIGN FUNDS.	*HR	Ch. SL 2006-161	05-10-06	06-20-06
H1845	Hackney	PERMITTED USE OF CAMPAIGN FUNDS.	*HR	Ch. SL 2006-161	07-11-06	07-12-06
H1846	Hackney	2006 CAMPAIGN FINANCE CHANGES.	*HR	Ch. SL 2006-195	05-10-06	06-06-06
H1847	Hackney	ELECTIONEERING COMMUNICATIONS.	*HR	Ch. SL 2006-182	05-10-06	05-24-06
H1847	Hackney	ELECTIONEERING COMMUNICATIONS.	*HR	Ch. SL 2006-182	07-11-06	07-12-06
H1848	Hackney	OMNIBUS COURTS ACT.	*HR	Ch. SL 2006-187	05-10-06	05-30-06
H1848	Hackney	OMNIBUS COURTS ACT.	*HR	Ch. SL 2006-187	07-12-06	07-18-06
H1849	Hackney	LOBBYING REFORMS 2006.	*H	Re-ref Com On Judiciary I	05-10-06	06-30-06
H1849	Hackney	LOBBYING REFORMS 2006.	*H	Re-ref Com On Judiciary I	07-20-06	
H1850	Hackney	STRENGTHEN ELECTIONEERING COMMUNICATIONS.	H	Ref To Com On Judiciary I	05-10-06	
H1851	Hackney	LEGISLATIVE CAMPAIGNS PILOT.	H	Ref To Com On Judiciary I	05-10-06	
H1977=	Ross	AMEND TRANSITION PROVISIONS ARTICLE 9/ UCC.	H	Ref To Com On Judiciary I	05-16-06	
H2017	Ross	UNIFORM UNINCORPORATED NONPROFIT ASSOC. ACT.	H	Ref To Com On Judiciary I	05-17-06	
H2035	Stiller	OAH HEARING FACILITIES.	*H	Ref To Com On Judiciary I	05-17-06	07-18-06
$ H2138	**LaRoque**	**TERRORISM/STATE CRIME.**	**H**	**Ref to the Com on Judiciary I and, if favorable, to the Com on Appropriations**	**05-18-06**	
H2152=	Ross	REVISE ARTICLES 1 AND 7 OF THE UCC.	H	Ref To Com On Judiciary I	05-18-06	
H2188	Hackney	CANDIDATE CHALLENGE PROCEDURE.	*HR	Ch. SL 2006-155	05-18-06	06-21-06
H2188	Hackney	CANDIDATE CHALLENGE PROCEDURE.	*HR	Ch. SL 2006-155	07-10-06	07-11-06
H2206=	Clary	CELL PHONE USE BY DRIVERS UNDER 18 PROHIBITED.	H	Ref To Com On Judiciary I	05-18-06	
H2630	Saunders	REPORT CHILD ABUSE BY SCHOOL PERSONNEL/ FUNDS.	H	Ref To Com On Judiciary I	05-25-06	
H2687	Stiller	SALE OF DRUGS NEAR PARKS/INCREASE PENALTY.	H	Re-ref Com On Judiciary I	07-13-06	
$ H2703	**Hilton**	**CASTLE DOCTRINE FOR NC.**	**H**	**Ref To Com On Judiciary I**	**05-25-06**	
S0061	Scott Thomas	FELONY DEATH BY	*H	Ref to Judiciary	08-25-05	08-30-05

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2005-2006 Biennium

Bill	Introducer	Short Title		Latest Action	In Date	Out Date
		VEHICLE/SEX OFFENDER AMEND.		I. If fav, re-ref to Appropriations/ Base Budget		
S0290	David W. Hoyle	SECURITIES TRANSFER ON DEATH.	*HR	Ch. SL 2005-411	08-15-05	08-22-05
S0321	Daniel G. Clodfe	JURY EXEMPTIONS/72 AND OLDER.	*HR	Ch. SL 2005-149	04-28-05	06-14-05
S0324	Daniel G. Clodfe	REVISE BUSINESS CORPORATION ACT.	*HR	Ch. SL 2005-268	04-19-05	07-21-05
S0428	Tony Rand	NO LASERS POINTED AT PLANES.	*HR	Ch. SL 2005-329	06-02-05	07-06-05
S0461	Fletcher L. Hart	UNITRUST AMENDMENTS.	*HR	Ch. SL 2005-244	04-18-05	06-22-05
S0488=	Charlie S. Danne	ASSAULT HANDICAPPED/ INCREASE PENALTY.	*HR	Ch. SL 2006-179	05-16-05	07-06-06
S0523	Daniel G. Clodfe	JUDICIAL APPOINTMENT/ VOTER CONFIRMATION/CJ.	*H	Re-ref Com On Judiciary I	08-25-05	
S0532=	Philip E. Berger	CONSTRUCTION SITE THEFT/AGGRAVATE PENALTY.	*HR	Ch. SL 2005-208	05-24-05	06-28-05
S0542	Daniel G. Clodfe	ACCESS TO STATE FACILITIES.	*H	Pres. To Gov. 7/ 27/2006	08-15-05	07-19-06
S0590	Katie G. Dorsett	CONSUMER CREDIT COUNSELING/DEBT MANAGEMENT.	*HR	Ch. SL 2005-408	06-30-05	08-02-05
S0592	Eleanor Kinnaird	INDIGENT DEFENSE TECHNICAL REVISIONS.	*HR	Ch. SL 2005-250	05-31-05	06-14-05
S0594	Eleanor Kinnaird	RECOUPMENT BY COURT-APPOINTED ATTORNEYS.	*HR	Ch. SL 2005-254	05-31-05	06-14-05
0612=	**Tony Rand**	**AMEND LOBBYING LAWS.**	***HR**	**Ch. SL 2005-456**	**04-20-05**	**07-20-05**
0679	Kay R. Hagan	NORTH CAROLINA UNIFORM TRUST CODE.	*HR	Ch. SL 2005-192	05-16-05	06-27-05
S0689	Eleanor Kinnaird	COPIES OF FILES/ APPOINTED APPELLATE ATTORNEYS.	*HR	Ch. SL 2005-148	04-21-05	06-14-05
S0701=	Martin L. Nesbit	CLARIFICATION OF LEGIS. OVERSIGHT OF FEES.	*H	Ref To Com On Judiciary I	04-26-05	
$ S0705	**Martin L. Nesbit**	**AMEND SUBSTANCE ABUSE LAWS.**	***HR**	**Ch. SL 2005-431**	**07-25-05**	**08-08-05**
$ S0705	**Martin L. Nesbit**	**AMEND SUBSTANCE ABUSE LAWS.**	***HR**	**Ch. SL 2005-431**	**08-09-05**	**08-11-05**
S0748	Tony Rand	DRUG ENFORCEMENT IMPROVEMENT ACT.	*HR	Ch. SL 2005-207	05-09-05	07-05-05
S0796	Scott Thomas	CRIMINAL RECORD CHECKS/ARCHAEOLOGICAL OPS.	*HR	Ch. SL 2005-367	06-28-05	07-21-05
S0806	Fletcher L. Hart	MEDIATION AMENDMENTS.	*HR	Ch. SL 2005-167	05-17-05	06-22-05
S0856	Daniel G. Clodfe	ACCESS TO PUBLIC TRIAL PREPARATION RECORDS.	*HR	Ch. SL 2005-332	06-02-05	08-11-05
S0887	Fletcher L. Hart	NC LIEN LAW REVISED.	*HR	Ch. SL 2005-229	05-24-05	07-07-05
S0897	Tony Rand	RESTRUCTURE PAROLE COMMISSION.	*H	Ref To Com On Judiciary I	04-18-05	
S0929	Daniel G. Clodfe	PRISON ESCAPE/ JUVENILE DETENTION	*H	Conf Com Appointed	05-19-05	07-05-05

'$' indicates the bill is an appropriation bill.
A bold line indicates the bill is an appropriation bill.
'*' indicates that the text of the original bill was changed by some action.
'=' indicates that the original bill is identical to another bill.

2005-2006 Biennium

Bill	Introducer	Short Title		Latest Action	In Date	Out Date	
		FACILITY.					
[redacted]0932	Daniel G. Clodfe	PUBLIC RECORDS ACT AMENDMENTS.	*H	Ref To Com On Judiciary I	06-02-05		
S1029	Janet Cowell	CLARIFY/ENHANCE DOMESTIC VIO. & TENANCY LAWS.	*HR	Ch. SL 2005-423	06-02-05	08-01-05	
S1048=	Daniel G. Clodfe	IDENTITY THEFT PROTECTION ACT OF 2005.	*HR	Ch. SL 2005-414	05-26-05	07-26-05	
S1087	John H. Kerr III	LIMITED DRIVING PRIVILEGES-DWLR.	*HF	Failed 3rd Reading	08-15-05	06-08-06	withdrawn from cmte.
S1130	Charles W. Alber	NO TOBACCO USE IN PRISONS.	*HR	Ch. SL 2005-372	06-02-05	07-27-05	
S1289=	Stan Bingham	CELL PHONE USE BY DRIVERS UNDER 18 PROHIBITED.	*HR	Ch. SL 2006-177	06-13-06	06-26-06	withdrawn from cmte
S1375	Fletcher L. Hart	NOTARY PUBLIC CORRECTIONS.	*HR	Ch. SL 2006-199	07-12-06	07-18-06	
S1377=	Fletcher L. Hart	AMEND TRANSITION PROVISIONS ARTICLE 9/ UCC.	HR	Ch. SL 2006-11	06-05-06	06-06-06	
S1378=	Fletcher L. Hart	AMEND THE FORFEITURE OF PROPERTY RIGHTS LAW.	*HR	Ch. SL 2006-107	06-20-06	06-29-06	
S1479	Kay R. Hagan	UNINC. NONPROFIT ASSOC. ACT/GSC TECH. CORR.	*HR	Ch. SL 2006-226	06-27-06	07-11-06	
S1485	Martin L. Nesbit	OCCUPATIONAL LICENSING BOARD REPORTS.	HR	Ch. SL 2006-70	06-08-06	06-29-06	
[redacted]1523	Fletcher L. Hart	2006 TECHNICAL CORRECTIONS ACT.	*H	Pres. To Gov. 7/ 28/2006	07-11-06	07-25-06	
S1555=	Fletcher L. Hart	REVISE ARTICLES 1 AND 7 OF THE UCC.	*HR	Ch. SL 2006-112	06-12-06	06-29-06	
S1991	R. C. Soles, Jr.	DISTRICT 13 COUNTY RESIDENT JUDGESHIPS.	*HR	Ch. SL 2006-96	06-29-06	06-30-06	

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A bold line indicates the bill is an appropriation bill.
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HOUSE JUDICIARY I COMMITTEE

2006 SESSION

INDEX OF LEGISLATION COVERED DURING EACH MEETING

by Date of Consideration

May 10, 2006	HB 1844	Executive Branch Ethics Act
May 11, 2006	HB 1844	Executive Branch Ethics Act
May 16, 2006	HB 1843	Revise Legislative Ethics Act
May 18, 2006	HB 1847	Treasurer Training
May 23, 2006	HB 1847	Treasurer Training
	HB 1849	Lobbying Reform 2006
May 25, 2006	HB 1848	No Blank Contribution Checks
	HB 1849	Lobbying Reform 2006
May 30, 2006	HB 1849	Lobbying Reform 2006
June 1, 2006	HB 1845	Permitted Use of Campaign Funds
June 6, 2006	HB 1845	Permitted Use of Campaign Funds
	HB 1846	Contribution Changes
	SB 1377	Amend Transition Provisions Article 9/UCC
June 8, 2006	HB 1845	Permitted Use of Campaign Funds
	HB 2188	Candidate Challenge Procedure
June 20, 2006	HB 1845	Permitted Use of Campaign Funds
	HB 2188	Candidate Challenge Procedure

June 22, 2006	HB 1849	Lobbying Reform 2006
June 27, 2006	HB 1849	Lobbying Reform 2006
June 29, 2006 (first meeting)	HB 1851	Legislative Campaigns Pilot
June 29, 2006 (second meeting)	HB 1432	Notary Public Corrections
	SB 1555	Revise Articles 1 and 7 of the UCC
	SB 1378	Amend the Forfeiture of Property Rights Law
	SB 1485	Occupational Licensing Board Reports
	SB 1479	Uniform Unincorporated Nonprofit Association Act
June 30, 2006	HB 1991	District 13 County Resident Judgeship
July 6, 2006	SB 488	Exploitation of Elder or Disabled Adults/POA
July 11, 2006	HB 1048	Governor's DWI Task Force Recommendations
	HB 2188	Candidate Challenge Procedure
	SB 1479	Uniform Unincorporated Nonprofit Association Act
July 12, 2006	HB 1845	Permitted Use of Campaign Funds
	HB 1847	Treasure Training
July 18, 2006	HB 1848	Omnibus Courts Act
	HB 2035	OAH Hearing Facilities
	HB 2687	Sale of Drugs Near Parks/Increase Penalty
	SB 542	Access to State Facilities
	SB 1375	Notary Public Corrections
July 19, 2006	HB 1843	State Government Ethics Act
July 25, 2006	SB 1523	2006 Technical Corrections Act

Consideration by Bill Number

House Bill 1048	July 12, 2006
House Bill 1432	June 29, 2006 (second meeting)
House Bill 1843	May 16 and July 19, 2006
House Bill 1844	May 10 and May 11, 2006
House Bill 1845	June 1, 6, 8, 20 and July 12, 2006
House Bill 1846	June 6, 2006
House Bill 1847	May 18, 23 and July 12, 2006
House Bill 1848	May 25, 2006
House Bill 1849	May 18, 23, 25, 30, June 22 and 27
House Bill 2035	July 18, 2006
House Bill 2188	June 8, 20 and July 12, 2006
Senate Bill 488	July 5, 2006
Senate Bill 542	July 18, 2006
Senate Bill 1375	July 18, 2006
Senate Bill 1377	June 6, 2006
Senate Bill 1378	June 29, 2006 (second meeting)
Senate Bill 1479	June 29 and July 12, 2006
Senate Bill 1485	June 29, 2006 (second meeting)
Senate Bill 1523	July 25, 2006
Senate Bill 1555	June 29, 2006 (second meeting)
Senate Bill 1991	June 30, 2006

House Judiciary I Committee

May 10, 2006
3:30 p.m.

Minutes

The House Judiciary I Committee met on Wednesday, May 10, 2006 at 3:30 p m. in Room 1228 of the Legislative Building. The Chairman, Representative Joe Hackney, called the meeting to order and the following members were present: Representatives Alexander, Blust, Capps, Goodwin, Harrison, Insko, Miller, Ross, Stam, and Stiller. A copy of the agenda and visitor registration is attached, (Attachments I and II).

The Chairman welcomed the members and introduced the pages and Sergeant-at-Arms staff. Chairman Hackney stated that the Committee would be considering bills recommended by the House Select Committee on Ethics and Governmental Reform that was co-chaired by Representative Howard and himself. He stated that as the study committee recommended ten bills for review by the General Assembly and that each of them would be considered by the Judiciary I Committee. He said that the bill that probably had the least controversy about and the most agreement on was Executive Branch Ethics. He said that the primary sponsors were Representatives Howard, Brubaker, Luebke and himself.

Mr. Walker Reagan, Research Division, was recognized. He gave a brief overview of governmental ethics. He said that in North Carolina, the Legislature has its own Legislative Ethics Act that was enacted in 1974 and went into effect in 1975. He said that the Judiciary is covered by both statutory law and constitutional law administered by the state Supreme Court through the Judicial Standards Commission. They have a code of judicial conduct and those who violate the code of conduct are disciplined by the state Supreme Court. Mr. Reagan said that for the most part, the Executive Branch has no statutory laws governing ethics. He said that effective January 1, 1977, Governor Hunt promulgated Executive Order Number One to create the Executive Branch ethics provisions, created the State Ethics Board and required members of the Executive Branch who were covered by this act to begin filing statements of economic interests and had various codes of conduct that these officials were expected to follow. He said that every governor since that time has renewed that Executive Order which has been modified from time-to-time. Executive Order Number One basically covers the higher level of members of the Executive Branch, those appointees that the governor has authority over including cabinet secretaries, deputy and assistant secretaries, other people appointed by the governor to exempt positions, and members of boards and commissions of which the governor has appointment authority.

Mr. Reagan continued with an explanation of House Bill 1844, AN ACT TO ESTABLISH THE EXECUTIVE BRANCH ETHICS ACT, TO CREATE THE STATE ETHICS COMMISSION, TO ESTABLISH ETHICAL STANDARDS FOR CERTAIN STATE PUBLIC OFFICERS, STATE EMPLOYEES, AND APPOINTEES TO

NONADVISORY STATE BOARDS AND COMMISSIONS, TO REQUIRE PUBLIC DISCLOSURE OF ECONOMIC INTERESTS, AND TO MAKE CONFORMING CHANGES, AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON ETHICS AND GOVERNMENTAL REFORM, (Attachment III). Mr. Reagan pointed out that the bill included a section defining the purpose of the bill. He said that the purpose is typically not included in bills, but that the State Ethics Commission staff often uses those purposes as part of their educational and instructional program, and it helps to set the tone and parameters to public officials as to why these provisions are in effect and what they are intended to do.

Mr. Reagan offered a section-by-section explanation of the bill. A copy of the bill summary is attached to the minutes, (Attachment IV).

There was brief discussion and a few questions were raised. Chairman Hackney stated that the Committee would accept any amendments that the members would like to offer at the next meeting.

The meeting was adjourned at 4:50 p.m.

Joe Hackney

Representative Joe Hackney
Chair

Emily Reynolds Freeman

Emily Reynolds Freeman
Committee Clerk

Attachment I

HOUSE COMMITTEE ON JUDICIARY I

May 10, 2006
3:30 p.m.

AGENDA

OPENING REMARKS

AGENDA ITEMS

House Bill 1843 – Revise Legislative Ethics Act
Representatives Hackney, Howard, Brubaker and Luebke

House Bill 1844 – Executive Branch Ethics Act
Representatives Hackney, Howard, Brubaker and Luebke

House Bill 1845 – Permitted Use of Campaign Funds
Representatives Hackney, Howard, Eddins and Ross

House Bill 1847– Treasurer Training
Representatives Hackney, Howard and Ross

ADJOURNMENT

Attachment II

VISITOR REGISTRATION SHEET

House Judiciary I — **Name of Committee**

May 10, 2006 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Doug Heron	NC Bar Association
Colleen Kachanek	Smith Moore
[illegible]	NCATL
Jennie New	Kennedy Covington
Perry Newson	Board of Ethics
Chris Fitzsimon	NC Policy Watch
Jeff Mixon	Civitas Institute
John McGee	Goo offers
Chad Hunter	Civitas Institute
Susan Valaani	National Rifle
Jami Fitzgerald	NC Family Policy Council

VISITOR REGISTRATION SHEET

House Judiciary I — May 10, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Doug Hawley	NCPMA
Dick Taylor	ACCAT L
Gary Robertson	AP
PATRICK BUFFKIN	ALLEY ASSOC, INC.
Bob Phillips	CCNC
Ruth Bibby	
Dan Lamy	NCO
[signature]	NCFPC
[signature]	Alley Assoc
Kelly McCall	UNC-TV
Ian Palmquist	Equality NC

VISITOR REGISTRATION SHEET

House Judiciary I — May 10, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Anne Adams	
Steve Keane	NC Med Society
Yvonne Bibby	Jamestown, NC
Bob Hall	Democracy North Carolina
Jim Stewart	IFNC

Attachment III

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

HOUSE BILL 1844

Short Title:	Executive Branch Ethics Act - 1.	(Public)
Sponsors:	Representatives Hackney, Howard, Brubaker, Luebke (Primary Sponsors); Barnhart, Bell, Coates, Eddins, Fisher, Gibson, Harrison, Justice, Lucas, Martin, McLawhorn, Nye, Ross, Sauls, Setzer, Sherrill, Steen, West, Alexander, L. Allen, Bordsen, Dickson, Glazier, Hill, Insko, Jeffus, McGee, Moore, Stiller, Underhill, Weiss, and Wiley.	
Referred to:	Judiciary I.	

May 10, 2006

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE EXECUTIVE BRANCH ETHICS ACT, TO CREATE THE STATE ETHICS COMMISSION, TO ESTABLISH ETHICAL STANDARDS FOR CERTAIN STATE PUBLIC OFFICERS, STATE EMPLOYEES, AND APPOINTEES TO NONADVISORY STATE BOARDS AND COMMISSIONS, TO REQUIRE PUBLIC DISCLOSURE OF ECONOMIC INTERESTS, AND TO MAKE CONFORMING CHANGES, AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON ETHICS AND GOVERNMENTAL REFORM.

The General Assembly of North Carolina enacts:

SECTION 1. The General Statutes are amended by adding a new Chapter to read:

"**Chapter 138A.**

"**Executive Branch Ethics Act.**

"Article 1.

"General Provisions.

"**§ 138A-1. Title.**

This Chapter shall be known and may be cited as the 'Executive Branch Ethics Act.'

"**§ 138A-2. Purpose.**

The people of North Carolina entrust public power to elected and appointed officials for the purpose of furthering the public, not private or personal, interest. To maintain the public trust it is essential that government function honestly and fairly, free from all forms of impropriety, threats, favoritism, and undue influence. Elected and appointed officials must maintain and exercise the highest standards of duty to the public in carrying out the responsibilities and functions of their positions. Acceptance of authority granted by the people to elected and appointed officials imposes a commitment of

fidelity to the public interest, and this power cannot be used to advance narrow interests for oneself, other persons, or groups. Self-interest, partiality, and prejudice have no place in decision-making for the public. Public officials must exercise their duties responsibly with skillful judgment and energetic dedication. Public officials must exercise discretion with sensitive information pertaining to public and private persons and activities. To maintain the integrity of North Carolina's State government, those citizens entrusted with authority must exercise it for the good of the public and treat every citizen with courtesy, attentiveness, and respect. Because many public officials serve on a part-time basis, it is inevitable that conflicts of interest and appearances of conflict will occur. Often these conflicts are unintentional and slight, but at every turn those public officials who represent the people of this State must be certain that it is the interests of the people, and not their own, that are being served. Officials should be prepared to remove themselves immediately from decisions, votes, or processes where even the appearance of a conflict of interest exists. The State is committed to the responsible exercise of authority by persons of honor and goodwill in government, by adopting a stronger procedure to prevent the occurrence of conflicts of interest in government and to resolve conflicts when they do occur.

"**§ 138A-3. Definitions.**

The following definitions apply in this Chapter:

(1) Board. – Any non-advisory State executive branch board, commission, council, committee, task force, authority, or similar public body, however denominated.

(2) Business. – Any of the following, whether or not for profit:

a. Association.
b. Corporation.
c. Enterprise.
d. Joint venture.
e. Organization.
f. Partnership.
g. Proprietorship.
h. Vested trust.
i. Every other business interest, including ownership or use of land for income.

(3) Business associate. – A partner, or member or manager of a limited liability company.

(4) Business with which associated. – A business of which the public servant or any member of the public servant's immediate family has a pecuniary interest. For purposes of this sub-subdivision, the term 'business' shall not include a widely held investment fund, including a mutual fund, regulated investment company, or pension or deferred compensation plan, if all of the following apply:

1. The public servant or a member of the public servant's immediate family neither exercises nor has the ability to exercise control over the financial interests held by the fund.

2. The fund is publicly traded, or the fund's assets are widely diversified.

(5) Commission. – The State Ethics Commission.

(6) Compensation. – Any money, thing of value, or economic benefit conferred on or received by any person in return for services rendered or to be rendered by that person or another. This term does not include campaign contributions properly received and, if applicable, reported as required by Article 22A of Chapter 163 of the General Statutes.

(7) Constitutional officers of the State. – Officers whose offices are established in Article III of the Constitution.

(8) Contract. – Any agreement including sales and conveyances of real and personal property and agreements for the performance of services.

(9) Employing entity. – Any of the following bodies of State government of which the public servant is an employee or a member, or over which the public servant exercises supervision: agencies, authorities, boards, commissions, committees, councils, departments, offices, institutions and their subdivisions, and constitutional offices of the State.

(10) Extended family. – Spouse, descendant, ascendant, or sibling of the public servant or descendant, ascendant, or sibling of the spouse of the public servant.

(11) Immediate family. – An unemancipated child of the public servant residing in the household and the public servant's spouse, if not legally separated.

(12) Official action. – Any decision, including administration, approval, disapproval, preparation, recommendation, the rendering of advice, and investigation, made or contemplated in any proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, investigation, charge, or rule making.

(13) Participate. – To take part in, influence, or attempt to influence, including acting through an agent or proxy.

(14) Pecuniary interest. – Any of the following:

a. Owning, either individually or collectively, a legal, equitable, or beneficial interest of ten thousand dollars ($10,000) or more or five percent (5%), whichever is less, of any business.

b. Receiving, either individually or collectively, during the preceding calendar year compensation that is or will be required to be included as taxable income on federal income tax returns of the public servant, the public servant's immediate family, or a business with which associated in an aggregate amount of five thousand dollars ($5,000) from any business or combination of businesses. A pecuniary interest exists in any client or customer who pays fees or commissions, either individually or collectively, of five thousand dollars ($5,000) or more in the

preceding 12 months to the public servant, the public servant's immediate family, or a business with which associated.

c. Receiving, either individually or collectively and directly or indirectly, in the preceding 12 months, gifts or honoraria having an unknown value or having an aggregate value of five hundred dollars ($500.00) or more from any person. A pecuniary interest does not exist under this sub-subdivision by reason of (i) a gift or bequest received as the result of the death of the donor; (ii) a gift from an extended family member; or (iii) acting as a trustee of a trust for the benefit of another.

d. Holding the position of associate, director, officer, business associate, or proprietor of any business, irrespective of the amount of compensation received.

(15) Public event. – An organized gathering of individuals open to the general public or to which at least ten public servants are invited to attend and at least ten employees or members of the principal or person actually attend.

(16) Public servants. – All of the following:

a. Constitutional officers of the State and persons elected or appointed as constitutional officers of the State prior to taking office.

b. Employees of the Office of the Governor.

c. Heads of all principal State departments, as set forth in G.S. 143B-6, who are appointed by the Governor.

d. The chief deputy and chief administrative assistant of each person designated under sub-subdivisions a. or c. of this subdivision.

e. Confidential assistants and secretaries as defined in G.S. 126-5(c)(2), to persons designated under sub-subdivisions a., c., or d. of this subdivision.

f. Employees in exempt positions as defined in G.S. 126-5(b) and employees in exempt positions designated in accordance with G.S. 126-5(d)(1), (2), or (2a), and confidential secretaries to these individuals.

g. Any other employees or appointees in the principal State departments as may be designated by the Governor to the extent that the designation does not conflict with the State Personnel Act.

h. All voting members of boards, including ex officio members and members serving by executive, legislative, or judicial branch appointment.

i. For The University of North Carolina, the voting members of the Board of Governors of The University of North Carolina, the president, the vice-presidents, and the chancellors, the

vice-chancellors, and voting members of the boards of trustees of the constituent institutions.

j. For the Community Colleges System, the voting members of the State Board of Community Colleges, the President and the chief financial officer of the Community Colleges System, the president, chief financial officer, and chief administrative officer of each community college, and voting members of the boards of trustees of each community college.

k. Members of the Commission.

l. Persons under contract with the State working in or against a position included under this subdivision.

(17) Vested trust. – A trust, annuity, or other funds held by a trustee or other third party for the benefit of the public servant or a member of the public servant's immediate family. A vested trust shall not include a widely held investment fund, including a mutual fund, regulated investment company, or pension or deferred compensation plan, if:

a. The public servant or a member of the public servant's immediate family neither exercises nor has the ability to exercise control over the financial interests held by the fund; and

b. The fund is publicly traded, or the fund's assets are widely diversified.

"**§ 138A-4 and 138A-5. [Reserved]**

"Article 2.

"Ethical Standards for Public Servants.

"**§ 138A-6. Use of public position for private gain.**

(a) A public servant shall not knowingly use the public servant's public position in any manner that will result in financial benefit, direct or indirect, to the public servant, a member of the public servant's extended family, or a person with whom, or business with which, the public servant is associated. The performance of usual and customary duties associated with the public position or the advancement of public policy goals or constituent services, without compensation, shall not constitute the use of public position for financial benefit. This subsection shall not apply to financial or other benefits derived by a public servant that the public servant would enjoy to an extent no greater than that which other citizens of the State would or could enjoy, or that are so remote, tenuous, insignificant, or speculative that a reasonable person would conclude under the circumstances that the public servant's ability to protect the public interest and perform the public servant's official duties would not be compromised.

(b) A public servant shall not mention or permit another person to mention the public servant's public position in nongovernmental advertising that advances the private interest of the public servant or others. The prohibition in this subsection shall not apply to political advertising, news stories, or news articles.

"**§ 138A-7. Gifts.**

(a) A public servant shall not knowingly, directly or indirectly, ask, accept, demand, exact, solicit, seek, assign, receive, or agree to receive anything of value for the public servant, or for another person, in return for being influenced in the discharge of the public servant's official responsibilities, other than that which is received by the public servant from the State for acting in the public servant's official capacity.

(b) A public servant may not solicit for a charitable purpose any gift from any other public servant whose position is subordinate to the soliciting public servant. This subsection shall not apply to solicitations for the State Employees Combined Campaign or to other charities for which payroll deductions are authorized under G.S. 143-3.3(i) and (j).

(c) No public servant shall knowingly accept anything of monetary value, directly or indirectly, from a legislative lobbyist or principal as defined in G.S. 120-47.1 or an executive lobbyist or principal as defined in G.S. 147-54.31, or a person whom the public servant knows or has reason to know any of the following:

(1) Is doing or is seeking to do business of any kind with the public servant's employing entity.

(2) Is engaged in activities that are regulated or controlled by the public servant's employing entity.

(3) Has financial interests that may be substantially and materially affected, in a manner distinguishable from the public generally, by the performance or nonperformance of the public servant's official duties.

(d) Subsection (c) of this section shall not apply to any of the following:

(1) Meals and beverages for immediate consumption in connection with public events.

(2) Nonmonetary items, other than food or beverages, with a value not to exceed ten dollars ($10.00) provided by a single donor during a single calendar day.

(3) Informational materials relevant to the duties of the public servant.

(4) Reasonable actual expenses for food, registration, travel, and lodging of the public servant for a meeting at which the public servant participates in a panel or speaking engagement at the meeting related to the public servant's duties and when expenses are incurred on the actual day of participation in the engagement or incurred within a 24-hour time period before or after the engagement.

(5) Items or services received in connection with a state, national or regional organization in which the public servant or the public servant's agency is a member.

(6) Items and services received relating to an educational conference or meeting.

(7) A plaque or similar nonmonetary memento recognizing individual services in a field or specialty or to a charitable cause.

(8) Gifts accepted on behalf of the State.

(9) Anything generally available or distributed to the general public or all other State employees.

(10) Anything for which fair market value is paid.

(11) Commercially available loans made on terms not more favorable than generally available to the public in the normal course of business if not made for the purpose of lobbying.

(12) Contractual arrangements or business relationships or arrangements made in the normal course of business if not made for the purpose of lobbying.

(13) Academic scholarships made on terms not more favorable than scholarships generally available to the public.

(14) Political contributions properly received and reported as required under Article 22A of Chapter 163 of the General Statutes.

(15) Gifts from the public servant's extended family, or a member of the same household of the public servant, or gifts received in conjunction with a marriage, birth, adoption, or death.

(16) Things of monetary value given to a public servant valued in excess of ten dollars ($10.00) where the thing of monetary value is entertainment or related expenses associated with the public business of industry recruitment, promotion of international trade, or the promotion of travel and tourism, and the public servant is responsible for conducting the business on behalf of the State, provided all the following conditions apply:

a. The public servant did not solicit the thing of value, and the public servant did not accept the thing of value in the performance of the public servant's official duties.

b. The public servant reports electronically to the Commission within 30 days of receipt of the thing of value. The report shall include a description and value of the thing of value and a description how the thing of value contributed to the public business of industry recruitment, promotion of international trade, or the promotion of travel and tourism. This report shall be posted to the Commission's public Web site.

c. A tangible thing of value in excess of ten dollars ($10.00), other than meals or beverages, shall be turned over as State property to the Department of Commerce within 30 days of receipt.

(17) Things of monetary value of personal property valued at less than one hundred dollars ($100.00) given to a public servant in the commission of the public servant's official duties if the gift is given to the public servant as a personal gift in another country as part of an overseas trade mission, and the giving and receiving of such personal gifts is considered a customary protocol in the other country.

(e) A prohibited gift shall be declined, returned, paid for at fair market value, or accepted and donated immediately to the State. Perishable food items of reasonable costs, received as gifts shall be donated to charity, destroyed, or provided for consumption among the entire staff or the public.

(f) A public servant shall not accept an honorarium from a source other than the employing entity for conducting any activity where any of the following apply:

(1) The employing entity reimburses the public servant for travel, subsistence, and registration expenses.

(2) The employing entity's work time or resources are used.

(3) The activity would be considered official duty or would bear a reasonably close relationship to the public servant's official duties.

An outside source may reimburse the employing entity for actual expenses incurred by a public servant in conducting an activity within the duties of the public servant, or may pay a fee to the employing entity, in lieu of an honorarium, for the services of the public servant.

(g) Acceptance or solicitation of a thing of value in compliance with this section without corrupt intent shall not constitute a violation of G.S. 14-217 or G.S. 14-218.

"**§ 138A-8. Other compensation.**

A public servant shall not solicit or receive personal financial gain, other than that received by the public servant from the State, or with the approval of the employing entity, for acting in the public servant's official capacity, or for advice or assistance given in the course of carrying out the public servant's duties.

"**§ 138A-9. Use of information for private gain.**

A public servant shall not use or disclose information gained in the course of, or by reason of, the public servant's official responsibilities in a way that would affect a personal financial interest of the public servant, a member of the public servant's extended family, or a person with whom or business with which the public servant is associated. A public servant shall not improperly use or disclose any information deemed confidential by State law and therefore not a public record.

"**§ 138A-10. Appearance of conflict.**

A public servant shall make reasonable efforts to avoid even the appearance of a conflict of interest in accordance with G.S. 138A-11. An appearance of conflict exists when a reasonable person would conclude from the circumstances that the public servant's ability to protect the public interest, or perform public duties, is compromised by familial, personal, or financial interest. An appearance of conflict could exist even in the absence of an actual conflict of interest.

"**§ 138A-11. Other rules of conduct.**

(a) A public servant shall make a due and diligent effort before taking any action, including voting or participating in discussions with other public servants on a board on which the public servant also serves, to determine whether the public servant has a conflict of interest or an appearance of a conflict. If the public servant is unable to determine whether or not a conflict of interest or the appearance of a conflict may exist, the public servant has a duty to inquire of the Commission as to that conflict or appearance of conflict.

(b) A public servant shall continually monitor, evaluate, and manage the public servant's personal, financial, and professional affairs to ensure the absence of conflicts of interest and appearances of conflicts.

(c) A public servant shall obey all other civil laws, administrative requirements, and criminal statutes governing conduct of State government appointees and employees.

"**§ 138A-12. Participation in official actions.**

(a) Notwithstanding any other law, except as permitted by subsection (e) of this section, no public servant acting in that capacity, authorized to perform an official action requiring the exercise of discretion, shall knowingly participate in an official action by the employing entity if the public servant, a member of the public servant's extended family, or a business with which the public servant is associated, has a pecuniary interest in, or a reasonably foreseeable benefit from, the matter under consideration, which would impair the public servant's independence of judgment or from which it could reasonably be inferred that the interest or benefit would influence the public servant's participation in the official action. A potential benefit includes (i) a detriment to a business competitor of the public servant, (ii) a member of the public servant's extended family, or (iii) a business with which the public servant is associated.

(b) A public servant described in subsection (a) of this section shall abstain from participation in the official action. The public servant shall submit in writing to the employing entity the reasons for the abstention. When the employing entity is a board, the abstention shall be recorded in the employing entity's minutes.

(c) A public servant shall take reasonable and appropriate steps, under the particular circumstances and considering the type of proceeding involved, to remove himself or herself, to the extent necessary to protect the public interest and comply with this Chapter, from any proceeding in which the public servant's impartiality might reasonably be questioned due to the public servant's familial, personal, or financial relationship with a participant in the proceeding. A participant includes (i) an owner, shareholder, business associate, employee, agent, officer, or director of a business, organization, or group involved in the proceeding, or (ii) an organization or group that has petitioned for rulemaking or has some specific, unique, and substantial interest in the proceeding. Proceedings include quasi-judicial proceedings and quasi-legislative proceedings. A personal relationship includes one in a leadership or policy-making position in a business, organization, or group.

(d) If a public servant is uncertain whether the relationship described in subsection (c) of this section justifies removing the public servant from the proceeding under subsection (c) of this section, the public servant shall disclose the relationship to the person presiding over the proceeding and seek appropriate guidance. The presiding officer, in consultation with legal counsel if necessary, shall then determine the extent to which the public servant will be permitted to participate. If the affected public servant is the person presiding, then the vice-chair or any other substitute presiding officer shall make the determination. A good-faith determination under this subsection of the allowable degree of participation by a public servant is presumptively valid and only subject to review under G.S. 138A-25 upon a clear and convincing showing of mistake, fraud, abuse of discretion, or willful disregard of this Chapter.

(e) Notwithstanding subsections (a) and (c) of this section, a public servant may participate in an official action under any of the following circumstances:

(1) The only pecuniary interest or reasonably foreseeable benefit that accrues to the public servant, the public servant's extended family, or business with which the public servant is associated as a member of a profession, occupation, or large class, is no greater than that which could reasonably be foreseen to accrue to all members of that profession, occupation, or large class.

(2) Where an official action affects or would affect the public servant's compensation and allowances as a public servant.

(3) Before the public servant participated in the official action, the public servant requested and received from the Commission a written advisory opinion that authorized the participation.

(4) Before participating in an official action, a public servant made full written disclosure to the public servant's employing entity which then made a written determination that the interest or benefit would neither impair the public servant's independence of judgment nor influence the public servant's participation in the official action. The employing entity shall file a copy of that written determination with the Commission.

(5) When action is ministerial only and does not require the exercise of discretion.

(6) When a public body records in its minutes that it cannot obtain a quorum in order to take the official action because members are disqualified from acting under this section.

(7) When a public servant notifies, in writing, the Commission that the public servant or someone whom the public servant appoints to act in the public servant's stead, or both, are the only individuals having legal authority to take an official action.

"**§ 138A-13. Disqualification to serve.**

(a) Within 30 days of notice of the Commission's determination that a public servant has a disqualifying conflict of interest, the public servant shall eliminate the interest that constitutes the disqualifying conflict of interest or resign from the public position.

(b) Failure by a public servant to comply with subsection (a) of this section is a violation of this Chapter for purposes of G.S. 138A-45.

(c) As used in this section, a disqualifying conflict of interest is a conflict of interest of such significance that the conflict of interest would prevent a public servant from fulfilling a substantial function or portion of the public servant's public duties.

"**§ 138A-14. Employment and supervision of members of public servant's extended family.**

A public servant shall not cause the employment, appointment, promotion, transfer, or advancement of an extended family member of the public servant to a State or local office or position to which the public servant supervises or manages. A public servant shall not participate in an action relating to the discipline of a member of the public servant's extended family.

"**§ 138A-15. Other ethics standards.**

Nothing in this Chapter shall prevent constitutional officers of the State, heads of principal departments, the Board of Governors of The University of North Carolina, State Board of Community Colleges, or other State executive boards from adopting more stringent ethics standards applicable to that public agency's operations.

"**§ 138A-16 through 19. [Reserved]**

"Article 3.

"State Ethics Commission.

"**§ 138A-20. State Ethics Commission established.**

There is established the State Ethics Commission.

"**§ 138A-21. Membership.**

(a) The Commission shall consist of seven members appointed by the Governor. No more than four members may be of the same political party. Members shall serve for four-year terms, beginning January 1, 2007, except for the initial terms that shall be as follows:

(1) One member shall serve an initial term of one year.
(2) Two members shall serve initial terms of two years.
(3) Two members shall serve initial terms of three years.
(4) Two members shall serve initial terms of four years.

(b) Members shall be removed from the Commission only for misfeasance, malfeasance, or nonfeasance as determined by the Governor.

(c) The Governor shall fill any vacancies in appointments for the remainder of any unfulfilled term.

(d) No member while serving on the Commission or employee while employed by the Commission shall:

(1) Hold or be a candidate for any other office or place of trust or profit under the United States, the State, or a political subdivision of the State.
(2) Hold office in any political party.
(3) Participate in or contribute to the political campaign of any public servant or any candidate for a public office as a public servant over which the Commission would have jurisdiction or authority.
(4) Otherwise be an employee of the State, a community college, or a local school system, or serve as a member of any other State board.

(e) The Commission shall elect a chair and vice-chair annually. The vice-chair shall act as the chair in the chair's absence or if there is a vacancy in that position.

(f) Members of the Commission shall receive no compensation for service on the Commission but shall be reimbursed for subsistence, travel, and convention registration fees as provided under G.S. 138-5, 138-6, or 138-7, as applicable.

"**§ 138A-22. Meetings and quorum.**

The Commission shall meet at least quarterly and at other times as called by its chair; in the case of a vacancy in the chair, by the vice-chair; or by four of its members. Four members of the Commission constitute a quorum.

"**§ 138A-23. Staff and offices.**

The Commission may employ professional and clerical staff, including an executive director. The Commission shall be located within the Department of Administration for administrative purposes only, but shall exercise all of its powers, including the power to employ, direct, and supervise all personnel, independently of the Secretary of Administration, and is subject to the direction and supervision of the Secretary of Administration only with respect to the management functions of coordinating and reporting.

"**§ 138A-24. Powers and duties.**

In addition to other powers and duties specified in this Chapter, the Commission shall:

(1) Provide reasonable assistance to public servants in complying with this Chapter.

(2) Develop readily understandable forms, policies, rules, and procedures to accomplish the purposes of the Chapter.

(3) Receive and review all statements of economic interests filed with the Commission by prospective and actual public servants and evaluate whether (i) the statements conform to the law and the rules of the Commission, and (ii) the financial interests and other information reported reveals actual or potential conflicts of interest.

(4) Investigate alleged violations in accordance with G.S. 138A-25.

(5) Render advisory opinions in accordance with G.S. 138A-26.

(6) Initiate and maintain oversight of ethics educational programs for public servants and their staffs consistent with G.S. 138A-27.

(7) Conduct a continuing study of governmental ethics in the State and propose changes to the General Assembly in the government process and the law as are conducive to promoting and continuing high ethical behavior by governmental officers and employees.

(8) Adopt rules to implement this Chapter, including those establishing ethical standards and guidelines to be employed and adhered to by public servants in attending to and performing their duties.

(9) Report annually to the General Assembly and the Governor on the Commission's activities and generally on the subject of public disclosure, ethics, and conflicts of interest, including recommendations for administrative and legislative action, as the Commission deems appropriate.

(10) Perform other duties as may be necessary to accomplish the purposes of this Chapter.

"**§ 138A-25. Investigations by the Commission.**

(a) Institution of Proceedings. – On its own motion, in response to a signed and sworn complaint of any individual filed with the Commission, or upon the written request of any public servant or any person responsible for the hiring, appointing, or supervising of a public servant, the Commission shall conduct an investigation into any of the following:

(1) The application or alleged violation of this Chapter.

(2) The application or alleged violation of rules adopted in accordance with G.S. 138A-24.

(3) The alleged violation of the criminal law by a public servant in the performance of that individual's official duties.

(b) Complaint. –

(1) A complaint filed under this Chapter shall state the name, address, and telephone number of the person filing the complaint, the name and job title or appointive position of the public servant against whom the complaint is filed, and a concise statement of the nature of the complaint and specific facts indicating that a violation of this Chapter has occurred, the date the alleged violation occurred, and either (i) that the contents of the complaint are within the knowledge of the individual verifying the complaint, or (ii) the basis upon which the individual verifying the complaint believes the allegations to be true.

(2) Except as provided in subsection (c) of this section, a complaint filed under this Chapter must be filed within one year of the date the complainant knew or should have known of the conduct upon which the complaint is based.

(3) The Commission may decline to accept or investigate any attempted complaint that does not meet all of the requirements set forth in subdivision (1) of this subsection, or the Commission may, in its sole discretion, request additional information to be provided by the complainant within a specified period of time of no less than seven business days.

(4) In addition to subdivision (3) of this subsection, the Commission may decline to accept or investigate a complaint if it determines that any of the following apply:

a. The complaint is frivolous or brought in bad faith.

b. The individuals and conduct complained of have already been the subject of a prior complaint.

c. The conduct complained of is primarily a matter more appropriately and adequately addressed and handled by other federal, State, or local agencies or authorities, including law enforcement authorities. If other agencies or authorities are conducting an investigation of the same actions or conduct involved in a complaint filed under this section, the Commission may stay its complaint investigation pending final resolution of the other investigation.

(5) The Commission shall send a copy of the complaint to the public servant who is the subject of the complaint within 30 days of the filing.

(c) Investigation of Complaints by the Commission. – The Commission shall investigate all complaints properly before the Commission in a timely manner. The Commission shall initiate an investigation of a complaint within 90 days of the filing of the complaint, or the complaint shall be dismissed. The Commission is authorized to

initiate investigations upon request of any member if there is reason to believe that a public servant has or may have violated this Chapter. There is no time limit on Commission-initiated complaint investigations under this section. In determining whether there is reason to believe that a violation has or may have occurred, a member can take general notice of available information even if not formally provided to the Commission in the form of a complaint. The Commission may utilize the services of a hired investigator when conducting investigations.

(d) Investigation by the Commission of Matters Other Than Complaints. – The Commission may investigate matters other than complaints properly before the Commission under subsection (a) of this section. For any investigation initiated under this subsection, the Commission may take any action it deems necessary or appropriate to further compliance with this Chapter, including the initiation of a complaint, the issuance of an advisory opinion under G.S. 138A-26, or referral to appropriate law enforcement or other authorities pursuant to subsection (j)(1) of this section.

(e) Public Servant Cooperation With Investigation. – Public servants shall promptly and fully cooperate with the Commission in any Commission-related investigation. Failure to cooperate fully with the Commission in any investigation shall be grounds for sanctions as set forth in G.S. 138A-45.

(f) Dismissal of Complaint After Preliminary Inquiry. – If the Commission determines at the end of its preliminary inquiry that (i) the individual who is the subject of the complaint is not a public servant subject to the Commission's jurisdiction and authority under this Chapter, or (ii) the complaint does not allege facts sufficient to constitute a violation of this Chapter, the Commission shall dismiss the complaint and provide written notice of the dismissal to the individual who filed the complaint and the person against whom the complaint was filed.

(g) Notice. – If at the end of its preliminary inquiry, the Commission determines to proceed with further investigation into the conduct of an individual, the Commission shall provide written notice to the individual who filed the complaint and the public servant as to the fact of the investigation and the charges against the public servant. The public servant shall be given an opportunity to file a written response with the Commission. Upon the notice required under this subsection being sent, the complaint and any written response shall be public records, and all other documents offered at the hearing in conjunction with the complaint shall be public records.

(h) Hearing. –

(1) The Commission shall give full and fair consideration to all complaints and responses received. If the Commission determines that the complaint cannot be resolved without a hearing, or if the public servant requests a public hearing, a hearing shall be held.

(2) The Commission shall send a notice of the hearing to the complainant, the public servant, and any other member of the public requesting notice. The notice shall contain the time and place for a hearing on the matter, which shall begin no less than 30 days and no more than 90 days after the date of the notice.

(3) At any hearing held by the Commission:

a. Oral evidence shall be taken only on oath or affirmation.
b. The hearing shall be open to the public. The deliberations by the Commission on a complaint may be held in closed session, but the decision of the Commission shall be announced in open session.
c. The public servant being investigated shall have the right to present evidence, call and examine witnesses, cross-examine witnesses, introduce exhibits, and be represented by counsel.

(i) Settlement of Investigations. – The parties may meet by mutual consent before the hearing to discuss the possibility of settlement of the investigation or the stipulation of any issues, facts, or matters of law. Any proposed settlement of the investigation is subject to the approval of the Commission.

(j) Disposition of Investigations. – Except as permitted under subsection (f) of this section, after hearing, the Commission shall dispose of the matter in one or more of the following ways:

(1) If the Commission finds substantial evidence of an alleged violation of a criminal statute, the Commission shall refer the matter to the Attorney General for investigation and referral to the district attorney for possible prosecution.
(2) If the Commission finds that the alleged violation is not established by clear and convincing evidence, the Commission shall dismiss the complaint.
(3) If the Commission finds that the alleged violation of this Chapter is established by clear and convincing evidence, the Commission shall do one or more of the following:
a. Issue a public or private admonishment to the public servant and notify the employing entity, if applicable.
b. Refer the matter to the Governor, the employing entity that appointed or employed the public servant or of which the public servant is a member, or the General Assembly for constitutional officers of the State, for appropriate action, and make recommendations on sanctions under subsection (k) of this section.

(k) Effect of Dismissal or Private Admonishment. – In the case of a dismissal or private admonishment, the Commission shall retain its records or findings in confidence, unless the public servant under inquiry requests in writing that the records and findings be made public. If the Commission later finds that a public servant's subsequent unethical activities were similar to and the subject of an earlier private admonishment, then the Commission may make public the earlier admonishment and the records and findings related to it.

(k) Recommendations of Sanctions. – If the Commission determines, after proper review and investigation, that action is appropriate, the Commission may recommend sanctions or issue rulings as it deems necessary or appropriate to protect the public

interest and ensure compliance with this Chapter. In formulating appropriate sanctions, the Commission may consider the following factors:

(1) The public servant's prior experience in an agency or on a board and prior opportunities to learn the ethical standards for public servants as set forth in Article 2 of this Chapter, including those dealing with conflicts of interest and appearances of conflicts of interest.

(2) The number of ethics violations.

(3) The severity of the ethics violations.

(4) Whether the ethics violations involve the public servant's financial interests or arise from an appearance of conflict of interest.

(5) Whether the ethics violations were inadvertent or intentional.

(6) Whether the public servant knew or should have known that the improper conduct was a violation of this Chapter.

(7) Whether the public servant has previously been advised, warned, or sanctioned by the Commission.

(8) Whether the conduct or situation giving rise to the ethics violation was pointed out to the public servant in the Commission's Statement of Economic Interest evaluation letter issued under G.S. 138A-38(c).

(9) The public servant's motivation or reason for the improper conduct or actions, including whether the action was for personal financial gain versus protection of the public interest.

If the Commission determines, after proper review and investigation, that sanctions are appropriate, the Commission may recommend any action it deems necessary to properly address and rectify any violation of this Chapter by a public servant, including removal of the public servant from the public servant's State position. As it deems necessary and proper, the Commission may make referrals to appropriate State officials, including law enforcement officials, for investigation of wrongful conduct by State employees or appointees discovered during the course of a complaint investigation, regardless of whether the individual is a public servant under this Chapter. Nothing in this subsection is intended, and shall not be construed, to give the Commission any independent civil, criminal, or administrative investigative or enforcement authority over public servants or other State employees or appointees.

(l) Findings and Record. – The Commission shall render formal and binding opinions of its findings and recommendations made pursuant to complaints or Commission investigations. In all matters in which the complaint is a public record, the Commission shall ensure that a complete record is made and preserved as a public record.

(m) Authority of Employing Entity. – Any action or failure to act by the Commission under this Chapter, except G.S. 138A-26, shall not limit any authority of the applicable employing entity to discipline the public servant.

(n) Continuing Jurisdiction. – The Commission shall have continuing jurisdiction to investigate possible criminal violations of this Chapter for a period of one year following the date a person who was formerly a pubic servant ceases to be a public servant.

(o) Confidentiality. – All motions, complaints, written requests, investigations and investigative materials shall be confidential and not matters of public record, except as otherwise provided in this section.

(p) Subpoena Authority. – The Commission may petition the Superior Court of Wake County for the approval to issue subpoenas and subpoenas duces tecum as necessary to conduct investigations of alleged violations of this Chapter. The court shall authorize subpoenas under this subsection when the court determines the subpoenas are necessary for the enforcement of this Chapter. Subpoenas issued under this subsection shall be enforceable by the court through contempt powers. Venue shall be with the Superior Court of Wake County for any person covered by this Chapter, and personal jurisdiction may be asserted under G.S. 1-75.4.

"**§ 138A-26. Advisory opinions.**

(a) At the request of any public servant, any individual not otherwise the public servant who is responsible for the supervision or appointment of a person who is a public servant, legal counsel for any public servant, any ethics liaison under G.S. 138A-27, or any member of the Commission, the Commission shall render advisory opinions on specific questions involving the meaning and application of this Chapter and the public servant's compliance therewith. The request shall be in writing, electronic or otherwise, and relate prospectively to real or reasonably anticipated fact settings or circumstances. The Commission shall issue advisory opinions having prospective application only. Reliance upon a requested written advisory opinion on a specific matter shall immunize the public servant, on that matter, from both of the following:

(1) Investigation by the Commission.

(2) Any adverse action by the employing entity.

(b) Staff to the Commission may issue advisory opinions under rules adopted by the Commission.

(c) The Commission shall interpret this Chapter by rules, and these interpretations are binding on all public servants upon publication.

(d) The Commission shall publish its advisory opinions at least once a year. These advisory opinions shall be edited for publication purposes as necessary to protect the identities of the individuals requesting opinions.

(e) Except as provided under subsection (d) of this section, requests for advisory opinions and advisory opinions issued under this section are confidential and not matters of public record.

"**§ 138A-27. Ethics education program.**

(a) The Commission shall develop and implement an ethics education and awareness program designed to instill in all public servants and their immediate staffs a keen and continuing awareness of their ethical obligations and a sensitivity to situations that might result in real or potential conflicts of interest or appearances of conflicts of interest. The Commission shall make basic ethics education and awareness presentations to all public servants and their immediate staffs upon their election, appointment or hiring, and shall offer periodic refresher presentations as the Commission deems appropriate. Every public servant and the immediate staff of every

public servant shall participate in an ethics presentation approved by the Commission within six months of the person's election, appointment, or hiring, and shall attend refresher ethics education presentations at least every two years thereafter in a manner as the Commission deems appropriate. Upon request, the Commission shall assist each agency in developing in-house education programs and procedures necessary or desirable to meet the agency's particular needs for ethics education, conflict identification, and conflict avoidance.

(b) Each agency head shall designate an ethics liaison who shall maintain active communication with the Commission on all agency ethical issues. The ethics liaison shall continuously assess and advise the Commission of any issues or conduct which might reasonably be expected to result in a conflict of interest and seek advice and rulings from the Commission as to their appropriate resolution.

(c) The Commission shall publish a newsletter containing summaries of the Commission's opinions, policies, procedures, and interpretive bulletins as issued from time to time. The newsletter shall be distributed to all public servants. Publication under this subsection may be done electronically.

(d) The Commission shall assemble and maintain a collection of relevant State laws, rules, and regulations that set forth ethical standards applicable to public servants. They shall be made available electronically as resource material to public servants and ethics liaisons, upon request.

(e) As used in this section, "immediate staff" means those individuals who report directly to the public servant.

"**§ 138A-28. Duties of heads of State agencies.**

(a) The head of each State agency, including the chair of each board subject to this Chapter, shall take an active role in furthering ethics in public service and ensuring compliance with this Chapter. The head of each State agency and the chair of each board shall make a conscientious, good-faith effort to assist public servants within the agency or on the board in monitoring their personal, financial, and professional affairs to avoid taking any action that results in a conflict of interest or the appearance of a conflict.

(b) The head of each State agency, including the chair of each board subject to this Chapter, shall maintain familiarity with and stay knowledgeable of the reports, opinions, newsletters, and other communications from the Commission regarding ethics in general and the interpretation and enforcement of this Chapter. The head of each State agency and the chair of each board shall also maintain familiarity with and stay knowledgeable of the Commission's reports, evaluations, opinions, or findings regarding individual public servants in that person's agency or on that person's board, or under person's supervision or control, including all reports, evaluations, opinions, or findings pertaining to actual or potential conflicts of interest.

(c) When an actual or potential conflict of interest is cited by the Commission with regard to a public servant sitting on a board, the conflict shall be recorded in the minutes of the applicable board and duly brought to the attention of the membership by the board's chair as often as necessary to remind all members of the conflict and to help ensure compliance with this Chapter.

(d) The head of each State agency, including the chair of each board subject to this Chapter, shall periodically remind public servants under that person's authority of the public servant's duties to the public under the ethical standards and rules of conduct in this Chapter, including the duty of each public servant to continually monitor, evaluate, and manage the public servant's personal, financial, and professional affairs to ensure the absence of conflicts of interest or appearances of conflict.

(e) At the beginning of any official meeting of a board, the chair shall remind all members of their duty to avoid conflicts of interest and appearances of conflict under this Chapter. The chair also shall inquire as to whether there is any known conflict of interest or appearance of conflict with respect to any matters coming before the board at that time.

(f) The head of each State agency, including the chair of each board subject to this Chapter, shall ensure that legal counsel employed by or assigned to their agency or board are familiar with the provisions of this Chapter, including the Ethical Standards for Public Servants set forth in Article 2 of this Chapter, and are available to advise public servants on the ethical considerations involved in carrying out their public duties in the best interest of the public. Legal counsel so engaged may consult with the Commission, seek the Commission's assistance or advice, and refer public servants and others to the Commission as appropriate.

(g) Taking into consideration the individual autonomy, needs, and circumstances of each agency and board, the head of each State agency, including the chair of each board subject to this Chapter, shall consider the need for the development and implementation of in-house educational programs, procedures, or policies tailored to meet the agency's or board's particular needs for ethics education, conflict identification, and conflict avoidance. This includes the periodic presentation to all agency heads, their chief deputies or assistants, other public servants under their supervision or control, and members of boards, of the basic ethics education and awareness presentation outlined in G.S. 138A-27 and any other workshop or seminar program the agency head or board chair deems necessary in implementing this Chapter. Agency heads and board chairs may request reasonable assistance from the Commission in complying with the requirements of this subsection.

(h) As soon as reasonably practicable after the designation, hiring, or promotion of their chief deputies, assistants, or other public servants under their supervision or control, or learning of the appointment or election of other public servants to a board covered under this Chapter, all agency heads and board chairs shall (i) notify the Commission of such designation, hiring, promotion, appointment, or election and (ii) provide these public servants with copies of this Chapter and all applicable financial disclosure forms, if these materials and forms have not been previously provided to these public servants by their appointing authorities. In order to avoid duplication of effort, agency heads and board chairs shall coordinate this effort with the Commission's staff.

"**§ 138A-29 through 34. [Reserved]**

"Article 4.

"Public Disclosure of Economic Interests.

"**§ 138A-35. Purpose.**

The purpose of disclosure of the financial and personal interests by public servants is to assist public servants and those persons who appoint, elect, hire, supervise, or advise them identify and avoid conflicts of interest and potential conflicts of interest between the public servant's private interests and the public servant's public duties. It is critical to this process that current and prospective public servants examine, evaluate, and disclose those personal and financial interests that could be or cause a conflict of interest or potential conflict of interest between the public servant's private interests and the public servant's public duties. Public servants must take an active, thorough, and conscientious role in the disclosure and review process, including having a complete knowledge of how the public servant's public position or duties might impact the public servant's private interests. Public servants have an affirmative duty to provide any and all information that a reasonable person would conclude is necessary to carry out the purposes of this Chapter and to fully disclose any conflict of interest or potential conflict of interest between the public servant's public and private interests, but the disclosure, review, and evaluation process is not intended to result in the disclosure of unnecessary or irrelevant personal information.

"**§ 138A-36. Statement of economic interest; filing required.**

(a) Every public servant subject to this Chapter who is elected, appointed, or employed and entitled to annual compensation from the State of more than forty thousand dollars ($40,000), including one appointed to fill a vacancy in elective office, shall file a statement of economic interest with the Commission prior to the public servant's initial appointment, election, or employment and no later than January 31 every year thereafter. A prospective public servant required to file a statement under this Chapter shall not be appointed, employed, or receive a certificate of election, prior to submission by the Commission of the Commission's evaluation of the statement in accordance with this Article. The requirement for an annual filing under this subsection also shall apply to public servants whose terms have expired but who continue to serve until their replacement is appointed.

(b) Notwithstanding subsection (a) of this section, persons hired by, and appointees of, constitutional officers of the State may file a statement of economic interest within 60 days of their appointments or employment when the appointment or employment is made during the first 60 days of the constitutional officer's initial term in that constitutional office.

(c) Except as otherwise filed under subsection (a) of this section, a candidate for the Council of State shall file the statement of economic interest at the same place and in the same manner as the notice of candidacy for that office is required to be filed under G.S. 163-106, within 10 days of the filing deadline for the office the candidate seeks. A person who is nominated under G.S. 163-114 after the primary and before the general election, and a person who qualifies under G.S. 163-122 as an unaffiliated candidate in a general election, shall file a statement of economic interest with the county board of elections of each county in the senatorial or representative district. A person nominated under G.S. 163-114 shall file the statement within three days following the person's nomination, or not later than the day preceding the general

election, whichever occurs first. A person seeking to qualify as an unaffiliated candidate under G.S. 163-122 shall file the statement of economic interest with the petition filed under that section. A person seeking to have write-in votes counted for the person in a general election shall file a statement of economic interest at the same time the candidate files a declaration of intent under G.S. 163-123. A candidate of a new party chosen by convention shall file a statement of economic interest at the same time that the president of the convention certifies the names of its candidates to the State Board of Elections under G.S. 163-98.

(d) The State Board of Elections shall provide for notification of the statement of economic interest requirements of this Article to be given to any candidate filing for nomination or election to those offices subject to this Article at the time of the filing of candidacy.

(e) The executive director of the State Board of Elections shall forward a certified copy of the statement of economic interest to the Commission for evaluation.

(f) The Commission shall issue forms to be used for the statement of economic interest and shall revise the forms from time to time as necessary to carry out the purposes of this Chapter. Except as otherwise set forth in this section, the Commission shall furnish to all other public servants the appropriate forms needed to comply with this Article.

"**§ 138A-37. Statements of economic interest as public records.**

The statements of economic interest filed by prospective public servants under this Article for appointed or employed positions and written evaluations by the Commission of these statements are not public records until the prospective public servant is appointed or is employed by the State. All other statements of economic interest and all other written evaluations by the Commission of those statements are public records. After becoming public records, statements shall be made available for inspection and copying by any person during normal business hours at the Commission's office.

"**§ 138A-38. Contents of statement.**

(a) Any statement of economic interest filed under this Article shall be on a form prescribed by the Commission and sworn to by the public servant. Answers must be provided to all questions. The form shall include the following information about the public servant and the public servant's immediate family:

(1) The name, home address, occupation, employer, and business of the person filing.

(2) A list of each asset and liability of whatever nature (including legal, equitable, or beneficial interest) with a value of at least ten thousand dollars ($10,000) of the prospective or actual public servant, and the public servant's spouse. This list shall include the following:

a. All real estate located in the State owned wholly or in part by the public servant or the public servant's spouse, including specific descriptions adequate to determine the location of each parcel and the specific interest held by the public servant and the spouse in each identified parcel.

b. Real estate that is currently leased or rented to the State.

c. Personal property sold to or bought from the State within the preceding two years.

d. Personal property currently leased or rented to the State.

e. The name of each publicly owned company in which the value of securities held exceeds ten thousand dollars ($10,000).

f. The name of each non-publicly owned company or business entity in which the value of securities or other equity interests held exceeds ten thousand dollars ($10,000), including interests in partnerships, limited partnerships, joint ventures, limited liability companies or partnerships, and closely held corporations. For each company or business entity listed under this sub-subdivision, the filing public servant shall indicate whether the listed company or entity owns securities or equity interests exceeding a value of ten thousand dollars ($10,000) in any other companies or entities. If so, then the other companies or entities shall also be listed with a brief description of the business activity of each.

g. If the filing public servant, the members of the public servant's immediate family are the beneficiaries of a vested trust created, established, or controlled by the public servant, then the name and address of the trustee and a description of the trust shall be provided. To the extent such information is available to the public servant, the statement also shall include a list of businesses in which the trust has an ownership interest exceeding ten thousand dollars ($10,000).

h. The filing public servant shall make a good faith effort to list any individual or business entity with which the filing public servant, the public servant's extended family, or any business with which the public servant or a member of the public servant's extended family is associated, has a financial or professional relationship provided (i) a reasonable person would conclude that the nature of the financial or professional relationship presents a conflict of interest or the appearance of a conflict of interest for the public servant; or (ii) a reasonable person would conclude that any other financial or professional interest of the individual or business entity would present a conflict of interest or appearance of a conflict of interest for the public servant. For each individual or business entity listed under this subsection, the filing public servant shall describe the financial or professional relationship and provide an explanation of why the individual or business entity has been listed.

i. A list of all other assets and liabilities with a valuation of at least ten thousand dollars ($10,000), including bank accounts and debts.

j. A list of each source (not specific amounts) of income (including capital gains) shown on the most recent federal and State income tax returns of the person filing where ten thousand dollars ($10,000) or more was received from that source.

k. If the public servant is a practicing attorney, an indication of whether the public servant, or the law firm with which the public servant is affiliated, earned legal fees during any single year of the past five years in excess of ten thousand dollars ($10,000) from any of the following categories of legal representation:

1. Administrative law.
2. Admiralty.
3. Corporation law.
4. Criminal law.
5. Decedent's estates.
6. Insurance law.
7. Labor law.
8. Local government.
9. Negligence – defendant.
10. Negligence – plaintiff.
11. Real property.
12. Taxation.
13. Utilities regulation.

l. A list of all nonpublicly owned businesses with which, during the past five years, the public servant or the public servant's immediate family has been associated, indicating the time period of that association and the relationship with each business as an officer, employee, director, business associate, or owner. The list also shall indicate whether each does business with, or is regulated by, the State and the nature of the business, if any, done with the State.

m. A list of all gifts, and the sources of the gifts, of a value of more than two hundred dollars ($200.00) received during the 12 months preceding the date of the statement from sources other than the public servant's extended family, and a list of all gifts, and the sources of the gifts, valued in excess of one hundred dollars ($100.00) received from any source having business with, or regulated by, the employing entity.

n. A list of all bankruptcies filed during the preceding five years by the public servant, the public servant's spouse, or any entity in which the public servant, or the public servant's spouse, has

been associated financially. A brief summary of the facts and circumstances regarding each listed bankruptcy shall be provided.

o. A list of all directorships on all business boards of which the public servant of the public servant's immediate family is a member.

(3) A list of the public servant's or the public servant's immediate family's memberships or other affiliations with, including offices held in, societies, organizations, or advocacy groups, pertaining to subject matter areas over which the public servant's agency or board may have jurisdiction.

(4) In addition to the information required to be reported under subdivisions (1), (2), and (3) of this subsection, the filing public servant shall provide in the public servant's statement a list of any felony convictions or any other information that a reasonable person would conclude is necessary either to carry out the purposes of this Chapter or to fully disclose any potential conflict of interest or appearance of conflict. If a public servant is uncertain of whether particular information is necessary, then the public servant shall consult the Commission for guidance.

(5) Each statement of economic interest shall contain sworn certification by the filing public servant that the public servant has read the statement and that, to the best of the public servant's knowledge and belief, the statement is true, correct, and complete. The public servant's sworn certification also shall provide that the public servant has not transferred, and will not transfer, any asset, interest, or other property for the purpose of concealing it from disclosure while retaining an equitable interest therein.

(6) If the public servant believes a potential for conflict exists, the public servant has a duty to inquire of the Commission as to that potential conflict.

(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 date the statement of economic interest was signed.

(c) The Commission shall prepare a written evaluation of each statement of economic interest relative to conflicts of interest and potential conflicts of interest. The Commission shall submit the evaluation to all of the following:

(1) The public servant who submitted the statement.

(2) The head of the agency in which the public servant serves.

(3) The Governor for gubernatorial appointees and employees in agencies under the Governor's authority.

(4) The appointing or hiring authority for those public servants not under the Governor's authority.

(5) The State Board of Elections for those public servants who are elected.

"**§ 138A-39. Failure to file.**

(a) Within 30 days after the date due in accordance with G.S. 138A-36, for every public servant from whom a statement of economic interest has not been received by the Commission, or whose statement of economic interest has been received by the Commission but deemed by the Commission to be incomplete, the Commission shall notify the public servant of the failure to file or complete and shall notify the public servant that if the statement of economic interest is not filed or completed within 30 days of receipt of the notice of failure to file or complete, the public servant shall be subject to a fine as provided for in this section.

(b) Any public servant who fails to file or complete a statement of economic interest within 30 days of the receipt of the notice, required under subsection (a) of this section, shall be subject to a fine of two hundred fifty dollars ($250.00), to be imposed by the Commission.

(c) Failure by any public servant to file or complete a statement of economic interest within 60 days of the receipt of the notice, required under subsection (a) of this section, shall be deemed to be a violation of this Chapter and shall be grounds for disciplinary action under G.S. 138A-45.

"**§ 138A-40. Concealing or failing to disclose material information.**

A public servant who knowingly conceals or fails to disclose information that is required to be disclosed on a statement of economic interest under this Article shall be punished as a Class 2 misdemeanor and shall be subject to disciplinary action under G.S. 138A-45.

"**§ 138A-41. Penalty for false or misleading information.**

A public servant who provides false or misleading information on a statement of economic interest as required under this Article knowing that the information is false or misleading shall be punished as a Class F felon and shall be subject to disciplinary action under G.S. 138A-45.

"**§ 138A-42 through 44. [Reserved]**

"Article 5.

"Violation Consequences.

"**§ 138A-45. Violation consequences.**

(a) Violation of this Chapter by any public servant is grounds for disciplinary action. Except as provided in Article 4 of this Chapter and for perjury under G.S. 138A-25 and G.S. 138A-38, no criminal penalty shall attach for any violation of this Chapter.

(b) The willful failure of any public servant serving on a board to comply with this Chapter is misfeasance, malfeasance, or nonfeasance. In the event of misfeasance, malfeasance, or nonfeasance, the offending public servant serving on a board is subject to removal from the board of which the public servant is a member. For appointees of the Governor and members of the Council of State, the appointing authority may remove the offending public servant. For appointees of the General Assembly, the Commission shall exercise the discretion of whether to remove the offending public servant.

(c) The willful failure of any public servant serving as a State employee to comply with this Chapter is a violation of a written work order, thereby permitting disciplinary action as allowed by the law, including termination from employment. Except for employees of State departments headed by a member of the Council of State, the Governor shall make all final decisions on the manner in which the offending public servant shall be disciplined. For employees of State departments headed by a member of the Council of State, the appropriate member of the Council of State shall make all final decisions on the manner in which the offending public servant shall be disciplined.

(d) The willful failure of any constitutional officer of the State to comply with this Chapter is malfeasance in office for purposes of G.S. 123-5.

(e) Nothing in this Chapter affects the power of the State to prosecute any person for any violation of the criminal law.

(f) The State Ethics Commission may seek to enjoin violations of G.S. 138A-9."

SECTION 2. G.S. 150B-1 is amended by adding a new subsection to read:

"(g) Exemption of State Ethics Commission. – Except for G.S. 150B-21.20A and Article 4 of this Chapter, no other provision of this Chapter applies to the State Ethics Commission."

SECTION 3. Part 4 of Article 2A of Chapter 150B of the General Statutes is amended by adding a new section to read:

"**§ 150B-21.20A. Publication of rules and advisory opinions of State Ethics Commission.**

Notwithstanding any other law, the Codifier of Rules shall publish unedited the rules and advisory opinions issued by the State Ethics Commission under Chapter 138A of the General Statutes in the North Carolina Register as they are received from the State Ethics Commission, in the format required by the Codifier.

Notwithstanding any other law, the Codifier of Rules shall publish unedited in the North Carolina Administrative Code the rules as codified and issued by the State Ethics Commission under Chapter 138A of the General Statutes, in the format required by the Codifier."

SECTION 4. The authority, powers, duties and functions, records, personnel, property, unexpended balances of appropriations, allocations, or other funds, including the functions of budgeting and purchasing, of the North Carolina Board of Ethics of the Office of the Governor are transferred to the State Ethics Commission created in Section 1 of this act. The Director of the Budget shall resolve any disputes arising out of this transfer.

SECTION 5. This act becomes effective October 1, 2006, applies to public servants on or after January 1, 2007, and acts and conflicts of interest that arise on or after January 1, 2007.

Attachment IV

HOUSE BILL 1844
Executive Branch Ethics Act – 1.

BILL ANALYSIS

Committee:	House Judiciary I	**Date:**	May 10, 2006
Introduced by:	Representatives Hackney, Howard, Brubaker, and Luebke	**Summary by:**	O. Walker Reagan Staff Attorney
Version:	First Edition		

SUMMARY: ***House Bill 1844 codifies Executive Order No. One that governs ethics in the executive branch. The Act creates the State Ethics Commission and subjects certain executive branch officials, appointees, and employees to economic interest disclosures and creates statutory ethical standards for these public servants. This proposal is a recommendation of the House Select Committee on Ethics and Governmental Reform.***

CURRENT LAW: Most of the regulation of ethics in the executive branch is pursuant to Executive Order No. One (Order) issued by the Governor, most recently on January 1, 2001. This Executive Order is the latest in a succession of similar executive orders governing this subject that have been in effect since January 1977. Under the Governor's limited authority in this area, the Governor has made the order applicable to appointees of the Governor. In addition, the Governor has offered the services of the State Ethics Board (created by the Order) to members of the Council of State and their appointees, the Speaker and President Pro Tempore for their appointees to boards and commissions, and to the UNC Board of Governors.

The Order creates the State Ethics Board (Board). It requires covered officials to file statements of economic interests annually. It establishes rules of conduct for covered officials. The Board is authorized to issue advisory ethics opinions, investigate ethics complaints, and conduct ethics education programs. The decisions of the Board are advisory, and enforcement of the Board's recommendations is left to the discretion of the appointing or hiring authority.

All records of the Board are public, including statements of economic interest filed by perspective appointees prior to their appointment. False statements made on statements of economic interest are not subject to the penalty of perjury. The Governor does not have the authority to require other constitutional officers of the State to participate under the Order or the authority to make the order applicable to appointees of boards and commissions made by persons other than the Governor, including the General Assembly.

BILL ANALYSIS: House Bill 1844 codifies the Order. On certain matters the Order does not address, the Act incorporates ethics procedures and processes copied from the Legislative Ethics Act and statutory ethics provisions unique to the NC Board of Transportation. The bill is divided into 4 primary sections.

ARTICLE 1 sets out the purpose of the Act and the applicable definitions. The following definitions are included in Article 1:

Board - Any non-advisory State executive branch board, commission, council, committee, task force, authority, or similar body.

Extended Family – Spouse, descendant, ascendant, or sibling of the public servant, or descendant, ascendant or sibling of the spouse of the public servant.

Public event – An organized gathering of individuals open to the general public or to which at least ten public servants are invited to attend and at least ten employees or members of the principal or person actually attend.

Public servants – All Council of State members, heads of all principal State departments, chief deputies and administrative assistants, confidential assistants and secretaries, employees of the Office of the Governor, persons designated as exempt from the State Personnel Act, voting members of all boards (defined) whether appointed by the executive, legislative, or judicial branch, the UNC Board of Governors, the UNC president and vice-presidents, chancellors, vice-chancellors, members of UNC boards of trustees, members of the State Board of Community Colleges, President and chief financial officer of the NC Community College System, and presidents, chief financial officers and trustees of local community colleges. Also added contract employees filling any of these positions.

ARTICLE 2 establishes ethical standards for public servants.

G.S. 138A-6 prohibits public servants from using their public positions for personal financial gain for themselves, their extended families, or a business with which they are associated, or from using their governmental title for non-governmental advertising **that advances the private interest of the public servant or others. Use of the legislative title is permitted for political advertising.**

G.S. 138A-7 restricts gifts that public servants can accept. It prohibits accepting gifts in return for being influenced in their official duties. It prohibits soliciting charitable gifts from subordinates. It prohibits public servants from accepting gifts from lobbyists, lobbyist principals, or other people doing business with the State. Excepted from the gift restrictions are meals and beverages for immediate consumption in connection with public events, gifts of less than $10, informational materials related to the public servant's duties, expenses associated with a speech or panel related to the public servant's public duties, items or services related to an organization to which the public servant or the public servant's agency belongs, expenses received at an educational conference or meeting, **a plaque or nonmonetary recognition memento,** gifts accepted on behalf of the State, anything available to the general public or all State employees, commercially available loans made on terms not more favorable than available to the public, contractual relationships or business relationships not made for the purpose of lobbying, scholarships on terms not more favorable than scholarships generally available to the public, gifts in excess of $10 associated with travel and tourism and industry recruitment under certain conditions, gifts of less than $100 received in a foreign country as part of a trade mission, anything for which fair market value was paid, legal campaign contributions, gifts from family members, and gifts received in conjunction with a wedding, birth, adoption or death. **This section also specifies that a gift accepted or solicited in compliance with this section without corrupt intent shall not constitute bribery.**

G.S. 138A-8 prohibits public servants from receiving additional compensation, other than salary, for carrying out their duties.

G.S. 138A-9 prohibits public servants from using information gained in their official positions for personal financial gain.

G.S. 138A-10 requires public servants to avoid appearances of conflicts of interest.

G.S. 138A-11 requires public servants to use due diligence to determine if they have a conflict of interest or the appearance of a conflict and to continually monitor their situation to assure the avoidance of conflicts.

G.S. 138A-12 defines conflicts of interest for public servants. A conflict of interest occurs when the person, his or her extended family, or a business with which he or she is associated, has a pecuniary interest in, or would benefit from, the matter under consideration, and the public servant's independence of judgment would be influenced by the interest. When a conflict exists, the public servant must abstain from participation. If the public servant is unclear if a conflict exists, the public official is required to seek guidance. This section sets out numerous exceptions to the restrictions, primarily involving situations where the benefit is no greater to the public servant than the public in general, or when the public servant has received an ethics opinion that no conflict exists.

G.S. 138A-13 establishes a process where a public servant can be forced to remove a disqualifying conflict of interest or be required to resign. A disqualifying conflict of interest occurs when a conflict of interest is found to prevent the public servant from fulfilling a substantial function or portion of his or her public duties.

G.S. 138A-14 prohibits a public servant from hiring or supervising a member of his or her extended family.

G.S. 138A-15 permits individual State agencies to adopt more stringent ethical standards in addition to the provisions of this Act.

ARTICLE 3 establishes the State Ethics Commission as an independent, bipartisan commission of seven members appointed by the Governor for 4-year staggered terms. No more than 4 members may be of the same political party. While serving on the Commission, no member may hold or be a candidate for public office, hold office in a political party, participate in or contribute to a political campaign for a public servant the Commission oversees, or otherwise be an employee of the State, a community college or local public school system, or a member of any other State board.

The Commission would have the power to employ staff, review statements of economic interest, render advisory opinions, investigate ethics complaints, oversee ethics education programs, and advise the General Assembly on ethics matters.

G.S. 138A-25 sets out the authority of the Commission to conduct ethics investigations and to hold hearings on alleged violations of the ethics laws, rules, or the criminal law in the performance of official duties. An investigation must be initiated within 90 days of the receipt of the complaint or the complaint is to be dismissed. After a hearing, the Commission can dismiss the complaint, refer criminal matters to the Attorney General and the district attorney, issue a pubic admonishment, or recommend other sanctions to the employing or appointing authority. Complaints and initial (probable cause) investigations are not public records, but all documents considered in a hearing are public records. Hearings are held in open session while deliberations are in closed session. Decisions are announced in open session. The Commission has subpoena authority when authorized by the court.

G.S. 138A-26 sets out the authority of the Commission to issue advisory opinions. A person who seeks an opinion is immunized from sanctions when he or she acts in accordance with an advisory opinion. Requests for advisory opinions and advisory opinions are confidential and not public records, but annual summaries of advisory opinions are to be published and made available to the public.

G.S. 138A-27 sets out the authority for the Commission to provide for ethics education programs. All public servants **and their immediate staffs (individuals who report directly to the public servant)** are required to take ethics training within 6 months of the beginning of their employment, election, or appointment, and take a refresher course every 2 years thereafter. Each agency will designate an ethics liaison to coordinate ethics compliance and education within each agency. The Commission is also to publish ethics newsletters from time to time.

G.S. 138A-28 sets out the ethics duties of heads of State agencies. Agency heads, including board chairs, are required to take an active role in promoting ethics in their areas of responsibility. They are expected to remain knowledgeable of ethics laws, remind public servants of their ethical obligations, remind their fellow public servants about conflicts of interests and appearances of conflicts of interests, and arrange and promote in-house ethics education programs.

ARTICLE 4 sets out the requirements for filing statements of economic interests.

G.S. 138A-36 requires all public servants, except employees earning $40,000 or less, to file statements of economic interest (SEI) prior to their initial appointment, election, or employment and no later than January 31st of every year thereafter. An exception is made for appointees of newly elected constitutional officers, who have 60 days from the date of appointment or employment to file, when the appointment or employment is done within the first 60 days of the initial term in office. This section sets forth the requirement and procedure for candidates for the Council of State to follow for filing their SEI, in the same manner as is required for candidates for the General Assembly.

G.S. 138A-37 makes statements of economic interest public records when filed, except SEI's of perspective appointees or employees do not become public until the person is appointed or employed.

G.S. 138A-38 sets out the contents of the Statement of Economic Interest (SEI). Included in the information to be reported are assets in excess of $10,000 in real estate holdings, personal property, business interests including stocks and bonds, interests in vested trusts, bank accounts, sources of income, attorney's areas of practice; businesses owned in the previous 5 years; gifts in excess of $200 from persons other than extended family members; bankruptcies; and directorships of businesses. The statement also requires lists of memberships and associations in organizations over which the public servant's agency or board has jurisdiction, and felony convictions. Statements of economic interest must be sworn, and false statements would be subject to penalty of perjury. The Commission is to evaluate each statement and issue an opinion on the existence or lack of conflicts of interests and potential conflicts of interests.

G.S. 138A-39 requires the Commission to notify every public servant who fails to file or complete his or her required SEI within 30 days of the due date. Any public

servant who fails to file or complete the SEI within 30 days of the receipt of the late notice is subject to a $250 fine. Any public servant who fails to file or complete the SEI within 60 days of receipt of the late notice shall be subject to disciplinary action under Article 5.

G.S. 138A-40 makes it a Class 2 misdemeanor for a public servant to knowingly conceal or fail to disclose required information on a SEI.

G.S. 138A-41 makes it a Class F felony for a public servant to provide false or misleading information on a SEI knowing the information to be false or misleading. The level of punishment is the same as the penalty for perjury.

ARTICLE 5 sets out the sanctions for violation of the Act. Willful violations by board members constitute malfeasance, misfeasance, and nonfeasance subjecting the person to removal from the board. Willful violations by State employees constitute a violation of a written work order which could lead to being fired. Willful violations by members of the Council of State constitute grounds for impeachment.

SECTION 2 exempts the Commission from all provisions of Chapter 150B, The Administrative Procedure Act, except for Article 4, Judicial Review.

SECTION 3 directs the Codifier of Rules to publish the rules and advisory opinions of the Commission.

SECTION 4 transfers the assets and personnel of the State Ethics Board to the State Ethics Commission.

EFFECTIVE DATE: The Act becomes effective October 1, 2006, and applies to public servants on or after January 1, 2007, and to acts and conflicts of interest that arise on or after January 1, 2007.

* *Brad Krehely contributed to the drafting of this summary.*

House Judiciary I Committee

May 11, 2006
10:00 a.m.

Minutes

The House Judiciary I Committee met on Thursday, May 11, 2006 at 10:00 a. m. in Room 1228 of the Legislative Building. The Chairman, Representative Joe Hackney, called the meeting to order and the following members were present: Representatives Blust, Capps, Goodwin, Harrison, Insko, Miller, Ross, Stam, Stiller and West. A copy of the agenda and visitor registration is attached, (Attachments I and II).

The Committee continued its discussion of House Bill 1844, AN ACT TO ESTABLISH THE EXECUTIVE BRANCH ETHICS ACT, TO CREATE THE STATE ETHICS COMMISSION, TO ESTABLISH ETHICAL STANDARDS FOR CERTAIN STATE PUBLIC OFFICERS, STATE EMPLOYEES, AND APPOINTEES TO NONADVISORY STATE BOARDS AND COMMISSIONS, TO REQUIRE PUBLIC DISCLOSURE OF ECONOMIC INTERESTS, AND TO MAKE CONFORMING CHANGES, AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON ETHICS AND GOVERNMENTAL REFORM, (Attachment III). The bill was discussed during the May 10, 2006 meeting of the Committee. A bill analysis explaining the bill is attached, (Attachment IV).

Representative Stam was recognized to offer an amendment, (Attachment V). Each part of the amendment was considered and voted on separately by the Committee. The first part of the amendment would remove the "purpose" section of the bill. Representative Ross spoke in opposition to its removal. Following discussion, Representative Stam withdrew that part of the amendment. The second part of the amendment would rewrite the definition of "board." Representative Stam moved its adoption and his motion carried. The next part of the amendment substituted the word "by" for the word "in" on page 3, line 10. Representative Stam moved adoption and his motion carried. The next part of the amendment regarded the solicitations and would rewrite lines 6-10 on page 6 of the bill. Following discussion, Representative Ross suggested a perfecting amendment to remove the word "common" from his amendment and to substitute with "same" or "similar." Chairman Hackney stated that he did not like either of those words and Representative Capps suggested that the word "generic" be used. Chairman Hackney stated that without objection, the word "generic" would be substituted for the word "common" in Representative Stam's amendment. There was no objection and that part of the amendment was adopted. The part of the amendment to delete the word "paid" and substitute the phrase "paid by the public servant" on page 7, line 1 was adopted. The proposed change to substitute the word "except" for the words "Notwithstanding any other law, except" on page 9, line 4 was adopted. The next part of the amendment would delete the number "90" and substitute the number "45" with regard to the number of days in which an investigation of a complaint should be initiated. Following discussion, Representative Stam agreed to a compromise of "60" days. The

next part of the amendment addressed lines 20 and 21 on page 20 of the bill and would change the words "forty thousand dollars ($40,000)" to "sixty thousand ($60,000)." Representative Luebke spoke in opposition to this part of the amendment and Representative Stam agreed to remove it.

Each addition part of the amendment was discussed and adopted by the Committee.

Mr. Perry Newsom, Board of Ethics, spoke in support of the bill.

Following brief discussion, Representative Ross moved to roll the amendment into a Proposed Committee Substitute, that it be given a favorable report and the original bill an unfavorable report, (Attachment VI). A copy of the Committee Substitute is attached, (Attachment VII).

The meeting was adjourned at 10:50 a.m.

Representative Joe Hackney
Chair

Emily Reynolds Freeman
Committee Clerk

Attachment I

HOUSE COMMITTEE ON JUDICIARY I

May 11, 2006
10:00 a.m.

AGENDA

OPENING REMARKS

AGENDA ITEMS

House Bill 1843 – Revise Legislative Ethics Act
Representatives Hackney, Howard, Brubaker and Luebke

House Bill 1844 – Executive Branch Ethics Act
Representatives Hackney, Howard, Brubaker and Luebke

House Bill 1845 – Permitted Use of Campaign Funds
Representatives Hackney, Howard, Eddins and Ross

House Bill 1847– Treasurer Training
Representatives Hackney, Howard and Ross

ADJOURNMENT

Attachment II

VISITOR REGISTRATION SHEET

House Judiciary I — May 11, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Suzanne Williams	NCCS
Gary McLeod	NCAGO
Dirk Carothers	atty.
Don Kerr	NCD
M Bunker	N + R
Chad Hunter	Civitas Institute
Christy Bell	CAPA
Rebecca Troutman	NCHCC
Paul Stock	NC Bankers Assn.
[illegible]	NC [illegible]
Paula A. Wolf	NC Coalition on Lobbying Reform

VISITOR REGISTRATION SHEET

House Judiciary I — May 11, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Rob Schofield	NC Ctr for NP's
Rob Thompson	NCPBRC
Russ Dubishy	Southern Strategy Group
DAVID BARNES	P+S.
Ian Palmquist	ENC
Kenny Wilson	SBE
Kathleen J Edwards	UNC-CH Daily Bulletin
Jeff Wolfe	UNC-CH Daily Bulletin
Barry Newsom	Bd of Ethics
John Mackey	BOG ARMC
Harry Taylor	NCAHA
Ken Wright	BCBSNC

VISITOR REGISTRATION SHEET

House Judiciary I — May 11, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Tracy Little	NCDOC
Mildred Spearman	NCDOC
Craig Dick	OJJDP
[illegible]	Gov's office
[illegible]	DOC
Doug [illegible]	NCDMST
Andy Ronchetti	NCCM
[illegible]	JD, AL, PA
[illegible]	WCSR
Joel Brown	NCSOS

Attachment III

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

HOUSE BILL 1844

Short Title:	Executive Branch Ethics Act - 1.	(Public)
Sponsors:	Representatives Hackney, Howard, Brubaker, Luebke (Primary Sponsors); Barnhart, Bell, Coates, Eddins, Fisher, Gibson, Harrison, Justice, Lucas, Martin, McLawhorn, Nye, Ross, Sauls, Setzer, Sherrill, Steen, West, Alexander, L. Allen, Bordsen, Dickson, Glazier, Hill, Insko, Jeffus, McGee, Moore, Stiller, Underhill, Weiss, and Wiley.	
Referred to:	Judiciary I.	

May 10, 2006

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE EXECUTIVE BRANCH ETHICS ACT, TO CREATE THE STATE ETHICS COMMISSION, TO ESTABLISH ETHICAL STANDARDS FOR CERTAIN STATE PUBLIC OFFICERS, STATE EMPLOYEES, AND APPOINTEES TO NONADVISORY STATE BOARDS AND COMMISSIONS, TO REQUIRE PUBLIC DISCLOSURE OF ECONOMIC INTERESTS, AND TO MAKE CONFORMING CHANGES, AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON ETHICS AND GOVERNMENTAL REFORM.

The General Assembly of North Carolina enacts:

SECTION 1. The General Statutes are amended by adding a new Chapter to read:

"**Chapter 138A.**

"**Executive Branch Ethics Act.**

"Article 1.

"General Provisions.

"**§ 138A-1. Title.**

This Chapter shall be known and may be cited as the 'Executive Branch Ethics Act.'

"**§ 138A-2. Purpose.**

The people of North Carolina entrust public power to elected and appointed officials for the purpose of furthering the public, not private or personal, interest. To maintain the public trust it is essential that government function honestly and fairly, free from all forms of impropriety, threats, favoritism, and undue influence. Elected and appointed officials must maintain and exercise the highest standards of duty to the public in carrying out the responsibilities and functions of their positions. Acceptance of authority granted by the people to elected and appointed officials imposes a commitment of

fidelity to the public interest, and this power cannot be used to advance narrow interests for oneself, other persons, or groups. Self-interest, partiality, and prejudice have no place in decision-making for the public. Public officials must exercise their duties responsibly with skillful judgment and energetic dedication. Public officials must exercise discretion with sensitive information pertaining to public and private persons and activities. To maintain the integrity of North Carolina's State government, those citizens entrusted with authority must exercise it for the good of the public and treat every citizen with courtesy, attentiveness, and respect. Because many public officials serve on a part-time basis, it is inevitable that conflicts of interest and appearances of conflict will occur. Often these conflicts are unintentional and slight, but at every turn those public officials who represent the people of this State must be certain that it is the interests of the people, and not their own, that are being served. Officials should be prepared to remove themselves immediately from decisions, votes, or processes where even the appearance of a conflict of interest exists. The State is committed to the responsible exercise of authority by persons of honor and goodwill in government, by adopting a stronger procedure to prevent the occurrence of conflicts of interest in government and to resolve conflicts when they do occur.

"**§ 138A-3. Definitions.**

The following definitions apply in this Chapter:

(1) Board. – Any non-advisory State executive branch board, commission, council, committee, task force, authority, or similar public body, however denominated.

(2) Business. – Any of the following, whether or not for profit:

a. Association.
b. Corporation.
c. Enterprise.
d. Joint venture.
e. Organization.
f. Partnership.
g. Proprietorship.
h. Vested trust.
i. Every other business interest, including ownership or use of land for income.

(3) Business associate. – A partner, or member or manager of a limited liability company.

(4) Business with which associated. – A business of which the public servant or any member of the public servant's immediate family has a pecuniary interest. For purposes of this sub-subdivision, the term 'business' shall not include a widely held investment fund, including a mutual fund, regulated investment company, or pension or deferred compensation plan, if all of the following apply:

1. The public servant or a member of the public servant's immediate family neither exercises nor has the ability to exercise control over the financial interests held by the fund.

2. The fund is publicly traded, or the fund's assets are widely diversified.

(5) Commission. – The State Ethics Commission.

(6) Compensation. – Any money, thing of value, or economic benefit conferred on or received by any person in return for services rendered or to be rendered by that person or another. This term does not include campaign contributions properly received and, if applicable, reported as required by Article 22A of Chapter 163 of the General Statutes.

(7) Constitutional officers of the State. – Officers whose offices are established in Article III of the Constitution.

(8) Contract. – Any agreement including sales and conveyances of real and personal property and agreements for the performance of services.

(9) Employing entity. – Any of the following bodies of State government of which the public servant is an employee or a member, or over which the public servant exercises supervision: agencies, authorities, boards, commissions, committees, councils, departments, offices, institutions and their subdivisions, and constitutional offices of the State.

(10) Extended family. – Spouse, descendant, ascendant, or sibling of the public servant or descendant, ascendant, or sibling of the spouse of the public servant.

(11) Immediate family. – An unemancipated child of the public servant residing in the household and the public servant's spouse, if not legally separated.

(12) Official action. – Any decision, including administration, approval, disapproval, preparation, recommendation, the rendering of advice, and investigation, made or contemplated in any proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, investigation, charge, or rule making.

(13) Participate. – To take part in, influence, or attempt to influence, including acting through an agent or proxy.

(14) Pecuniary interest. – Any of the following:

a. Owning, either individually or collectively, a legal, equitable, or beneficial interest of ten thousand dollars ($10,000) or more or five percent (5%), whichever is less, of any business.

b. Receiving, either individually or collectively, during the preceding calendar year compensation that is or will be required to be included as taxable income on federal income tax returns of the public servant, the public servant's immediate family, or a business with which associated in an aggregate amount of five thousand dollars ($5,000) from any business or combination of businesses. A pecuniary interest exists in any client or customer who pays fees or commissions, either individually or collectively, of five thousand dollars ($5,000) or more in the

preceding 12 months to the public servant, the public servant's immediate family, or a business with which associated.

c. Receiving, either individually or collectively and directly or indirectly, in the preceding 12 months, gifts or honoraria having an unknown value or having an aggregate value of five hundred dollars ($500.00) or more from any person. A pecuniary interest does not exist under this sub-subdivision by reason of (i) a gift or bequest received as the result of the death of the donor; (ii) a gift from an extended family member; or (iii) acting as a trustee of a trust for the benefit of another.

d. Holding the position of associate, director, officer, business associate, or proprietor of any business, irrespective of the amount of compensation received.

(15) Public event. – An organized gathering of individuals open to the general public or to which at least ten public servants are invited to attend and at least ten employees or members of the principal or person actually attend.

(16) Public servants. – All of the following:

a. Constitutional officers of the State and persons elected or appointed as constitutional officers of the State prior to taking office.

b. Employees of the Office of the Governor.

c. Heads of all principal State departments, as set forth in G.S. 143B-6, who are appointed by the Governor.

d. The chief deputy and chief administrative assistant of each person designated under sub-subdivisions a. or c. of this subdivision.

e. Confidential assistants and secretaries as defined in G.S. 126-5(c)(2), to persons designated under sub-subdivisions a., c., or d. of this subdivision.

f. Employees in exempt positions as defined in G.S. 126-5(b) and employees in exempt positions designated in accordance with G.S. 126-5(d)(1), (2), or (2a), and confidential secretaries to these individuals.

g. Any other employees or appointees in the principal State departments as may be designated by the Governor to the extent that the designation does not conflict with the State Personnel Act.

h. All voting members of boards, including ex officio members and members serving by executive, legislative, or judicial branch appointment.

i. For The University of North Carolina, the voting members of the Board of Governors of The University of North Carolina, the president, the vice-presidents, and the chancellors, the

vice-chancellors, and voting members of the boards of trustees of the constituent institutions.

j. For the Community Colleges System, the voting members of the State Board of Community Colleges, the President and the chief financial officer of the Community Colleges System, the president, chief financial officer, and chief administrative officer of each community college, and voting members of the boards of trustees of each community college.

k. Members of the Commission.

l. Persons under contract with the State working in or against a position included under this subdivision.

(17) Vested trust. – A trust, annuity, or other funds held by a trustee or other third party for the benefit of the public servant or a member of the public servant's immediate family. A vested trust shall not include a widely held investment fund, including a mutual fund, regulated investment company, or pension or deferred compensation plan, if:

a. The public servant or a member of the public servant's immediate family neither exercises nor has the ability to exercise control over the financial interests held by the fund; and

b. The fund is publicly traded, or the fund's assets are widely diversified.

"**§ 138A-4 and 138A-5. [Reserved]**

"Article 2.

"Ethical Standards for Public Servants.

"**§ 138A-6. Use of public position for private gain.**

(a) A public servant shall not knowingly use the public servant's public position in any manner that will result in financial benefit, direct or indirect, to the public servant, a member of the public servant's extended family, or a person with whom, or business with which, the public servant is associated. The performance of usual and customary duties associated with the public position or the advancement of public policy goals or constituent services, without compensation, shall not constitute the use of public position for financial benefit. This subsection shall not apply to financial or other benefits derived by a public servant that the public servant would enjoy to an extent no greater than that which other citizens of the State would or could enjoy, or that are so remote, tenuous, insignificant, or speculative that a reasonable person would conclude under the circumstances that the public servant's ability to protect the public interest and perform the public servant's official duties would not be compromised.

(b) A public servant shall not mention or permit another person to mention the public servant's public position in nongovernmental advertising that advances the private interest of the public servant or others. The prohibition in this subsection shall not apply to political advertising, news stories, or news articles.

"**§ 138A-7. Gifts.**

(a) A public servant shall not knowingly, directly or indirectly, ask, accept, demand, exact, solicit, seek, assign, receive, or agree to receive anything of value for the public servant, or for another person, in return for being influenced in the discharge of the public servant's official responsibilities, other than that which is received by the public servant from the State for acting in the public servant's official capacity.

(b) A public servant may not solicit for a charitable purpose any gift from any other public servant whose position is subordinate to the soliciting public servant. This subsection shall not apply to solicitations for the State Employees Combined Campaign or to other charities for which payroll deductions are authorized under G.S. 143-3.3(i) and (j).

(c) No public servant shall knowingly accept anything of monetary value, directly or indirectly, from a legislative lobbyist or principal as defined in G.S. 120-47.1 or an executive lobbyist or principal as defined in G.S. 147-54.31, or a person whom the public servant knows or has reason to know any of the following:

(1) Is doing or is seeking to do business of any kind with the public servant's employing entity.

(2) Is engaged in activities that are regulated or controlled by the public servant's employing entity.

(3) Has financial interests that may be substantially and materially affected, in a manner distinguishable from the public generally, by the performance or nonperformance of the public servant's official duties.

(d) Subsection (c) of this section shall not apply to any of the following:

(1) Meals and beverages for immediate consumption in connection with public events.

(2) Nonmonetary items, other than food or beverages, with a value not to exceed ten dollars ($10.00) provided by a single donor during a single calendar day.

(3) Informational materials relevant to the duties of the public servant.

(4) Reasonable actual expenses for food, registration, travel, and lodging of the public servant for a meeting at which the public servant participates in a panel or speaking engagement at the meeting related to the public servant's duties and when expenses are incurred on the actual day of participation in the engagement or incurred within a 24-hour time period before or after the engagement.

(5) Items or services received in connection with a state, national or regional organization in which the public servant or the public servant's agency is a member.

(6) Items and services received relating to an educational conference or meeting.

(7) A plaque or similar nonmonetary memento recognizing individual services in a field or specialty or to a charitable cause.

(8) Gifts accepted on behalf of the State.

(9) Anything generally available or distributed to the general public or all other State employees.

(10) Anything for which fair market value is paid.
(11) Commercially available loans made on terms not more favorable than generally available to the public in the normal course of business if not made for the purpose of lobbying.
(12) Contractual arrangements or business relationships or arrangements made in the normal course of business if not made for the purpose of lobbying.
(13) Academic scholarships made on terms not more favorable than scholarships generally available to the public.
(14) Political contributions properly received and reported as required under Article 22A of Chapter 163 of the General Statutes.
(15) Gifts from the public servant's extended family, or a member of the same household of the public servant, or gifts received in conjunction with a marriage, birth, adoption, or death.
(16) Things of monetary value given to a public servant valued in excess of ten dollars ($10.00) where the thing of monetary value is entertainment or related expenses associated with the public business of industry recruitment, promotion of international trade, or the promotion of travel and tourism, and the public servant is responsible for conducting the business on behalf of the State, provided all the following conditions apply:
a. The public servant did not solicit the thing of value, and the public servant did not accept the thing of value in the performance of the public servant's official duties.
b. The public servant reports electronically to the Commission within 30 days of receipt of the thing of value. The report shall include a description and value of the thing of value and a description how the thing of value contributed to the public business of industry recruitment, promotion of international trade, or the promotion of travel and tourism. This report shall be posted to the Commission's public Web site.
c. A tangible thing of value in excess of ten dollars ($10.00), other than meals or beverages, shall be turned over as State property to the Department of Commerce within 30 days of receipt.
(17) Things of monetary value of personal property valued at less than one hundred dollars ($100.00) given to a public servant in the commission of the public servant's official duties if the gift is given to the public servant as a personal gift in another country as part of an overseas trade mission, and the giving and receiving of such personal gifts is considered a customary protocol in the other country.

(e) A prohibited gift shall be declined, returned, paid for at fair market value, or accepted and donated immediately to the State. Perishable food items of reasonable costs, received as gifts shall be donated to charity, destroyed, or provided for consumption among the entire staff or the public.

(f) A public servant shall not accept an honorarium from a source other than the employing entity for conducting any activity where any of the following apply:

(1) The employing entity reimburses the public servant for travel, subsistence, and registration expenses.

(2) The employing entity's work time or resources are used.

(3) The activity would be considered official duty or would bear a reasonably close relationship to the public servant's official duties.

An outside source may reimburse the employing entity for actual expenses incurred by a public servant in conducting an activity within the duties of the public servant, or may pay a fee to the employing entity, in lieu of an honorarium, for the services of the public servant.

(g) Acceptance or solicitation of a thing of value in compliance with this section without corrupt intent shall not constitute a violation of G.S. 14-217 or G.S. 14-218.

"**§ 138A-8. Other compensation.**

A public servant shall not solicit or receive personal financial gain, other than that received by the public servant from the State, or with the approval of the employing entity, for acting in the public servant's official capacity, or for advice or assistance given in the course of carrying out the public servant's duties.

"**§ 138A-9. Use of information for private gain.**

A public servant shall not use or disclose information gained in the course of, or by reason of, the public servant's official responsibilities in a way that would affect a personal financial interest of the public servant, a member of the public servant's extended family, or a person with whom or business with which the public servant is associated. A public servant shall not improperly use or disclose any information deemed confidential by State law and therefore not a public record.

"**§ 138A-10. Appearance of conflict.**

A public servant shall make reasonable efforts to avoid even the appearance of a conflict of interest in accordance with G.S. 138A-11. An appearance of conflict exists when a reasonable person would conclude from the circumstances that the public servant's ability to protect the public interest, or perform public duties, is compromised by familial, personal, or financial interest. An appearance of conflict could exist even in the absence of an actual conflict of interest.

"**§ 138A-11. Other rules of conduct.**

(a) A public servant shall make a due and diligent effort before taking any action, including voting or participating in discussions with other public servants on a board on which the public servant also serves, to determine whether the public servant has a conflict of interest or an appearance of a conflict. If the public servant is unable to determine whether or not a conflict of interest or the appearance of a conflict may exist, the public servant has a duty to inquire of the Commission as to that conflict or appearance of conflict.

(b) A public servant shall continually monitor, evaluate, and manage the public servant's personal, financial, and professional affairs to ensure the absence of conflicts of interest and appearances of conflicts.

(c) A public servant shall obey all other civil laws, administrative requirements, and criminal statutes governing conduct of State government appointees and employees.

"**§ 138A-12. Participation in official actions.**

(a) Notwithstanding any other law, except as permitted by subsection (e) of this section, no public servant acting in that capacity, authorized to perform an official action requiring the exercise of discretion, shall knowingly participate in an official action by the employing entity if the public servant, a member of the public servant's extended family, or a business with which the public servant is associated, has a pecuniary interest in, or a reasonably foreseeable benefit from, the matter under consideration, which would impair the public servant's independence of judgment or from which it could reasonably be inferred that the interest or benefit would influence the public servant's participation in the official action. A potential benefit includes (i) a detriment to a business competitor of the public servant, (ii) a member of the public servant's extended family, or (iii) a business with which the public servant is associated.

(b) A public servant described in subsection (a) of this section shall abstain from participation in the official action. The public servant shall submit in writing to the employing entity the reasons for the abstention. When the employing entity is a board, the abstention shall be recorded in the employing entity's minutes.

(c) A public servant shall take reasonable and appropriate steps, under the particular circumstances and considering the type of proceeding involved, to remove himself or herself, to the extent necessary to protect the public interest and comply with this Chapter, from any proceeding in which the public servant's impartiality might reasonably be questioned due to the public servant's familial, personal, or financial relationship with a participant in the proceeding. A participant includes (i) an owner, shareholder, business associate, employee, agent, officer, or director of a business, organization, or group involved in the proceeding, or (ii) an organization or group that has petitioned for rulemaking or has some specific, unique, and substantial interest in the proceeding. Proceedings include quasi-judicial proceedings and quasi-legislative proceedings. A personal relationship includes one in a leadership or policy-making position in a business, organization, or group.

(d) If a public servant is uncertain whether the relationship described in subsection (c) of this section justifies removing the public servant from the proceeding under subsection (c) of this section, the public servant shall disclose the relationship to the person presiding over the proceeding and seek appropriate guidance. The presiding officer, in consultation with legal counsel if necessary, shall then determine the extent to which the public servant will be permitted to participate. If the affected public servant is the person presiding, then the vice-chair or any other substitute presiding officer shall make the determination. A good-faith determination under this subsection of the allowable degree of participation by a public servant is presumptively valid and only subject to review under G.S. 138A-25 upon a clear and convincing showing of mistake, fraud, abuse of discretion, or willful disregard of this Chapter.

(e) Notwithstanding subsections (a) and (c) of this section, a public servant may participate in an official action under any of the following circumstances:

(1) The only pecuniary interest or reasonably foreseeable benefit that accrues to the public servant, the public servant's extended family, or business with which the public servant is associated as a member of a profession, occupation, or large class, is no greater than that which could reasonably be foreseen to accrue to all members of that profession, occupation, or large class.

(2) Where an official action affects or would affect the public servant's compensation and allowances as a public servant.

(3) Before the public servant participated in the official action, the public servant requested and received from the Commission a written advisory opinion that authorized the participation.

(4) Before participating in an official action, a public servant made full written disclosure to the public servant's employing entity which then made a written determination that the interest or benefit would neither impair the public servant's independence of judgment nor influence the public servant's participation in the official action. The employing entity shall file a copy of that written determination with the Commission.

(5) When action is ministerial only and does not require the exercise of discretion.

(6) When a public body records in its minutes that it cannot obtain a quorum in order to take the official action because members are disqualified from acting under this section.

(7) When a public servant notifies, in writing, the Commission that the public servant or someone whom the public servant appoints to act in the public servant's stead, or both, are the only individuals having legal authority to take an official action.

"**§ 138A-13. Disqualification to serve.**

(a) Within 30 days of notice of the Commission's determination that a public servant has a disqualifying conflict of interest, the public servant shall eliminate the interest that constitutes the disqualifying conflict of interest or resign from the public position.

(b) Failure by a public servant to comply with subsection (a) of this section is a violation of this Chapter for purposes of G.S. 138A-45.

(c) As used in this section, a disqualifying conflict of interest is a conflict of interest of such significance that the conflict of interest would prevent a public servant from fulfilling a substantial function or portion of the public servant's public duties.

"**§ 138A-14. Employment and supervision of members of public servant's extended family.**

A public servant shall not cause the employment, appointment, promotion, transfer, or advancement of an extended family member of the public servant to a State or local office or position to which the public servant supervises or manages. A public servant shall not participate in an action relating to the discipline of a member of the public servant's extended family.

"**§ 138A-15. Other ethics standards.**

Nothing in this Chapter shall prevent constitutional officers of the State, heads of principal departments, the Board of Governors of The University of North Carolina, State Board of Community Colleges, or other State executive boards from adopting more stringent ethics standards applicable to that public agency's operations.

"**§ 138A-16 through 19. [Reserved]**

"Article 3.

"State Ethics Commission.

"**§ 138A-20. State Ethics Commission established.**

There is established the State Ethics Commission.

"**§ 138A-21. Membership.**

(a) The Commission shall consist of seven members appointed by the Governor. No more than four members may be of the same political party. Members shall serve for four-year terms, beginning January 1, 2007, except for the initial terms that shall be as follows:

(1) One member shall serve an initial term of one year.
(2) Two members shall serve initial terms of two years.
(3) Two members shall serve initial terms of three years.
(4) Two members shall serve initial terms of four years.

(b) Members shall be removed from the Commission only for misfeasance, malfeasance, or nonfeasance as determined by the Governor.

(c) The Governor shall fill any vacancies in appointments for the remainder of any unfulfilled term.

(d) No member while serving on the Commission or employee while employed by the Commission shall:

(1) Hold or be a candidate for any other office or place of trust or profit under the United States, the State, or a political subdivision of the State.
(2) Hold office in any political party.
(3) Participate in or contribute to the political campaign of any public servant or any candidate for a public office as a public servant over which the Commission would have jurisdiction or authority.
(4) Otherwise be an employee of the State, a community college, or a local school system, or serve as a member of any other State board.

(e) The Commission shall elect a chair and vice-chair annually. The vice-chair shall act as the chair in the chair's absence or if there is a vacancy in that position.

(f) Members of the Commission shall receive no compensation for service on the Commission but shall be reimbursed for subsistence, travel, and convention registration fees as provided under G.S. 138-5, 138-6, or 138-7, as applicable.

"**§ 138A-22. Meetings and quorum.**

The Commission shall meet at least quarterly and at other times as called by its chair; in the case of a vacancy in the chair, by the vice-chair; or by four of its members. Four members of the Commission constitute a quorum.

"**§ 138A-23. Staff and offices.**

The Commission may employ professional and clerical staff, including an executive director. The Commission shall be located within the Department of Administration for administrative purposes only, but shall exercise all of its powers, including the power to employ, direct, and supervise all personnel, independently of the Secretary of Administration, and is subject to the direction and supervision of the Secretary of Administration only with respect to the management functions of coordinating and reporting.

"**§ 138A-24. Powers and duties.**

In addition to other powers and duties specified in this Chapter, the Commission shall:

(1) Provide reasonable assistance to public servants in complying with this Chapter.

(2) Develop readily understandable forms, policies, rules, and procedures to accomplish the purposes of the Chapter.

(3) Receive and review all statements of economic interests filed with the Commission by prospective and actual public servants and evaluate whether (i) the statements conform to the law and the rules of the Commission, and (ii) the financial interests and other information reported reveals actual or potential conflicts of interest.

(4) Investigate alleged violations in accordance with G.S. 138A-25.

(5) Render advisory opinions in accordance with G.S. 138A-26.

(6) Initiate and maintain oversight of ethics educational programs for public servants and their staffs consistent with G.S. 138A-27.

(7) Conduct a continuing study of governmental ethics in the State and propose changes to the General Assembly in the government process and the law as are conducive to promoting and continuing high ethical behavior by governmental officers and employees.

(8) Adopt rules to implement this Chapter, including those establishing ethical standards and guidelines to be employed and adhered to by public servants in attending to and performing their duties.

(9) Report annually to the General Assembly and the Governor on the Commission's activities and generally on the subject of public disclosure, ethics, and conflicts of interest, including recommendations for administrative and legislative action, as the Commission deems appropriate.

(10) Perform other duties as may be necessary to accomplish the purposes of this Chapter.

"**§ 138A-25. Investigations by the Commission.**

(a) Institution of Proceedings. – On its own motion, in response to a signed and sworn complaint of any individual filed with the Commission, or upon the written request of any public servant or any person responsible for the hiring, appointing, or supervising of a public servant, the Commission shall conduct an investigation into any of the following:

(1) The application or alleged violation of this Chapter.

(2) The application or alleged violation of rules adopted in accordance with G.S. 138A-24.

(3) The alleged violation of the criminal law by a public servant in the performance of that individual's official duties.

(b) Complaint. –

(1) A complaint filed under this Chapter shall state the name, address, and telephone number of the person filing the complaint, the name and job title or appointive position of the public servant against whom the complaint is filed, and a concise statement of the nature of the complaint and specific facts indicating that a violation of this Chapter has occurred, the date the alleged violation occurred, and either (i) that the contents of the complaint are within the knowledge of the individual verifying the complaint, or (ii) the basis upon which the individual verifying the complaint believes the allegations to be true.

(2) Except as provided in subsection (c) of this section, a complaint filed under this Chapter must be filed within one year of the date the complainant knew or should have known of the conduct upon which the complaint is based.

(3) The Commission may decline to accept or investigate any attempted complaint that does not meet all of the requirements set forth in subdivision (1) of this subsection, or the Commission may, in its sole discretion, request additional information to be provided by the complainant within a specified period of time of no less than seven business days.

(4) In addition to subdivision (3) of this subsection, the Commission may decline to accept or investigate a complaint if it determines that any of the following apply:

a. The complaint is frivolous or brought in bad faith.

b. The individuals and conduct complained of have already been the subject of a prior complaint.

c. The conduct complained of is primarily a matter more appropriately and adequately addressed and handled by other federal, State, or local agencies or authorities, including law enforcement authorities. If other agencies or authorities are conducting an investigation of the same actions or conduct involved in a complaint filed under this section, the Commission may stay its complaint investigation pending final resolution of the other investigation.

(5) The Commission shall send a copy of the complaint to the public servant who is the subject of the complaint within 30 days of the filing.

(c) Investigation of Complaints by the Commission. – The Commission shall investigate all complaints properly before the Commission in a timely manner. The Commission shall initiate an investigation of a complaint within 90 days of the filing of the complaint, or the complaint shall be dismissed. The Commission is authorized to

initiate investigations upon request of any member if there is reason to believe that a public servant has or may have violated this Chapter. There is no time limit on Commission-initiated complaint investigations under this section. In determining whether there is reason to believe that a violation has or may have occurred, a member can take general notice of available information even if not formally provided to the Commission in the form of a complaint. The Commission may utilize the services of a hired investigator when conducting investigations.

(d) Investigation by the Commission of Matters Other Than Complaints. – The Commission may investigate matters other than complaints properly before the Commission under subsection (a) of this section. For any investigation initiated under this subsection, the Commission may take any action it deems necessary or appropriate to further compliance with this Chapter, including the initiation of a complaint, the issuance of an advisory opinion under G.S. 138A-26, or referral to appropriate law enforcement or other authorities pursuant to subsection (j)(1) of this section.

(e) Public Servant Cooperation With Investigation. – Public servants shall promptly and fully cooperate with the Commission in any Commission-related investigation. Failure to cooperate fully with the Commission in any investigation shall be grounds for sanctions as set forth in G.S. 138A-45.

(f) Dismissal of Complaint After Preliminary Inquiry. – If the Commission determines at the end of its preliminary inquiry that (i) the individual who is the subject of the complaint is not a public servant subject to the Commission's jurisdiction and authority under this Chapter, or (ii) the complaint does not allege facts sufficient to constitute a violation of this Chapter, the Commission shall dismiss the complaint and provide written notice of the dismissal to the individual who filed the complaint and the person against whom the complaint was filed.

(g) Notice. – If at the end of its preliminary inquiry, the Commission determines to proceed with further investigation into the conduct of an individual, the Commission shall provide written notice to the individual who filed the complaint and the public servant as to the fact of the investigation and the charges against the public servant. The public servant shall be given an opportunity to file a written response with the Commission. Upon the notice required under this subsection being sent, the complaint and any written response shall be public records, and all other documents offered at the hearing in conjunction with the complaint shall be public records.

(h) Hearing. –

(1) The Commission shall give full and fair consideration to all complaints and responses received. If the Commission determines that the complaint cannot be resolved without a hearing, or if the public servant requests a public hearing, a hearing shall be held.

(2) The Commission shall send a notice of the hearing to the complainant, the public servant, and any other member of the public requesting notice. The notice shall contain the time and place for a hearing on the matter, which shall begin no less than 30 days and no more than 90 days after the date of the notice.

(3) At any hearing held by the Commission:

a. Oral evidence shall be taken only on oath or affirmation.
b. The hearing shall be open to the public. The deliberations by the Commission on a complaint may be held in closed session, but the decision of the Commission shall be announced in open session.
c. The public servant being investigated shall have the right to present evidence, call and examine witnesses, cross-examine witnesses, introduce exhibits, and be represented by counsel.

(i) Settlement of Investigations. – The parties may meet by mutual consent before the hearing to discuss the possibility of settlement of the investigation or the stipulation of any issues, facts, or matters of law. Any proposed settlement of the investigation is subject to the approval of the Commission.

(j) Disposition of Investigations. – Except as permitted under subsection (f) of this section, after hearing, the Commission shall dispose of the matter in one or more of the following ways:

(1) If the Commission finds substantial evidence of an alleged violation of a criminal statute, the Commission shall refer the matter to the Attorney General for investigation and referral to the district attorney for possible prosecution.
(2) If the Commission finds that the alleged violation is not established by clear and convincing evidence, the Commission shall dismiss the complaint.
(3) If the Commission finds that the alleged violation of this Chapter is established by clear and convincing evidence, the Commission shall do one or more of the following:
a. Issue a public or private admonishment to the public servant and notify the employing entity, if applicable.
b. Refer the matter to the Governor, the employing entity that appointed or employed the public servant or of which the public servant is a member, or the General Assembly for constitutional officers of the State, for appropriate action, and make recommendations on sanctions under subsection (k) of this section.

(k) Effect of Dismissal or Private Admonishment. – In the case of a dismissal or private admonishment, the Commission shall retain its records or findings in confidence, unless the public servant under inquiry requests in writing that the records and findings be made public. If the Commission later finds that a public servant's subsequent unethical activities were similar to and the subject of an earlier private admonishment, then the Commission may make public the earlier admonishment and the records and findings related to it.

(k) Recommendations of Sanctions. – If the Commission determines, after proper review and investigation, that action is appropriate, the Commission may recommend sanctions or issue rulings as it deems necessary or appropriate to protect the public

interest and ensure compliance with this Chapter. In formulating appropriate sanctions, the Commission may consider the following factors:

(1) The public servant's prior experience in an agency or on a board and prior opportunities to learn the ethical standards for public servants as set forth in Article 2 of this Chapter, including those dealing with conflicts of interest and appearances of conflicts of interest.

(2) The number of ethics violations.

(3) The severity of the ethics violations.

(4) Whether the ethics violations involve the public servant's financial interests or arise from an appearance of conflict of interest.

(5) Whether the ethics violations were inadvertent or intentional.

(6) Whether the public servant knew or should have known that the improper conduct was a violation of this Chapter.

(7) Whether the public servant has previously been advised, warned, or sanctioned by the Commission.

(8) Whether the conduct or situation giving rise to the ethics violation was pointed out to the public servant in the Commission's Statement of Economic Interest evaluation letter issued under G.S. 138A-38(c).

(9) The public servant's motivation or reason for the improper conduct or actions, including whether the action was for personal financial gain versus protection of the public interest.

If the Commission determines, after proper review and investigation, that sanctions are appropriate, the Commission may recommend any action it deems necessary to properly address and rectify any violation of this Chapter by a public servant, including removal of the public servant from the public servant's State position. As it deems necessary and proper, the Commission may make referrals to appropriate State officials, including law enforcement officials, for investigation of wrongful conduct by State employees or appointees discovered during the course of a complaint investigation, regardless of whether the individual is a public servant under this Chapter. Nothing in this subsection is intended, and shall not be construed, to give the Commission any independent civil, criminal, or administrative investigative or enforcement authority over public servants or other State employees or appointees.

(l) Findings and Record. – The Commission shall render formal and binding opinions of its findings and recommendations made pursuant to complaints or Commission investigations. In all matters in which the complaint is a public record, the Commission shall ensure that a complete record is made and preserved as a public record.

(m) Authority of Employing Entity. – Any action or failure to act by the Commission under this Chapter, except G.S. 138A-26, shall not limit any authority of the applicable employing entity to discipline the public servant.

(n) Continuing Jurisdiction. – The Commission shall have continuing jurisdiction to investigate possible criminal violations of this Chapter for a period of one year following the date a person who was formerly a pubic servant ceases to be a public servant.

(o) Confidentiality. – All motions, complaints, written requests, investigations and investigative materials shall be confidential and not matters of public record, except as otherwise provided in this section.

(p) Subpoena Authority. – The Commission may petition the Superior Court of Wake County for the approval to issue subpoenas and subpoenas duces tecum as necessary to conduct investigations of alleged violations of this Chapter. The court shall authorize subpoenas under this subsection when the court determines the subpoenas are necessary for the enforcement of this Chapter. Subpoenas issued under this subsection shall be enforceable by the court through contempt powers. Venue shall be with the Superior Court of Wake County for any person covered by this Chapter, and personal jurisdiction may be asserted under G.S. 1-75.4.

"**§ 138A-26. Advisory opinions.**

(a) At the request of any public servant, any individual not otherwise the public servant who is responsible for the supervision or appointment of a person who is a public servant, legal counsel for any public servant, any ethics liaison under G.S. 138A-27, or any member of the Commission, the Commission shall render advisory opinions on specific questions involving the meaning and application of this Chapter and the public servant's compliance therewith. The request shall be in writing, electronic or otherwise, and relate prospectively to real or reasonably anticipated fact settings or circumstances. The Commission shall issue advisory opinions having prospective application only. Reliance upon a requested written advisory opinion on a specific matter shall immunize the public servant, on that matter, from both of the following:

(1) Investigation by the Commission.

(2) Any adverse action by the employing entity.

(b) Staff to the Commission may issue advisory opinions under rules adopted by the Commission.

(c) The Commission shall interpret this Chapter by rules, and these interpretations are binding on all public servants upon publication.

(d) The Commission shall publish its advisory opinions at least once a year. These advisory opinions shall be edited for publication purposes as necessary to protect the identities of the individuals requesting opinions.

(e) Except as provided under subsection (d) of this section, requests for advisory opinions and advisory opinions issued under this section are confidential and not matters of public record.

"**§ 138A-27. Ethics education program.**

(a) The Commission shall develop and implement an ethics education and awareness program designed to instill in all public servants and their immediate staffs a keen and continuing awareness of their ethical obligations and a sensitivity to situations that might result in real or potential conflicts of interest or appearances of conflicts of interest. The Commission shall make basic ethics education and awareness presentations to all public servants and their immediate staffs upon their election, appointment or hiring, and shall offer periodic refresher presentations as the Commission deems appropriate. Every public servant and the immediate staff of every

public servant shall participate in an ethics presentation approved by the Commission within six months of the person's election, appointment, or hiring, and shall attend refresher ethics education presentations at least every two years thereafter in a manner as the Commission deems appropriate. Upon request, the Commission shall assist each agency in developing in-house education programs and procedures necessary or desirable to meet the agency's particular needs for ethics education, conflict identification, and conflict avoidance.

(b) Each agency head shall designate an ethics liaison who shall maintain active communication with the Commission on all agency ethical issues. The ethics liaison shall continuously assess and advise the Commission of any issues or conduct which might reasonably be expected to result in a conflict of interest and seek advice and rulings from the Commission as to their appropriate resolution.

(c) The Commission shall publish a newsletter containing summaries of the Commission's opinions, policies, procedures, and interpretive bulletins as issued from time to time. The newsletter shall be distributed to all public servants. Publication under this subsection may be done electronically.

(d) The Commission shall assemble and maintain a collection of relevant State laws, rules, and regulations that set forth ethical standards applicable to public servants. They shall be made available electronically as resource material to public servants and ethics liaisons, upon request.

(e) As used in this section, "immediate staff" means those individuals who report directly to the public servant.

"**§ 138A-28. Duties of heads of State agencies.**

(a) The head of each State agency, including the chair of each board subject to this Chapter, shall take an active role in furthering ethics in public service and ensuring compliance with this Chapter. The head of each State agency and the chair of each board shall make a conscientious, good-faith effort to assist public servants within the agency or on the board in monitoring their personal, financial, and professional affairs to avoid taking any action that results in a conflict of interest or the appearance of a conflict.

(b) The head of each State agency, including the chair of each board subject to this Chapter, shall maintain familiarity with and stay knowledgeable of the reports, opinions, newsletters, and other communications from the Commission regarding ethics in general and the interpretation and enforcement of this Chapter. The head of each State agency and the chair of each board shall also maintain familiarity with and stay knowledgeable of the Commission's reports, evaluations, opinions, or findings regarding individual public servants in that person's agency or on that person's board, or under person's supervision or control, including all reports, evaluations, opinions, or findings pertaining to actual or potential conflicts of interest.

(c) When an actual or potential conflict of interest is cited by the Commission with regard to a public servant sitting on a board, the conflict shall be recorded in the minutes of the applicable board and duly brought to the attention of the membership by the board's chair as often as necessary to remind all members of the conflict and to help ensure compliance with this Chapter.

(d) The head of each State agency, including the chair of each board subject to this Chapter, shall periodically remind public servants under that person's authority of the public servant's duties to the public under the ethical standards and rules of conduct in this Chapter, including the duty of each public servant to continually monitor, evaluate, and manage the public servant's personal, financial, and professional affairs to ensure the absence of conflicts of interest or appearances of conflict.

(e) At the beginning of any official meeting of a board, the chair shall remind all members of their duty to avoid conflicts of interest and appearances of conflict under this Chapter. The chair also shall inquire as to whether there is any known conflict of interest or appearance of conflict with respect to any matters coming before the board at that time.

(f) The head of each State agency, including the chair of each board subject to this Chapter, shall ensure that legal counsel employed by or assigned to their agency or board are familiar with the provisions of this Chapter, including the Ethical Standards for Public Servants set forth in Article 2 of this Chapter, and are available to advise public servants on the ethical considerations involved in carrying out their public duties in the best interest of the public. Legal counsel so engaged may consult with the Commission, seek the Commission's assistance or advice, and refer public servants and others to the Commission as appropriate.

(g) Taking into consideration the individual autonomy, needs, and circumstances of each agency and board, the head of each State agency, including the chair of each board subject to this Chapter, shall consider the need for the development and implementation of in-house educational programs, procedures, or policies tailored to meet the agency's or board's particular needs for ethics education, conflict identification, and conflict avoidance. This includes the periodic presentation to all agency heads, their chief deputies or assistants, other public servants under their supervision or control, and members of boards, of the basic ethics education and awareness presentation outlined in G.S. 138A-27 and any other workshop or seminar program the agency head or board chair deems necessary in implementing this Chapter. Agency heads and board chairs may request reasonable assistance from the Commission in complying with the requirements of this subsection.

(h) As soon as reasonably practicable after the designation, hiring, or promotion of their chief deputies, assistants, or other public servants under their supervision or control, or learning of the appointment or election of other public servants to a board covered under this Chapter, all agency heads and board chairs shall (i) notify the Commission of such designation, hiring, promotion, appointment, or election and (ii) provide these public servants with copies of this Chapter and all applicable financial disclosure forms, if these materials and forms have not been previously provided to these public servants by their appointing authorities. In order to avoid duplication of effort, agency heads and board chairs shall coordinate this effort with the Commission's staff.

"**§ 138A-29 through 34. [Reserved]**

"Article 4.

"Public Disclosure of Economic Interests.

"§ 138A-35. Purpose.

The purpose of disclosure of the financial and personal interests by public servants is to assist public servants and those persons who appoint, elect, hire, supervise, or advise them identify and avoid conflicts of interest and potential conflicts of interest between the public servant's private interests and the public servant's public duties. It is critical to this process that current and prospective public servants examine, evaluate, and disclose those personal and financial interests that could be or cause a conflict of interest or potential conflict of interest between the public servant's private interests and the public servant's public duties. Public servants must take an active, thorough, and conscientious role in the disclosure and review process, including having a complete knowledge of how the public servant's public position or duties might impact the public servant's private interests. Public servants have an affirmative duty to provide any and all information that a reasonable person would conclude is necessary to carry out the purposes of this Chapter and to fully disclose any conflict of interest or potential conflict of interest between the public servant's public and private interests, but the disclosure, review, and evaluation process is not intended to result in the disclosure of unnecessary or irrelevant personal information.

"§ 138A-36. Statement of economic interest; filing required.

(a) Every public servant subject to this Chapter who is elected, appointed, or employed and entitled to annual compensation from the State of more than forty thousand dollars ($40,000), including one appointed to fill a vacancy in elective office, shall file a statement of economic interest with the Commission prior to the public servant's initial appointment, election, or employment and no later than January 31 every year thereafter. A prospective public servant required to file a statement under this Chapter shall not be appointed, employed, or receive a certificate of election, prior to submission by the Commission of the Commission's evaluation of the statement in accordance with this Article. The requirement for an annual filing under this subsection also shall apply to public servants whose terms have expired but who continue to serve until their replacement is appointed.

(b) Notwithstanding subsection (a) of this section, persons hired by, and appointees of, constitutional officers of the State may file a statement of economic interest within 60 days of their appointments or employment when the appointment or employment is made during the first 60 days of the constitutional officer's initial term in that constitutional office.

(c) Except as otherwise filed under subsection (a) of this section, a candidate for the Council of State shall file the statement of economic interest at the same place and in the same manner as the notice of candidacy for that office is required to be filed under G.S. 163-106, within 10 days of the filing deadline for the office the candidate seeks. A person who is nominated under G.S. 163-114 after the primary and before the general election, and a person who qualifies under G.S. 163-122 as an unaffiliated candidate in a general election, shall file a statement of economic interest with the county board of elections of each county in the senatorial or representative district. A person nominated under G.S. 163-114 shall file the statement within three days following the person's nomination, or not later than the day preceding the general

election, whichever occurs first. A person seeking to qualify as an unaffiliated candidate under G.S. 163-122 shall file the statement of economic interest with the petition filed under that section. A person seeking to have write-in votes counted for the person in a general election shall file a statement of economic interest at the same time the candidate files a declaration of intent under G.S. 163-123. A candidate of a new party chosen by convention shall file a statement of economic interest at the same time that the president of the convention certifies the names of its candidates to the State Board of Elections under G.S. 163-98.

(d) The State Board of Elections shall provide for notification of the statement of economic interest requirements of this Article to be given to any candidate filing for nomination or election to those offices subject to this Article at the time of the filing of candidacy.

(e) The executive director of the State Board of Elections shall forward a certified copy of the statement of economic interest to the Commission for evaluation.

(f) The Commission shall issue forms to be used for the statement of economic interest and shall revise the forms from time to time as necessary to carry out the purposes of this Chapter. Except as otherwise set forth in this section, the Commission shall furnish to all other public servants the appropriate forms needed to comply with this Article.

"**§ 138A-37. Statements of economic interest as public records.**

The statements of economic interest filed by prospective public servants under this Article for appointed or employed positions and written evaluations by the Commission of these statements are not public records until the prospective public servant is appointed or is employed by the State. All other statements of economic interest and all other written evaluations by the Commission of those statements are public records. After becoming public records, statements shall be made available for inspection and copying by any person during normal business hours at the Commission's office.

"**§ 138A-38. Contents of statement.**

(a) Any statement of economic interest filed under this Article shall be on a form prescribed by the Commission and sworn to by the public servant. Answers must be provided to all questions. The form shall include the following information about the public servant and the public servant's immediate family:

(1) The name, home address, occupation, employer, and business of the person filing.

(2) A list of each asset and liability of whatever nature (including legal, equitable, or beneficial interest) with a value of at least ten thousand dollars ($10,000) of the prospective or actual public servant, and the public servant's spouse. This list shall include the following:

a. All real estate located in the State owned wholly or in part by the public servant or the public servant's spouse, including specific descriptions adequate to determine the location of each parcel and the specific interest held by the public servant and the spouse in each identified parcel.

b. Real estate that is currently leased or rented to the State.

c. Personal property sold to or bought from the State within the preceding two years.

d. Personal property currently leased or rented to the State.

e. The name of each publicly owned company in which the value of securities held exceeds ten thousand dollars ($10,000).

f. The name of each non-publicly owned company or business entity in which the value of securities or other equity interests held exceeds ten thousand dollars ($10,000), including interests in partnerships, limited partnerships, joint ventures, limited liability companies or partnerships, and closely held corporations. For each company or business entity listed under this sub-subdivision, the filing public servant shall indicate whether the listed company or entity owns securities or equity interests exceeding a value of ten thousand dollars ($10,000) in any other companies or entities. If so, then the other companies or entities shall also be listed with a brief description of the business activity of each.

g. If the filing public servant, the members of the public servant's immediate family are the beneficiaries of a vested trust created, established, or controlled by the public servant, then the name and address of the trustee and a description of the trust shall be provided. To the extent such information is available to the public servant, the statement also shall include a list of businesses in which the trust has an ownership interest exceeding ten thousand dollars ($10,000).

h. The filing public servant shall make a good faith effort to list any individual or business entity with which the filing public servant, the public servant's extended family, or any business with which the public servant or a member of the public servant's extended family is associated, has a financial or professional relationship provided (i) a reasonable person would conclude that the nature of the financial or professional relationship presents a conflict of interest or the appearance of a conflict of interest for the public servant; or (ii) a reasonable person would conclude that any other financial or professional interest of the individual or business entity would present a conflict of interest or appearance of a conflict of interest for the public servant. For each individual or business entity listed under this subsection, the filing public servant shall describe the financial or professional relationship and provide an explanation of why the individual or business entity has been listed.

i. A list of all other assets and liabilities with a valuation of at least ten thousand dollars ($10,000), including bank accounts and debts.

j. A list of each source (not specific amounts) of income (including capital gains) shown on the most recent federal and State income tax returns of the person filing where ten thousand dollars ($10,000) or more was received from that source.

k. If the public servant is a practicing attorney, an indication of whether the public servant, or the law firm with which the public servant is affiliated, earned legal fees during any single year of the past five years in excess of ten thousand dollars ($10,000) from any of the following categories of legal representation:

1. Administrative law.
2. Admiralty.
3. Corporation law.
4. Criminal law.
5. Decedent's estates.
6. Insurance law.
7. Labor law.
8. Local government.
9. Negligence – defendant.
10. Negligence – plaintiff.
11. Real property.
12. Taxation.
13. Utilities regulation.

l. A list of all nonpublicly owned businesses with which, during the past five years, the public servant or the public servant's immediate family has been associated, indicating the time period of that association and the relationship with each business as an officer, employee, director, business associate, or owner. The list also shall indicate whether each does business with, or is regulated by, the State and the nature of the business, if any, done with the State.

m. A list of all gifts, and the sources of the gifts, of a value of more than two hundred dollars ($200.00) received during the 12 months preceding the date of the statement from sources other than the public servant's extended family, and a list of all gifts, and the sources of the gifts, valued in excess of one hundred dollars ($100.00) received from any source having business with, or regulated by, the employing entity.

n. A list of all bankruptcies filed during the preceding five years by the public servant, the public servant's spouse, or any entity in which the public servant, or the public servant's spouse, has

been associated financially. A brief summary of the facts and circumstances regarding each listed bankruptcy shall be provided.

o. A list of all directorships on all business boards of which the public servant of the public servant's immediate family is a member.

(3) A list of the public servant's or the public servant's immediate family's memberships or other affiliations with, including offices held in, societies, organizations, or advocacy groups, pertaining to subject matter areas over which the public servant's agency or board may have jurisdiction.

(4) In addition to the information required to be reported under subdivisions (1), (2), and (3) of this subsection, the filing public servant shall provide in the public servant's statement a list of any felony convictions or any other information that a reasonable person would conclude is necessary either to carry out the purposes of this Chapter or to fully disclose any potential conflict of interest or appearance of conflict. If a public servant is uncertain of whether particular information is necessary, then the public servant shall consult the Commission for guidance.

(5) Each statement of economic interest shall contain sworn certification by the filing public servant that the public servant has read the statement and that, to the best of the public servant's knowledge and belief, the statement is true, correct, and complete. The public servant's sworn certification also shall provide that the public servant has not transferred, and will not transfer, any asset, interest, or other property for the purpose of concealing it from disclosure while retaining an equitable interest therein.

(6) If the public servant believes a potential for conflict exists, the public servant has a duty to inquire of the Commission as to that potential conflict.

(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 date the statement of economic interest was signed.

(c) The Commission shall prepare a written evaluation of each statement of economic interest relative to conflicts of interest and potential conflicts of interest. The Commission shall submit the evaluation to all of the following:

(1) The public servant who submitted the statement.

(2) The head of the agency in which the public servant serves.

(3) The Governor for gubernatorial appointees and employees in agencies under the Governor's authority.

(4) The appointing or hiring authority for those public servants not under the Governor's authority.

(5) The State Board of Elections for those public servants who are elected.

"**§ 138A-39. Failure to file.**

(a) Within 30 days after the date due in accordance with G.S. 138A-36, for every public servant from whom a statement of economic interest has not been received by the Commission, or whose statement of economic interest has been received by the Commission but deemed by the Commission to be incomplete, the Commission shall notify the public servant of the failure to file or complete and shall notify the public servant that if the statement of economic interest is not filed or completed within 30 days of receipt of the notice of failure to file or complete, the public servant shall be subject to a fine as provided for in this section.

(b) Any public servant who fails to file or complete a statement of economic interest within 30 days of the receipt of the notice, required under subsection (a) of this section, shall be subject to a fine of two hundred fifty dollars ($250.00), to be imposed by the Commission.

(c) Failure by any public servant to file or complete a statement of economic interest within 60 days of the receipt of the notice, required under subsection (a) of this section, shall be deemed to be a violation of this Chapter and shall be grounds for disciplinary action under G.S. 138A-45.

"**§ 138A-40. Concealing or failing to disclose material information.**

A public servant who knowingly conceals or fails to disclose information that is required to be disclosed on a statement of economic interest under this Article shall be punished as a Class 2 misdemeanor and shall be subject to disciplinary action under G.S. 138A-45.

"**§ 138A-41. Penalty for false or misleading information.**

A public servant who provides false or misleading information on a statement of economic interest as required under this Article knowing that the information is false or misleading shall be punished as a Class F felon and shall be subject to disciplinary action under G.S. 138A-45.

"**§ 138A-42 through 44. [Reserved]**

"Article 5.

"Violation Consequences.

"**§ 138A-45. Violation consequences.**

(a) Violation of this Chapter by any public servant is grounds for disciplinary action. Except as provided in Article 4 of this Chapter and for perjury under G.S. 138A-25 and G.S. 138A-38, no criminal penalty shall attach for any violation of this Chapter.

(b) The willful failure of any public servant serving on a board to comply with this Chapter is misfeasance, malfeasance, or nonfeasance. In the event of misfeasance, malfeasance, or nonfeasance, the offending public servant serving on a board is subject to removal from the board of which the public servant is a member. For appointees of the Governor and members of the Council of State, the appointing authority may remove the offending public servant. For appointees of the General Assembly, the Commission shall exercise the discretion of whether to remove the offending public servant.

(c) The willful failure of any public servant serving as a State employee to comply with this Chapter is a violation of a written work order, thereby permitting disciplinary action as allowed by the law, including termination from employment. Except for employees of State departments headed by a member of the Council of State, the Governor shall make all final decisions on the manner in which the offending public servant shall be disciplined. For employees of State departments headed by a member of the Council of State, the appropriate member of the Council of State shall make all final decisions on the manner in which the offending public servant shall be disciplined.

(d) The willful failure of any constitutional officer of the State to comply with this Chapter is malfeasance in office for purposes of G.S. 123-5.

(e) Nothing in this Chapter affects the power of the State to prosecute any person for any violation of the criminal law.

(f) The State Ethics Commission may seek to enjoin violations of G.S. 138A-9."

SECTION 2. G.S. 150B-1 is amended by adding a new subsection to read:

"(g) Exemption of State Ethics Commission. – Except for G.S. 150B-21.20A and Article 4 of this Chapter, no other provision of this Chapter applies to the State Ethics Commission."

SECTION 3. Part 4 of Article 2A of Chapter 150B of the General Statutes is amended by adding a new section to read:

"**§ 150B-21.20A. Publication of rules and advisory opinions of State Ethics Commission.**

Notwithstanding any other law, the Codifier of Rules shall publish unedited the rules and advisory opinions issued by the State Ethics Commission under Chapter 138A of the General Statutes in the North Carolina Register as they are received from the State Ethics Commission, in the format required by the Codifier.

Notwithstanding any other law, the Codifier of Rules shall publish unedited in the North Carolina Administrative Code the rules as codified and issued by the State Ethics Commission under Chapter 138A of the General Statutes, in the format required by the Codifier."

SECTION 4. The authority, powers, duties and functions, records, personnel, property, unexpended balances of appropriations, allocations, or other funds, including the functions of budgeting and purchasing, of the North Carolina Board of Ethics of the Office of the Governor are transferred to the State Ethics Commission created in Section 1 of this act. The Director of the Budget shall resolve any disputes arising out of this transfer.

SECTION 5. This act becomes effective October 1, 2006, applies to public servants on or after January 1, 2007, and acts and conflicts of interest that arise on or after January 1, 2007.

Attachment IV

HOUSE BILL 1844
Executive Branch Ethics Act – 1.

BILL ANALYSIS

Committee:	House Judiciary I	**Date:**	May 10, 2006
Introduced by:	Representatives Hackney, Howard, Brubaker, and Luebke	**Summary by:**	O. Walker Reagan Staff Attorney
Version:	First Edition		

SUMMARY: House Bill 1844 codifies Executive Order No. One that governs ethics in the executive branch. The Act creates the State Ethics Commission and subjects certain executive branch officials, appointees, and employees to economic interest disclosures and creates statutory ethical standards for these public servants. This proposal is a recommendation of the House Select Committee on Ethics and Governmental Reform.

CURRENT LAW: Most of the regulation of ethics in the executive branch is pursuant to Executive Order No. One (Order) issued by the Governor, most recently on January 1, 2001. This Executive Order is the latest in a succession of similar executive orders governing this subject that have been in effect since January 1977. Under the Governor's limited authority in this area, the Governor has made the order applicable to appointees of the Governor. In addition, the Governor has offered the services of the State Ethics Board (created by the Order) to members of the Council of State and their appointees, the Speaker and President Pro Tempore for their appointees to boards and commissions, and to the UNC Board of Governors.

The Order creates the State Ethics Board (Board). It requires covered officials to file statements of economic interests annually. It establishes rules of conduct for covered officials. The Board is authorized to issue advisory ethics opinions, investigate ethics complaints, and conduct ethics education programs. The decisions of the Board are advisory, and enforcement of the Board's recommendations is left to the discretion of the appointing or hiring authority.

All records of the Board are public, including statements of economic interest filed by perspective appointees prior to their appointment. False statements made on statements of economic interest are not subject to the penalty of perjury. The Governor does not have the authority to require other constitutional officers of the State to participate under the Order or the authority to make the order applicable to appointees of boards and commissions made by persons other than the Governor, including the General Assembly.

BILL ANALYSIS: House Bill 1844 codifies the Order. On certain matters the Order does not address, the Act incorporates ethics procedures and processes copied from the Legislative Ethics Act and statutory ethics provisions unique to the NC Board of Transportation. The bill is divided into 4 primary sections.

ARTICLE 1 sets out the purpose of the Act and the applicable definitions. The following definitions are included in Article 1:

Board - Any non-advisory State executive branch board, commission, council, committee, task force, authority, or similar body.

Extended Family – Spouse, descendant, ascendant, or sibling of the public servant, or descendant, ascendant or sibling of the spouse of the public servant.

Public event – An organized gathering of individuals open to the general public or to which at least ten public servants are invited to attend and at least ten employees or members of the principal or person actually attend.

Public servants – All Council of State members, heads of all principal State departments, chief deputies and administrative assistants, confidential assistants and secretaries, employees of the Office of the Governor, persons designated as exempt from the State Personnel Act, voting members of all boards (defined) whether appointed by the executive, legislative, or judicial branch, the UNC Board of Governors, the UNC president and vice-presidents, chancellors, vice-chancellors, members of UNC boards of trustees, members of the State Board of Community Colleges, President and chief financial officer of the NC Community College System, and presidents, chief financial officers and trustees of local community colleges. Also added contract employees filling any of these positions.

ARTICLE 2 establishes ethical standards for public servants.

G.S. 138A-6 prohibits public servants from using their public positions for personal financial gain for themselves, their extended families, or a business with which they are associated, or from using their governmental title for non-governmental advertising **that advances the private interest of the public servant or others. Use of the legislative title is permitted for political advertising.**

G.S. 138A-7 restricts gifts that public servants can accept. It prohibits accepting gifts in return for being influenced in their official duties. It prohibits soliciting charitable gifts from subordinates. It prohibits public servants from accepting gifts from lobbyists, lobbyist principals, or other people doing business with the State. Excepted from the gift restrictions are meals and beverages for immediate consumption in connection with public events, gifts of less than $10, informational materials related to the public servant's duties, expenses associated with a speech or panel related to the public servant's public duties, items or services related to an organization to which the public servant or the public servant's agency belongs, expenses received at an educational conference or meeting, **a plaque or nonmonetary recognition memento,** gifts accepted on behalf of the State, anything available to the general public or all State employees, commercially available loans made on terms not more favorable than available to the public, contractual relationships or business relationships not made for the purpose of lobbying, scholarships on terms not more favorable than scholarships generally available to the public, gifts in excess of $10 associated with travel and tourism and industry recruitment under certain conditions, gifts of less than $100 received in a foreign country as part of a trade mission, anything for which fair market value was paid, legal campaign contributions, gifts from family members, and gifts received in conjunction with a wedding, birth, adoption or death. **This section also specifies that a gift accepted or solicited in compliance with this section without corrupt intent shall not constitute bribery.**

G.S. 138A-8 prohibits public servants from receiving additional compensation, other than salary, for carrying out their duties.

G.S. 138A-9 prohibits public servants from using information gained in their official positions for personal financial gain.

G.S. 138A-10 requires public servants to avoid appearances of conflicts of interest.

G.S. 138A-11 requires public servants to use due diligence to determine if they have a conflict of interest or the appearance of a conflict and to continually monitor their situation to assure the avoidance of conflicts.

G.S. 138A-12 defines conflicts of interest for public servants. A conflict of interest occurs when the person, his or her extended family, or a business with which he or she is associated, has a pecuniary interest in, or would benefit from, the matter under consideration, and the public servant's independence of judgment would be influenced by the interest. When a conflict exists, the public servant must abstain from participation. If the public servant is unclear if a conflict exists, the public official is required to seek guidance. This section sets out numerous exceptions to the restrictions, primarily involving situations where the benefit is no greater to the public servant than the public in general, or when the public servant has received an ethics opinion that no conflict exists.

G.S. 138A-13 establishes a process where a public servant can be forced to remove a disqualifying conflict of interest or be required to resign. A disqualifying conflict of interest occurs when a conflict of interest is found to prevent the public servant from fulfilling a substantial function or portion of his or her public duties.

G.S. 138A-14 prohibits a public servant from hiring or supervising a member of his or her extended family.

G.S. 138A-15 permits individual State agencies to adopt more stringent ethical standards in addition to the provisions of this Act.

ARTICLE 3 establishes the State Ethics Commission as an independent, bipartisan commission of seven members appointed by the Governor for 4-year staggered terms. No more than 4 members may be of the same political party. While serving on the Commission, no member may hold or be a candidate for public office, hold office in a political party, participate in or contribute to a political campaign for a public servant the Commission oversees, or otherwise be an employee of the State, a community college or local public school system, or a member of any other State board.

The Commission would have the power to employ staff, review statements of economic interest, render advisory opinions, investigate ethics complaints, oversee ethics education programs, and advise the General Assembly on ethics matters.

G.S. 138A-25 sets out the authority of the Commission to conduct ethics investigations and to hold hearings on alleged violations of the ethics laws, rules, or the criminal law in the performance of official duties. An investigation must be initiated within 90 days of the receipt of the complaint or the complaint is to be dismissed. After a hearing, the Commission can dismiss the complaint, refer criminal matters to the Attorney General and the district attorney, issue a pubic admonishment, or recommend other sanctions to the employing or appointing authority. Complaints and initial (probable cause) investigations are not public records, but all documents considered in a hearing are public records. Hearings are held in open session while deliberations are in closed session. Decisions are announced in open session. The Commission has subpoena authority when authorized by the court.

G.S. 138A-26 sets out the authority of the Commission to issue advisory opinions. A person who seeks an opinion is immunized from sanctions when he or she acts in accordance with an advisory opinion. Requests for advisory opinions and advisory opinions are confidential and not public records, but annual summaries of advisory opinions are to be published and made available to the public.

G.S. 138A-27 sets out the authority for the Commission to provide for ethics education programs. All public servants **and their immediate staffs (individuals who report directly to the public servant)** are required to take ethics training within 6 months of the beginning of their employment, election, or appointment, and take a refresher course every 2 years thereafter. Each agency will designate an ethics liaison to coordinate ethics compliance and education within each agency. The Commission is also to publish ethics newsletters from time to time.

G.S. 138A-28 sets out the ethics duties of heads of State agencies. Agency heads, including board chairs, are required to take an active role in promoting ethics in their areas of responsibility. They are expected to remain knowledgeable of ethics laws, remind public servants of their ethical obligations, remind their fellow public servants about conflicts of interests and appearances of conflicts of interests, and arrange and promote in-house ethics education programs.

ARTICLE 4 sets out the requirements for filing statements of economic interests.

G.S. 138A-36 requires all public servants, except employees earning $40,000 or less, to file statements of economic interest (SEI) prior to their initial appointment, election, or employment and no later than January 31st of every year thereafter. An exception is made for appointees of newly elected constitutional officers, who have 60 days from the date of appointment or employment to file, when the appointment or employment is done within the first 60 days of the initial term in office. This section sets forth the requirement and procedure for candidates for the Council of State to follow for filing their SEI, in the same manner as is required for candidates for the General Assembly.

G.S. 138A-37 makes statements of economic interest public records when filed, except SEI's of perspective appointees or employees do not become public until the person is appointed or employed.

G.S. 138A-38 sets out the contents of the Statement of Economic Interest (SEI). Included in the information to be reported are assets in excess of $10,000 in real estate holdings, personal property, business interests including stocks and bonds, interests in vested trusts, bank accounts, sources of income, attorney's areas of practice; businesses owned in the previous 5 years; gifts in excess of $200 from persons other than extended family members; bankruptcies; and directorships of businesses. The statement also requires lists of memberships and associations in organizations over which the public servant's agency or board has jurisdiction, and felony convictions. Statements of economic interest must be sworn, and false statements would be subject to penalty of perjury. The Commission is to evaluate each statement and issue an opinion on the existence or lack of conflicts of interests and potential conflicts of interests.

G.S. 138A-39 requires the Commission to notify every public servant who fails to file or complete his or her required SEI within 30 days of the due date. Any public

servant who fails to file or complete the SEI within 30 days of the receipt of the late notice is subject to a $250 fine. Any public servant who fails to file or complete the SEI within 60 days of receipt of the late notice shall be subject to disciplinary action under Article 5.

G.S. 138A-40 makes it a Class 2 misdemeanor for a public servant to knowingly conceal or fail to disclose required information on a SEI.

G.S. 138A-41 makes it a Class F felony for a public servant to provide false or misleading information on a SEI knowing the information to be false or misleading. The level of punishment is the same as the penalty for perjury.

ARTICLE 5 sets out the sanctions for violation of the Act. Willful violations by board members constitute malfeasance, misfeasance, and nonfeasance subjecting the person to removal from the board. Willful violations by State employees constitute a violation of a written work order which could lead to being fired. Willful violations by members of the Council of State constitute grounds for impeachment.

SECTION 2 exempts the Commission from all provisions of Chapter 150B, The Administrative Procedure Act, except for Article 4, Judicial Review.

SECTION 3 directs the Codifier of Rules to publish the rules and advisory opinions of the Commission.

SECTION 4 transfers the assets and personnel of the State Ethics Board to the State Ethics Commission.

EFFECTIVE DATE: The Act becomes effective October 1, 2006, and applies to public servants on or after January 1, 2007, and to acts and conflicts of interest that arise on or after January 1, 2007.

* *Brad Krehely contributed to the drafting of this summary.*

Attachment V

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1844

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

H1844-ARN-12 [v.6]

Date May 11, ,2006

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

Representative Stam

moves to amend the bill on page 1, line 18 through page 2, line 17, by deleting the lines and renumbering the remaining statutory sections accordingly; and

on page 2, lines 20-22, by rewriting the lines to read "(1) Board. – Any State executive branch board, commission, council, committee, task force, authority, or similar public body, however denominated, except for those public bodies that have only advisory authority."; and

on page 3, line 10, by deleting the word "in" and substituting the word "by"; and

on page 6, lines 6-10, by rewriting the lines to read "A public servant may not solicit for a charitable purpose any gift from any subordinate State employee. This subsection shall not apply to common written solicitations to all members of a class of subordinates."; and

on page 7, line 1, by deleting the word "paid." and substituting the words "paid by the public servant."; and

on page 9, line 4, by deleting the words "Notwithstanding any other law, except" and substituting the word "Except"; and

on page 13, line 43, by deleting the number "90" and substituting the number "45"; and

on page 20, lines 20 and 21, by deleting the words "forty thousand dollars ($40,000)," and substituting the words "sixty thousand dollars ($60,000),"; and

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1844

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

H1844-ARN-12 [v.6]

on page 20, line 32, by deleting the number "60" and substituting the number "30"; and

on page 25, line 26, by deleting the words "Class F" and substituting the words "Class H" ; and

on page 26, line 22, by deleting the words "Notwithstanding any other law, the" and substituting the word "The"; and

on page 26, line 26, by deleting the words "Notwithstanding any other law, the" and substituting the word "The".

SIGNED Stam
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

Attachment VI

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative Hackney (Chair) for the Committee on JUDICIARY I.

☐ Committee Substitute for
HB 1844 A BILL TO BE ENTITLED AN ACT TO ESTABLISH THE EXECUTIVE BRANCH ETHICS ACT, TO CREATE THE STATE ETHICS COMMISSION, TO ESTABLISH ETHICAL STANDARDS FOR CERTAIN STATE PUBLIC OFFICERS, STATE EMPLOYEES, AND APPOINTEES TO NONADVISORY STATE BOARDS AND COMMISSIONS, TO REQUIRE PUBLIC DISCLOSURE OF ECONOMIC INTERESTS, AND TO MAKE CONFORMING CHANGES, AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON ETHICS AND GOVERNMENTAL REFORM.

☒ With a favorable report as to the committee substitute bill, unfavorable as to the original bill.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

_____ Pursuant to Rule 36(b), the (House/Senate) committee substitute bill/(joint) resolution (No._____) is placed on the Calendar of _____. (The original bill resolution No._____) is placed on the Unfavorable Calendar.

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

Attachment VII

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

H D

HOUSE BILL 1844
PROPOSED COMMITTEE SUBSTITUTE H1844-PCS30438-RN-11

Short Title: Executive Branch Ethics Act - 1. (Public)

Sponsors:

Referred to:

May 10, 2006

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE EXECUTIVE BRANCH ETHICS ACT, TO CREATE THE STATE ETHICS COMMISSION, TO ESTABLISH ETHICAL STANDARDS FOR CERTAIN STATE PUBLIC OFFICERS, STATE EMPLOYEES, AND APPOINTEES TO NONADVISORY STATE BOARDS AND COMMISSIONS, TO REQUIRE PUBLIC DISCLOSURE OF ECONOMIC INTERESTS, AND TO MAKE CONFORMING CHANGES, AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON ETHICS AND GOVERNMENTAL REFORM.

The General Assembly of North Carolina enacts:

SECTION 1. The General Statutes are amended by adding a new Chapter to read:

"**Chapter 138A.**

"**Executive Branch Ethics Act.**

"Article 1.

"General Provisions.

"**§ 138A-1. Title.**

This Chapter shall be known and may be cited as the 'Executive Branch Ethics Act.'

"**§ 138A-2. Purpose.**

The people of North Carolina entrust public power to elected and appointed officials for the purpose of furthering the public, not private or personal, interest. To maintain the public trust it is essential that government function honestly and fairly, free from all forms of impropriety, threats, favoritism, and undue influence. Elected and appointed officials must maintain and exercise the highest standards of duty to the public in carrying out the responsibilities and functions of their positions. Acceptance of authority granted by the people to elected and appointed officials imposes a commitment of fidelity to the public interest, and this power cannot be used to advance narrow interests for oneself, other persons, or groups. Self-interest, partiality, and prejudice have no place in decision-making for the public. Public officials must exercise their duties

responsibly with skillful judgment and energetic dedication. Public officials must exercise discretion with sensitive information pertaining to public and private persons and activities. To maintain the integrity of North Carolina's State government, those citizens entrusted with authority must exercise it for the good of the public and treat every citizen with courtesy, attentiveness, and respect. Because many public officials serve on a part-time basis, it is inevitable that conflicts of interest and appearances of conflict will occur. Often these conflicts are unintentional and slight, but at every turn those public officials who represent the people of this State must be certain that it is the interests of the people, and not their own, that are being served. Officials should be prepared to remove themselves immediately from decisions, votes, or processes where even the appearance of a conflict of interest exists. The State is committed to the responsible exercise of authority by persons of honor and goodwill in government, by adopting a stronger procedure to prevent the occurrence of conflicts of interest in government and to resolve conflicts when they do occur.

"**§ 138A-3. Definitions.**

The following definitions apply in this Chapter:

(1) Board. – Any State executive branch board, commission, council, committee, task force, authority, or similar public body, however denominated, except for those public bodies that have only advisory authority.

(2) Business. – Any of the following, whether or not for profit:

a. Association.
b. Corporation.
c. Enterprise.
d. Joint venture.
e. Organization.
f. Partnership.
g. Proprietorship.
h. Vested trust.
i. Every other business interest, including ownership or use of land for income.

(3) Business associate. – A partner, or member or manager of a limited liability company.

(4) Business with which associated. – A business of which the public servant or any member of the public servant's immediate family has a pecuniary interest. For purposes of this sub-subdivision, the term 'business' shall not include a widely held investment fund, including a mutual fund, regulated investment company, or pension or deferred compensation plan, if all of the following apply:

1. The public servant or a member of the public servant's immediate family neither exercises nor has the ability to exercise control over the financial interests held by the fund.
2. The fund is publicly traded, or the fund's assets are widely diversified.

(5) Commission. – The State Ethics Commission.

(6) Compensation. – Any money, thing of value, or economic benefit conferred on or received by any person in return for services rendered or to be rendered by that person or another. This term does not include campaign contributions properly received and, if applicable, reported as required by Article 22A of Chapter 163 of the General Statutes.

(7) Constitutional officers of the State. – Officers whose offices are established by Article III of the Constitution.

(8) Contract. – Any agreement including sales and conveyances of real and personal property and agreements for the performance of services.

(9) Employing entity. – Any of the following bodies of State government of which the public servant is an employee or a member, or over which the public servant exercises supervision: agencies, authorities, boards, commissions, committees, councils, departments, offices, institutions and their subdivisions, and constitutional offices of the State.

(10) Extended family. – Spouse, descendant, ascendant, or sibling of the public servant or descendant, ascendant, or sibling of the spouse of the public servant.

(11) Immediate family. – An unemancipated child of the public servant residing in the household and the public servant's spouse, if not legally separated.

(12) Official action. – Any decision, including administration, approval, disapproval, preparation, recommendation, the rendering of advice, and investigation, made or contemplated in any proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, investigation, charge, or rule making.

(13) Participate. – To take part in, influence, or attempt to influence, including acting through an agent or proxy.

(14) Pecuniary interest. – Any of the following:

a. Owning, either individually or collectively, a legal, equitable, or beneficial interest of ten thousand dollars ($10,000) or more or five percent (5%), whichever is less, of any business.

b. Receiving, either individually or collectively, during the preceding calendar year compensation that is or will be required to be included as taxable income on federal income tax returns of the public servant, the public servant's immediate family, or a business with which associated in an aggregate amount of five thousand dollars ($5,000) from any business or combination of businesses. A pecuniary interest exists in any client or customer who pays fees or commissions, either individually or collectively, of five thousand dollars ($5,000) or more in the preceding 12 months to the public servant, the public servant's immediate family, or a business with which associated.

c. Receiving, either individually or collectively and directly or indirectly, in the preceding 12 months, gifts or honoraria having an unknown value or having an aggregate value of five hundred dollars ($500.00) or more from any person. A pecuniary interest does not exist under this sub-subdivision by reason of (i) a gift or bequest received as the result of the death of the donor; (ii) a gift from an extended family member; or (iii) acting as a trustee of a trust for the benefit of another.

d. Holding the position of associate, director, officer, business associate, or proprietor of any business, irrespective of the amount of compensation received.

(15) Public event. – An organized gathering of individuals open to the general public or to which at least ten public servants are invited to attend and at least ten employees or members of the principal or person actually attend.

(16) Public servants. – All of the following:

a. Constitutional officers of the State and persons elected or appointed as constitutional officers of the State prior to taking office.

b. Employees of the Office of the Governor.

c. Heads of all principal State departments, as set forth in G.S. 143B-6, who are appointed by the Governor.

d. The chief deputy and chief administrative assistant of each person designated under sub-subdivisions a. or c. of this subdivision.

e. Confidential assistants and secretaries as defined in G.S. 126-5(c)(2), to persons designated under sub-subdivisions a., c., or d. of this subdivision.

f. Employees in exempt positions as defined in G.S. 126-5(b) and employees in exempt positions designated in accordance with G.S. 126-5(d)(1), (2), or (2a), and confidential secretaries to these individuals.

g. Any other employees or appointees in the principal State departments as may be designated by the Governor to the extent that the designation does not conflict with the State Personnel Act.

h. All voting members of boards, including ex officio members and members serving by executive, legislative, or judicial branch appointment.

i. For The University of North Carolina, the voting members of the Board of Governors of The University of North Carolina, the president, the vice-presidents, and the chancellors, the vice-chancellors, and voting members of the boards of trustees of the constituent institutions.

j. For the Community Colleges System, the voting members of the State Board of Community Colleges, the President and the chief financial officer of the Community Colleges System, the president, chief financial officer, and chief administrative officer of each community college, and voting members of the boards of trustees of each community college.

k. Members of the Commission.

l. Persons under contract with the State working in or against a position included under this subdivision.

(17) Vested trust. – A trust, annuity, or other funds held by a trustee or other third party for the benefit of the public servant or a member of the public servant's immediate family. A vested trust shall not include a widely held investment fund, including a mutual fund, regulated investment company, or pension or deferred compensation plan, if:

a. The public servant or a member of the public servant's immediate family neither exercises nor has the ability to exercise control over the financial interests held by the fund; and

b. The fund is publicly traded, or the fund's assets are widely diversified.

"**§ 138A-4 and 138A-5. [Reserved]**

"Article 2.

"Ethical Standards for Public Servants.

"**§ 138A-6. Use of public position for private gain.**

(a) A public servant shall not knowingly use the public servant's public position in any manner that will result in financial benefit, direct or indirect, to the public servant, a member of the public servant's extended family, or a person with whom, or business with which, the public servant is associated. The performance of usual and customary duties associated with the public position or the advancement of public policy goals or constituent services, without compensation, shall not constitute the use of public position for financial benefit. This subsection shall not apply to financial or other benefits derived by a public servant that the public servant would enjoy to an extent no greater than that which other citizens of the State would or could enjoy, or that are so remote, tenuous, insignificant, or speculative that a reasonable person would conclude under the circumstances that the public servant's ability to protect the public interest and perform the public servant's official duties would not be compromised.

(b) A public servant shall not mention or permit another person to mention the public servant's public position in nongovernmental advertising that advances the private interest of the public servant or others. The prohibition in this subsection shall not apply to political advertising, news stories, or news articles.

"**§ 138A-7. Gifts.**

(a) A public servant shall not knowingly, directly or indirectly, ask, accept, demand, exact, solicit, seek, assign, receive, or agree to receive anything of value for the public servant, or for another person, in return for being influenced in the discharge of

the public servant's official responsibilities, other than that which is received by the public servant from the State for acting in the public servant's official capacity.

(b) A public servant may not solicit for a charitable purpose any gift from any subordinate State employee. This subsection shall not apply to generic written solicitations to all members of a class of subordinates.

(c) No public servant shall knowingly accept anything of monetary value, directly or indirectly, from a legislative lobbyist or principal as defined in G.S. 120-47.1 or an executive lobbyist or principal as defined in G.S. 147-54.31, or a person whom the public servant knows or has reason to know any of the following:

(1) Is doing or is seeking to do business of any kind with the public servant's employing entity.

(2) Is engaged in activities that are regulated or controlled by the public servant's employing entity.

(3) Has financial interests that may be substantially and materially affected, in a manner distinguishable from the public generally, by the performance or nonperformance of the public servant's official duties.

(d) Subsection (c) of this section shall not apply to any of the following:

(1) Meals and beverages for immediate consumption in connection with public events.

(2) Nonmonetary items, other than food or beverages, with a value not to exceed ten dollars ($10.00) provided by a single donor during a single calendar day.

(3) Informational materials relevant to the duties of the public servant.

(4) Reasonable actual expenses for food, registration, travel, and lodging of the public servant for a meeting at which the public servant participates in a panel or speaking engagement at the meeting related to the public servant's duties and when expenses are incurred on the actual day of participation in the engagement or incurred within a 24-hour time period before or after the engagement.

(5) Items or services received in connection with a state, national or regional organization in which the public servant or the public servant's agency is a member.

(6) Items and services received relating to an educational conference or meeting.

(7) A plaque or similar nonmonetary memento recognizing individual services in a field or specialty or to a charitable cause.

(8) Gifts accepted on behalf of the State.

(9) Anything generally available or distributed to the general public or all other State employees.

(10) Anything for which fair market value is paid by the public servant.

(11) Commercially available loans made on terms not more favorable than generally available to the public in the normal course of business if not made for the purpose of lobbying.

(12) Contractual arrangements or business relationships or arrangements made in the normal course of business if not made for the purpose of lobbying.

(13) Academic scholarships made on terms not more favorable than scholarships generally available to the public.

(14) Political contributions properly received and reported as required under Article 22A of Chapter 163 of the General Statutes.

(15) Gifts from the public servant's extended family, or a member of the same household of the public servant, or gifts received in conjunction with a marriage, birth, adoption, or death.

(16) Things of monetary value given to a public servant valued in excess of ten dollars ($10.00) where the thing of monetary value is entertainment or related expenses associated with the public business of industry recruitment, promotion of international trade, or the promotion of travel and tourism, and the public servant is responsible for conducting the business on behalf of the State, provided all the following conditions apply:

a. The public servant did not solicit the thing of value, and the public servant did not accept the thing of value in the performance of the public servant's official duties.

b. The public servant reports electronically to the Commission within 30 days of receipt of the thing of value. The report shall include a description and value of the thing of value and a description how the thing of value contributed to the public business of industry recruitment, promotion of international trade, or the promotion of travel and tourism. This report shall be posted to the Commission's public Web site.

c. A tangible thing of value in excess of ten dollars ($10.00), other than meals or beverages, shall be turned over as State property to the Department of Commerce within 30 days of receipt.

(17) Things of monetary value of personal property valued at less than one hundred dollars ($100.00) given to a public servant in the commission of the public servant's official duties if the gift is given to the public servant as a personal gift in another country as part of an overseas trade mission, and the giving and receiving of such personal gifts is considered a customary protocol in the other country.

(e) A prohibited gift shall be declined, returned, paid for at fair market value, or accepted and donated immediately to the State. Perishable food items of reasonable costs, received as gifts shall be donated to charity, destroyed, or provided for consumption among the entire staff or the public.

(f) A public servant shall not accept an honorarium from a source other than the employing entity for conducting any activity where any of the following apply:

(1) The employing entity reimburses the public servant for travel, subsistence, and registration expenses.

(2) The employing entity's work time or resources are used.
(3) The activity would be considered official duty or would bear a reasonably close relationship to the public servant's official duties.

An outside source may reimburse the employing entity for actual expenses incurred by a public servant in conducting an activity within the duties of the public servant, or may pay a fee to the employing entity, in lieu of an honorarium, for the services of the public servant.

(g) Acceptance or solicitation of a thing of value in compliance with this section without corrupt intent shall not constitute a violation of G.S. 14-217 or G.S. 14-218.

"**§ 138A-8. Other compensation.**

A public servant shall not solicit or receive personal financial gain, other than that received by the public servant from the State, or with the approval of the employing entity, for acting in the public servant's official capacity, or for advice or assistance given in the course of carrying out the public servant's duties.

"**§ 138A-9. Use of information for private gain.**

A public servant shall not use or disclose information gained in the course of, or by reason of, the public servant's official responsibilities in a way that would affect a personal financial interest of the public servant, a member of the public servant's extended family, or a person with whom or business with which the public servant is associated. A public servant shall not improperly use or disclose any information deemed confidential by State law and therefore not a public record.

"**§ 138A-10. Appearance of conflict.**

A public servant shall make reasonable efforts to avoid even the appearance of a conflict of interest in accordance with G.S. 138A-11. An appearance of conflict exists when a reasonable person would conclude from the circumstances that the public servant's ability to protect the public interest, or perform public duties, is compromised by familial, personal, or financial interest. An appearance of conflict could exist even in the absence of an actual conflict of interest.

"**§ 138A-11. Other rules of conduct.**

(a) A public servant shall make a due and diligent effort before taking any action, including voting or participating in discussions with other public servants on a board on which the public servant also serves, to determine whether the public servant has a conflict of interest or an appearance of a conflict. If the public servant is unable to determine whether or not a conflict of interest or the appearance of a conflict may exist, the public servant has a duty to inquire of the Commission as to that conflict or appearance of conflict.

(b) A public servant shall continually monitor, evaluate, and manage the public servant's personal, financial, and professional affairs to ensure the absence of conflicts of interest and appearances of conflicts.

(c) A public servant shall obey all other civil laws, administrative requirements, and criminal statutes governing conduct of State government appointees and employees.

"**§ 138A-12. Participation in official actions.**

(a) Except as permitted by subsection (e) of this section, no public servant acting in that capacity, authorized to perform an official action requiring the exercise of

discretion, shall knowingly participate in an official action by the employing entity if the public servant, a member of the public servant's extended family, or a business with which the public servant is associated, has a pecuniary interest in, or a reasonably foreseeable benefit from, the matter under consideration, which would impair the public servant's independence of judgment or from which it could reasonably be inferred that the interest or benefit would influence the public servant's participation in the official action. A potential benefit includes (i) a detriment to a business competitor of the public servant, (ii) a member of the public servant's extended family, or (iii) a business with which the public servant is associated.

(b) A public servant described in subsection (a) of this section shall abstain from participation in the official action. The public servant shall submit in writing to the employing entity the reasons for the abstention. When the employing entity is a board, the abstention shall be recorded in the employing entity's minutes.

(c) A public servant shall take reasonable and appropriate steps, under the particular circumstances and considering the type of proceeding involved, to remove himself or herself, to the extent necessary to protect the public interest and comply with this Chapter, from any proceeding in which the public servant's impartiality might reasonably be questioned due to the public servant's familial, personal, or financial relationship with a participant in the proceeding. A participant includes (i) an owner, shareholder, business associate, employee, agent, officer, or director of a business, organization, or group involved in the proceeding, or (ii) an organization or group that has petitioned for rulemaking or has some specific, unique, and substantial interest in the proceeding. Proceedings include quasi-judicial proceedings and quasi-legislative proceedings. A personal relationship includes one in a leadership or policy-making position in a business, organization, or group.

(d) If a public servant is uncertain whether the relationship described in subsection (c) of this section justifies removing the public servant from the proceeding under subsection (c) of this section, the public servant shall disclose the relationship to the person presiding over the proceeding and seek appropriate guidance. The presiding officer, in consultation with legal counsel if necessary, shall then determine the extent to which the public servant will be permitted to participate. If the affected public servant is the person presiding, then the vice-chair or any other substitute presiding officer shall make the determination. A good-faith determination under this subsection of the allowable degree of participation by a public servant is presumptively valid and only subject to review under G.S. 138A-25 upon a clear and convincing showing of mistake, fraud, abuse of discretion, or willful disregard of this Chapter.

(e) Notwithstanding subsections (a) and (c) of this section, a public servant may participate in an official action under any of the following circumstances:

(1) The only pecuniary interest or reasonably foreseeable benefit that accrues to the public servant, the public servant's extended family, or business with which the public servant is associated as a member of a profession, occupation, or large class, is no greater than that which could reasonably be foreseen to accrue to all members of that profession, occupation, or large class.

(2) Where an official action affects or would affect the public servant's compensation and allowances as a public servant.

(3) Before the public servant participated in the official action, the public servant requested and received from the Commission a written advisory opinion that authorized the participation.

(4) Before participating in an official action, a public servant made full written disclosure to the public servant's employing entity which then made a written determination that the interest or benefit would neither impair the public servant's independence of judgment nor influence the public servant's participation in the official action. The employing entity shall file a copy of that written determination with the Commission.

(5) When action is ministerial only and does not require the exercise of discretion.

(6) When a public body records in its minutes that it cannot obtain a quorum in order to take the official action because members are disqualified from acting under this section.

(7) When a public servant notifies, in writing, the Commission that the public servant or someone whom the public servant appoints to act in the public servant's stead, or both, are the only individuals having legal authority to take an official action.

"**§ 138A-13. Disqualification to serve.**

(a) Within 30 days of notice of the Commission's determination that a public servant has a disqualifying conflict of interest, the public servant shall eliminate the interest that constitutes the disqualifying conflict of interest or resign from the public position.

(b) Failure by a public servant to comply with subsection (a) of this section is a violation of this Chapter for purposes of G.S. 138A-45.

(c) As used in this section, a disqualifying conflict of interest is a conflict of interest of such significance that the conflict of interest would prevent a public servant from fulfilling a substantial function or portion of the public servant's public duties.

"**§ 138A-14. Employment and supervision of members of public servant's extended family.**

A public servant shall not cause the employment, appointment, promotion, transfer, or advancement of an extended family member of the public servant to a State or local office or position to which the public servant supervises or manages. A public servant shall not participate in an action relating to the discipline of a member of the public servant's extended family.

"**§ 138A-15. Other ethics standards.**

Nothing in this Chapter shall prevent constitutional officers of the State, heads of principal departments, the Board of Governors of The University of North Carolina, State Board of Community Colleges, or other State executive boards from adopting more stringent ethics standards applicable to that public agency's operations.

"**§ 138A-16 through 19. [Reserved]**

"Article 3.
"State Ethics Commission.

"**§ 138A-20. State Ethics Commission established.**

There is established the State Ethics Commission.

"**§ 138A-21. Membership.**

(a) The Commission shall consist of seven members appointed by the Governor. No more than four members may be of the same political party. Members shall serve for four-year terms, beginning January 1, 2007, except for the initial terms that shall be as follows:

(1) One member shall serve an initial term of one year.
(2) Two members shall serve initial terms of two years.
(3) Two members shall serve initial terms of three years.
(4) Two members shall serve initial terms of four years.

(b) Members shall be removed from the Commission only for misfeasance, malfeasance, or nonfeasance as determined by the Governor.

(c) The Governor shall fill any vacancies in appointments for the remainder of any unfulfilled term.

(d) No member while serving on the Commission or employee while employed by the Commission shall:

(1) Hold or be a candidate for any other office or place of trust or profit under the United States, the State, or a political subdivision of the State.
(2) Hold office in any political party.
(3) Participate in or contribute to the political campaign of any public servant or any candidate for a public office as a public servant over which the Commission would have jurisdiction or authority.
(4) Otherwise be an employee of the State, a community college, or a local school system, or serve as a member of any other State board.

(e) The Commission shall elect a chair and vice-chair annually. The vice-chair shall act as the chair in the chair's absence or if there is a vacancy in that position.

(f) Members of the Commission shall receive no compensation for service on the Commission but shall be reimbursed for subsistence, travel, and convention registration fees as provided under G.S. 138-5, 138-6, or 138-7, as applicable.

"**§ 138A-22. Meetings and quorum.**

The Commission shall meet at least quarterly and at other times as called by its chair; in the case of a vacancy in the chair, by the vice-chair; or by four of its members. Four members of the Commission constitute a quorum.

"**§ 138A-23. Staff and offices.**

The Commission may employ professional and clerical staff, including an executive director. The Commission shall be located within the Department of Administration for administrative purposes only, but shall exercise all of its powers, including the power to employ, direct, and supervise all personnel, independently of the Secretary of Administration, and is subject to the direction and supervision of the Secretary of

Administration only with respect to the management functions of coordinating and reporting.

"**§ 138A-24. Powers and duties.**

In addition to other powers and duties specified in this Chapter, the Commission shall:

(1) Provide reasonable assistance to public servants in complying with this Chapter.

(2) Develop readily understandable forms, policies, rules, and procedures to accomplish the purposes of the Chapter.

(3) Receive and review all statements of economic interests filed with the Commission by prospective and actual public servants and evaluate whether (i) the statements conform to the law and the rules of the Commission, and (ii) the financial interests and other information reported reveals actual or potential conflicts of interest.

(4) Investigate alleged violations in accordance with G.S. 138A-25.

(5) Render advisory opinions in accordance with G.S. 138A-26.

(6) Initiate and maintain oversight of ethics educational programs for public servants and their staffs consistent with G.S. 138A-27.

(7) Conduct a continuing study of governmental ethics in the State and propose changes to the General Assembly in the government process and the law as are conducive to promoting and continuing high ethical behavior by governmental officers and employees.

(8) Adopt rules to implement this Chapter, including those establishing ethical standards and guidelines to be employed and adhered to by public servants in attending to and performing their duties.

(9) Report annually to the General Assembly and the Governor on the Commission's activities and generally on the subject of public disclosure, ethics, and conflicts of interest, including recommendations for administrative and legislative action, as the Commission deems appropriate.

(10) Perform other duties as may be necessary to accomplish the purposes of this Chapter.

"**§ 138A-25. Investigations by the Commission.**

(a) Institution of Proceedings. – On its own motion, in response to a signed and sworn complaint of any individual filed with the Commission, or upon the written request of any public servant or any person responsible for the hiring, appointing, or supervising of a public servant, the Commission shall conduct an investigation into any of the following:

(1) The application or alleged violation of this Chapter.

(2) The application or alleged violation of rules adopted in accordance with G.S. 138A-24.

(3) The alleged violation of the criminal law by a public servant in the performance of that individual's official duties.

(b) Complaint. –

(1) A complaint filed under this Chapter shall state the name, address, and telephone number of the person filing the complaint, the name and job title or appointive position of the public servant against whom the complaint is filed, and a concise statement of the nature of the complaint and specific facts indicating that a violation of this Chapter has occurred, the date the alleged violation occurred, and either (i) that the contents of the complaint are within the knowledge of the individual verifying the complaint, or (ii) the basis upon which the individual verifying the complaint believes the allegations to be true.

(2) Except as provided in subsection (c) of this section, a complaint filed under this Chapter must be filed within one year of the date the complainant knew or should have known of the conduct upon which the complaint is based.

(3) The Commission may decline to accept or investigate any attempted complaint that does not meet all of the requirements set forth in subdivision (1) of this subsection, or the Commission may, in its sole discretion, request additional information to be provided by the complainant within a specified period of time of no less than seven business days.

(4) In addition to subdivision (3) of this subsection, the Commission may decline to accept or investigate a complaint if it determines that any of the following apply:

a. The complaint is frivolous or brought in bad faith.

b. The individuals and conduct complained of have already been the subject of a prior complaint.

c. The conduct complained of is primarily a matter more appropriately and adequately addressed and handled by other federal, State, or local agencies or authorities, including law enforcement authorities. If other agencies or authorities are conducting an investigation of the same actions or conduct involved in a complaint filed under this section, the Commission may stay its complaint investigation pending final resolution of the other investigation.

(5) The Commission shall send a copy of the complaint to the public servant who is the subject of the complaint within 30 days of the filing.

(c) Investigation of Complaints by the Commission. – The Commission shall investigate all complaints properly before the Commission in a timely manner. The Commission shall initiate an investigation of a complaint within 60 days of the filing of the complaint, or the complaint shall be dismissed. The Commission is authorized to initiate investigations upon request of any member if there is reason to believe that a public servant has or may have violated this Chapter. There is no time limit on Commission-initiated complaint investigations under this section. In determining whether there is reason to believe that a violation has or may have occurred, a member can take general notice of available information even if not formally provided to the

Commission in the form of a complaint. The Commission may utilize the services of a hired investigator when conducting investigations.

(d) Investigation by the Commission of Matters Other Than Complaints. – The Commission may investigate matters other than complaints properly before the Commission under subsection (a) of this section. For any investigation initiated under this subsection, the Commission may take any action it deems necessary or appropriate to further compliance with this Chapter, including the initiation of a complaint, the issuance of an advisory opinion under G.S. 138A-26, or referral to appropriate law enforcement or other authorities pursuant to subsection (j)(1) of this section.

(e) Public Servant Cooperation With Investigation. – Public servants shall promptly and fully cooperate with the Commission in any Commission-related investigation. Failure to cooperate fully with the Commission in any investigation shall be grounds for sanctions as set forth in G.S. 138A-45.

(f) Dismissal of Complaint After Preliminary Inquiry. – If the Commission determines at the end of its preliminary inquiry that (i) the individual who is the subject of the complaint is not a public servant subject to the Commission's jurisdiction and authority under this Chapter, or (ii) the complaint does not allege facts sufficient to constitute a violation of this Chapter, the Commission shall dismiss the complaint and provide written notice of the dismissal to the individual who filed the complaint and the person against whom the complaint was filed.

(g) Notice. – If at the end of its preliminary inquiry, the Commission determines to proceed with further investigation into the conduct of an individual, the Commission shall provide written notice to the individual who filed the complaint and the public servant as to the fact of the investigation and the charges against the public servant. The public servant shall be given an opportunity to file a written response with the Commission. Upon the notice required under this subsection being sent, the complaint and any written response shall be public records, and all other documents offered at the hearing in conjunction with the complaint shall be public records.

(h) Hearing. –

(1) The Commission shall give full and fair consideration to all complaints and responses received. If the Commission determines that the complaint cannot be resolved without a hearing, or if the public servant requests a public hearing, a hearing shall be held.

(2) The Commission shall send a notice of the hearing to the complainant, the public servant, and any other member of the public requesting notice. The notice shall contain the time and place for a hearing on the matter, which shall begin no less than 30 days and no more than 90 days after the date of the notice.

(3) At any hearing held by the Commission:

a. Oral evidence shall be taken only on oath or affirmation.

b. The hearing shall be open to the public. The deliberations by the Commission on a complaint may be held in closed session, but the decision of the Commission shall be announced in open session.

c. The public servant being investigated shall have the right to present evidence, call and examine witnesses, cross-examine witnesses, introduce exhibits, and be represented by counsel.

(i) Settlement of Investigations. – The parties may meet by mutual consent before the hearing to discuss the possibility of settlement of the investigation or the stipulation of any issues, facts, or matters of law. Any proposed settlement of the investigation is subject to the approval of the Commission.

(j) Disposition of Investigations. – Except as permitted under subsection (f) of this section, after hearing, the Commission shall dispose of the matter in one or more of the following ways:

(1) If the Commission finds substantial evidence of an alleged violation of a criminal statute, the Commission shall refer the matter to the Attorney General for investigation and referral to the district attorney for possible prosecution.

(2) If the Commission finds that the alleged violation is not established by clear and convincing evidence, the Commission shall dismiss the complaint.

(3) If the Commission finds that the alleged violation of this Chapter is established by clear and convincing evidence, the Commission shall do one or more of the following:

a. Issue a public or private admonishment to the public servant and notify the employing entity, if applicable.

b. Refer the matter to the Governor, the employing entity that appointed or employed the public servant or of which the public servant is a member, or the General Assembly for constitutional officers of the State, for appropriate action, and make recommendations on sanctions under subsection (k) of this section.

(k) Effect of Dismissal or Private Admonishment. – In the case of a dismissal or private admonishment, the Commission shall retain its records or findings in confidence, unless the public servant under inquiry requests in writing that the records and findings be made public. If the Commission later finds that a public servant's subsequent unethical activities were similar to and the subject of an earlier private admonishment, then the Commission may make public the earlier admonishment and the records and findings related to it.

(k) Recommendations of Sanctions. – If the Commission determines, after proper review and investigation, that action is appropriate, the Commission may recommend sanctions or issue rulings as it deems necessary or appropriate to protect the public interest and ensure compliance with this Chapter. In formulating appropriate sanctions, the Commission may consider the following factors:

(1) The public servant's prior experience in an agency or on a board and prior opportunities to learn the ethical standards for public servants as set forth in Article 2 of this Chapter, including those dealing with conflicts of interest and appearances of conflicts of interest.

(2) The number of ethics violations.
(3) The severity of the ethics violations.
(4) Whether the ethics violations involve the public servant's financial interests or arise from an appearance of conflict of interest.
(5) Whether the ethics violations were inadvertent or intentional.
(6) Whether the public servant knew or should have known that the improper conduct was a violation of this Chapter.
(7) Whether the public servant has previously been advised, warned, or sanctioned by the Commission.
(8) Whether the conduct or situation giving rise to the ethics violation was pointed out to the public servant in the Commission's Statement of Economic Interest evaluation letter issued under G.S. 138A-38(c).
(9) The public servant's motivation or reason for the improper conduct or actions, including whether the action was for personal financial gain versus protection of the public interest.

If the Commission determines, after proper review and investigation, that sanctions are appropriate, the Commission may recommend any action it deems necessary to properly address and rectify any violation of this Chapter by a public servant, including removal of the public servant from the public servant's State position. As it deems necessary and proper, the Commission may make referrals to appropriate State officials, including law enforcement officials, for investigation of wrongful conduct by State employees or appointees discovered during the course of a complaint investigation, regardless of whether the individual is a public servant under this Chapter. Nothing in this subsection is intended, and shall not be construed, to give the Commission any independent civil, criminal, or administrative investigative or enforcement authority over public servants or other State employees or appointees.

(l) Findings and Record. – The Commission shall render formal and binding opinions of its findings and recommendations made pursuant to complaints or Commission investigations. In all matters in which the complaint is a public record, the Commission shall ensure that a complete record is made and preserved as a public record.

(m) Authority of Employing Entity. – Any action or failure to act by the Commission under this Chapter, except G.S. 138A-26, shall not limit any authority of the applicable employing entity to discipline the public servant.

(n) Continuing Jurisdiction. – The Commission shall have continuing jurisdiction to investigate possible criminal violations of this Chapter for a period of one year following the date a person who was formerly a pubic servant ceases to be a public servant.

(o) Confidentiality. – All motions, complaints, written requests, investigations and investigative materials shall be confidential and not matters of public record, except as otherwise provided in this section.

(p) Subpoena Authority. – The Commission may petition the Superior Court of Wake County for the approval to issue subpoenas and subpoenas duces tecum as necessary to conduct investigations of alleged violations of this Chapter. The court shall

authorize subpoenas under this subsection when the court determines the subpoenas are necessary for the enforcement of this Chapter. Subpoenas issued under this subsection shall be enforceable by the court through contempt powers. Venue shall be with the Superior Court of Wake County for any person covered by this Chapter, and personal jurisdiction may be asserted under G.S. 1-75.4.

"**§ 138A-26. Advisory opinions.**

(a) At the request of any public servant, any individual not otherwise the public servant who is responsible for the supervision or appointment of a person who is a public servant, legal counsel for any public servant, any ethics liaison under G.S. 138A-27, or any member of the Commission, the Commission shall render advisory opinions on specific questions involving the meaning and application of this Chapter and the public servant's compliance therewith. The request shall be in writing, electronic or otherwise, and relate prospectively to real or reasonably anticipated fact settings or circumstances. The Commission shall issue advisory opinions having prospective application only. Reliance upon a requested written advisory opinion on a specific matter shall immunize the public servant, on that matter, from both of the following:

(1) Investigation by the Commission.

(2) Any adverse action by the employing entity.

(b) Staff to the Commission may issue advisory opinions under rules adopted by the Commission.

(c) The Commission shall interpret this Chapter by rules, and these interpretations are binding on all public servants upon publication.

(d) The Commission shall publish its advisory opinions at least once a year. These advisory opinions shall be edited for publication purposes as necessary to protect the identities of the individuals requesting opinions.

(e) Except as provided under subsection (d) of this section, requests for advisory opinions and advisory opinions issued under this section are confidential and not matters of public record.

"**§ 138A-27. Ethics education program.**

(a) The Commission shall develop and implement an ethics education and awareness program designed to instill in all public servants and their immediate staffs a keen and continuing awareness of their ethical obligations and a sensitivity to situations that might result in real or potential conflicts of interest or appearances of conflicts of interest. The Commission shall make basic ethics education and awareness presentations to all public servants and their immediate staffs upon their election, appointment or hiring, and shall offer periodic refresher presentations as the Commission deems appropriate. Every public servant and the immediate staff of every public servant shall participate in an ethics presentation approved by the Commission within six months of the person's election, appointment, or hiring, and shall attend refresher ethics education presentations at least every two years thereafter in a manner as the Commission deems appropriate. Upon request, the Commission shall assist each agency in developing in-house education programs and procedures necessary or

desirable to meet the agency's particular needs for ethics education, conflict identification, and conflict avoidance.

(b) Each agency head shall designate an ethics liaison who shall maintain active communication with the Commission on all agency ethical issues. The ethics liaison shall continuously assess and advise the Commission of any issues or conduct which might reasonably be expected to result in a conflict of interest and seek advice and rulings from the Commission as to their appropriate resolution.

(c) The Commission shall publish a newsletter containing summaries of the Commission's opinions, policies, procedures, and interpretive bulletins as issued from time to time. The newsletter shall be distributed to all public servants. Publication under this subsection may be done electronically.

(d) The Commission shall assemble and maintain a collection of relevant State laws, rules, and regulations that set forth ethical standards applicable to public servants. They shall be made available electronically as resource material to public servants and ethics liaisons, upon request.

(e) As used in this section, "immediate staff" means those individuals who report directly to the public servant.

"**§ 138A-28. Duties of heads of State agencies.**

(a) The head of each State agency, including the chair of each board subject to this Chapter, shall take an active role in furthering ethics in public service and ensuring compliance with this Chapter. The head of each State agency and the chair of each board shall make a conscientious, good-faith effort to assist public servants within the agency or on the board in monitoring their personal, financial, and professional affairs to avoid taking any action that results in a conflict of interest or the appearance of a conflict.

(b) The head of each State agency, including the chair of each board subject to this Chapter, shall maintain familiarity with and stay knowledgeable of the reports, opinions, newsletters, and other communications from the Commission regarding ethics in general and the interpretation and enforcement of this Chapter. The head of each State agency and the chair of each board shall also maintain familiarity with and stay knowledgeable of the Commission's reports, evaluations, opinions, or findings regarding individual public servants in that person's agency or on that person's board, or under person's supervision or control, including all reports, evaluations, opinions, or findings pertaining to actual or potential conflicts of interest.

(c) When an actual or potential conflict of interest is cited by the Commission with regard to a public servant sitting on a board, the conflict shall be recorded in the minutes of the applicable board and duly brought to the attention of the membership by the board's chair as often as necessary to remind all members of the conflict and to help ensure compliance with this Chapter.

(d) The head of each State agency, including the chair of each board subject to this Chapter, shall periodically remind public servants under that person's authority of the public servant's duties to the public under the ethical standards and rules of conduct in this Chapter, including the duty of each public servant to continually monitor,

evaluate, and manage the public servant's personal, financial, and professional affairs to ensure the absence of conflicts of interest or appearances of conflict.

(e) At the beginning of any official meeting of a board, the chair shall remind all members of their duty to avoid conflicts of interest and appearances of conflict under this Chapter. The chair also shall inquire as to whether there is any known conflict of interest or appearance of conflict with respect to any matters coming before the board at that time.

(f) The head of each State agency, including the chair of each board subject to this Chapter, shall ensure that legal counsel employed by or assigned to their agency or board are familiar with the provisions of this Chapter, including the Ethical Standards for Public Servants set forth in Article 2 of this Chapter, and are available to advise public servants on the ethical considerations involved in carrying out their public duties in the best interest of the public. Legal counsel so engaged may consult with the Commission, seek the Commission's assistance or advice, and refer public servants and others to the Commission as appropriate.

(g) Taking into consideration the individual autonomy, needs, and circumstances of each agency and board, the head of each State agency, including the chair of each board subject to this Chapter, shall consider the need for the development and implementation of in-house educational programs, procedures, or policies tailored to meet the agency's or board's particular needs for ethics education, conflict identification, and conflict avoidance. This includes the periodic presentation to all agency heads, their chief deputies or assistants, other public servants under their supervision or control, and members of boards, of the basic ethics education and awareness presentation outlined in G.S. 138A-27 and any other workshop or seminar program the agency head or board chair deems necessary in implementing this Chapter. Agency heads and board chairs may request reasonable assistance from the Commission in complying with the requirements of this subsection.

(h) As soon as reasonably practicable after the designation, hiring, or promotion of their chief deputies, assistants, or other public servants under their supervision or control, or learning of the appointment or election of other public servants to a board covered under this Chapter, all agency heads and board chairs shall (i) notify the Commission of such designation, hiring, promotion, appointment, or election and (ii) provide these public servants with copies of this Chapter and all applicable financial disclosure forms, if these materials and forms have not been previously provided to these public servants by their appointing authorities. In order to avoid duplication of effort, agency heads and board chairs shall coordinate this effort with the Commission's staff.

"**§ 138A-29 through 34. [Reserved]**

"Article 4.

"Public Disclosure of Economic Interests.

"**§ 138A-35. Purpose.**

The purpose of disclosure of the financial and personal interests by public servants is to assist public servants and those persons who appoint, elect, hire, supervise, or advise them identify and avoid conflicts of interest and potential conflicts of interest between

the public servant's private interests and the public servant's public duties. It is critical to this process that current and prospective public servants examine, evaluate, and disclose those personal and financial interests that could be or cause a conflict of interest or potential conflict of interest between the public servant's private interests and the public servant's public duties. Public servants must take an active, thorough, and conscientious role in the disclosure and review process, including having a complete knowledge of how the public servant's public position or duties might impact the public servant's private interests. Public servants have an affirmative duty to provide any and all information that a reasonable person would conclude is necessary to carry out the purposes of this Chapter and to fully disclose any conflict of interest or potential conflict of interest between the public servant's public and private interests, but the disclosure, review, and evaluation process is not intended to result in the disclosure of unnecessary or irrelevant personal information.

"**§ 138A-36. Statement of economic interest; filing required.**

(a) Every public servant subject to this Chapter who is elected, appointed, or employed and entitled to annual compensation from the State of more than forty thousand dollars ($40,000), including one appointed to fill a vacancy in elective office, shall file a statement of economic interest with the Commission prior to the public servant's initial appointment, election, or employment and no later than January 31 every year thereafter. A prospective public servant required to file a statement under this Chapter shall not be appointed, employed, or receive a certificate of election, prior to submission by the Commission of the Commission's evaluation of the statement in accordance with this Article. The requirement for an annual filing under this subsection also shall apply to public servants whose terms have expired but who continue to serve until their replacement is appointed.

(b) Notwithstanding subsection (a) of this section, persons hired by, and appointees of, constitutional officers of the State may file a statement of economic interest within 30 days of their appointments or employment when the appointment or employment is made during the first 60 days of the constitutional officer's initial term in that constitutional office.

(c) Except as otherwise filed under subsection (a) of this section, a candidate for the Council of State shall file the statement of economic interest at the same place and in the same manner as the notice of candidacy for that office is required to be filed under G.S. 163-106, within 10 days of the filing deadline for the office the candidate seeks. A person who is nominated under G.S. 163-114 after the primary and before the general election, and a person who qualifies under G.S. 163-122 as an unaffiliated candidate in a general election, shall file a statement of economic interest with the county board of elections of each county in the senatorial or representative district. A person nominated under G.S. 163-114 shall file the statement within three days following the person's nomination, or not later than the day preceding the general election, whichever occurs first. A person seeking to qualify as an unaffiliated candidate under G.S. 163-122 shall file the statement of economic interest with the petition filed under that section. A person seeking to have write-in votes counted for the person in a general election shall file a statement of economic interest at the same time the

candidate files a declaration of intent under G.S. 163-123. A candidate of a new party chosen by convention shall file a statement of economic interest at the same time that the president of the convention certifies the names of its candidates to the State Board of Elections under G.S. 163-98.

(d) The State Board of Elections shall provide for notification of the statement of economic interest requirements of this Article to be given to any candidate filing for nomination or election to those offices subject to this Article at the time of the filing of candidacy.

(e) The executive director of the State Board of Elections shall forward a certified copy of the statement of economic interest to the Commission for evaluation.

(f) The Commission shall issue forms to be used for the statement of economic interest and shall revise the forms from time to time as necessary to carry out the purposes of this Chapter. Except as otherwise set forth in this section, the Commission shall furnish to all other public servants the appropriate forms needed to comply with this Article.

"**§ 138A-37. Statements of economic interest as public records.**

The statements of economic interest filed by prospective public servants under this Article for appointed or employed positions and written evaluations by the Commission of these statements are not public records until the prospective public servant is appointed or is employed by the State. All other statements of economic interest and all other written evaluations by the Commission of those statements are public records. After becoming public records, statements shall be made available for inspection and copying by any person during normal business hours at the Commission's office.

"**§ 138A-38. Contents of statement.**

(a) Any statement of economic interest filed under this Article shall be on a form prescribed by the Commission and sworn to by the public servant. Answers must be provided to all questions. The form shall include the following information about the public servant and the public servant's immediate family:

(1) The name, home address, occupation, employer, and business of the person filing.

(2) A list of each asset and liability of whatever nature (including legal, equitable, or beneficial interest) with a value of at least ten thousand dollars ($10,000) of the prospective or actual public servant, and the public servant's spouse. This list shall include the following:

a. All real estate located in the State owned wholly or in part by the public servant or the public servant's spouse, including specific descriptions adequate to determine the location of each parcel and the specific interest held by the public servant and the spouse in each identified parcel.

b. Real estate that is currently leased or rented to the State.

c. Personal property sold to or bought from the State within the preceding two years.

d. Personal property currently leased or rented to the State.

e. The name of each publicly owned company in which the value of securities held exceeds ten thousand dollars ($10,000).

f. The name of each non-publicly owned company or business entity in which the value of securities or other equity interests held exceeds ten thousand dollars ($10,000), including interests in partnerships, limited partnerships, joint ventures, limited liability companies or partnerships, and closely held corporations. For each company or business entity listed under this sub-subdivision, the filing public servant shall indicate whether the listed company or entity owns securities or equity interests exceeding a value of ten thousand dollars ($10,000) in any other companies or entities. If so, then the other companies or entities shall also be listed with a brief description of the business activity of each.

g. If the filing public servant, the members of the public servant's immediate family are the beneficiaries of a vested trust created, established, or controlled by the public servant, then the name and address of the trustee and a description of the trust shall be provided. To the extent such information is available to the public servant, the statement also shall include a list of businesses in which the trust has an ownership interest exceeding ten thousand dollars ($10,000).

h. The filing public servant shall make a good faith effort to list any individual or business entity with which the filing public servant, the public servant's extended family, or any business with which the public servant or a member of the public servant's extended family is associated, has a financial or professional relationship provided (i) a reasonable person would conclude that the nature of the financial or professional relationship presents a conflict of interest or the appearance of a conflict of interest for the public servant; or (ii) a reasonable person would conclude that any other financial or professional interest of the individual or business entity would present a conflict of interest or appearance of a conflict of interest for the public servant. For each individual or business entity listed under this subsection, the filing public servant shall describe the financial or professional relationship and provide an explanation of why the individual or business entity has been listed.

i. A list of all other assets and liabilities with a valuation of at least ten thousand dollars ($10,000), including bank accounts and debts.

j. A list of each source (not specific amounts) of income (including capital gains) shown on the most recent federal and

State income tax returns of the person filing where ten thousand dollars ($10,000) or more was received from that source.

k. If the public servant is a practicing attorney, an indication of whether the public servant, or the law firm with which the public servant is affiliated, earned legal fees during any single year of the past five years in excess of ten thousand dollars ($10,000) from any of the following categories of legal representation:

1. Administrative law.
2. Admiralty.
3. Corporation law.
4. Criminal law.
5. Decedent's estates.
6. Insurance law.
7. Labor law.
8. Local government.
9. Negligence – defendant.
10. Negligence – plaintiff.
11. Real property.
12. Taxation.
13. Utilities regulation.

l. A list of all nonpublicly owned businesses with which, during the past five years, the public servant or the public servant's immediate family has been associated, indicating the time period of that association and the relationship with each business as an officer, employee, director, business associate, or owner. The list also shall indicate whether each does business with, or is regulated by, the State and the nature of the business, if any, done with the State.

m. A list of all gifts, and the sources of the gifts, of a value of more than two hundred dollars ($200.00) received during the 12 months preceding the date of the statement from sources other than the public servant's extended family, and a list of all gifts, and the sources of the gifts, valued in excess of one hundred dollars ($100.00) received from any source having business with, or regulated by, the employing entity.

n. A list of all bankruptcies filed during the preceding five years by the public servant, the public servant's spouse, or any entity in which the public servant, or the public servant's spouse, has been associated financially. A brief summary of the facts and circumstances regarding each listed bankruptcy shall be provided.

o. A list of all directorships on all business boards of which the public servant of the public servant's immediate family is a member.

(3) A list of the public servant's or the public servant's immediate family's memberships or other affiliations with, including offices held in, societies, organizations, or advocacy groups, pertaining to subject matter areas over which the public servant's agency or board may have jurisdiction.

(4) In addition to the information required to be reported under subdivisions (1), (2), and (3) of this subsection, the filing public servant shall provide in the public servant's statement a list of any felony convictions or any other information that a reasonable person would conclude is necessary either to carry out the purposes of this Chapter or to fully disclose any potential conflict of interest or appearance of conflict. If a public servant is uncertain of whether particular information is necessary, then the public servant shall consult the Commission for guidance.

(5) Each statement of economic interest shall contain sworn certification by the filing public servant that the public servant has read the statement and that, to the best of the public servant's knowledge and belief, the statement is true, correct, and complete. The public servant's sworn certification also shall provide that the public servant has not transferred, and will not transfer, any asset, interest, or other property for the purpose of concealing it from disclosure while retaining an equitable interest therein.

(6) If the public servant believes a potential for conflict exists, the public servant has a duty to inquire of the Commission as to that potential conflict.

(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 date the statement of economic interest was signed.

(c) The Commission shall prepare a written evaluation of each statement of economic interest relative to conflicts of interest and potential conflicts of interest. The Commission shall submit the evaluation to all of the following:

(1) The public servant who submitted the statement.

(2) The head of the agency in which the public servant serves.

(3) The Governor for gubernatorial appointees and employees in agencies under the Governor's authority.

(4) The appointing or hiring authority for those public servants not under the Governor's authority.

(5) The State Board of Elections for those public servants who are elected.

"**§ 138A-39. Failure to file.**

(a) Within 30 days after the date due in accordance with G.S. 138A-36, for every public servant from whom a statement of economic interest has not been received by the

Commission, or whose statement of economic interest has been received by the Commission but deemed by the Commission to be incomplete, the Commission shall notify the public servant of the failure to file or complete and shall notify the public servant that if the statement of economic interest is not filed or completed within 30 days of receipt of the notice of failure to file or complete, the public servant shall be subject to a fine as provided for in this section.

(b) Any public servant who fails to file or complete a statement of economic interest within 30 days of the receipt of the notice, required under subsection (a) of this section, shall be subject to a fine of two hundred fifty dollars ($250.00), to be imposed by the Commission.

(c) Failure by any public servant to file or complete a statement of economic interest within 60 days of the receipt of the notice, required under subsection (a) of this section, shall be deemed to be a violation of this Chapter and shall be grounds for disciplinary action under G.S. 138A-45.

"**§ 138A-40. Concealing or failing to disclose material information.**

A public servant who knowingly conceals or fails to disclose information that is required to be disclosed on a statement of economic interest under this Article shall be punished as a Class 2 misdemeanor and shall be subject to disciplinary action under G.S. 138A-45.

"**§ 138A-41. Penalty for false or misleading information.**

A public servant who provides false or misleading information on a statement of economic interest as required under this Article knowing that the information is false or misleading shall be punished as a Class H felon and shall be subject to disciplinary action under G.S. 138A-45.

"**§ 138A-42 through 44. [Reserved]**

"Article 5.

"Violation Consequences.

"**§ 138A-45. Violation consequences.**

(a) Violation of this Chapter by any public servant is grounds for disciplinary action. Except as provided in Article 4 of this Chapter and for perjury under G.S. 138A-25 and G.S. 138A-38, no criminal penalty shall attach for any violation of this Chapter.

(b) The willful failure of any public servant serving on a board to comply with this Chapter is misfeasance, malfeasance, or nonfeasance. In the event of misfeasance, malfeasance, or nonfeasance, the offending public servant serving on a board is subject to removal from the board of which the public servant is a member. For appointees of the Governor and members of the Council of State, the appointing authority may remove the offending public servant. For appointees of the General Assembly, the Commission shall exercise the discretion of whether to remove the offending public servant.

(c) The willful failure of any public servant serving as a State employee to comply with this Chapter is a violation of a written work order, thereby permitting disciplinary action as allowed by the law, including termination from employment. Except for employees of State departments headed by a member of the Council of State,

the Governor shall make all final decisions on the manner in which the offending public servant shall be disciplined. For employees of State departments headed by a member of the Council of State, the appropriate member of the Council of State shall make all final decisions on the manner in which the offending public servant shall be disciplined.

(d) The willful failure of any constitutional officer of the State to comply with this Chapter is malfeasance in office for purposes of G.S. 123-5.

(e) Nothing in this Chapter affects the power of the State to prosecute any person for any violation of the criminal law.

(f) The State Ethics Commission may seek to enjoin violations of G.S. 138A-9."

SECTION 2. G.S. 150B-1 is amended by adding a new subsection to read:

"(g) Exemption of State Ethics Commission. – Except for G.S. 150B-21.20A and Article 4 of this Chapter, no other provision of this Chapter applies to the State Ethics Commission."

SECTION 3. Part 4 of Article 2A of Chapter 150B of the General Statutes is amended by adding a new section to read:

"**§ 150B-21.20A. Publication of rules and advisory opinions of State Ethics Commission.**

The Codifier of Rules shall publish unedited the rules and advisory opinions issued by the State Ethics Commission under Chapter 138A of the General Statutes in the North Carolina Register as they are received from the State Ethics Commission, in the format required by the Codifier.

The Codifier of Rules shall publish unedited in the North Carolina Administrative Code the rules as codified and issued by the State Ethics Commission under Chapter 138A of the General Statutes, in the format required by the Codifier."

SECTION 4. The authority, powers, duties and functions, records, personnel, property, unexpended balances of appropriations, allocations, or other funds, including the functions of budgeting and purchasing, of the North Carolina Board of Ethics of the Office of the Governor are transferred to the State Ethics Commission created in Section 1 of this act. The Director of the Budget shall resolve any disputes arising out of this transfer.

SECTION 5. This act becomes effective October 1, 2006, applies to public servants on or after January 1, 2007, and acts and conflicts of interest that arise on or after January 1, 2007.

House Judiciary I Committee

May 16, 2006
10:00 a.m.

Minutes

The House Judiciary I Committee met on Tuesday, May 16, 2006 at 10:00 a.m. in Room 1228 of the Legislative Building. The Chairman, Representative Joe Hackney, called the meeting to order and the following members were present: Representatives Alexander, Blust, Capps, Clary, Goodwin, Harrison, Insko, Miller, Ross, Stam, and Stiller. A copy of the agenda and visitor registration is attached, (Attachments I and II).

House Bill 1843, AN ACT TO REVISE THE LEGISLATIVE ETHICS ACT AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON ETHICS AND GOVERNMENTAL REFORM, (Attachment III), was before the Committee. Chairman Hackney stated that the bill was the legislative corollary to the Executive Ethics bill.

Mr. Walker Reagan, Research Division, was recognized for an explanation of the bill. He stated that the bill modified the existing Legislative Ethics Act to incorporate what is currently is in the law for legislative ethics and supplements it with additional provisions and standards that were adopted in the Executive Ethics Act. Mr. Reagan offered a brief history of the current Legislative Ethics Act. He then gave a section-by-section explanation of the bill noting that the bill continues all the existing provisions of that Act and adds additional provisions for more definitions on conflicts of interest, limitations on gift bans to legislators from lobbyist and lobbyist principals and provides for the more detailed frequent statements of economic interests that have also been adopted for the Executive Branch. A copy of a bill analysis, prepared by Mr. Reagan, provides an explanation of the bill and is attached to the minutes, (Attachment IV).

Representative Luebke, Chair of the subcommittee of the House Select Committee on Ethics and Governmental Reform, was recognized for comment on the bill.

Representative Stam was recognized and offered an amendment, (Attachment V). He noted that the amendment was a "clean-up" amendment, and moved its adoption. Following brief discussion, two revisions were made to the amendment (see amendment). Upon vote of the Committee, the amendment was adopted.

A second amendment was offered by Representative Stam, (Attachment VI). The first part of the amendment changed the requirement of notifying by "registered" mail to "certified" mail on page 15, line 32. Also, on page 19, line 34 the amendment would change the penalty for concealing or failing to disclose material information from a Class 2 misdemeanor to a Class 1 misdemeanor. The amendment would also rewrite lines 7 and 8 on page 20 to state who would bring the action for an injunction for violations. Upon vote of the Committee, the amendment was adopted.

Representative Stam offered a third amendment, (Attachment VII). The amendment addressed personnel-related action on page 5, lines 7 and 8, and would make it clear that it would be about a specific employee and not generic "state employee." Upon vote of the Committee, the amendment was adopted.

An amendment was offered by Representative Stam, (Attachment VIII), to remove the appearance of conflict language on page 6, lines 36-42, and leave in all the actual conflict language. The amendment would keep conflicts as ethical violations, but makes sure that an appearance of conflict is not. The amendment was adopted.

Representative Blust was recognized and commented on the difficulty of legislators "policing" themselves.

Representative Howard was recognized and commented on past ethics opinions and actions taken by the House Ethics Committee

Representative Ross stated that she understood Representative Blust's suggestion that someone outside the legislature should "police" the members. She added however, that in order to create a culture where the members care about ethics and ethics are taken seriously in the General Assembly, there is a need for an Ethics Committee made up of the members of the legislature who will take this issue seriously, who train the members, where members can go to for advice and a committee comprised of members who are respected by other members. She said that it does not help to have outside enforcement when the legislature is not creating an internal culture and putting in place leadership among the people who work there.

Committee discussion followed regarding the make-up of an Ethics Committee. Representative Luebke was recognized and said that he felt the bill was sufficient as currently drafted.

Representative Ross offered an amendment, (Attachment IX) and moved its adoption. The amendment would prohibit the use of state money for public service announcements. The amendment was adopted.

Representative Blust offered an amendment (Attachment X). The amendment would call for a Legislative Ethics Committee consisting of an even number of members from each party elected by their respective caucus in open meeting. Representative Stam spoke in support of the amendment.

Representative Ross questioned having the caucus meeting open to the public and requested that the open meeting of the caucus be removed.

Representative Blust agreed to amend his amendment to delete the open caucus.

Upon vote of the Committee, the amendment was adopted with permission being given to staff to make any necessary conforming and technical changes to it.

Representative Ross moved to roll all amendments into a Proposed Committee Substitute, that it be given a favorable report and the original bill an unfavorable report. The motion carried, (Attachment XI). A copy of the new Committee Substitute is attached, (Attachment XII).

The meeting was adjourned at 11:35 a. m.

Representative Joe Hackney
Chair

Emily Reynolds Freeman
Committee Clerk

Attachment I

HOUSE COMMITTEE ON JUDICIARY I

May 16, 2006
10:00 a.m.

AGENDA

OPENING REMARKS

AGENDA ITEMS

House Bill 1843 – Revise Legislative Ethics Act – Reps. Hackney, Howard, Brubaker and Luebke
House Bill 1845 – Permitted Use of Campaign Funds – Reps. Hackney, Howard, Eddins and Ross
House Bill 1847 – Treasurer Training – Reps. Hackney, Howard and Ross

ADJOURNMENT

Attachment II

VISITOR REGISTRATION SHEET

House Judiciary I — May 16, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Rob Schofield	NC Center for NP's
Becki Gray	Civitas Institute
Perry Newson	NC Board of Ethics
Jami Fitzgerald	NC Family Policy Council
Chris Fitzsimon	NC Policy Watch
Todd Barlow	NCATL
Lee Hedgepeth	KCCU
Ramona Carpenter	TCC
John Meffley	Gov office
Carey Wiggins	Gov. office
Ben Tuite	NC House of Representatives

VISITOR REGISTRATION SHEET

House Judiciary I — May 16, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Kathleen Edwards	UNC-CH Daily Bulletin
Jeff Wolfe	UNC-CH Daily Bulletin
Bob Phillips	Common Cause N.C.
Ryan Preston	Rep-Glazier
Patrick Buffkin	Alley Assoc, Inc.
Nancy Thompson	UMCIC
Carlos Payne	Edmisten & Webb
Scott Mooneyham	Insider
Caroline Howe	Lt. Gov's Office
Jim Morrill	Charlotte Observer
Becky Grey	Civitas Institute

VISITOR REGISTRATION SHEET

House Judiciary I — May 16, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jeff Mixon	Civitas Institute
Alyn Perry	Civitas Institute
John Hunt	NCFPC
Elizabeth Sea	NC Sierra Club
Paul Stock	NC Bankers Assn.
Susan Valauri	Nationwide
[illegible]	MFA
[illegible]	Gov's Off
[illegible]	JD, NC, PA
[illegible]	NCLM
[illegible]	NCPA

VISITOR REGISTRATION SHEET

House Judiciary I — **Name of Committee**

May 16, 2006 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Bill Rowe	NC Justice Center
Gary Harris	NC Petroleum Mkts
Joe Sam	Nucor
Don Vaughan	NCBA
Dan Cook	Carolina Journal
John Bowdish	ADA
Paula D. Wolf	NC Lobbying Reform Coalition
Bin Lin	Covenant
Jim Blackburn	NC Association of County Commissioners
Jon Teague	NMRS
Catherine Bi	Electricities

VISITOR REGISTRATION SHEET

House Judiciary I — May 16, 2006

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
DAVID BARNES	PHS
Chip Kelly	Nelson Mullins
[illegible]	AAA
[illegible]	IPC
Barbara Conder	BSCC
Paul Parks	NCATL

Attachment III

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

H 1

HOUSE BILL 1843

Short Title:	Revise Legislative Ethics Act - 1.	(Public)
Sponsors:	Representatives Hackney, Howard, Brubaker, Luebke (Primary Sponsors); Barnhart, Bell, Coates, Eddins, Fisher, Gibson, Harrison, Justice, Lucas, Martin, McLawhorn, Nye, Ross, Sauls, Setzer, Sherrill, Steen, West, Alexander, L. Allen, Bordsen, Dickson, Glazier, Hill, Insko, Jeffus, McGee, Moore, Stiller, Underhill, Weiss, and Wiley.	
Referred to:	Judiciary I.	

May 10, 2006

A BILL TO BE ENTITLED

AN ACT TO REVISE THE LEGISLATIVE ETHICS ACT AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON ETHICS AND GOVERNMENTAL REFORM.

The General Assembly of North Carolina enacts:

SECTION 1. Article 14 of Chapter 120 of the General Statutes is repealed.

SECTION 2. Chapter 120 of the General Statutes is amended by adding a new article to read:

"Article 32.

"Legislative Ethics Act.

"Part 1. General Provisions.

"**§ 120-280. Title.**

This Article shall be known and may be cited as the 'Legislative Ethics Act.'

"**§ 120-281. Definitions.**

The following definitions apply in this Article:

(1) Business. – Any of the following, whether or not for profit:

a. Association.
b. Corporation.
c. Enterprise.
d. Joint venture.
e. Organization.
f. Partnership.
g. Proprietorship.
h. Vested trust.

i. Every other business interest, including ownership or use of land for income.

(2) Business associate. – A partner, or member or manager of a limited liability company.

(3) Business with which associated. – A business in which the legislator or any member of the legislator's immediate family has a pecuniary interest. For purposes of this subdivision, the term 'business' shall not include a widely held investment fund, including a mutual fund, regulated investment company, or pension or deferred compensation plan, if all of the following apply:

a. The legislator or a member of the legislator's immediate family neither exercises nor has the ability to exercise control over the financial interests held by the fund.

b. The fund is publicly traded or the fund's assets are widely diversified.

(4) Committee. – The Legislative Ethics Committee.

(5) Compensation. – Any money, thing of value, or economic benefit conferred on or received by any person in return for services rendered or to be rendered by that person or another. This term does not include campaign contributions properly received and, if applicable, reported as required by Article 22A of Article 163 of the General Statutes.

(6) Confidential information. – Information defined as confidential by statute.

(7) Contract. – Any agreement including sales and conveyances of real and personal property and agreements for the performance of services.

(8) Economic interest. – Matters involving a business with which the person is associated or a nonprofit corporation or organization with which the person is associated.

(9) Extended family. – Spouse, descendant, ascendant, or sibling of the legislator or, descendant, ascendant, or sibling of the spouse of the legislator.

(10) Immediate family. – An unemancipated child of the legislator residing in the household, and the legislator's spouse, if not legally separated.

(11) Legislative action. – As the term is defined in G.S. 120-47.1.

(12) Legislative employee. – As the term is defined in G.S. 120-47.1.

(13) Legislator. – A member or presiding officer of the General Assembly, or a person elected or appointed a member or presiding officer of the General Assembly before taking office.

(14) Nonprofit corporation or organization with which associated. – 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

family is a director, officer, governing board member, employee or independent contractor as of December 31 of the preceding year.

(15) Participate. – To take part in, influence, or attempt to influence, including acting through an agent or proxy.

(16) Pecuniary interest. – Any of the following:

a. Owning, either individually or collectively, a legal, equitable, or beneficial interest of ten thousand dollars ($10,000) or more or five percent (5%), whichever is less, of any business.

b. Receiving, either individually or collectively, during the preceding calendar year compensation that is or will be required to be included as taxable income on federal income tax returns of the legislator, the legislator's immediate family, or a business with which associated in an aggregate amount of five thousand dollars ($5,000) from any business or combination of businesses. A pecuniary interest exists in any client or customer who pays fees or commissions, either individually or collectively, of five thousand dollars ($5,000) or more in the preceding 12 months to the legislator, the legislator's immediate family, or a business with which associated.

c. Receiving, either individually or collectively and directly or indirectly, in the preceding 12 months, gifts or honoraria having an unknown value or having an aggregate value of five hundred dollars ($500.00) or more from any person. A pecuniary interest does not exist under this sub-subdivision by reason of (i) a gift or bequest received as the result of the death of the donor; (ii) a gift from an extended family member; or (iii) acting as a trustee of a trust for the benefit of another.

d. Holding the position of associate, director, officer, business associate, or proprietor of any business, irrespective of the amount of compensation received.

(17) Public event. – An organized gathering of individuals open to the general public or to which a legislator or legislative employee is invited along with the entire membership of the House, the Senate, a committee, a subcommittee, a county legislative delegation, a joint committee or a legislative caucus and to which at least ten employees or members of the principal actually attend.

(18) Vested trust. – A trust, annuity, or other funds held by a trustee or other third party for the benefit of the legislator or a member of the legislator's immediate family. A vested trust shall not include a widely held investment fund, including a mutual fund, regulated investment company, or pension or deferred compensation plan, if:

a. The legislator or a member of the legislator's immediate family neither exercises nor has the ability to exercise control over the financial interests held by the fund; and

b. The fund is publicly traded, or the fund's assets are widely diversified.

"**§ 120-282 through 120-285. [Reserved]**

"Part 2. Ethical Standards for Legislators.

"**§ 120-286. Bribery, etc.**

(a) No person shall offer or give to a legislator or a member of a legislator's immediate household, or to a business with which the legislator is associated, and no legislator shall solicit or receive, anything of monetary value, including a gift, favor or service or a promise of future employment, based on any understanding that the legislator's vote, official actions or judgment would be influenced thereby, or where it could reasonably be inferred that the thing of value would influence the legislator in the discharge of the legislator's duties.

(b) It shall be unlawful for the business associate, client, customer, or employer of a legislator or the agent of that partner, client, customer, or employer, directly or indirectly, to threaten economically that legislator with the intent to influence the legislator in the discharge of the legislator's duties.

(c) It shall be unlawful for any person, directly or indirectly, to threaten economically another person in order to compel the threatened person to attempt to influence a legislator in the discharge of the legislator's duties.

(d) It shall be unethical for a legislator to contact the business associate, client, customer, or employer of another legislator if the purpose of the contact is to cause the partner, client, customer, or employer, directly or indirectly, to threaten economically that legislator with the intent to influence that legislator in the discharge of the legislator's duties.

(e) A violation of subsection (a), (b), or (c) of this section is a Class F felony. A violation of subsection (d) of this section is not a crime but is punishable under G.S. 120-325.

"**§ 120-287. Use of public position for private gain.**

(a) A legislator shall not knowingly use the legislator's public position in any manner that will result in financial benefit, direct or indirect, to the legislator, a member of the legislator's extended family, or a person with whom, or business with which, the legislator is associated. The performance of usual and customary duties associated with the public position or the advancement of public policy goals or constituent services, without compensation, shall not constitute the use of public position for financial benefit. This subsection shall not apply to financial or other benefits derived by a legislator that the legislator would enjoy to an extent no greater than that which other citizens of the State would or could enjoy, or that are so remote, tenuous, insignificant, or speculative that a reasonable person would conclude under the circumstances that the legislator's ability to protect the public interest and perform the legislator's official duties would not be compromised.

(b) A legislator shall not mention or permit another person to mention the legislator's public position in nongovernmental advertising that advances the private interest of the legislator or others. The prohibition in this subsection shall not apply to political advertising, news stories or news articles.

"**§ 120-288. Disclosure of confidential information.**

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 the legislator's official position that could result in financial gain for the legislator or any other person.

"**§ 120-289. Personnel-related action unethical.**

It shall be unethical for a legislator to take, promise, or threaten any legislative action for the purpose of influencing or in retaliation for any action regarding State employee hirings, promotions, grievances, or disciplinary actions subject to Chapter 126 of the General Statutes.

"**§ 120-290. Gifts.**

(a) A legislator shall not knowingly, directly or indirectly, ask, accept, demand, exact, solicit, seek, assign, receive, or agree to receive anything of value for the legislator, or for another person, in return for being influenced in the discharge of the legislator's official responsibilities, other than that which is received by the legislator from the State for acting in the legislator's official capacity.

(b) No legislator or legislative employee shall knowingly accept anything of monetary value, directly or indirectly, from a legislative lobbyist or principal as defined in G.S. 120-47.1 or an executive lobbyist or principal as defined in G.S. 147-54.31.

(c) Subsection (b) of this section shall not apply to any of the following:

(1) Meals and beverages for immediate consumption in connection with public events.

(2) Nonmonetary items, other than food or beverages, with a value not to exceed ten dollars ($10.00) provided by a single donor during a single calendar day.

(3) Informational materials relevant to the duties of the legislator or legislative employee.

(4) Reasonable actual expenses for food, registration, travel, and lodging of the legislator or legislative employee for a meeting at which the legislator or legislative employee participates in a panel or speaking engagement at the meeting related to the legislator's or legislative employee's duties and when expenses are incurred on the actual day of participation in the engagement or incurred within a 24-hour time period before or after the engagement.

(5) Items or services received in connection with a state, regional or national legislative organization of which the General Assembly, the legislator or legislative employee is a member by virtue of the person's legislative position.

(6) Items and services received relating to an educational conference or meeting.

(7) A plaque or similar nonmonetary memento recognizing individual services in a field or specialty or to a charitable cause.

(8) Gifts accepted on behalf of the State.

(9) Anything generally available or distributed to the general public or all other State employees.

(10) Anything for which fair market value is paid.
(11) Commercially available loans made on terms not more favorable than generally available to the public in the normal course of business if not made for the purpose of lobbying.
(12) Contractual arrangements or business relationships or arrangements made in the normal course of business if not made for the purpose of lobbying.
(13) Academic scholarships made on terms not more favorable than scholarships generally available to the public.
(14) Political contributions properly received and reported as required under Article 22A of Article 163 of the General Statutes.
(15) Gifts from the legislator's or the legislative employee's extended family, or a member of the same household of the legislator or the legislative employee, or gifts received in conjunction with a marriage, birth, adoption, or death.

(d) A prohibited gift shall be declined, returned, paid for at fair market value, or accepted and immediately donated to the State. Perishable food items of reasonable costs, received as gifts, shall be donated to charity, destroyed or provided for consumption among the entire staff or the public.

(e) A legislative employee shall not accept an honorarium from a source other than the General Assembly for conducting any activity where any of the following apply:

(1) The General Assembly reimburses the public servant for travel, subsistence, and registration expenses.
(2) The General Assembly's work time or resources are used.
(3) The activity would be considered official duty or would bear a reasonably close relationship to the legislative employee's official duties.

An outside source may reimburse the General Assembly for actual expenses incurred by a legislative employee in conducting an activity within the duties of the legislative employee, or may pay a fee to the General Assembly, in lieu of an honorarium, for the services of the legislative employee.

(f) The offering, giving, soliciting or receiving a thing of value in compliance with this section without corrupt intent shall not constitute a violation of G.S. 120-286, G.S. 14-217 or G.S. 14-218.

"**§ 120-291. Appearance of conflict.**

A legislator shall make reasonable efforts to avoid even the appearance of a conflict of interest in accordance with G.S. 120-292. An appearance of conflict exists when a reasonable person would conclude from the circumstances that the legislator's ability to protect the public interest, or perform public duties, is compromised by familial, personal, or financial interest. An appearance of conflict could exist even in the absence of an actual conflict of interest.

"**§ 120-292. Other rules of conduct.**

(a) A legislator shall make a due and diligent effort before taking any action, including voting or participating in discussions with other legislators, to determine whether the legislator has a conflict of interest or an appearance of a conflict. If the legislator is unable to determine whether or not a conflict of interest or the appearance of a conflict may exist, the legislator has a duty to inquire of the Committee as to that conflict or appearance of conflict.

(b) A legislator shall continually monitor, evaluate, and manage the legislator's personal, financial, and professional affairs to ensure the absence of conflicts of interest and appearances of conflicts.

(c) A legislator shall obey all other civil laws, administrative requirements and criminal statutes governing conduct of State government appointees and employees.

"**§ 120-293. Participation in legislative actions.**

(a) Notwithstanding any other law, except as permitted by subsection (c) of this section, no legislator shall knowingly participate in a legislative action if the legislator, a member of the legislator's extended family, the legislator's client, or a business with which the legislator is associated, has a pecuniary or economic interest in, or a reasonably foreseeable benefit from, the matter under consideration, which would impair the legislator's independence of judgment or from which it could reasonably be inferred that the interest or benefit would influence the legislator's participation in the legislative action. A potential benefit includes a detriment to (i) a business competitor of the legislator, (ii) a member of the legislator's extended family, or (iii) a business with which the legislator is associated.

(b) A legislator described in subsection (a) of this section shall abstain from participation in the legislative action. The legislator shall submit in writing the reasons for the abstention to the principal clerk of the house of which the legislator is a member.

(c) Notwithstanding subsection (a) of this section, a legislator may participate in a legislative action under any of the following circumstances:

(1) The only pecuniary or economic interest or reasonably foreseeable benefit that accrues to the legislator, the legislator's extended family, or business with which the legislator is associated as a member of a profession, occupation, or large class, is no greater than that which could reasonably be foreseen to accrue to all members of that profession, occupation, or large class.

(2) Where a legislative action affects or would affect the legislator's compensation and allowances as a legislator.

(3) Before the legislator participated in the legislative action, the legislator requested and received a written advisory opinion from the Committee that authorized the participation. In authorizing the participation under this subsection, the Committee shall consider the need for the legislator's particular contribution, such as special knowledge of the subject matter, to the effective functioning of the General Assembly.

(4) When action is ministerial only and does not require the exercise of discretion.

(5) When a legislative body records in its minutes that it cannot obtain a quorum in order to take the legislative action because legislators are disqualified from acting under this section.

"**§ 120-294. Employment of members of legislator's extended family.**

A legislator shall not cause the employment, appointment, promotion, transfer, or advancement of an extended family member of the legislator to a State or local office or position, except for positions at the General Assembly as permitted by the Legislative Services Commission.

"**§ 120-295 through 299. [Reserved]**

"Part 3. Legislative Ethics Committee.

"**§ 120-300. Legislative Ethics Committee established.**

There is established the Legislative Ethics Committee.

"**§ 120-301. Membership.**

(a) The Legislative Ethics Committee shall 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 each odd-numbered year, and the cochair appointed by the Speaker of the House shall preside in each even-numbered year. However, a cochair may preside at any time 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.

"**§ 120-302. 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. Appointees shall serve until the expiration of the appointee's 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 that made the original appointment. 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.

"**§ 120-303. Quorum; expenses of members.**

(a) Six members constitute a quorum of the Committee. A vacancy on the Committee does not impair the right of the remaining members to exercise all the powers of the Committee.

(b) The members of the Committee, while serving on the business of the Committee, are performing legislative duties and are entitled to the subsistence and travel allowances to which members of the General Assembly are entitled when performing legislative duties.

"**§ 120-304. Powers and duties of Committee.**

(a) In addition to the other powers and duties specified in this Article, the Committee may:

(1) Prescribe forms for the statements of economic interest and other reports required by this Article, and to furnish these forms to persons who are required to file statements or reports.

(2) Receive and file any information voluntarily supplied that exceeds the requirements of this Article.

(3) Organize in a reasonable manner statements and reports filed with it and to make these statements and reports available for public inspection and copying during regular office hours. Copying facilities shall be made available at a charge not to exceed the actual cost.

(4) Preserve statements and reports filed with the Committee for a period of 10 years from the date of receipt. At the end of the 10-year period, these documents shall be destroyed.

(5) Prepare a list of ethical principles and guidelines to be used by legislators and legislative employees to identify potential conflicts of interest and prohibited behavior and to suggest rules of conduct that shall be adhered to by legislators and legislative staff.

(6) Advise each General Assembly committee of specific danger areas where conflicts of interest may exist and to suggest rules of conduct that should be adhered to by committee members in order to avoid conflict.

(7) Advise General Assembly members or render written opinions if so requested by the member about questions of ethics or possible points of conflict and suggested standards of conduct of members upon ethical points raised.

(8) Propose rules of legislative ethics and conduct. The rules, when adopted by the House of Representatives and the Senate, shall be the standards adopted for that term.

(9) Upon receipt of information that a legislator owes money to the State and is delinquent in repaying the obligation, to investigate and dispose of the matter according to the terms of this Article.

(10) Receive and review all statements of economic interest filed with the Committee by prospective and actual legislators and evaluate whether (i) the statements conform to the law and the rules of the Committee, and (ii) the financial interests and other information reported reveals actual or potential conflicts of interest.

(11) Render advisory opinions in accordance with G.S. 120-307.

(12) Investigate alleged violations in accordance with G.S. 120-306 and to hire separate legal counsel, through the Legislative Services Commission, for these purposes.

(13) Initiate and maintain oversight of ethics educational programs for legislators and legislative employees consistent with G.S. 120-308.

(14) Adopt rules to implement this Article, including those establishing ethical standards and guidelines governing legislators and legislative employees in attending to and performing their duties.

(15) Perform other duties as may be necessary to accomplish the purposes of this Article.

(b) 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. Notwithstanding any other law, every State agency, local governmental agency, and units and subdivisions thereof shall make available to the Committee any documents, records, data, statements or other information, except tax returns or information relating thereto, which the Committee designates as being necessary for the exercise of its powers and duties.

"**§ 120-305. Continuing study of ethical questions.**

The Committee shall conduct continuing studies of questions of legislative ethics including revisions and improvements of this Article as well as sections to cover the executive branch of government. The Committee shall report to the General Assembly from time to time recommendations for amendments to the statutes and legislative rules that the Committee deems desirable in promoting, maintaining and effectuating high standards of ethics in the legislative branch of State government.

"**§ 120-306. Investigations by the Committee.**

(a) Institution of Proceedings. – On its own motion, in response to a signed and sworn complaint of any individual filed with the Committee, or upon the written request of any legislator, the Committee shall conduct an investigation into any of the following:

(1) The application or alleged violation of this Article.

(2) The application or alleged violation of rules adopted in accordance with G.S. 120-304.

(3) The alleged violation of the criminal law by a legislator while acting in the legislator's official capacity as a participant in the lawmaking process.

(b) Complaint. –

(1) A complaint filed under this Article shall state the name, address, and telephone number of the person filing the complaint, the name of the legislator against whom the complaint is filed, and a concise statement of the nature of the complaint and specific facts indicating that a violation of this Article has occurred, the date the alleged violation occurred, and either (i) that the contents of the complaint are within the knowledge of the individual verifying the complaint, or (ii) the basis upon which the individual verifying the complaint believes the allegations to be true.

(2) The Committee may decline to accept or investigate any attempted complaint that does not meet all of the requirements set forth in subdivision (1) of this subsection, or the Committee may, in its sole discretion, request additional information to be provided by the complainant within a specified period of time of no less than seven business days.

(3) In addition to subdivision (2) of this subsection, the Committee may decline to accept or further investigate a complaint if it determines that any of the following apply:

a. The complaint is frivolous or brought in bad faith.

b. The individuals and conduct complained of have already been the subject of a prior complaint.

c. The conduct complained of is primarily a matter more appropriately and adequately addressed and handled by other federal, State or local agencies or authorities, including law enforcement authorities. If other agencies or authorities are conducting an investigation of the same actions or conduct involved in a complaint filed under this section, the Committee may stay its complaint investigation pending final resolution of the other investigation.

(4) The Committee shall send a copy of the complaint to the legislator who is the subject of the complaint within 30 days of the filing.

(c) Investigation of Complaints by the Committee. – The Committee shall investigate all complaints properly before the Committee in a timely manner. The Committee shall initiate an investigation of a complaint within 90 days of the filing of the complaint, or the complaint shall then become a public record. In determining whether there is reason to believe that a violation has or may have occurred, a member of the Committee can take general notice of available information even if not formally provided to the Committee in the form of a complaint. The Committee may utilize the services of a hired investigator when conducting investigations.

(d) Investigation by the Committee of Matters Other Than Complaints. – The Committee may investigate matters other than complaints properly before the Committee under subsection (a) of this section. For any investigation initiated under this subsection, the Committee may take any action it deems necessary or appropriate to further compliance with this Article, including the initiation of a complaint, the issuance of an advisory opinion under G.S. 120-307, or referral to appropriate law enforcement or other authorities pursuant to subsection (i)(2) of this section.

(e) Legislator Cooperation With Investigation. – Legislators shall promptly and fully cooperate with the Committee in any Committee-related investigation. Failure to cooperate fully with the Committee in any investigation shall be grounds for sanctions under G.S. 120-325.

(f) Dismissal of Complaint After Preliminary Inquiry. – If the Committee determines at the end of its preliminary inquiry that (i) the individual who is the subject of the complaint is not a legislator or (ii) the complaint does not allege facts sufficient to constitute a violation of this Article, the Committee shall dismiss the complaint and provide written notice of the dismissal to the individual who filed the complaint and the person against whom the complaint was filed.

(g) Notice. – If at the end of its preliminary inquiry the Committee determines to proceed with further investigation into the conduct of a legislator, the Committee shall provide written notice to the individual who filed the complaint and the legislator as to the fact of the investigation and the charges against the legislator. The legislator shall be given an opportunity to file a written response with the Committee. Upon the notice required under this subsection being sent, the complaint and any written response shall be public records, and all other documents offered at the hearing in conjunction with the complaint, shall be public records.

(h) Hearing. –

(1) The Committee shall give full and fair consideration to all complaints and responses received. If the Committee determines that the complaint cannot be resolved without a hearing, or if the legislator requests a public hearing, a hearing shall be held.

(2) The Committee shall send a notice of the hearing to the complainant, the legislator, and any other member of the public requesting notice. The notice shall contain the time and place for a hearing on the matter, which shall begin no less than 30 days and no more than 90 days after the date of the notice.

(3) At any hearing held by the Committee:

a. Oral evidence shall be taken only on oath or affirmation.

b. The hearing shall be open to the public. The deliberations by the Committee on a complaint may be held in closed session, but the decision of the Committee shall be announced in open session.

c. The legislator being investigated shall have the right to present evidence, call and examine witnesses, cross-examine witnesses, introduce exhibits, and be represented by counsel.

(i) Disposition of Investigations. – Except as permitted under subsection (f) of this section, after the hearing the Committee shall dispose of a matter before the Committee under this section, in any of the following ways:

(1) If the Committee finds that the alleged violation is not established by clear and convincing evidence, the Committee shall dismiss the complaint.

(2) If the Committee finds that the alleged violation of this Article is established by clear and convincing evidence, the Committee shall do one or more of the following:

a. Issue a public or private admonishment to the legislator.

b. Refer the matter to the Attorney General for investigation and referral to the district attorney for possible prosecution or the appropriate house for appropriate action, or both, if the Committee finds substantial evidence of a violation of a criminal statute.

c. Refer the matter to the appropriate house for appropriate action, which shall include censure and expulsion, if the Committee finds substantial evidence of a violation of this Article or other unethical activities.

(3) If the Committee issues an admonishment as provided in subdivision (2)a. of this subsection, the legislator affected may upon written request to the Committee have the matter referred as provided under subdivision (2)c. of this subsection.

(j) Effect of Dismissal or Private Admonishment. – In the case of a dismissal or private admonishment, the Committee shall retain its records or findings in confidence, unless the legislator under inquiry requests in writing that the records and findings be made public. If the Committee later finds that a legislator's subsequent unethical activities were similar to and the subject of an earlier private admonishment then the Committee may make public the earlier admonishment and the records and findings related to it.

(k) Findings and Record. – The Committee shall render formal and binding opinions of its findings and recommendations made pursuant to complaints or Committee investigations. In all matters in which the complaint is a public record, the Committee shall ensure that a complete record is made and preserved as a public record.

(l) Confidentiality. – All motions, complaints, written requests, investigations and investigative materials shall be confidential and not a matter of public record, except as otherwise provided in this section.

(m) Any action or lack of action by the Committee under this section shall not limit the right of each house of the General Assembly to discipline or to expel its members.

"**§ 120-307. Advisory opinions.**

(a) At the request of any legislator, the Committee may render advisory opinions on specific questions involving the meaning and application of this Article and the legislator's compliance with the requirements of this Article. The request shall be in

writing, electronic or otherwise, and relate prospectively to real or reasonably anticipated fact settings or circumstances. The Committee shall issue advisory opinions having prospective application only. Reliance upon a requested written advisory opinion on a specific matter shall immunize the legislator, on that matter, from a finding by the Committee of a violation of this Article.

(b) Staff to the Committee may issue informal, nonbinding advisory opinions under rules adopted by the Committee.

(c) The Committee shall interpret this Article by rules, and these interpretations are binding on all legislators upon publication.

(d) The Committee shall publish its advisory opinions at least once a year. These advisory opinions shall be edited for publication purposes as necessary to protect the identities of the individuals requesting opinions.

(e) Except as provided under subsection (d) of this section, requests for advisory opinions and advisory opinions issued under this section are confidential and not matters of public record.

"**§ 120-308. Ethics education program.**

The Committee shall develop and implement an ethics education and awareness program designed to instill in all legislators and legislative employees a keen and continuing awareness of their ethical obligations and a sensitivity to situations that might result in real or potential conflicts of interest or appearances of conflicts of interest. The Committee shall make basic ethics education and awareness presentations to all legislators and legislative employees upon their election or employment and shall offer periodic refresher presentations as the Committee deems appropriate. Every legislator and legislative employee shall participate in an ethics presentation approved by the Committee within three months of the person's election, appointment or employment in a manner as the Committee deems appropriate.

"**§ 120-309 through 314. [Reserved]**

"Part 4. Public Disclosure of Economic Interests.

"**§ 120-315. Purpose.**

The purpose of disclosure of the financial and personal interests by legislators is to assist legislators and those persons who elect them to identify and avoid conflicts of interest and potential conflicts of interest between the individual legislator's private interests and the legislator's public duties. It is critical to this process that current and prospective legislators examine, evaluate, and disclose those personal and financial interests that could be or cause a conflict of interest or potential conflict of interest between the legislator's private interests and the legislator's public duties. Legislators must take an active, thorough and conscientious role in the disclosure and review process, including having a complete knowledge of how the legislator's public position or duties might impact the legislator's private interests. Legislators have an affirmative duty to provide any and all information that a reasonable person would conclude is necessary to carry out the purposes of this Article and to fully disclose any conflict of interest or potential conflict of interest between the legislator's public and private interests but the disclosure, review and evaluation process is not intended to result in the disclosure of unnecessary or irrelevant personal information.

"**§ 120-316. Statement of economic interest; filing required.**

(a) Every legislator who is elected or appointed shall file a statement of economic interest with the Committee before the legislator's initial election or appointment and, except as otherwise filed under subsection (b) of this section, no later than March 15 every year thereafter. A prospective legislator required to file a statement under this Article shall not be appointed or receive a certificate of election, prior to submission by the Committee of the Committee's evaluation of the statement in accordance with this Article.

(b) A candidate for an office subject to this Article shall file the statement of economic interest at the same place and in the same manner as the notice of candidacy for that office is required to be filed under G.S. 163-106, within 10 days of the filing deadline for the office the candidate seeks. A person who is nominated under G.S. 163-114 after the primary and before the general election, and a person who qualifies under G.S. 163-122 as an unaffiliated candidate in a general election, shall file a statement of economic interest with the county board of elections of each county in the senatorial or representative district. A person nominated under G.S. 163-114 shall file the statement within three days following the person's nomination, or not later than the day preceding the general election, whichever occurs first. A person seeking to qualify as an unaffiliated candidate under G.S. 163-122 shall file the statement of economic interest with the petition filed under that section. A person seeking to have write-in votes counted for the person in a general election shall file a statement of economic interest at the same time the candidate files a declaration of intent under G.S. 163-123. A candidate of a new party chosen by convention shall file a statement of economic interest at the same time that the president of the convention certifies the names of its candidates to the State Board of Elections under G.S. 163-98.

(c) The boards of elections shall provide for notification of the statement of economic interest requirements of this Article to be given to any candidate filing for nomination or election to those offices subject to this Article at the time of the filing of candidacy.

(d) If a candidate for an office subject to this Article does not file the statement of economic interest within the time required by this Article, the county board of elections immediately shall notify the candidate by registered mail, restricted delivery to addressee only, that, if the statement is not received within 15 days, the candidate shall not be certified as the party nominee, or in the case of a candidate nominated by a new party under G.S. 163-98 that the candidate shall be decertified by the State Board of Elections. If the statement is not received within 15 days of notification, the board of elections authorized to certify a candidate as nominee to the office shall not certify the candidate as nominee under any circumstances, regardless of the number of candidates for the nomination and regardless of the number of votes the candidate receives in the primary. If the delinquent candidate was nominated by a new party under G.S. 163-98, the State Board of Elections shall decertify the candidate, and no county board of elections shall place the candidate's name on the general election ballot as nominee of the party. A vacancy thus created on a party's ticket shall be considered a vacancy for

the purposes of G.S. 163-114, and shall be filled according to the procedures set out in G.S. 163-114.

(e) Every person appointed to fill a vacant seat in the General Assembly under G.S. 163-11 shall file with the Legislative Services Office and the county board of elections of each county in the senatorial or representative district a statement of economic interest as specified in this Article no later than 10 days after taking the oath of office. If a person required to file a statement of economic interest as required under this section fails to file the statement within the time required by this section, the Legislative Services Officer shall notify the person that the statement must be received within 15 days of notification. If the statement is not received within the time allowed in this subsection, then the Legislative Services Officer shall notify the Legislative Ethics Committee of the failure of the person to file the statement.

(f) The chair of the board of elections shall forward a certified copy of the statement of economic interest to the Committee for evaluation within 10 days of the date the statement of economic interest is filed with the board of elections.

(g) The Committee shall issue forms to be used for the statement of economic interest and shall revise the forms from time to time as necessary to carry out the purposes of this Article. Except as otherwise set forth in this section, the Committee shall furnish the appropriate forms needed to comply with this Article to legislators.

"**§ 120-317. Statements of economic interest as public records.**

The statements of economic interest filed under this Article, and all other written evaluations by the Committee of those statements, shall be filed with the Legislative Services Office, made available in the Legislative Library, and be public records.

"**§ 120-318. Contents of statement.**

(a) Any statement of economic interest required to be filed under this Article shall be on a form prescribed by the Committee and sworn to by the person required to file. Answers must be provided to all questions. The form shall include the following information about the person and the person's immediate family:

(1) The name, home address, occupation, employer, and business of the person filing.

(2) A list of each asset and liability of whatever nature, including legal, equitable, or beneficial interest, with a value of at least ten thousand dollars ($10,000) of the person, and that person's spouse. This list shall include the following:

a. All real estate located in the State owned wholly or in part by the person or the person's spouse, including specific descriptions adequate to determine the location of each parcel and the specific interest held by the person and the person's spouse in each identified parcel.

b. Real estate that is currently leased or rented to the State.

c. Personal property sold to or bought from the State within the preceding two years.

d. Personal property currently leased or rented to the State.

e. The name of each publicly owned company in which the value of securities held exceeds ten thousand dollars ($10,000).

f. The name of each nonpublicly owned company or business entity in which the value of securities or other equity interests held exceeds ten thousand dollars ($10,000), including interests in partnerships, limited partnerships, joint ventures, limited liability companies or partnerships, and closely held corporations. For each company or business entity listed under this sub-subdivision, the person shall indicate whether the listed company or entity owns securities or equity interests exceeding a value of ten thousand dollars ($10,000) in any other companies or entities. If so, then the other companies or entities shall also be listed with a brief description of the business activity of each.

g. If the person or a member of the person's immediate family is the beneficiary of a vested trust created, established, or controlled by the person, then the name and address of the trustee and a description of the trust shall be provided. To the extent such information is available to the person, the statement also shall include a list of businesses in which the trust has an ownership interest exceeding ten thousand dollars ($10,000).

h. The person shall make a good faith effort to list any individual or business entity with which the person, the person's extended family, or any business with which the person or a member of the person's extended family is associated, has a financial or professional relationship provided (i) a reasonable person would conclude that the nature of the financial or professional relationship presents a conflict of interest or the appearance of a conflict of interest for the person; or (ii) a reasonable person would conclude that any other financial or professional interest of the individual or business entity would present a conflict of interest or appearance of a conflict of interest for the person. For each individual or business entity listed under this subsection, the person shall describe the financial or professional relationship and provide an explanation of why the individual or business entity has been listed.

i. A list of all other assets and liabilities with a valuation of at least ten thousand dollars ($10,000), including bank accounts and debts.

j. A list of each source (not specific amounts) of income (including capital gains) shown on the most recent federal and State income tax returns of the person filing where ten thousand dollars ($10,000) or more was received from that source.

k. If the person is a practicing attorney, an indication of whether the person, or the law firm with which the person is affiliated, earned legal fees during any single year of the past five years in excess of ten thousand dollars ($10,000) from any of the following categories of legal representation:
1. Administrative law.
2. Admiralty.
3. Corporation law.
4. Criminal law.
5. Decedents' estates.
6. Insurance law.
7. Labor law.
8. Local government.
9. Negligence – defendant.
10. Negligence – plaintiff.
11. Real property.
12. Taxation.
13. Utilities regulation.

l. A list of all nonpublicly owned businesses with which, during the past five years, the person or the person's immediate family has been associated or has an economic interest, indicating the time period of that association and the relationship with each business as an officer, employee, director, partner, or owner. The list also shall indicate whether each does business with, or is regulated by, the State and the nature of the business, if any, done with the State.

m. A list of all gifts, and the sources of the gifts, of a value of more than two hundred dollars ($200.00) received during the 12 months preceding the date of the statement from sources other than the person's extended family, and a list of all gifts, and the sources of the gifts, valued in excess of one hundred dollars ($100.00) received from any source having business with, or regulated by, the State.

n. A list of all bankruptcies filed during the preceding five years by the person, the person's spouse, or any entity in which the person, or the person's spouse, has been associated financially. A brief summary of the facts and circumstances regarding each listed bankruptcy shall be provided.

o. A list of all directorships on all business boards of which the person or the person's immediate family is a member.

(3) Each statement of economic interest shall contain the person's sworn certification that the person has read the statement and that, to the best of the person's knowledge and belief, the statement is true, correct, and complete. The person's sworn certification also shall provide that the

person has not transferred, and will not transfer, any asset, interest, or other property for the purpose of concealing it from disclosure while retaining an equitable interest therein.

(4) If the person believes a potential for conflict exists, the person has a duty to inquire of the Committee as to that potential conflict.

(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 date the statement of economic interest was signed.

(c) The Committee shall prepare a written evaluation of each statement of economic interest relative to conflicts of interest and potential conflicts of interest. The Committee shall submit the evaluation to all of the following:

(1) The person who submitted the statement.

(2) The Legislative Services Office.

"**§ 120-319. Failure to file.**

(a) In addition to the provision of G.S. 120-316, within 30 days after the date due in accordance with G.S. 120-316, for every person from whom a statement of economic interest has not been received by the Committee, or whose statement of economic interest has been received by the Committee but deemed by the Committee to be incomplete, the Committee shall notify the person of the failure to file or complete and shall notify the person that if the statement of economic interest is not filed or completed within 30 days of receipt of the notice of failure to file or complete, the person shall be subject to a fine under this section.

(b) Any person who fails to file or complete a statement of economic interest within 30 days of the receipt of the notice required under subsection (a) of this section, shall be subject to a fine of two hundred fifty dollars ($250.00), to be imposed by the Committee.

(c) Failure by any person to file or complete a statement of economic interest within 60 days of the receipt of the notice required under subsection (a) of this section shall be deemed to be a violation of this Article and shall be grounds for disciplinary action under G.S. 120-325.

"**§ 120-320. Concealing or failing to disclose material information.**

A person who knowingly conceals or fails to disclose information that is required to be disclosed on a statement of economic interest under this Article shall be punished as a Class 2 misdemeanor and shall be subject to disciplinary action under G.S. 120-325.

"**§ 120-321. Penalty for false or misleading information.**

A person who provides false or misleading information on a statement of economic interest as required under this Article knowing that the information is false or misleading shall be punished as a Class F felon and shall be subject to disciplinary action under G.S. 120-325.

"**§ 120-322 through 324. [Reserved]**

"Part 5. Violation Consequences.

"**§ 120-325. Violation consequences.**

(a) Violation of this Article by any legislator or legislative employee is grounds for disciplinary action. Except as specifically provided in this Article or for perjury

under G.S. 120-306 and G.S. 120-318, no criminal penalty shall attach for any violation of this Article.

(b) The willful failure of any legislator to comply with this Article shall be deemed a violation of this Article for purposes of G.S. 120-306.

(c) Nothing in this Article affects the power of the State to prosecute any person for any violation of the criminal law.

(d) The Legislative Ethics Committee may seek to enjoin violations of G.S. 120-288."

SECTION 3. Article 7 of Chapter 120 of the General Statutes is amended by adding the following new section to read:

"**§ 120-32.6. Certain employment authority.**

G.S. 114-2.3 and G.S. 147-17 shall not apply to the General Assembly."

SECTION 4. Section 1 of this Act becomes effective January 1, 2007. The remainder of this act becomes effective October 1, 2006, and applies to persons holding office and employed on or after January 1, 2007, and acts and conflicts of interest that arise on or after January 1, 2007.

Attachment IV

HOUSE BILL 1843
Revise Legislative Ethics Act – 1.

BILL ANALYSIS

Committee:	House Floor	**Date:**	May 16, 2006
Introduced by:	Reps. Hackney, Howard, Brubaker, and Luebke	**Summary by:**	O. Walker Reagan Staff Attorney
Version:	Second Edition		

SUMMARY: ***House Bill 1843 revises the current Legislative Ethics Act by conforming the ethical standards and ethical processes for the General Assembly to the ethical standards and ethical processes applicable to certain public officials in the Executive Branch through Executive Order No. One and as proposed in the Executive Branch Ethics Act (House Bill 1844). The proposal is a recommendation from the House Select Committee on Ethics and Governmental Reform.***

CURRENT LAW: The current Legislative Ethics Act was originally enacted in 1975. The Act is in three Parts. Part 1 is the Code of Legislative Ethics that defines certain conduct involving legislators that would be either criminal or unethical conduct. Part 1 also defines what constitutes a conflict of interest for legislators. Part 2 sets out the requirements for statements of economic interest required to be filed by legislators. Part 3 establishes the Legislative Ethics Committee and defines the powers and authority of the Committee including the responsibility for overseeing the statement of economic interest process, issuing ethics advisory opinions, and conducting investigations of alleged unethical conduct.

BILL ANALYSIS: House Bill 1843 retains most the provisions of the existing Legislative Ethics Act and supplements these provisions with more definitions of conflicts of interest, establishes a limit on gifts received by legislators from lobbyists and lobbyist principals, and provides for a more detailed and frequent statement of economic interest. The bill organizes the Act into 5 Parts.

Part 1 sets out the applicable definitions for the Act. It retains the existing definitions with a few changes and adds additional definitions.

Business with which associated – Changed to incorporate a pecuniary interest which changes the current law to apply to a business in which a person holds $10,000 worth of securities (currently is $5,000) or 5% of the outstanding stock of the business.

Extended Family – Spouse, descendant, ascendant, or sibling of the public servant, or descendant, ascendant or sibling of the spouse of the public servant.

Public Event – An organized gathering of individuals open to the general public or to which a legislator or legislative employee is invited along with the entire membership of the House, the Senate, a committee, a subcommittee, a county legislative delegation, a joint committee or a legislative caucus and to which at least ten employees or members of the principal actually attend.

Part 2 establishes ethical standards for legislators.

G.S. 120-286 recodifies the existing legislative bribery statute found in G.S. 120-86.

G.S. 120-287 mirrors the Executive Branch Ethics Act and prohibits a legislator from using the legislator's public position for personal financial gain for the legislator, the legislator's extended family, or a business with which the legislator is associated, or from

using the legislator's title for non-governmental advertising that advances the private interests of the legislator or others. Use of the legislative title is permitted for political advertising. However, a legislator must not use or permit the use of State funds for any advertisement or public service announcement in a newspaper, on radio, or on television that contains the legislator's name, picture, or voice except in emergencies and only if the announcement is related to the legislator's official function.

G.S. 120-288 recodifies the existing statute prohibiting a legislator from disclosing confidential information found in G.S. 120-87.

G.S 120-289 makes certain personnel-related actions by a legislator unethical as found in G.S. 120-86.1.

G.S. 120-290 mirrors the Executive Branch Ethics Act and restricts gifts that legislators can accept. It prohibits accepting gifts in return for being influenced in their official duties. It prohibits legislators from accepting gifts from lobbyists and lobbyist principals. Excepted from the gift restrictions are meals and beverages for immediate consumption in connection with public events, gifts of less than $10, informational materials relevant to the legislator's duties, expenses associated with a speech or panel related to the legislator's public duties, expenses received at an educational conference or meeting, a plaque or similar non-monetary recognition memento, items or services received from a state, regional or national legislative organization of which the General Assembly or legislator is a member by virtue of their legislative position, gifts accepted on behalf of the State, anything available to the general public or all other State employees, anything for which fair market value was paid by the legislator or the legislative employee, commercially available loans made on terms not more favorable than available to the public, contractual arrangements or business arrangements not made for the purpose of lobbying, academic scholarships made on terms not more favorable than scholarships available to the public, legal campaign contributions, gifts from family members, and gifts received in conjunction with a wedding, birth, adoption or death. This section also specifies that a gift offered, given, solicited or received in compliance with this section without corrupt intent shall not constitute bribery.

G.S. 120-291 mirrors the Executive Branch Ethics Act and requires legislators to use due diligence to determine if they have a conflict of interest and to continually monitor their situation to assure the avoidance of conflicts. **This bill does not require legislators to avoid appearances of conflicts of interest.**

G.S. 120-292 mirrors the Executive Branch Ethics Act and defines conflicts of interest for legislators. This section retains the existing criteria found in G.S. 120-88 for determining when a conflict of interest exists and adds additional clarification. A conflict of interest occurs when the legislator, his or her extended family, or a business with which he or she is associated, has a pecuniary interest in, or would benefit from, the matter under consideration, and the legislator's independence of judgment would be influenced by the interest. When a conflict exists, the legislator must abstain from participation. If the legislator is unclear if a conflict exists, the legislator is required to seek guidance. This section sets out numerous exceptions to the restrictions, primarily involving situations where the benefit is no greater to the legislator than the public in general, or when the legislator has received an ethics opinion that no conflict exists.

G.S. 120-293 mirrors the Executive Branch Ethics Act and prohibits a legislator from causing members of the legislator's extended family to be employed or promoted in any State or local office

or position, except for positions at the General Assembly as permitted by the Legislative Services Commission.

Part 3 changes the Legislative Ethics Committee by: (1) increasing its membership from 10 to 12, (2) providing that 3 members are elected by a caucus of the majority party of the House, 3 members are elected by a caucus of the minority party of the House, 3 members are elected by a caucus of the majority party of the Senate, and 3 members are elected by a caucus of the minority party of the Senate (currently, the Speaker and the President Pro Tempore choose the 10 members, among them 2 members are chosen from a list of 4 of the majority leader and 2 members are chosen from a list of 4 of the minority leader of each chamber, (3) requiring that caucuses must select members of the Legislative Ethics Committee within one week of the opening of each session of the General Assembly, and (4) increasing the number of members constituting a quorum from 6 to 8. Part 3 recodifies the existing law establishing and defining powers of the Legislative Ethics Committee, adds definitions of the investigative powers and procedures for ethics violations to mirror similar provisions in the Executive Branch Ethics bill draft, and provides for mandatory ethics education.

G.S. 120-308 sets out the authority for the Committee to provide for ethics education programs. All legislators and legislative employees are required to take ethics training within 3 months of the beginning of their employment, election, or appointment.

Part 4 sets out the requirements for filing statements of economic interest. In addition to recodifying the existing time for legislative candidates to file statements of economic interest, new provisions are added to require legislators to file additional statements annually.

G.S. 120-316 continues to require candidates for the legislature to file statements of economic interest within 10 days of the end of the filing period of their candidacy and also requires legislators to file additional statements no later than March 15th of every year thereafter.

G.S. 120-318 sets out the contents of the Statement of Economic Interest (SEI). Included in the information to be reported are assets in excess of $10,000 in real estate holdings, personal property, business interests including stocks and bonds, interests in vested trusts, bank accounts, sources of income, attorney's areas of practice; businesses owned in the previous 5 years; gifts in excess of $200 from persons other than extended family members; bankruptcies; and directorships of businesses. Statements of economic interest must be sworn, and false statements would be subject to penalty of perjury. The Committee is to evaluate each statement and issue an opinion on the existence or lack of conflicts of interests and potential conflicts of interests.

G.S. 120-319 requires the Committee to notify every person who fails to file or complete his or her required SEI within 30 days of the due date. Any person who fails to file or complete the SEI within 30 days of the receipt of the late notice is subject to a $250 fine. Any person who fails to file or complete the SEI within 60 days of receipt of the late notice shall be subject to disciplinary action under G.S. 120-325.

G.S. 120-320 makes it a Class 1 misdemeanor for a person to knowingly conceal or fail to disclose required information on a SEI.

G.S. 120-321 makes it a Class H felony for a person to provide false or misleading information on a SEI knowing the information to be false or misleading.

Part 5 sets out the sanctions for violation of the Act. Willful violations by a legislator are considered to be an unethical act and subject to sanctions as set forth in G.S. 120-325, which could include censure or expulsion.

EFFECTIVE DATE: Section 1 of this Act becomes effective January 1, 2007. The remainder of this act becomes effective October 1, 2006, applies to persons holding office and employed on or after January 1, 2007, to acts and conflicts of interest that arise on or after January 1, 2007, and to offenses committed on or after January 1, 2007. Prosecutions for offenses or ethics violations committed before January 1, 2007 are not abated or affected by this act and the statutes that would be applicable but for this act remain applicable to those prosecutions.

**Brad Krehely contributed to the drafting of this summary.*

Attachment V

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1843

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

H1843-ARN-13 [v.2]

Date _____,2006

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

Representative Stam

moves to amend the bill on page 6, line 1, by deleting the word "paid." and substituting the words "paid by the legislator."; and or legislative employee Sta (revised)

on page 7, line 13, by deleting the words "Notwithstanding any other law, except" and substituting the word "Except"; and

on page 11, line 38, by deleting the number "90" and substituting the number "~~45~~ 60 Sta (revised)"; and

on page 19, line 38, by deleting the words "Class F" and substituting the words "Class H"; and

on page 20, lines 14 through 16, by rewriting the line to read:
"remainder of this act becomes effective October 1, 2006, applies to persons holding office and employed on or after January 1, 2007, to acts and conflicts of interest that arise on or after January 1, 2007, and to offenses committed on or after January 1, 2007. Prosecutions for offenses or ethics violations committed before January 1, 2007 are not

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1843

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

H1843-ARN-13 [v.2]

abated or affected by this act and the statutes that would be applicable but for this act remain applicable to those prosecutions.".

SIGNED Stan
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

Attachment VI

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1843

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

H1843-AST-101 [v.1]

Date _____,2006

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

Representative Stam

moves to amend the bill on page 15, line 32 by deleting "registered" and substituting "certified";

and on page 19, line 34 by deleting the number "2" and substituting the number "1";

and on page 20, lines 7-8 by rewriting those lines to read:

"(d) The Legislative Ethics Committee may request the Office of the Attorney General to seek to enjoin violations of G.S. 120-288.".

SIGNED Stam
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

Attachment VII

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1843

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

H1843-AST-100 [v.1]

Date _____,2006

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

Representative Stam

moves to amend the bill on page 5, lines 7-8 by rewriting those lines to read:

"action for the purpose of influencing or in retaliation for any action regarding the hiring, promotion, grievance, or disciplinary action of a State employee subject to Chapter 126".

SIGNED Stam
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

Attachment VIII

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1843

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

H1843-AST-99 [v.1]

Date _____,2006

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

Representative Stam

moves to amend the bill on page 6, lines 36-42 by deleting those lines and renumbering the remaining sections in Part 2 of Article 32 accordingly;

and on page 7, line 6 by rewriting that line to read:

"conflict.";

and on page 7, line 8 by deleting the phrase "interest" and substituting "interest." and on page 7, line 9 by deleting that line;

and on page 14, lines 20-21 by deleting the phrase "interest or appearances of conflicts of interest." and substituting "interest.".

SIGNED Stam
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

Attachment IX

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1843

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

H1843-AST-98 [v.2]

Date _____,2006

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

Representative Ross

moves to amend the bill on page 4, line 44 by inserting the following after that line:

"(c) No legislator shall use or permit the use of State funds for any advertisement or public service announcement in a newspaper, on radio, or on television that contains that legislator's name, picture, or voice, except in case of State or national emergency and only if the announcement is reasonably necessary to their official function.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

Attachment X

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. 1

H. B. No. 1843 DATE 5-16-06

S. B. No. _____ Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

(Rep.) Sen.) Blust

moves to amend the bill on page 8, line 14 - 19

( ) WHICH CHANGES THE TITLE

by deleting subsection "(a)" and replacing it with a new subsection "(a)" which reads as follows:

"(a) The Legislative Ethics Committee shall consist of twelve members, three ~~of the being~~ elected by a caucus of the majority party in the Senate, three elected by a caucus of the minority party in the Senate, three elected by a caucus of the majority party in the House, and three elected by a caucus of the minority party in the House. Each caucus electing members of the Legislative Ethics Committee ~~shall be open to the public and~~ shall be held within one week of the opening of each new session of the General Assembly."

~~deleting~~ and on ~~line~~ page 8 ~~page~~ lines 20-21 by deleting "as the appointing officers"

and on pge 9 line 7 by chging "SIX" to "eight"

SIGNED John M Blust

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

Attachment XI

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative Hackney (Chair) for the Committee on JUDICIARY I.

☐ Committee Substitute for
HB 1843 A BILL TO BE ENTITLED AN ACT TO REVISE THE LEGISLATIVE ETHICS ACT AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON ETHICS AND GOVERNMENTAL REFORM.

☒ With a favorable report as to the committee substitute bill, unfavorable as to the original bill.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

_____ Pursuant to Rule 36(b), the (House/Senate) committee substitute bill/(joint) resolution (No._____) is placed on the Calendar of _____. (The original bill resolution No._____) is placed on the Unfavorable Calendar.

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

FOR JOURNAL USE ONLY

____ Pursuant to Rule 36(a), the bill is placed on the Calendar of _____.

____ The (committee substitute) bill/resolution (, as amended,) is (ordered engrossed and) re-referred to the Committee on _____.

____ The (committee substitute) bill/resolution (, as amended,) is placed on the Consent Calendar of _____. The original bill/resolution is placed on the Unfavorable Calendar.

____ The bill/resolution is re-referred to the Committee on _____.

____ On motion of (Rep. _____,) (the Chair,) the (committee substitute) bill/resolution is (ordered engrossed and) re-referred to the Committee on _____.

____ Pursuant to Rule 36(a), the (House)committee substitute bill (No. ____)/resolution is placed on the Calendar of _____. (The original bill) (House Committee Substitute Bill No. ____)/resolution is placed on the Unfavorable Calendar.

____ On motion of Rep. _____, (the rules are suspended) (Rule ____ is suspended) and the bill/resolution is placed on today's calendar. (for immediate consideration.)

____ On motion of Rep. _____, Committee Amendment No.(s) _____ is/are adopted (by EV____ ____).

____ On motion of Rep. _____, Committee Amendment No.(s) _____ is/are adopted (by EV____ ____).

____ Rep. _____ offers Amendment No. _____ which (is adopted.) (fails of adoption.) (by EV ____ ____.) ( ) This amendment changes the title.

____ The bill/resolution (, as amended,) passes its second reading (by following vote, ____ ____ RC) (, by EV ____ ____,) and (remains on the Calendar,) (and there being no objection is read a third time).

____ The bill/resolution (, as amended,) passes its third reading (by the following vote, ____ ____ RC) (, by EV ____ ____,) and is ordered
____ sent to the Senate.
____ without engrossment. ____ by Special message.
____ sent to the Senate for concurrence in
_____ House amendment (s).
_____ House committee substitute.
____ enrolled.

____ On motion of Rep. _____, the House concurs in the (material) Senate _____ (by the following vote, ____ ____ RC) (, by EV ____ ____,) and the bill is ordered enrolled.

Attachment XII

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 1843
PROPOSED COMMITTEE SUBSTITUTE H1843-PCS30461-ST-102

Short Title: Revise Legislative Ethics Act - 1. (Public)

Sponsors:

Referred to:

May 10, 2006

A BILL TO BE ENTITLED

AN ACT TO REVISE THE LEGISLATIVE ETHICS ACT AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON ETHICS AND GOVERNMENTAL REFORM.

The General Assembly of North Carolina enacts:

SECTION 1. Article 14 of Chapter 120 of the General Statutes is repealed.

SECTION 2. Chapter 120 of the General Statutes is amended by adding a new article to read:

"Article 32.

"Legislative Ethics Act.

"Part 1. General Provisions.

"**§ 120-280. Title.**

This Article shall be known and may be cited as the 'Legislative Ethics Act.'

"**§ 120-281. Definitions.**

The following definitions apply in this Article:

(1) Business. – Any of the following, whether or not for profit:

a. Association.
b. Corporation.
c. Enterprise.
d. Joint venture.
e. Organization.
f. Partnership.
g. Proprietorship.
h. Vested trust.
i. Every other business interest, including ownership or use of land for income.

(2) Business associate. – A partner, or member or manager of a limited liability company.

(3) Business with which associated. – A business in which the legislator or any member of the legislator's immediate family has a pecuniary interest. For purposes of this subdivision, the term 'business' shall not include a widely held investment fund, including a mutual fund, regulated investment company, or pension or deferred compensation plan, if all of the following apply:
  a. The legislator or a member of the legislator's immediate family neither exercises nor has the ability to exercise control over the financial interests held by the fund.
  b. The fund is publicly traded or the fund's assets are widely diversified.

(4) Committee. – The Legislative Ethics Committee.

(5) Compensation. – Any money, thing of value, or economic benefit conferred on or received by any person in return for services rendered or to be rendered by that person or another. This term does not include campaign contributions properly received and, if applicable, reported as required by Article 22A of Article 163 of the General Statutes.

(6) Confidential information. – Information defined as confidential by statute.

(7) Contract. – Any agreement including sales and conveyances of real and personal property and agreements for the performance of services.

(8) Economic interest. – Matters involving a business with which the person is associated or a nonprofit corporation or organization with which the person is associated.

(9) Extended family. – Spouse, descendant, ascendant, or sibling of the legislator or, descendant, ascendant, or sibling of the spouse of the legislator.

(10) Immediate family. – An unemancipated child of the legislator residing in the household, and the legislator's spouse, if not legally separated.

(11) Legislative action. – As the term is defined in G.S. 120-47.1.

(12) Legislative employee. – As the term is defined in G.S. 120-47.1.

(13) Legislator. – A member or presiding officer of the General Assembly, or a person elected or appointed a member or presiding officer of the General Assembly before taking office.

(14) Nonprofit corporation or organization with which associated. – 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 family is a director, officer, governing board member, employee or independent contractor as of December 31 of the preceding year.

(15) Participate. – To take part in, influence, or attempt to influence, including acting through an agent or proxy.

(16) Pecuniary interest. – Any of the following:

a. Owning, either individually or collectively, a legal, equitable, or beneficial interest of ten thousand dollars ($10,000) or more or five percent (5%), whichever is less, of any business.

b. Receiving, either individually or collectively, during the preceding calendar year compensation that is or will be required to be included as taxable income on federal income tax returns of the legislator, the legislator's immediate family, or a business with which associated in an aggregate amount of five thousand dollars ($5,000) from any business or combination of businesses. A pecuniary interest exists in any client or customer who pays fees or commissions, either individually or collectively, of five thousand dollars ($5,000) or more in the preceding 12 months to the legislator, the legislator's immediate family, or a business with which associated.

c. Receiving, either individually or collectively and directly or indirectly, in the preceding 12 months, gifts or honoraria having an unknown value or having an aggregate value of five hundred dollars ($500.00) or more from any person. A pecuniary interest does not exist under this sub-subdivision by reason of (i) a gift or bequest received as the result of the death of the donor; (ii) a gift from an extended family member; or (iii) acting as a trustee of a trust for the benefit of another.

d. Holding the position of associate, director, officer, business associate, or proprietor of any business, irrespective of the amount of compensation received.

(17) Public event. – An organized gathering of individuals open to the general public or to which a legislator or legislative employee is invited along with the entire membership of the House, the Senate, a committee, a subcommittee, a county legislative delegation, a joint committee or a legislative caucus and to which at least ten employees or members of the principal actually attend.

(18) Vested trust. – A trust, annuity, or other funds held by a trustee or other third party for the benefit of the legislator or a member of the legislator's immediate family. A vested trust shall not include a widely held investment fund, including a mutual fund, regulated investment company, or pension or deferred compensation plan, if:

a. The legislator or a member of the legislator's immediate family neither exercises nor has the ability to exercise control over the financial interests held by the fund; and

b. The fund is publicly traded, or the fund's assets are widely diversified.

"**§ 120-282 through 120-285. [Reserved]**

"Part 2. Ethical Standards for Legislators.

"**§ 120-286. Bribery, etc.**

(a) No person shall offer or give to a legislator or a member of a legislator's immediate household, or to a business with which the legislator is associated, and no legislator shall solicit or receive, anything of monetary value, including a gift, favor or service or a promise of future employment, based on any understanding that the legislator's vote, official actions or judgment would be influenced thereby, or where it could reasonably be inferred that the thing of value would influence the legislator in the discharge of the legislator's duties.

(b) It shall be unlawful for the business associate, client, customer, or employer of a legislator or the agent of that partner, client, customer, or employer, directly or indirectly, to threaten economically that legislator with the intent to influence the legislator in the discharge of the legislator's duties.

(c) It shall be unlawful for any person, directly or indirectly, to threaten economically another person in order to compel the threatened person to attempt to influence a legislator in the discharge of the legislator's duties.

(d) It shall be unethical for a legislator to contact the business associate, client, customer, or employer of another legislator if the purpose of the contact is to cause the partner, client, customer, or employer, directly or indirectly, to threaten economically that legislator with the intent to influence that legislator in the discharge of the legislator's duties.

(e) A violation of subsection (a), (b), or (c) of this section is a Class F felony. A violation of subsection (d) of this section is not a crime but is punishable under G.S. 120-325.

"**§ 120-287. Use of public position for private gain.**

(a) A legislator shall not knowingly use the legislator's public position in any manner that will result in financial benefit, direct or indirect, to the legislator, a member of the legislator's extended family, or a person with whom, or business with which, the legislator is associated. The performance of usual and customary duties associated with the public position or the advancement of public policy goals or constituent services, without compensation, shall not constitute the use of public position for financial benefit. This subsection shall not apply to financial or other benefits derived by a legislator that the legislator would enjoy to an extent no greater than that which other citizens of the State would or could enjoy, or that are so remote, tenuous, insignificant, or speculative that a reasonable person would conclude under the circumstances that the legislator's ability to protect the public interest and perform the legislator's official duties would not be compromised.

(b) A legislator shall not mention or permit another person to mention the legislator's public position in nongovernmental advertising that advances the private interest of the legislator or others. The prohibition in this subsection shall not apply to political advertising, news stories or news articles.

(c) No legislator shall use or permit the use of State funds for any advertisement or public service announcement in a newspaper, on radio, or on television that contains that legislator's name, picture, or voice, except in case of State or national emergency and only if the announcement is reasonably necessary to their official function.

"**§ 120-288. Disclosure of confidential information.**

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 the legislator's official position that could result in financial gain for the legislator or any other person.

"**§ 120-289. Personnel-related action unethical.**

It shall be unethical for a legislator to take, promise, or threaten any legislative action for the purpose of influencing or in retaliation for any action regarding the hiring, promotion, grievance, or disciplinary action of a State employee subject to Chapter 126 of the General Statutes.

"**§ 120-290. Gifts.**

(a) A legislator shall not knowingly, directly or indirectly, ask, accept, demand, exact, solicit, seek, assign, receive, or agree to receive anything of value for the legislator, or for another person, in return for being influenced in the discharge of the legislator's official responsibilities, other than that which is received by the legislator from the State for acting in the legislator's official capacity.

(b) No legislator or legislative employee shall knowingly accept anything of monetary value, directly or indirectly, from a legislative lobbyist or principal as defined in G.S. 120-47.1 or an executive lobbyist or principal as defined in G.S. 147-54.31.

(c) Subsection (b) of this section shall not apply to any of the following:

(1) Meals and beverages for immediate consumption in connection with public events.

(2) Nonmonetary items, other than food or beverages, with a value not to exceed ten dollars ($10.00) provided by a single donor during a single calendar day.

(3) Informational materials relevant to the duties of the legislator or legislative employee.

(4) Reasonable actual expenses for food, registration, travel, and lodging of the legislator or legislative employee for a meeting at which the legislator or legislative employee participates in a panel or speaking engagement at the meeting related to the legislator's or legislative employee's duties and when expenses are incurred on the actual day of participation in the engagement or incurred within a 24-hour time period before or after the engagement.

(5) Items or services received in connection with a state, regional or national legislative organization of which the General Assembly, the legislator or legislative employee is a member by virtue of the person's legislative position.

(6) Items and services received relating to an educational conference or meeting.

(7) A plaque or similar nonmonetary memento recognizing individual services in a field or specialty or to a charitable cause.

(8) Gifts accepted on behalf of the State.

(9) Anything generally available or distributed to the general public or all other State employees.

(10) Anything for which fair market value is paid by the legislator or legislative employee.
(11) Commercially available loans made on terms not more favorable than generally available to the public in the normal course of business if not made for the purpose of lobbying.
(12) Contractual arrangements or business relationships or arrangements made in the normal course of business if not made for the purpose of lobbying.
(13) Academic scholarships made on terms not more favorable than scholarships generally available to the public.
(14) Political contributions properly received and reported as required under Article 22A of Article 163 of the General Statutes.
(15) Gifts from the legislator's or the legislative employee's extended family, or a member of the same household of the legislator or the legislative employee, or gifts received in conjunction with a marriage, birth, adoption, or death.

(d) A prohibited gift shall be declined, returned, paid for at fair market value, or accepted and immediately donated to the State. Perishable food items of reasonable costs, received as gifts, shall be donated to charity, destroyed or provided for consumption among the entire staff or the public.

(e) A legislative employee shall not accept an honorarium from a source other than the General Assembly for conducting any activity where any of the following apply:

(1) The General Assembly reimburses the public servant for travel, subsistence, and registration expenses.
(2) The General Assembly's work time or resources are used.
(3) The activity would be considered official duty or would bear a reasonably close relationship to the legislative employee's official duties.

An outside source may reimburse the General Assembly for actual expenses incurred by a legislative employee in conducting an activity within the duties of the legislative employee, or may pay a fee to the General Assembly, in lieu of an honorarium, for the services of the legislative employee.

(f) The offering, giving, soliciting or receiving a thing of value in compliance with this section without corrupt intent shall not constitute a violation of G.S. 120-286, G.S. 14-217 or G.S. 14-218.

"**§ 120-291. Other rules of conduct.**

(a) A legislator shall make a due and diligent effort before taking any action, including voting or participating in discussions with other legislators, to determine whether the legislator has a conflict of interest. If the legislator is unable to determine whether or not a conflict of interest may exist, the legislator has a duty to inquire of the Committee as to that conflict.

(b) A legislator shall continually monitor, evaluate, and manage the legislator's personal, financial, and professional affairs to ensure the absence of conflicts of interest.

(c) A legislator shall obey all other civil laws, administrative requirements and criminal statutes governing conduct of State government appointees and employees.

"**§ 120-292. Participation in legislative actions.**

(a) Except as permitted by subsection (c) of this section, no legislator shall knowingly participate in a legislative action if the legislator, a member of the legislator's extended family, the legislator's client, or a business with which the legislator is associated, has a pecuniary or economic interest in, or a reasonably foreseeable benefit from, the matter under consideration, which would impair the legislator's independence of judgment or from which it could reasonably be inferred that the interest or benefit would influence the legislator's participation in the legislative action. A potential benefit includes a detriment to (i) a business competitor of the legislator, (ii) a member of the legislator's extended family, or (iii) a business with which the legislator is associated.

(b) A legislator described in subsection (a) of this section shall abstain from participation in the legislative action. The legislator shall submit in writing the reasons for the abstention to the principal clerk of the house of which the legislator is a member.

(c) Notwithstanding subsection (a) of this section, a legislator may participate in a legislative action under any of the following circumstances:

(1) The only pecuniary or economic interest or reasonably foreseeable benefit that accrues to the legislator, the legislator's extended family, or business with which the legislator is associated as a member of a profession, occupation, or large class, is no greater than that which could reasonably be foreseen to accrue to all members of that profession, occupation, or large class.

(2) Where a legislative action affects or would affect the legislator's compensation and allowances as a legislator.

(3) Before the legislator participated in the legislative action, the legislator requested and received a written advisory opinion from the Committee that authorized the participation. In authorizing the participation under this subsection, the Committee shall consider the need for the legislator's particular contribution, such as special knowledge of the subject matter, to the effective functioning of the General Assembly.

(4) When action is ministerial only and does not require the exercise of discretion.

(5) When a legislative body records in its minutes that it cannot obtain a quorum in order to take the legislative action because legislators are disqualified from acting under this section.

"**§ 120-293. Employment of members of legislator's extended family.**

A legislator shall not cause the employment, appointment, promotion, transfer, or advancement of an extended family member of the legislator to a State or local office or position, except for positions at the General Assembly as permitted by the Legislative Services Commission.

"**§ 120-294 through 299. [Reserved]**

"Part 3. Legislative Ethics Committee.

"**§ 120-300. Legislative Ethics Committee established.**

There is established the Legislative Ethics Committee.

"**§ 120-301. Membership.**

(a) The Legislative Ethics Committee shall consist of 12 members of the General Assembly, three elected by a caucus of the majority party of the Senate, three elected by a caucus of the minority party of the Senate, three elected by a caucus of the majority party of the House of Representatives, and three elected by a caucus of the minority party of the House of Representatives.

(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 membership of the Committee. The cochair appointed by the President Pro Tempore of the Senate shall preside over the Committee during each odd-numbered year, and the cochair appointed by the Speaker of the House shall preside in each even-numbered year. However, a cochair may preside at any time 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 Committee, and so indicates in writing to the appointing officer and the Committee, the respective appointing officer shall designate a member of the Committee to serve as cochair for that specific matter.

"**§ 120-302. 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. The respective caucuses shall have seven days immediately following the day of the convening of the regular session of the General Assembly in odd-numbered years to meet and elect members to the Committee. If any caucus fails to elect all members of the Committee as provided in G.S. 120-301(a) within the seven-day period, the President Pro Tempore of the Senate shall make appointments to the Committee from the Senate for the unfilled positions and the Speaker of the House shall make appointments to the Committee from the House for the unfilled positions, with appointees from the political party of the caucus that failed to elect the member. Appointees shall serve until the expiration of the appointee's 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 that made the original appointment within seven days in a manner consistent with subsection (a) of this section. 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 Committee is unable to act on a specific matter before the Committee, and so indicates in writing to the appointing authority and the Committee, the appointing authority may appoint another member of the respective caucus to serve as a member of the Committee for the specific matter only. If on any specific matter, the number of members of the Committee who are unable to act on a specific matter exceeds four members and the respective caucus fails to fill the position under this subsection within seven days of notice, the appropriate appointing officer

shall appoint other members of the General Assembly to serve as members of the Committee for that specific matter only, consistent with provisions of this section.

"**§ 120-303. Quorum; expenses of members.**

(a) Eight members constitute a quorum of the Committee. A vacancy on the Committee does not impair the right of the remaining members to exercise all the powers of the Committee.

(b) The members of the Committee, while serving on the business of the Committee, are performing legislative duties and are entitled to the subsistence and travel allowances to which members of the General Assembly are entitled when performing legislative duties.

"**§ 120-304. Powers and duties of Committee.**

(a) In addition to the other powers and duties specified in this Article, the Committee may:

(1) Prescribe forms for the statements of economic interest and other reports required by this Article, and to furnish these forms to persons who are required to file statements or reports.

(2) Receive and file any information voluntarily supplied that exceeds the requirements of this Article.

(3) Organize in a reasonable manner statements and reports filed with it and to make these statements and reports available for public inspection and copying during regular office hours. Copying facilities shall be made available at a charge not to exceed the actual cost.

(4) Preserve statements and reports filed with the Committee for a period of 10 years from the date of receipt. At the end of the 10-year period, these documents shall be destroyed.

(5) Prepare a list of ethical principles and guidelines to be used by legislators and legislative employees to identify potential conflicts of interest and prohibited behavior and to suggest rules of conduct that shall be adhered to by legislators and legislative staff.

(6) Advise each General Assembly committee of specific danger areas where conflicts of interest may exist and to suggest rules of conduct that should be adhered to by committee members in order to avoid conflict.

(7) Advise General Assembly members or render written opinions if so requested by the member about questions of ethics or possible points of conflict and suggested standards of conduct of members upon ethical points raised.

(8) Propose rules of legislative ethics and conduct. The rules, when adopted by the House of Representatives and the Senate, shall be the standards adopted for that term.

(9) Upon receipt of information that a legislator owes money to the State and is delinquent in repaying the obligation, to investigate and dispose of the matter according to the terms of this Article.

(10) Receive and review all statements of economic interest filed with the Committee by prospective and actual legislators and evaluate whether (i) the statements conform to the law and the rules of the Committee, and (ii) the financial interests and other information reported reveals actual or potential conflicts of interest.

(11) Render advisory opinions in accordance with G.S. 120-307.

(12) Investigate alleged violations in accordance with G.S. 120-306 and to hire separate legal counsel, through the Legislative Services Commission, for these purposes.

(13) Initiate and maintain oversight of ethics educational programs for legislators and legislative employees consistent with G.S. 120-308.

(14) Adopt rules to implement this Article, including those establishing ethical standards and guidelines governing legislators and legislative employees in attending to and performing their duties.

(15) Perform other duties as may be necessary to accomplish the purposes of this Article.

(b) 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. Notwithstanding any other law, every State agency, local governmental agency, and units and subdivisions thereof shall make available to the Committee any documents, records, data, statements or other information, except tax returns or information relating thereto, which the Committee designates as being necessary for the exercise of its powers and duties.

"**§ 120-305. Continuing study of ethical questions.**

The Committee shall conduct continuing studies of questions of legislative ethics including revisions and improvements of this Article as well as sections to cover the executive branch of government. The Committee shall report to the General Assembly from time to time recommendations for amendments to the statutes and legislative rules that the Committee deems desirable in promoting, maintaining and effectuating high standards of ethics in the legislative branch of State government.

"**§ 120-306. Investigations by the Committee.**

(a) Institution of Proceedings. – On its own motion, in response to a signed and sworn complaint of any individual filed with the Committee, or upon the written request of any legislator, the Committee shall conduct an investigation into any of the following:

(1) The application or alleged violation of this Article.

(2) The application or alleged violation of rules adopted in accordance with G.S. 120-304.

(3) The alleged violation of the criminal law by a legislator while acting in the legislator's official capacity as a participant in the lawmaking process.

(b) Complaint. –

(1) A complaint filed under this Article shall state the name, address, and telephone number of the person filing the complaint, the name of the legislator against whom the complaint is filed, and a concise statement of the nature of the complaint and specific facts indicating that a violation of this Article has occurred, the date the alleged violation occurred, and either (i) that the contents of the complaint are within the knowledge of the individual verifying the complaint, or (ii) the basis upon which the individual verifying the complaint believes the allegations to be true.

(2) The Committee may decline to accept or investigate any attempted complaint that does not meet all of the requirements set forth in subdivision (1) of this subsection, or the Committee may, in its sole discretion, request additional information to be provided by the complainant within a specified period of time of no less than seven business days.

(3) In addition to subdivision (2) of this subsection, the Committee may decline to accept or further investigate a complaint if it determines that any of the following apply:

a. The complaint is frivolous or brought in bad faith.

b. The individuals and conduct complained of have already been the subject of a prior complaint.

c. The conduct complained of is primarily a matter more appropriately and adequately addressed and handled by other federal, State or local agencies or authorities, including law enforcement authorities. If other agencies or authorities are conducting an investigation of the same actions or conduct involved in a complaint filed under this section, the Committee may stay its complaint investigation pending final resolution of the other investigation.

(4) The Committee shall send a copy of the complaint to the legislator who is the subject of the complaint within 30 days of the filing.

(c) Investigation of Complaints by the Committee. – The Committee shall investigate all complaints properly before the Committee in a timely manner. The Committee shall initiate an investigation of a complaint within 60 days of the filing of the complaint, or the complaint shall then become a public record. In determining whether there is reason to believe that a violation has or may have occurred, a member of the Committee can take general notice of available information even if not formally provided to the Committee in the form of a complaint. The Committee may utilize the services of a hired investigator when conducting investigations.

(d) Investigation by the Committee of Matters Other Than Complaints. – The Committee may investigate matters other than complaints properly before the Committee under subsection (a) of this section. For any investigation initiated under this subsection, the Committee may take any action it deems necessary or appropriate to further compliance with this Article, including the initiation of a complaint, the issuance

of an advisory opinion under G.S. 120-307, or referral to appropriate law enforcement or other authorities pursuant to subsection (i)(2) of this section.

(e) Legislator Cooperation With Investigation. – Legislators shall promptly and fully cooperate with the Committee in any Committee-related investigation. Failure to cooperate fully with the Committee in any investigation shall be grounds for sanctions under G.S. 120-325.

(f) Dismissal of Complaint After Preliminary Inquiry. – If the Committee determines at the end of its preliminary inquiry that (i) the individual who is the subject of the complaint is not a legislator or (ii) the complaint does not allege facts sufficient to constitute a violation of this Article, the Committee shall dismiss the complaint and provide written notice of the dismissal to the individual who filed the complaint and the person against whom the complaint was filed.

(g) Notice. – If at the end of its preliminary inquiry the Committee determines to proceed with further investigation into the conduct of a legislator, the Committee shall provide written notice to the individual who filed the complaint and the legislator as to the fact of the investigation and the charges against the legislator. The legislator shall be given an opportunity to file a written response with the Committee. Upon the notice required under this subsection being sent, the complaint and any written response shall be public records, and all other documents offered at the hearing in conjunction with the complaint, shall be public records.

(h) Hearing. –

(1) The Committee shall give full and fair consideration to all complaints and responses received. If the Committee determines that the complaint cannot be resolved without a hearing, or if the legislator requests a public hearing, a hearing shall be held.

(2) The Committee shall send a notice of the hearing to the complainant, the legislator, and any other member of the public requesting notice. The notice shall contain the time and place for a hearing on the matter, which shall begin no less than 30 days and no more than 90 days after the date of the notice.

(3) At any hearing held by the Committee:

a. Oral evidence shall be taken only on oath or affirmation.

b. The hearing shall be open to the public. The deliberations by the Committee on a complaint may be held in closed session, but the decision of the Committee shall be announced in open session.

c. The legislator being investigated shall have the right to present evidence, call and examine witnesses, cross-examine witnesses, introduce exhibits, and be represented by counsel.

(i) Disposition of Investigations. – Except as permitted under subsection (f) of this section, after the hearing the Committee shall dispose of a matter before the Committee under this section, in any of the following ways:

(1) If the Committee finds that the alleged violation is not established by clear and convincing evidence, the Committee shall dismiss the complaint.

(2) If the Committee finds that the alleged violation of this Article is established by clear and convincing evidence, the Committee shall do one or more of the following:

a. Issue a public or private admonishment to the legislator.

b. Refer the matter to the Attorney General for investigation and referral to the district attorney for possible prosecution or the appropriate house for appropriate action, or both, if the Committee finds substantial evidence of a violation of a criminal statute.

c. Refer the matter to the appropriate house for appropriate action, which shall include censure and expulsion, if the Committee finds substantial evidence of a violation of this Article or other unethical activities.

(3) If the Committee issues an admonishment as provided in subdivision (2)a. of this subsection, the legislator affected may upon written request to the Committee have the matter referred as provided under subdivision (2)c. of this subsection.

(j) Effect of Dismissal or Private Admonishment. – In the case of a dismissal or private admonishment, the Committee shall retain its records or findings in confidence, unless the legislator under inquiry requests in writing that the records and findings be made public. If the Committee later finds that a legislator's subsequent unethical activities were similar to and the subject of an earlier private admonishment then the Committee may make public the earlier admonishment and the records and findings related to it.

(k) Findings and Record. – The Committee shall render formal and binding opinions of its findings and recommendations made pursuant to complaints or Committee investigations. In all matters in which the complaint is a public record, the Committee shall ensure that a complete record is made and preserved as a public record.

(l) Confidentiality. – All motions, complaints, written requests, investigations and investigative materials shall be confidential and not a matter of public record, except as otherwise provided in this section.

(m) Any action or lack of action by the Committee under this section shall not limit the right of each house of the General Assembly to discipline or to expel its members.

"**§ 120-307. Advisory opinions.**

(a) At the request of any legislator, the Committee may render advisory opinions on specific questions involving the meaning and application of this Article and the legislator's compliance with the requirements of this Article. The request shall be in writing, electronic or otherwise, and relate prospectively to real or reasonably anticipated fact settings or circumstances. The Committee shall issue advisory opinions having prospective application only. Reliance upon a requested written advisory opinion

on a specific matter shall immunize the legislator, on that matter, from a finding by the Committee of a violation of this Article.

(b) Staff to the Committee may issue informal, nonbinding advisory opinions under rules adopted by the Committee.

(c) The Committee shall interpret this Article by rules, and these interpretations are binding on all legislators upon publication.

(d) The Committee shall publish its advisory opinions at least once a year. These advisory opinions shall be edited for publication purposes as necessary to protect the identities of the individuals requesting opinions.

(e) Except as provided under subsection (d) of this section, requests for advisory opinions and advisory opinions issued under this section are confidential and not matters of public record.

"**§ 120-308. Ethics education program.**

The Committee shall develop and implement an ethics education and awareness program designed to instill in all legislators and legislative employees a keen and continuing awareness of their ethical obligations and a sensitivity to situations that might result in real or potential conflicts of interest. The Committee shall make basic ethics education and awareness presentations to all legislators and legislative employees upon their election or employment and shall offer periodic refresher presentations as the Committee deems appropriate. Every legislator and legislative employee shall participate in an ethics presentation approved by the Committee within three months of the person's election, appointment or employment in a manner as the Committee deems appropriate.

"**§ 120-309 through 314. [Reserved]**

"Part 4. Public Disclosure of Economic Interests.

"**§ 120-315. Purpose.**

The purpose of disclosure of the financial and personal interests by legislators is to assist legislators and those persons who elect them to identify and avoid conflicts of interest and potential conflicts of interest between the individual legislator's private interests and the legislator's public duties. It is critical to this process that current and prospective legislators examine, evaluate, and disclose those personal and financial interests that could be or cause a conflict of interest or potential conflict of interest between the legislator's private interests and the legislator's public duties. Legislators must take an active, thorough and conscientious role in the disclosure and review process, including having a complete knowledge of how the legislator's public position or duties might impact the legislator's private interests. Legislators have an affirmative duty to provide any and all information that a reasonable person would conclude is necessary to carry out the purposes of this Article and to fully disclose any conflict of interest or potential conflict of interest between the legislator's public and private interests but the disclosure, review and evaluation process is not intended to result in the disclosure of unnecessary or irrelevant personal information.

"**§ 120-316. Statement of economic interest; filing required.**

(a) Every legislator who is elected or appointed shall file a statement of economic interest with the Committee before the legislator's initial election or

appointment and, except as otherwise filed under subsection (b) of this section, no later than March 15 every year thereafter. A prospective legislator required to file a statement under this Article shall not be appointed or receive a certificate of election, prior to submission by the Committee of the Committee's evaluation of the statement in accordance with this Article.

(b) A candidate for an office subject to this Article shall file the statement of economic interest at the same place and in the same manner as the notice of candidacy for that office is required to be filed under G.S. 163-106, within 10 days of the filing deadline for the office the candidate seeks. A person who is nominated under G.S. 163-114 after the primary and before the general election, and a person who qualifies under G.S. 163-122 as an unaffiliated candidate in a general election, shall file a statement of economic interest with the county board of elections of each county in the senatorial or representative district. A person nominated under G.S. 163-114 shall file the statement within three days following the person's nomination, or not later than the day preceding the general election, whichever occurs first. A person seeking to qualify as an unaffiliated candidate under G.S. 163-122 shall file the statement of economic interest with the petition filed under that section. A person seeking to have write-in votes counted for the person in a general election shall file a statement of economic interest at the same time the candidate files a declaration of intent under G.S. 163-123. A candidate of a new party chosen by convention shall file a statement of economic interest at the same time that the president of the convention certifies the names of its candidates to the State Board of Elections under G.S. 163-98.

(c) The boards of elections shall provide for notification of the statement of economic interest requirements of this Article to be given to any candidate filing for nomination or election to those offices subject to this Article at the time of the filing of candidacy.

(d) If a candidate for an office subject to this Article does not file the statement of economic interest within the time required by this Article, the county board of elections immediately shall notify the candidate by certified mail, restricted delivery to addressee only, that, if the statement is not received within 15 days, the candidate shall not be certified as the party nominee, or in the case of a candidate nominated by a new party under G.S. 163-98 that the candidate shall be decertified by the State Board of Elections. If the statement is not received within 15 days of notification, the board of elections authorized to certify a candidate as nominee to the office shall not certify the candidate as nominee under any circumstances, regardless of the number of candidates for the nomination and regardless of the number of votes the candidate receives in the primary. If the delinquent candidate was nominated by a new party under G.S. 163-98, the State Board of Elections shall decertify the candidate, and no county board of elections shall place the candidate's name on the general election ballot as nominee of the party. A vacancy thus created on a party's ticket shall be considered a vacancy for the purposes of G.S. 163-114, and shall be filled according to the procedures set out in G.S. 163-114.

(e) Every person appointed to fill a vacant seat in the General Assembly under G.S. 163-11 shall file with the Legislative Services Office and the county board of

elections of each county in the senatorial or representative district a statement of economic interest as specified in this Article no later than 10 days after taking the oath of office. If a person required to file a statement of economic interest as required under this section fails to file the statement within the time required by this section, the Legislative Services Officer shall notify the person that the statement must be received within 15 days of notification. If the statement is not received within the time allowed in this subsection, then the Legislative Services Officer shall notify the Legislative Ethics Committee of the failure of the person to file the statement.

(f) The chair of the board of elections shall forward a certified copy of the statement of economic interest to the Committee for evaluation within 10 days of the date the statement of economic interest is filed with the board of elections.

(g) The Committee shall issue forms to be used for the statement of economic interest and shall revise the forms from time to time as necessary to carry out the purposes of this Article. Except as otherwise set forth in this section, the Committee shall furnish the appropriate forms needed to comply with this Article to legislators.

"**§ 120-317. Statements of economic interest as public records.**

The statements of economic interest filed under this Article, and all other written evaluations by the Committee of those statements, shall be filed with the Legislative Services Office, made available in the Legislative Library, and be public records.

"**§ 120-318. Contents of statement.**

(a) Any statement of economic interest required to be filed under this Article shall be on a form prescribed by the Committee and sworn to by the person required to file. Answers must be provided to all questions. The form shall include the following information about the person and the person's immediate family:

(1) The name, home address, occupation, employer, and business of the person filing.

(2) A list of each asset and liability of whatever nature, including legal, equitable, or beneficial interest, with a value of at least ten thousand dollars ($10,000) of the person, and that person's spouse. This list shall include the following:

a. All real estate located in the State owned wholly or in part by the person or the person's spouse, including specific descriptions adequate to determine the location of each parcel and the specific interest held by the person and the person's spouse in each identified parcel.

b. Real estate that is currently leased or rented to the State.

c. Personal property sold to or bought from the State within the preceding two years.

d. Personal property currently leased or rented to the State.

e. The name of each publicly owned company in which the value of securities held exceeds ten thousand dollars ($10,000).

f. The name of each nonpublicly owned company or business entity in which the value of securities or other equity interests held exceeds ten thousand dollars ($10,000), including interests

in partnerships, limited partnerships, joint ventures, limited liability companies or partnerships, and closely held corporations. For each company or business entity listed under this sub-subdivision, the person shall indicate whether the listed company or entity owns securities or equity interests exceeding a value of ten thousand dollars ($10,000) in any other companies or entities. If so, then the other companies or entities shall also be listed with a brief description of the business activity of each.

g. If the person or a member of the person's immediate family is the beneficiary of a vested trust created, established, or controlled by the person, then the name and address of the trustee and a description of the trust shall be provided. To the extent such information is available to the person, the statement also shall include a list of businesses in which the trust has an ownership interest exceeding ten thousand dollars ($10,000).

h. The person shall make a good faith effort to list any individual or business entity with which the person, the person's extended family, or any business with which the person or a member of the person's extended family is associated, has a financial or professional relationship provided (i) a reasonable person would conclude that the nature of the financial or professional relationship presents a conflict of interest or the appearance of a conflict of interest for the person; or (ii) a reasonable person would conclude that any other financial or professional interest of the individual or business entity would present a conflict of interest or appearance of a conflict of interest for the person. For each individual or business entity listed under this subsection, the person shall describe the financial or professional relationship and provide an explanation of why the individual or business entity has been listed.

i. A list of all other assets and liabilities with a valuation of at least ten thousand dollars ($10,000), including bank accounts and debts.

j. A list of each source (not specific amounts) of income (including capital gains) shown on the most recent federal and State income tax returns of the person filing where ten thousand dollars ($10,000) or more was received from that source.

k. If the person is a practicing attorney, an indication of whether the person, or the law firm with which the person is affiliated, earned legal fees during any single year of the past five years in excess of ten thousand dollars ($10,000) from any of the following categories of legal representation:

1. Administrative law.

2. Admiralty.
3. Corporation law.
4. Criminal law.
5. Decedents' estates.
6. Insurance law.
7. Labor law.
8. Local government.
9. Negligence – defendant.
10. Negligence – plaintiff.
11. Real property.
12. Taxation.
13. Utilities regulation.

l. A list of all nonpublicly owned businesses with which, during the past five years, the person or the person's immediate family has been associated or has an economic interest, indicating the time period of that association and the relationship with each business as an officer, employee, director, partner, or owner. The list also shall indicate whether each does business with, or is regulated by, the State and the nature of the business, if any, done with the State.

m. A list of all gifts, and the sources of the gifts, of a value of more than two hundred dollars ($200.00) received during the 12 months preceding the date of the statement from sources other than the person's extended family, and a list of all gifts, and the sources of the gifts, valued in excess of one hundred dollars ($100.00) received from any source having business with, or regulated by, the State.

n. A list of all bankruptcies filed during the preceding five years by the person, the person's spouse, or any entity in which the person, or the person's spouse, has been associated financially. A brief summary of the facts and circumstances regarding each listed bankruptcy shall be provided.

o. A list of all directorships on all business boards of which the person or the person's immediate family is a member.

(3) Each statement of economic interest shall contain the person's sworn certification that the person has read the statement and that, to the best of the person's knowledge and belief, the statement is true, correct, and complete. The person's sworn certification also shall provide that the person has not transferred, and will not transfer, any asset, interest, or other property for the purpose of concealing it from disclosure while retaining an equitable interest therein.

(4) If the person believes a potential for conflict exists, the person has a duty to inquire of the Committee as to that potential conflict.

(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 date the statement of economic interest was signed.

(c) The Committee shall prepare a written evaluation of each statement of economic interest relative to conflicts of interest and potential conflicts of interest. The Committee shall submit the evaluation to all of the following:

(1) The person who submitted the statement.

(2) The Legislative Services Office.

"**§ 120-319. Failure to file.**

(a) In addition to the provision of G.S. 120-316, within 30 days after the date due in accordance with G.S. 120-316, for every person from whom a statement of economic interest has not been received by the Committee, or whose statement of economic interest has been received by the Committee but deemed by the Committee to be incomplete, the Committee shall notify the person of the failure to file or complete and shall notify the person that if the statement of economic interest is not filed or completed within 30 days of receipt of the notice of failure to file or complete, the person shall be subject to a fine under this section.

(b) Any person who fails to file or complete a statement of economic interest within 30 days of the receipt of the notice required under subsection (a) of this section, shall be subject to a fine of two hundred fifty dollars ($250.00), to be imposed by the Committee.

(c) Failure by any person to file or complete a statement of economic interest within 60 days of the receipt of the notice required under subsection (a) of this section shall be deemed to be a violation of this Article and shall be grounds for disciplinary action under G.S. 120-325.

"**§ 120-320. Concealing or failing to disclose material information.**

A person who knowingly conceals or fails to disclose information that is required to be disclosed on a statement of economic interest under this Article shall be punished as a Class 1 misdemeanor and shall be subject to disciplinary action under G.S. 120-325.

"**§ 120-321. Penalty for false or misleading information.**

A person who provides false or misleading information on a statement of economic interest as required under this Article knowing that the information is false or misleading shall be punished as a Class H felon and shall be subject to disciplinary action under G.S. 120-325.

"**§ 120-322 through 324. [Reserved]**

"Part 5. Violation Consequences.

"**§ 120-325. Violation consequences.**

(a) Violation of this Article by any legislator or legislative employee is grounds for disciplinary action. Except as specifically provided in this Article or for perjury under G.S. 120-306 and G.S. 120-318, no criminal penalty shall attach for any violation of this Article.

(b) The willful failure of any legislator to comply with this Article shall be deemed a violation of this Article for purposes of G.S. 120-306.

(c) Nothing in this Article affects the power of the State to prosecute any person for any violation of the criminal law.

(d) The Legislative Ethics Committee may request the Office of the Attorney General to seek to enjoin violations of G.S. 120-288."

SECTION 3. Article 7 of Chapter 120 of the General Statutes is amended by adding the following new section to read:

"**§ 120-32.6. Certain employment authority.**

G.S. 114-2.3 and G.S. 147-17 shall not apply to the General Assembly."

SECTION 4. Section 1 of this act becomes effective January 1, 2007. The remainder of this act becomes effective October 1, 2006, applies to persons holding office and employed on or after January 1, 2007, to acts and conflicts of interest that arise on or after January 1, 2007, and to offenses committed on or after January 1, 2007. Prosecutions for offenses or ethics violations committed before January 1, 2007, 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 Judiciary I Committee

May 18, 2006
10:00 a.m.

Minutes

The House Judiciary I Committee met on Thursday, May 18, 2006 at 10:00 a. m. in Room 1228 of the Legislative Building. The Chairman, Representative Joe Hackney, called the meeting to order and the following members were present: Representatives Alexander, Blust, Capps, Clary, Goodwin, Harrison, Insko, Ross, Stam, Stiller and West. A copy of the agenda and visitor registration is attached, (Attachments I and II).

Representative Ross was recognized to present House Bill 1847, AN ACT TO STRENGTHEN POLITICAL COMMITTEE TREASURER TRAINING, AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON ETHICS AND GOVERNMENTAL REFORM, (Attachment III). She said that the bill would require all treasurers of political committees to participate in training as to the duties of the office within three months of appointment and at least once every four years thereafter. She said that the training could be either in person or electronically, but if done electronically it would have to be interactive. She noted that she would support the inclusion of assistant treasurers in the bill

Ms. Erika Churchill, Committee Counsel, commented briefly on the bill. A bill analysis prepared by Ms. Churchill is attached to the minutes, (Attachment IV).

Chairman Hackney stated that he had received comments about assistant treasurer concerns and how the bill would affect federal pacs.

Mr. John Bowdish, Astra Zeneca Pharmaceuticals, stated that if a federal pac is also registered as a state pac, they can extend their federal status by registering it also as a state pac.

Discussion followed regarding adding assistant treasurers to the bill.

Ms. Kim Strach, State Board of Elections, stated that the person who will complete and sign the report should be required to have the training.

Representative Ross asked if assistant treasurers were allowed to sign the reports. Ms. Strach replied that were.

Representative Stam suggested adding language that would require that only persons who have had training be allowed to sign reports.

Ms. Churchill was instructed to prepare an amendment to that effect. She stated that she did not think that statutorily there was such a position as "assistant treasurer" and that it might take more than a simple amendment to make the change.

The bill was displaced to provide time for a Committee Substitute to be drafted that would incorporate suggestions made during the discussion of the bill and the proposed amendments.

The next bill before the Committee was House Bill 1849, A BILL TO BE ENTITLED AN ACT TO AMEND THE LEGISLATIVE LOBBYING LAWS BY ESTABLISHING WAITING PERIODS BEFORE CERTAIN STATE OFFICERS MAY LOBBY; BY BARRING LOBBYISTS FROM CERTAIN APPOINTMENTS AND OTHER ACTIVITIES; BY BANNING CERTAIN GIFTS; BY ESTABLISHING QUARTERLY REPORTING OF EXPENDITURS WITH ADDITIONAL INTERIM REPORTING; BY EXPANDING THE COVERAGE OF THE LOBBYING LAWS TO INCLUDE EXECUTIVE BRANCH OFFICERS; BY LIMITING CAMPAIGN CONTRIBUTIONS BY REGISTERED LOBBYISTS; AND BY MAKING OTHER CONFORMING CHANGES, AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON ETHICS AND GOVERNMENTAL REFORM, (Attachment V).

Ms. Churchill was recognized to explain the bill that governs the actions of the lobbyists and lobbyist's principals. She said that the bill attempts to encompass the concerns and suggestions that have been offered by the interested parties since the passage of Senate Bill 612 during the previous session of the General Assembly. That bill, which amended the lobbying law, is scheduled to come into effect on January 1, 2007. She said that the bill is set up in two phases and that Sections 1 and 2 are scheduled to come into effect immediately upon enactment of the bill. She said that the remainder of the bill would be effective January 1, 2007 and would amend the changes that were made in Senate Bill 612. She said that the first two sections of the bill address suggestions that were offered by interested parties during the study commission's work. Those provisions are outlined on the top section of page 2 of the bill analysis prepared by Ms. Churchill that is attached to the minutes, (Attachment VI). She noted that these provisions carry a criminal violation (Class 1 misdemeanor), and would come into effect immediately.

Representative Clary asked if the provision regarding serving on regulatory authorities would apply to current members. Ms. Churchill replied that it would apply to current sitting members of the General Assembly who might be appointed after enactment of the bill.

Ms. Churchill then explained the sections (Sections 3-6) of the bill that amend Senate Bill 612 that is scheduled to come unto effect January 1, 2007. She said that one major change from Senate Bill 612 would be to have all lobbyists simply register as a lobbyist rather than having legislative lobbyist and executive lobbyist register and be regulated separately. She then discussed the definition section of the bill noting that they

were very key to the discussion of the bill. She pointed out changes in the definitions of "covered person," "legislator," "executive branch officer," and "executive action."

Chairman Hackney noted the expansion of the definition of executive action and said that just about anyone who is paid to seek redress of any kind from state government appears to be covered.

Discussion followed regarding whether to include contract employees, deputy secretaries and assistant secretaries.

Representative Sherrill stated that she thought deputy and assistant secretaries might be exempt employees and included.

Ms. Churchill continued with her explanation by discussing additions to the definitions of "lobbyist" and "lobbyist's principal" and "public event." Chairman Hackney commented on the lobbyist's principal definition with regard to "Advocacy Day" events. He noted that persons coming to the General Assembly such as county commissioners, city council members, etc. who are a part of Advocacy Day events are not considered to be lobbyist's principals, but that the persons who lobby for the County Commissioner's Association, the League of Municipalities, etc. are covered persons.

Representative Ross stated that she thought the definition for "Advocacy Day" needed further revision because some have complained that the way it is written might conflict with rights of assembly and petitioning the government.

Ms. Churchill continued with a brief overview of the bill. A bill analysis prepared by Ms. Churchill is attached to the minutes, (Attachment VII).

The meeting was adjourned at 10:55 a.m.

Representative Joe Hackney
Chair

Emily Reynolds Freeman
Committee Clerk

Attachment I

HOUSE COMMITTEE ON JUDICIARY I

May 18, 2006
10:00 a.m.

AGENDA

OPENING REMARKS

AGENDA ITEMS

House Bill 1845 – Permitted Use of Campaign Funds
Representatives Hackney, Howard, Eddins and Ross

House Bill 1847 – Treasurer Training
Representatives Hackney, Howard and Ross

House Bill 1849 – Lobbying Reform 2006
Representatives Hackney, Howard, Gibson and Sherrill

ADJOURNMENT

Attachment II

VISITOR REGISTRATION SHEET

House Judiciary I — May 18, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Megan Glazier	Rep. Glazier's Office
John McMillan	NFIB
Paul Stock	NCBA
Jeff Rau	GRNC
S Henri McClees	McClees Consulting, Inc.
Emily Kirby	NCCN
Erin Kinney	NCCN
[illegible]	Capitol Group
Jim Stegall	NC Legislative Services
Bryce Ball	Fiscal Research
Todd Barlow	NCATL

VISITOR REGISTRATION SHEET

House Judiciary I — May 18, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Barbara Caroline	BBGR
David Carter	Bar Ass.
Courtney Denning	NC Bar Association
Jeff Wolfe	UNC-CH Daily Bulletin
Kathleen Edwards	unc-ch Daily Bulletin
Amy Jo Horne	NCNS
Lou B. Wilson	NCALTCF
Michael Houser	NCAE
John McKay	Governor's
Caroline Howe	Lt. Gov's Office
Virginia Nicholson	Lt. Gov.'s Office

VISITOR REGISTRATION SHEET

House Judiciary I — May 18, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Rob Schofield	NC Center for Nonprofits
Louisa Warren	NC Coalition for Lobbying Reform
Eric Hines	NC Coalition for Lobbying Reform
Fred Bone	Bone & Assoc.
John Bourdeau	AstraZeneca
J Craig Jones	UNS
Becki Gray	Civitas Institute
Doug Lassiter	NCSTA
Rebekah Gincavage	ACLA-NC
Eddie Davis	NCAE
Bruce Thompson	Parker Poe

VISITOR REGISTRATION SHEET

House Judiciary I — Name of Committee

May 18, 2006 — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
DAVID BARNES	Poyner + Spruill
[illegible]	NCAFL
Joel Brown	NC SOS
Butch Gunnells	NCBA
[illegible] Wright	BCBSNC
Bill Rustin	ACP
Doug Henry	NC Bar Assoc.
Andy Ellen	NCRMA
Elizabeth Dalton	NCRMA
[illegible]	AHIC
[illegible]	NMRS
[illegible]	CRPA - NCPLA

VISITOR REGISTRATION SHEET

House Judiciary I — May 18, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Caly Wiggins	Gov. office
[signature]	NCCVE
[signature]	SBE
Celia Cox	OSBM
Robert Wilson	Secretary of State
CASANDRA WHITE	NC CCPS
JAY DAWKINS	JWP CIVITAS
[signature]	[illegible]
[signature]	NCPTRA
Britt Scoggin	KCCH
Rodney Moody	SOSNC

VISITOR REGISTRATION SHEET

House Judiciary I — May 18, 2006

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Citizen (and taxpayer)	Protecting your 1st Amendment
Roger Bone	Bone & Assoc

Attachment III

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 1

HOUSE BILL 1847

Short Title:	Treasurer Training.	(Public)
Sponsors:	Representatives Hackney, Howard, Ross (Primary Sponsors); Barnhart, Bell, Brubaker, Coates, Earle, Fisher, Gibson, Harrison, Jones, Justice, Lucas, Luebke, Martin, McLawhorn, Nye, Sauls, Setzer, Sherrill, Steen, West, Alexander, L. Allen, Bordsen, Dickson, Glazier, Harrell, Hill, Insko, Jeffus, Preston, Underhill, and Weiss.	
Referred to:	Judiciary I.	

May 10, 2006

A BILL TO BE ENTITLED

AN ACT TO STRENGTHEN POLITICAL COMMITTEE TREASURER TRAINING, AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON ETHICS AND GOVERNMENTAL REFORM.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 163-278.7(f) reads as rewritten:

"(f) ~~The State Board of Elections shall provide training for every~~Every treasurer of a political ~~committee, prior to the election in which the political committee is involved,~~ committee shall participate in training as to the duties of the ~~office.~~office within three months of appointment, and at least once every four years thereafter. The State Board of Elections shall provide ~~each treasurer with a CD-ROM, DVD, videotape, or other electronic document containing~~ the training as to the duties of the ~~office,~~office in person, through ~~and shall conduct~~ regional ~~seminars for in-person training.~~ seminars, and through interactive electronic means. The treasurer may choose to participate in training prior to each election in which the political committee is involved. All such training shall be free of charge to the treasurer."

SECTION 2. This act becomes effective July 1, 2006.

Attachment IV

HOUSE BILL 1847: Treasurer Training

BILL ANALYSIS

Committee:	House Judiciary I	**Date:**	May 10, 2006
Introduced by:	Reps. Hackney, Howard, Ross	**Summary by:**	R. Erika Churchill
Version:	First Edition		Committee Co-Counsel

SUMMARY: ***House Bill 1847 requires all treasurers of political committees to participate in training as to the duties of the office within 3 months of appointment, and at least once every 4 years thereafter. The training would be either in person or electronically. Effective July 1, 2006.***

CURRENT LAW: Current law requires that all treasurers of referendum committees must receive training from the State Board of Elections. The law specifically says the training must include instruction that referendum committees that have received a contribution from a corporation, labor union, insurance company, business entity or professional association may in turn may a contribution to another referendum committee, candidate or a political committee. The treasurer of the referendum committee may designate an employee or volunteer of the referendum committee to receive the training. G.S. 163-278.7(e).

Current law also provides that political committee treasurers must receive training as to the duties of the office, prior to the election in which the political committee is involved. The State Board is to provide the training by providing each treasurer with a CD-ROM, DVD, videotape or other electronic document containing training as to the duties of the office. The State Board is also required to conduct regional seminars for in-person training. There is no requirement that the treasurer attend an in-person training. All training is free of charge to the treasurer. G.S. 163-278.7(f).

BILL ANALYSIS:

The bill would require all political committee treasurers to participate in training as to the duties of the office within 3 months of the appointment to the office, and at least once every 4 years thereafter.

The State Board of Elections would provide the training, either in-person through regional seminars or by interactive electronic means.

The political committee treasurer would have the option to participate in training prior to every election in which the political committee was involved.

The training would remain free of charge to the treasurer.

EFFECTIVE DATE: July 1, 2006.

BACKGROUND: The bill is a recommendation of the House Select Committee on Ethics and Governmental Reform.

H1847e1-SMST

Attachment V

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H

HOUSE BILL 1849

Short Title:	Lobbying Reforms 2006.	(Public)
Sponsors:	Representatives Hackney, Howard, Gibson, Sherrill (Primary Sponsors); Barnhart, Bell, Brubaker, Coates, Earle, Eddins, Fisher, Harrison, Justice, Lucas, Luebke, Martin, McLawhorn, Nye, Ross, Sauls, Setzer, Steen, West, Alexander, L. Allen, Bordsen, Dickson, Glazier, Harrell, Hill, Insko, Jeffus, McGee, Moore, Spear, Underhill, Walend, and Weiss.	
Referred to:	Judiciary I.	

May 10, 2006

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LEGISLATIVE LOBBYING LAWS BY ESTABLISHING WAITING PERIODS BEFORE CERTAIN STATE OFFICERS MAY LOBBY; BY BARRING LOBBYISTS FROM CERTAIN APPOINTMENTS AND OTHER ACTIVITIES; BY BANNING CERTAIN GIFTS; BY ESTABLISHING QUARTERLY REPORTING OF EXPENDITURES WITH ADDITIONAL INTERIM REPORTING; BY EXPANDING THE COVERAGE OF THE LOBBYING LAWS TO INCLUDE EXECUTIVE BRANCH OFFICERS; BY LIMITING CAMPAIGN CONTRIBUTIONS BY REGISTERED LOBBYISTS; AND BY MAKING OTHER CONFORMING CHANGES, AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON ETHICS AND GOVERNMENTAL REFORM.

The General Assembly of North Carolina enacts:

SECTION 1. Article 9A of Chapter 120 of the General Statutes is amended to add a new section to read:

"**§ 120-47.7C. Prohibitions.**

(a) No member or former member of the General Assembly may be employed as a legislative lobbyist by a lobbyist's principal to lobby as defined in this Article within one year after the end of that member's service in the General Assembly.

(b) No person serving, or formerly having served, as Governor, a member of the Council of State, or a head of a principal State department listed in G.S. 143B-6 may be employed as a legislative lobbyist by a lobbyist's principal to lobby as defined in this Article within one year after separation from employment or leaving office.

(c) No individual registered as a legislative lobbyist shall serve as a campaign treasurer under Chapter 163 of the General Statutes as defined in G.S. 163-278.6(19) for

a campaign for election as a member of the General Assembly, Governor, or Council of State.

(d) A legislative lobbyist shall not be eligible for appointment by a State official to any body created under the laws of this State that has regulatory authority over the activities of a person that the legislative lobbyist currently represents or has represented within 60 days after the expiration of the legislative lobbyist's registration representing that person. Nothing herein shall be construed to prohibit appointment by any unit of local government.

(e) No legislative lobbyist or another acting on the legislative lobbyist's behalf shall permit a covered person, legislative employee, or that person's immediate family member to use the cash or credit of the lobbyist for the purpose of lobbying unless the lobbyist is in attendance at the time of the expenditure."

SECTION 2. Article 9A of Chapter 120 of the General Statutes is amended to add a new section to read:

"**§ 120-47.7B. Powers and duties of the Secretary of State.**

(a) The Secretary of State shall perform systematic reviews of reports required to be filed under G.S. 120-47.6 and G.S. 120-47.7 on a regular basis to assure complete and timely disclosure of expenditures.

(b) The Secretary of State may petition the Superior Court of Wake County for the approval to issue subpoenas and subpoenas duces tecum as necessary to conduct investigations of violations of this Article. The court shall authorize subpoenas under this subsection when the court determines they are necessary for the enforcement of this Article. Subpoenas issued pursuant to this subsection shall be enforceable by the court through contempt powers. Venue shall be with the Superior Court of Wake County for any nonresident person, or that person's agent, who makes a reportable expenditure under this Article, and personal jurisdiction may be asserted under G.S. 1-75.4.

(c) Complaints of violations of this Article and all other records accumulated in conjunction with the investigation of these complaints shall be considered records of criminal investigations under G.S. 132-1.4."

SECTION 3. Article 9A of Chapter 120 of the General Statutes reads as rewritten:

"Article 9A.

"~~Legislative Branch~~ Lobbying.

"**§ 120-47.1. Definitions.**

~~The following definitions shall apply in this Article:~~As used in this Article, the following terms mean:

(1) ~~The term "covered person" means a legislator, the Governor, or the Lieutenant Governor.~~Covered person. – A legislator, legislative employee, or executive branch officer.

(1a) Advocacy day. – A day that any lobbyist's principal collectively assembles its membership or employees and advocates for legislative or executive action.

(1b) Constitutional officers of the State. – Officers whose offices are established in Article III of the Constitution.

(1c) Executive action. – Any decision, including administration, approval, disapproval, preparation, recommendation, the rendering of advice, and investigation, made or contemplated in any proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, investigation, charge, or rule making.

(1d) Executive branch officer. – All of the following:

a. Constitutional officers of the State, persons elected or appointed as a Constitutional officer of the State prior to taking office, or a person having filed a notice of candidacy for such office under G.S. 163-106 or Article 11 of Chapter 163 of the General Statutes.

b. Employees of the Office of the Governor.

c. Heads of all principal State departments, as set forth in G.S. 143B-6, who are appointed by the Governor.

d. The chief deputy or chief administrative assistant of each person designated under sub-subdivisions a. and c. of this subdivision.

e. Confidential assistants and secretaries as defined in G.S. 126-5(c)(2), to persons designated under sub-subdivisions a., c., and d. of this subdivision.

f. Employees in exempt positions as defined in G.S. 126-5(b) and employees in exempt positions designated in accordance with G.S. 126-5(d)(1), (2), or (2a), and confidential secretaries to these individuals.

g. Any other employees or appointees in the principal State departments as may be designated by the Governor to the extent that the designation does not conflict with the State Personnel Act.

h. All voting members of boards, including ex officio members and members serving by executive, legislative, or judicial branch appointment.

i. For The University of North Carolina, the voting members of the Board of Governors of The University of North Carolina, the president, the vice-presidents, and the chancellors, the vice-chancellors, and voting members of the boards of trustees of the constituent institutions.

j. For the System of Community Colleges, the voting members of the State Board of Community Colleges, the President and chief financial officer of the System of Community Colleges, the president, chief financial officer and chief administrative officer of each community college, and voting members of the boards of trustees of each community college.

~~(1a)~~(1e) ~~The term "expenditure" means any~~ Expenditure. – Any advance, contribution, conveyance, deposit, distribution, payment, gift, retainer,

fee, salary, honorarium, reimbursement, loan, pledge or thing of value greater than ten dollars ~~($10.00),~~($10.00) per single calendar day or a contract, agreement, promise or other obligation whether or not legally enforceable, that directly or indirectly is made to, at the request of, for the benefit of, or on the behalf of a covered ~~person, legislative employee,~~ person or that person's immediate family member.

(1f) Extended family. – Spouse, descendant, ascendant, or sibling of the covered person or, descendant, ascendant, or sibling of the spouse of the covered person.

~~(1b) The term "executive lobbyist" means a lobbyist registered pursuant to Article 4C of Chapter 147 of the General Statutes.~~

(2),(3) Repealed by Session Laws 1991, c. 740, s. 1.1.

(2a) Gift. – Anything of value without valuable consideration.

(3a) ~~The term "immediate family member" means spouse, descendant, or ascendant.~~Immediate family member. – An unemancipated child of the covered person residing in the household, and the covered person's spouse, if not legally separated.

(4) ~~The term "legislative action" means the~~Legislative action. – The preparation, research, drafting, introduction, consideration, modification, amendment, approval, passage, enactment, tabling, postponement, defeat, or rejection of a bill, resolution, amendment, motion, report, nomination, appointment, or other matter, whether or not the matter is identified by an official title, general title, or other specific reference, by the legislature or by a member or employee of the legislature acting or purporting to act in an official capacity. It also includes the consideration of any bill by the Governor for the Governor's approval or veto under Article II, Section 22(1) of the Constitution or for the Governor to allow the bill to become law under Article II, Section 22(7) of the Constitution.

(4a) ~~The term "legislative employee" means employees~~Legislative employee. – Employees and officers of the General Assembly.

(4b) ~~The term "legislative liaison personnel" means any~~Liaison personnel. – Any State employee or officer whose principal duties, in practice or as set forth in that person's job description, include lobbying the General ~~Assembly.~~Assembly or executive branch officers.

~~(4c) The term "legislative lobbyist" means any lobbyist for or against legislative action.~~

(4d) ~~The term "legislator" means a~~Legislator. – A member or presiding officer of the General ~~Assembly or~~Assembly, a person elected or appointed a member or presiding officer of the General Assembly prior to taking ~~office~~office, or a person having filed a notice of candidacy for such office under G.S. 163-106 or Article 11 of Chapter 163 of the General Statutes.

(5) ~~The term "lobbying" means any~~Lobbying. – Any of the following:

a. Influencing or attempting to influence legislative or executive action, or both, through direct communication or activities with a covered ~~person, legislative employee,~~person or that person's immediate family member.

b. Solicitation of others by ~~legislative~~ lobbyists or lobbyists' principals to influence legislative or executive ~~action.~~action, or both.

c. Developing goodwill through communications or activities, including the building of relationships, with a covered ~~person, legislative employee,~~ person or that person's immediate family member with the intention of influencing current or future legislative action, but does not include communications or activities with a covered ~~person, legislative employee,~~person or that person's immediate family member in a business, civic, religious, fraternal, or commercial relationship which is not connected to legislative or executive ~~action.~~action, or both.

(6) ~~The term "lobbyist" means an~~Lobbyist. – An individual who meets any of the following criteria:

a. Is employed and receives compensation, or who contracts for economic consideration, for the purpose of lobbying.

b. Represents another person and receives compensation for the purpose of lobbying.

~~c. Is legislative liaison personnel.~~

The term "lobbyist" shall not include those individuals who are specifically exempted from this Article by G.S. 120-47.8. For the purpose of determining whether an individual is a lobbyist under this subdivision, reimbursement of actual travel and subsistence expenses shall not be considered compensation; provided, however, that reimbursement in the ordinary course of business of these expenses shall be considered compensation if a significant part of the individual's duties involve lobbying before the General ~~Assembly.~~Assembly or executive branch officers.

(7) ~~The terms "lobbyist's principal" and "principal" mean the~~Lobbyist principal and principal. – The person on whose behalf the ~~legislative~~ lobbyist lobbies. In the case where a lobbyist is compensated by a law firm, consulting firm, or other entity retained by a person for ~~legislative~~ lobbying, the principal is the person whose interests the lobbyist represents in lobbying. In the case of a lobbyist employed or retained by an association or other organization, the lobbyist's principal is the association or other organization, not the members of the association or other organization.

(7a) ~~The term "news medium" means mainstream~~News medium. – Mainstream media providers whose sole purpose is to report events and that does not involve research or advocacy.

(8) ~~The term "person" means any~~Person. – Any individual, firm, partnership, committee, association, corporation, business entity, or any other organization or group of persons which has an independent legal existence.

(8a) Public event. – Either of the following:

a. An organized gathering of individuals open to the general public or to which a legislator or legislative employee is invited along with the entire membership of the House, Senate, a committee, a subcommittee, a county legislative delegation, a joint committee or legislative caucus and to which at least 10 employees or members of the principal actually attend.

b. An organized gathering of individuals open to the general public or to which at least ten executive branch officers are invited to attend and at least 10 employees or members of the principal actually attend.

(9) ~~The General Assembly is in "regular session" from the~~ In regular session. – The date set by law or resolution that the General Assembly convenes until the General Assembly either:

a. Adjourns sine die; or

b. Recesses or adjourns for more than 10 days.

§ 120-47.2. Registration procedure.

(a) A ~~legislative~~ lobbyist shall file a registration statement with the Secretary of State in a manner prescribed by the Secretary before engaging in any lobbying. It shall be unlawful for a person to lobby without registering unless exempted by this Article. A lobbyist shall file a separate registration statement for each principal the lobbyist represents. ~~The registration shall indicate whether it is registration as a legislative lobbyist, executive lobbyist, or both, and a separate registration fee shall be paid for each separate type of registration.~~

(b) The form of the registration shall be prescribed by the Secretary of State and shall include the registrant's full name, firm, complete address and telephone number; the registrant's place of business; the full name, complete address and telephone number of each person by whom the registrant is employed or retained; and a general description of the matters on which the registrant expects to act as a ~~legislative~~ lobbyist. The Secretary of State shall make available as soon as practicable the registrations of the lobbyists and lobbyists' principals in an electronic, searchable format.

(c) Each ~~legislative~~ lobbyist shall file an amended registration form with the Secretary of State no later than 10 business days after any change in the information supplied in the ~~legislative~~ lobbyist's last registration under subsection (b). Each supplementary registration shall include a complete statement of the information that has changed.

(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~~ Assembly, Constitutional officers of the State, the head of each principal department of the Executive Branch, and the State Legislative Library a list of all persons who have

registered as ~~executive or legislative~~ lobbyists and whom they represent. ~~Within 20 days after the beginning of the term of a Governor, the Secretary of State shall furnish the Governor, each other member of the Council of State, the head of each principal department of the Executive Branch, and the State Legislative Library a list of all persons who have registered as executive or legislative lobbyists and whom they represent.~~ A supplemental list of ~~legislative~~ lobbyists shall be furnished periodically each 20 days ~~thereafter as the session progresses.~~ while the General Assembly is in session, and every 60 days thereafter. ~~A supplemental list of executive lobbyists shall be furnished periodically each 60 days thereafter.~~ For each special session of the General Assembly, a supplemental list of ~~legislative~~ lobbyists shall be furnished to the State Legislative Library. All lists required by this section may be furnished electronically.

(e) Each registration statement of a ~~legislative~~ lobbyist required under this Article shall be effective from the date of filing until January 1 of the following year. The ~~legislative~~ lobbyist shall file a new registration statement after that date, and the applicable fee shall be due and payable.

"**§ 120-47.3. Registration fee.**

A fee of one hundred dollars ($100.00) is due and payable to the Secretary of State by either the lobbyist or the lobbyist's principal at the time of each lobbyist registration. Fees so collected shall be deposited in the General Fund of the State. The Secretary of State shall allow fees required under this section to be paid electronically but may not require the fees to be paid electronically. The Secretary of State shall adopt rules providing for the waiver or reduction of the fees required by this section in cases of hardship.

"**§ 120-47.4. Authorization from lobbyist's principal; fee from principal.**

(a) Each ~~legislative~~ lobbyist or lobbyist's principal shall file with the Secretary of State within 10 business days after the ~~legislative~~ lobbyist's registration a written authorization signed by the lobbyist's principal authorizing the lobbyist to represent the principal.

(b) The form of the authorization shall be prescribed by the Secretary of State and shall include the lobbyist's principal's full name, complete address and telephone number, name and title of the official signing for the lobbyist's principal, and the name of each lobbyist registered to represent the lobbyist's principal. The Secretary of State shall make available as soon as practicable the authorization of the lobbyists' principals in an electronic, searchable format.

(c) An amended authorization shall be filed with the Secretary of State no later than 10 days after any change in the information supplied for the lobbyist's principal on the previous authorization. Each supplementary authorization shall include a complete statement of the information that has changed.

(d) Except as provided for in subsection (e) of this section, a fee of one hundred dollars ($100.00) is due and payable to the Secretary of State at the time the lobbyist's principal's first authorization statement is filed each calendar year for a ~~legislative~~ lobbyist. ~~The fee for the legislative lobbyist's authorization shall be seventy-five dollars ($75.00) if an authorization for the principal to be represented by an executive lobbyist~~

~~is filed at the same time. No additional fee is due for additional authorizations filed for legislative lobbyists.~~

(e) The Secretary of State shall adopt rules providing for the waiver or reduction of the fees required by ~~fee in~~ subsection (d) of this section. The rules shall provide that the fees be reduced to a total of twenty-five dollars ($25.00) if the lobbyist's principal had annual revenues in its most recent fiscal year of three hundred thousand dollars ($300,000) or less and is represented by no more than two different lobbyists. ~~This reduced fee covers authorizations filed for the principal's legislative and executive lobbyists.~~

"§ 120-47.5. Contingency lobbying fees and election influence prohibited.

(a) No person shall act as a ~~legislative~~ lobbyist for compensation that is dependent upon the result or outcome of any legislative action.

(b) No ~~legislative lobbyist or legislative lobbyist's principal~~ person shall attempt to influence the action of any covered person by the promise of financial support of the covered person's candidacy, or by threat of financial support in opposition to the covered person's candidacy in any future election.

"§ 120-47.5A. Certain gifts by lobbyists and lobbyist's principals prohibited; ~~Exemptions and inclusions for reporting purposes.~~exemptions.

(a) No lobbyist or lobbyist's principal may give a gift to a covered person.

~~(a)~~(a1) ~~For purposes of G.S. 120-47.6 and G.S. 120-47.7, the following expenditures need not be reported:~~ Subsection (a) of this section shall not apply to:

~~(1) Gifts between an immediate family member or person who is the stepchild, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, or members of the household of the covered person or legislative employee~~

(1) Meals and beverages for immediate consumption in connection with public events.

~~(2) Lawful campaign contributions.~~

(2) Nonmonetary items, other than food or beverages, with a value not to exceed ten dollars ($10.00) provided by a single donor during a single calendar day.

~~(3) Commercially available loans made on terms not more favorable than generally available to the public in the normal course of business if not made for the purpose of lobbying.~~

~~(4) Contractual arrangements or business relationships or arrangements made in the normal course of business if not made for the purpose of lobbying.~~

~~(5) The cost of attendance or participation provided by the sponsoring entity of lodging, and of food and beverages consumed, at events sponsored by or in conjunction with a civic, charitable, community, or diplomatic event if the activity or event does not last longer than three hours.~~

~~(6) Academic scholarships made on terms not more favorable than scholarships generally available to the public.~~

(3) Informational materials relevant to the duties of the covered person.

(4) Reasonable actual expenses for food, registration, travel, and lodging of the covered person for a meeting at which the covered person participates in a panel or speaking engagement at the meeting related to the public servant's duties and when expenses are incurred on the actual day of participation in the engagement or incurred within a 24-hour time period before or after the engagement.

(5) Items or services received in connection with a state, national, or regional organization in which the covered person or the covered person's agency is a member.

(6) Items and services received relating to an educational conference or meeting.

(7) A plaque or similar nonmonetary memento recognizing individual services in a field or specialty or to a charitable cause.

(8) Gifts accepted on behalf of the State.

(9) Anything generally available or distributed to the general public or all other State employees.

(10) Anything for which fair market value is paid.

(11) Commercially available loans made on terms not more favorable than generally available to the public in the normal course of business if not made for the purpose of lobbying.

(12) Contractual arrangements or business relationships or arrangements made in the normal course of business if not made for the purpose of lobbying.

(13) Academic scholarships made on terms not more favorable than scholarships generally available to the public.

(14) Political contributions properly received and reported as required under Article 22A of Chapter 163 of the General Statutes.

(15) Gifts from the covered person's extended family, or a member of the same household of the covered person, or gifts received in conjunction with a marriage, birth, adoption, or death.

(16) Things of monetary value given to a executive branch officer valued in excess of ten dollars ($10.00) where the thing of monetary value is entertainment or related expenses associated with the public business of industry recruitment, promotion of international trade, or the promotion of travel and tourism, and the executive branch officer is responsible for conducting the business on behalf of the State, provided all the following conditions apply:

a. The executive branch officer did not solicit the thing of value, and the executive branch officer did not accept the thing of value in the performance of the executive branch officer's official duties.

b. The executive branch officer reports electronically to the Commission within 30 days of receipt of the thing of value. The

report shall include a description and value of the thing of value and a description how the thing of value contributed to the public business of industry recruitment, promotion of international trade, or the promotion of travel and tourism. This report shall be posted to the Commission's public Web site.

c. A tangible thing of value in excess of ten dollars ($10.00), other than meals or beverages, shall be turned over as State property to the Department of Commerce within 30 days of receipt.

(17) Things of monetary value of personal property valued at less than one hundred dollars ($100.00) given to an executive branch officer in the commission of the executive branch officer's official duties if the gift is given to the executive branch officer as a personal gift in another country as part of an overseas trade mission, and the giving and receiving of such personal gifts is considered a customary protocol in the other country.

(b) For purposes of G.S. 120-47.6 and G.S. 120-47.7, all expenditures made for the purpose of lobbying shall be reported, including the following:

(1) Expenditures benefiting or made on behalf of a covered person, ~~a legislative employee,~~ or those persons' immediate family members, in the regular course of that person's ~~nonlegislative~~ employment.

(2) Contractual arrangements or direct business relationships between a ~~legislative~~ lobbyist or ~~legislative~~ lobbyist's principal and a covered person, ~~legislative employee,~~ or that person's immediate family member, in effect during the reporting period or the previous 12 months.

(3) Expenditures reimbursed to a ~~legislative~~ lobbyist in the ordinary course of business by the lobbyist's principal or other employer. Expenditures reimbursed by the lobbyist's principal or other employer are reported only by the lobbyist.

(4) Expenditures for items exempted by subsection (a1) of this section.

~~(c) For reporting purposes of G.S. 120-47.6 and G.S. 120-47.7, legislative lobbying with respect to only the legislative actions of the Governor and Lieutenant Governor shall be reported.~~

(d) The offering or giving of a gift in compliance with this Article without corrupt intent shall not constitute a violation of G.S. 14-217 or G.S. 14-218.

"**§ 120-47.6. Statements of ~~legislative~~ lobbyist's lobbying expenditures required.**

(a) Each ~~legislative~~ lobbyist shall file ~~monthly~~ quarterly expenditure reports under oath with the Secretary of State, in a manner prescribed by the Secretary of State, which may include electronic reports, with respect to each lobbyist's ~~principal, while the General Assembly is in regular session, and quarterly thereafter.~~ principal. The expenditure report shall include all expenditures during the reporting period and shall be due 10 business days after the end of the reporting period. The ~~legislative~~ lobbyist shall file ~~expense~~ expenditure reports whether or not expenditures are made.

(a1) In addition to the reports required by subsection (a) of this section, each lobbyist incurring expenditures with respect to lobbying legislators and legislative employees shall file a monthly expenditure report while the General Assembly is in regular session. The monthly expenditure report shall contain information required by this section with respect to all lobbying of legislators and legislative employees, and is due within 10 business days of the end of the month. The information on the monthly expenditure report shall also be included in each quarterly report required by subsection (a) of this section.

(b) Each expenditure report shall set forth the fair market ~~value,~~value or face value if shown, date, a description of the expenditure, name and address of the payee, or beneficiary, and name of any covered person, ~~legislative employee,~~ or that person's immediate family member benefiting from the expenditure. Such expenditures shall be reported using the following categories:

(1) Transportation and lodging.
(2) Entertainment, food, and beverages.
(3) Meetings and events.
(4) Gifts.
(5) Other expenditures.
(6) Solicitation of others to lobby, including if such expenditures are incurred in connection or in concert with other reportable expenditures.

~~In addition, expenses for the solicitation of others to lobby, whether or not a covered person, legislative employee, or family member is affected, shall be reportable if such expenses are incurred in connection, or in concert, with other expenditures reportable under this subsection.~~

(c) All reports shall be in the form prescribed by the Secretary of State and shall be open to public inspection upon filing. When more than 15 covered persons benefit from an expenditure, no names of individuals need be reported provided that the report identifies the approximate number of covered persons benefiting and, with particularity, the basis for their selection, including the name of the legislative body, committee, caucus, or other group whose membership list is a matter of public record in accordance with G.S. 132-1 or including a description of the group that clearly distinguishes its purpose or composition from the general membership of the General Assembly. The approximate number of ~~legislative employees and~~ immediate family members of covered persons ~~and legislative employees~~ who benefited from the expenditure shall be listed separately.

(d) When a ~~legislative~~ lobbyist fails to file an expenditure report as required in this section, the Secretary of State shall send a certified or registered letter advising the ~~legislative~~ lobbyist of the delinquency and the penalties provided by law. Within 20 days of the receipt of the letter, the ~~legislative~~ lobbyist shall deliver or post by United States mail to the Secretary of State the required report and an additional late filing fee in an amount equal to the late filing fee under G.S. 163-278.34(a)(2).

(e) Filing of the required report and payment of the additional fee within the time extended shall constitute compliance with this section. Failure to file an expenditure

report in one of the manners prescribed in this section shall result in revocation of any and all registrations of a legislative lobbyist under this Article. No ~~legislative~~ lobbyist may register or reregister under this Article until the ~~legislative~~ lobbyist has fully complied with this section.

(f) Appeal of a decision by the Secretary of State under this section shall be in accordance with Article 3 of Chapter 150B of the General Statutes.

(g) The Secretary of State may adopt rules to facilitate complete and timely disclosure of expenditures, including the format of reports and additional categories of information, and to protect the addresses of payees under protective order issued pursuant to Chapter 50B of the General Statutes or participating in the Address Confidentiality Program pursuant to Chapter 15C of the General Statutes. The Secretary of State shall not impose any penalties or late filing fees upon a ~~legislative~~ lobbyist for subsequent failures to comply with the requirements of this section if the Secretary of State failed to provide ~~to~~ the lobbyist with required notifications of the initial violation. This provision shall not apply to a failure by the lobbyist to file an expenditure report in a timely manner.

"**§ 120-47.7. Statements of ~~legislative~~ lobbyist's principal lobbying expenditures required.**

(a) Each ~~legislative~~ lobbyist's principal shall file ~~monthly~~ quarterly expenditure reports under oath with the Secretary of State, in a manner prescribed by the Secretary of State, which may include electronic ~~reports, while the General Assembly is in regular session, and quarterly thereafter.~~reports. The expenditure report shall include all expenditures during the reporting period and shall be due 10 business days after the end of the reporting period. The lobbyist's principal shall file the expenditure reports whether or not expenditures are made during a reporting period.

(a1) In addition to the reports required by subsection (a) of this section, each lobbyist's principal incurring expenditures with respect to lobbying legislators and legislative employees shall file a monthly expenditure report while the General Assembly is in regular session. The monthly expenditure report shall contain information required by this section with respect to all lobbying of legislators and legislative employees, and is due within 10 business days of the end of the month. The information on the monthly expenditure report shall also be included in each quarterly report required by subsection (a) of this section.

(b) Each expenditure report shall set forth the fair market ~~value,~~value or face value if shown, date, a description of the expenditure, name and address of the payee, or beneficiary, and name of any covered person, ~~legislative employee,~~ or that person's immediate family member affected by the expenditure. Such expenditures shall be reported using the following categories:

(1) Transportation and lodging.
(2) Entertainment, food, and beverages.
(3) Meetings and events.
(4) Gifts.
(5) Other expenditures.

(6) Solicitation of others to lobby, including if such expenditures are incurred in connection or in concert with other expenditures reportable under this Article.

(7) Compensation paid to all lobbyists during the reporting period. If a legislative lobbyist is a full-time employee of the lobbyist's principal, or is compensated by means of an annual fee or retainer, the lobbyist's principal shall estimate and report the portion of the salary, fee, or retainer that compensates for lobbying.

(8) Expenditures reimbursed or paid to lobbyists for lobbying that are not reported on the lobbyist's report, with an itemized description of those expenditures.

~~In addition, expenses for the solicitation of others to lobby, whether or not a covered person, legislative employee, or family member is affected, shall be reportable if such expenses are incurred in connection, or in concert, with other expenditures reportable under this subsection.~~

~~In addition, the compensation paid or agreed to be paid to all legislative lobbyists shall be reported, whether or not a covered person, legislative employee, or family member is affected. If a legislative lobbyist is a full-time employee of the lobbyist's principal, or is compensated by means of an annual fee or retainer, the lobbyist's principal shall estimate and report the portion of the salary, fee, or retainer that compensates for lobbying. The lobbyist's principal's expenditure report shall include an itemized description of all expenditures reimbursed or paid to legislative lobbyists for lobbying that are not reported on the legislative lobbyists' reports.~~

(c) All reports shall be in the form prescribed by the Secretary of State and open to public inspection upon filing. When more than 15 covered persons benefit from an expenditure, no names of individuals need be reported provided that the report identifies the approximate number of covered persons benefiting and, with particularity, the basis for their selection, including the name of the legislative body, committee, caucus, or other group whose membership list is a matter of public record in accordance with G.S. 132-1 or including a description of the group that clearly distinguishes its purpose or composition from the general membership of the General Assembly. The approximate number of ~~legislative employees and~~ immediate family members of covered persons ~~and legislative employees~~ who benefited from the expenditure shall be listed separately.

(d) When a lobbyist's principal fails to file an expenditure report as required in this section, the Secretary of State shall send a certified or registered letter advising the lobbyist's principal of the delinquency and the penalties provided by law. Within 20 days of the receipt of the letter, the lobbyist's principal shall deliver or post by United States mail to the Secretary of State the required report and a late filing fee in an amount equal to the late filing fee under G.S. 163-278.34(a)(2).

(e) Filing of the required report and payment of the late fee within the time extended shall constitute compliance with this section. Failure to file an expenditure report in one of the manners prescribed in this section shall result in revocation of any and all registrations of a lobbyist's principal under this Article. No lobbyist's principal

may register or reregister under this Article until the lobbyist's principal has fully complied with this section.

(f) Appeal of a decision by the Secretary of State under this section shall be in accordance with Article 3 of Chapter 150B of the General Statutes.

(g) The Secretary of State may adopt rules to facilitate complete and timely disclosure of expenditures, including the format of reports and additional categories of information, and to protect the addresses of payees under protective order issued pursuant to Chapter 50B of the General Statutes or participating in the Address Confidentiality Program pursuant to Chapter 15C of the General Statutes. The Secretary of State shall not impose any penalties or late filing fees upon a principal for subsequent failures to comply with the requirements of this section if the Secretary of State failed to provide to the lobbyist's principal with required notifications of the initial violation. This provision shall not apply to a failure by the principal to file an expenditure report in a timely manner.

"**§ 120-47.7A.** Reserved for future codification purposes.

"**§ 120-47.7B. Powers and duties of the Secretary of State.**

(a) The Secretary of State shall perform systematic reviews of reports required to be filed under G.S. 120-47.6 and G.S. 120-47.7 on a regular basis to assure complete and timely disclosure of allowable expenditures.

(b) The Secretary of State may petition the Superior Court of Wake County for the approval to issue subpoenas and subpoenas duces tecum as necessary to conduct investigations of violations of this Article. The court shall authorize subpoenas under this subsection when the court determines they are necessary for the enforcement of this Article. Subpoenas issued pursuant to this subsection shall be enforceable by the court through contempt powers. Venue shall be with the Superior Court of Wake County for any nonresident person, or that person's agent, who makes a reportable expenditure under this Article, and personal jurisdiction may be asserted under G.S. 1-75.4.

(c) Complaints of violations of this Article and all other records accumulated in conjunction with the investigation of these complaints shall be considered records of criminal investigations under G.S. 132-1.4.

"**§ 120-47.7C. Prohibitions.**

(a) No member or former member of the General Assembly may be employed as ~~an executive or legislative~~ a lobbyist by a lobbyist's principal to lobby as defined in this Article ~~or Article 4C of Chapter 147 of the General Statutes~~ within ~~six months~~one year after the end of that member's service in the General Assembly.

(b) No person serving as ~~Governor, as a member of the Council of State,~~a Constitutional officer of the State or as a head of a principal State department listed in G.S. 143B-6 may be employed as ~~an executive or legislative~~a lobbyist by a lobbyist's principal to lobby as defined in this Article ~~or Article 4C of Chapter 147 of the General Statutes~~ within ~~six months~~one year after separation from employment or leaving office.

(c) No individual registered as a ~~legislative~~ lobbyist shall serve as a campaign treasurer ~~under Chapter 163 of the General Statutes~~ as defined in G.S. 163-278.6(19) for a campaign for election as a member of the General ~~Assembly.~~Assembly or a Constitutional officer of the State.

(d) A ~~legislative or executive~~ lobbyist shall not be eligible for appointment by a State official to any body created under the laws of this State that has regulatory authority over the activities of a person that the lobbyist currently represents or has represented within 60 days after the expiration of the lobbyist's registration representing that person. Nothing herein shall be construed to prohibit appointment by any unit of local government.

(e) No ~~legislative or executive~~ lobbyist or another acting on the lobbyist's behalf shall permit a covered person ~~person, legislative employee, executive branch officer,~~ or that person's immediate family member, to use the cash or credit of the lobbyist for the purpose of lobbying unless the lobbyist is in attendance at the time of the expenditure.

"§ 120-47.8. Persons exempted from provisions of Article.

Except as otherwise provided in this Article, the provisions of this Article shall not be construed to apply to any of the ~~following:~~following lobbying activities:

(1) An individual solely engaged in expressing a personal opinion or stating facts or recommendations on legislative matters to members of the General Assembly and not acting as a legislative lobbyist.

(2) A person appearing before a ~~legislative committee~~ committee, commission, board, council, or other collective body whose membership includes one or more covered persons at the invitation or request of the committee or a member thereof and who engages in no further activities as a legislative lobbyist.

(3) a. A duly elected or appointed official or employee of the State, the United States, a county, municipality, school district or other governmental agency, when appearing solely in connection with matters pertaining to the office and public duties.

b. Notwithstanding the persons exempted in this Article, the ~~Governor, Council of State,~~ Constitutional officers of the State and all appointed heads of State departments, agencies and institutions, shall designate all authorized official ~~legislative~~ liaison personnel and shall file and maintain current lists of designated ~~legislative~~ liaison personnel with the Secretary of State.

(4) A person performing professional services in drafting ~~bills~~ bills, or in advising and rendering opinions to clients, or to covered persons on behalf of clients, as to the construction and effect of proposed or pending ~~legislation~~ legislative or executive action where the professional services are not otherwise connected with the legislative or executive action.

(5) A person who owns, publishes or is employed by any news medium while engaged in the acquisition or dissemination of news on behalf of the news medium.

(6) Repealed by Session Laws 1991, c. 740, s. 1.1.

(7) Covered ~~persons and legislative employees.~~persons while acting in their official capacity.

(8) A person responding to inquiries from a ~~member of the General Assembly or a legislative employee,~~covered person and who engages in no further activities as a ~~legislative~~ lobbyist in connection with that or any other legislative ~~matter.~~or executive action.

(9) An ~~employee who represents the employer's interests in action for no more than three hours in a quarter, provided that neither the employee nor the employer makes any expenditure as defined in G.S. 120-47.1.~~ individual while participating in an advocacy day.

(10) A person appearing before an executive branch agency or department on behalf of another person, on an individual application for a license or permit, or a disciplinary action on a license or permit.

(11) A person appearing before an executive branch officer on behalf of another person with respect to a proposed sale or lease of real property, goods or services to the State, or construction of property by the State.

(12) A person appearing before an executive branch agency or department or an executive branch officer on behalf of another person or entity in connection with an application for a grant, loan, determination or eligibility, or certification.

"§ 120-47.8A. Expenditures made by persons exempted or not covered by this Article.

(a) If a covered person ~~or a legislative employee~~ accepts an expenditure made for the purpose of lobbying valued over two hundred dollars ($200.00) from a person or group of persons acting together, exempted or not otherwise covered by this Article, the person, or group of persons, making the expenditure shall report the date, a description of the expenditure, the name and address of the person, or group of persons, making the expenditure, the name of the covered person ~~or legislative employee~~ accepting the expenditure, and the estimated fair market value of the expenditure.

(b) If the person making the expenditure in subsection (a) of this section is outside North Carolina, and the covered person ~~or legislative employee~~ accepting the expenditure is also outside North Carolina at the time the person accepts the expenditure, then the person accepting the expenditure shall be responsible for filing the report using available information.

(c) If a covered person ~~or a legislative employee~~ accepts a scholarship valued over two hundred dollars ($200.00) from a person, or group of persons, acting together, exempted or not covered by this Article, the person, or group of persons, granting the scholarship shall report the date of the scholarship, a description of the event involved, the name and address of the person, or group of persons, granting the scholarship, the name of the covered person ~~or legislative employee~~ accepting the scholarship, and the estimated fair market value.

(d) If the person granting the scholarship in subsection (c) of this section is outside North Carolina, the covered person ~~or legislative employee~~ accepting the scholarship shall be responsible for filing the report.

(e) This section shall not apply to any of the following:

(1) Lawful campaign ~~contributions.~~ contributions properly received and reported as required under Article 22A of Chapter 163 of the General Statutes.

(2) Any gift from ~~a~~ an extended family member to a covered person. ~~person or legislative employee.~~

(3) Gifts associated primarily with the covered ~~person's, legislative employee's,~~ person's or that person's immediate family member's ~~nonlegislative~~ employment.

(4) Gifts, other than food, beverages, travel, and lodging, which are received from a person who is a citizen of a country other than the United States or a state other than North Carolina and given during a ceremonial presentation or as a custom.

(5) A thing of value that is paid for by the State.

(f) Reports required by this section shall be filed within 10 business days after the end of the quarter in which the expenditure was made, with the Secretary of State in a manner prescribed by the Secretary of State, which may include electronic reports.

"**§ 120-47.8B. Advocacy Day.**

(a) No lobbyist's principal may conduct more than one advocacy day per calendar year.

(b) All advocacy days to lobby the General Assembly must be scheduled through the Legislative Services Office.

(c) All advocacy days to lobby executive branch officers must be scheduled through the Governor's Office.

(d) All lobbyists' principals conducting an advocacy day shall comply with this Article while conducting the advocacy day.

"**§ 120-47.9. Punishment for violation.**

(a) Whoever willfully violates any provision of this Article shall be guilty of a Class 1 misdemeanor. In addition, no ~~legislative~~ lobbyist who is convicted of a violation of the provisions of this Article shall in any way act as a ~~legislative or executive~~ lobbyist for a period of two years following conviction.

(b) In addition to the criminal penalties set forth in this section, the Secretary of State may levy civil fines for willful false or incomplete reporting up to five thousand dollars ($5,000) per violation.

"**§ 120-47.10. Enforcement of Article by Attorney General.**

(a) The Secretary of State may investigate complaints of violations of this Article, ~~The Secretary of State~~ and shall report apparent violations of this Article to the Attorney General. The Attorney General shall, upon complaint, make an appropriate investigation thereof, and the Attorney General shall forward a copy of the investigation to the district attorney of the prosecutorial district as defined in G.S. 7A-60 of which Wake County is a part, who shall prosecute any person who violates any provisions of this Article.

(b) Complaints of violations of this Article involving the Secretary of State or any member of the Department of the Secretary of State shall be referred to the

Attorney General for investigation in accordance with G.S. 120-47.7B. Any portion of the complaint not involving alleged violations of this Article by the Secretary of State or any member of the Department of the Secretary of State shall remain with the Secretary of State for investigation. The Attorney General shall, upon receipt of a complaint, make an appropriate investigation thereof, and the Attorney General shall forward a copy of the investigation to the District Attorney of the prosecutorial district as defined in G.S. 7A-60 of which Wake County is a part, who shall prosecute any person who violates any provisions of this Article.

(c) Complaints of improper lobbying involving the Attorney General or any member of the Department of Justice shall be investigated by the Secretary of State and any apparent violations reported to the District Attorney of that prosecutorial district as defined in G.S. 7A-60 of which Wake County is a part. The District Attorney of that prosecutorial district shall, upon receipt of the Secretary of State's report, prosecute any person who violates any provisions of this Article.

"**§ 120-47.11. Rules and forms.**

(a) The Secretary of State shall adopt any rules, orders, forms, and definitions as are necessary to carry out the provisions of this Article. The Secretary of State may appoint a council to advise the Secretary in adopting rules under this section.

(b) The Secretary of State shall adopt rules to protect from disclosure all confidential information under Chapter 132 related to economic development initiatives or to industrial or business recruitment activities. The information shall remain confidential until the State, a unit of local government or the business has announced a commitment by the business to expand or locate a specific project in this State or a final decision not to do so and the business has communicated that commitment or decision to the State or local government agency involved with the project.

"**§ 120-47.12. Limitations on agency ~~legislative~~ liaison personnel.**

(a) No State department may use State funds to contract with persons who are not employed by the State to lobby the General Assembly.

(b) No more than two persons in each State department and constituent institution of The University of North Carolina may be registered to lobby the General Assembly or designated as ~~legislative~~ liaison personnel pursuant to this Article.

(c) All persons designated as ~~legislative~~ liaison personnel pursuant to this Article and the State department or constituent institution of The University of North Carolina that employs the ~~legislative~~ liaison personnel shall report all expenditures made for lobbying purposes in the same manner as required for ~~legislative~~ lobbyists under G.S. 120-47.6 and lobbyists' principals under G.S. 120-47.7. The registration and authorization fees required under G.S. 120-47.3 and G.S. 120-47.4 shall not apply to ~~legislative~~ liaison personnel or the State department or constituent institution that employs the ~~legislative~~ liaison personnel."

"**§ 120-47.13. Advisory opinions.**

(a) At the request of any person affected by this Article, the Secretary of State shall render advisory opinions on specific questions involving the meaning and application of this Article and the covered person's compliance therewith. The request shall be in writing and relate prospectively to real or reasonably anticipated fact settings

or circumstances. The Secretary of State shall issue advisory opinions having prospective application only. Reliance upon a requested written advisory opinion on a specific matter shall immunize the covered person, on that matter, from both of the following:

(1) Investigation by the Secretary of State.

(2) Any adverse action by the employing entity.

(b) Staff to the Secretary of State may issue advisory opinions under rules adopted by the Secretary of State.

(c) The Secretary of State shall interpret the provisions of this Article by rules, and these interpretations shall be binding on all covered persons, lobbyists, and lobbyists' principal upon publication.

(d) The Secretary of State shall publish its advisory opinions at least once a year, edited as necessary to protect the identities of the individuals requesting opinions.

(e) Except as provided under subsection (d) of this section, requests for advisory opinions and advisory opinions issued pursuant to this section are confidential and not matters of public record.

"**§ 120A-14. Lobbying education program.**

(a) The Secretary of State shall develop and implement a lobbying education and awareness program designed to instill in all covered persons, lobbyists, and lobbyists' principals a keen and continuing awareness of their obligations and a sensitivity to situations that might result in real or potential violation of this Article or other related laws. The Secretary shall make basic lobbying education and awareness presentations to all covered persons upon their election, appointment or hiring and shall offer periodic refresher presentations as the Secretary deems appropriate. Every covered person shall participate in a lobbying presentation approved by the Secretary within six months of the person's election, appointment or hiring, and shall attend refresher ethics education presentations at least every two years thereafter in a manner the Secretary deems appropriate. Upon request, the Secretary shall assist each agency in developing in-house education programs and procedures necessary or desirable to meet the agency's particular needs for lobbying education.

(b) The Secretary shall publish a newsletter containing summaries of the Secretary's opinions, policies, procedures, and interpretive bulletins as issued from time to time. The newsletter shall be distributed to all covered persons, lobbyists, and lobbyists' principals. Publication under this subsection may be done electronically.

(c) The Secretary shall assemble and maintain a collection of relevant State laws, rules, and regulations that set forth lobbying standards applicable to covered persons. The collection of laws, rules and regulations shall be made available electronically as resource material to covered persons, lobbyists and lobbyists' principals, upon request.

"**§ 120-15. No gift registry.**

(a) The Secretary of State shall establish a "No Gifts" registry for persons subject to this Article. The "No Gifts" registry shall be published and updated with the list of lobbyists and lobbyists' principals required under G.S. 120-47.2.

(b) Except as provided in this subsection, lobbyists and lobbyists' principals shall not give unsolicited gifts allowed under G.S. 120-47.5A(a1)(2) to persons placing their

names on the registry, without the persons' expressed consent. Gifts of informational directories may be given to persons placing their names on the registry.

(c) The Secretary shall have the authority to adopt rules to implement this section in compliance with the following criteria:

(1) The registration is valid from the time the person registers until January 1 of the following year, unless the person requests in writing the removal of that person's name.

(2) The registration shall be in writing.

(d) Violations of this section shall not constitute a crime but shall be subject to civil fines of up to five hundred dollars ($500.00) as levied by the Secretary of State."

SECTION 4. Sections 2 and 3 of S.L. 2005-456 are repealed.

SECTION 5.1. G.S. 163-278.6 is amended by adding a new subsection to read:

"**§ 163-278.6. Definitions.**

When used in this Article:

...

(5a) The term 'Constitutional officers of the State' means officers whose offices are established in Article III of the Constitution.

..."

SECTION 5.2. Article 22A of Chapter 163 of the General Statutes is amended by adding a new section G.S. 163-278.19A to read:

"**§ 163-278.13C. Limitation on contributions by registered lobbyists.**

(a) No lobbyist registered under Article 9A of Chapter 120 shall do any of the following:

(1) Make or offer to make a contribution to a legislator, executive branch official, or candidate campaign committee.

(2) Make a contribution to any candidate, officeholder, or political committee, directing or requesting that the contribution be made in turn to a legislator, executive branch official, or candidate campaign committee.

(3) Transfer any amount of money or anything of value to any entity, directing or requesting that the entity use what was transferred to contribute to a legislator, executive branch officer, or candidate campaign committee.

(4) Solicit a contribution from any individual, political committee, or other entity on behalf of a legislator, executive branch official, or candidate campaign committee. This subdivision does not apply to a registered lobbyist soliciting a contribution on behalf of a political party executive committee if the solicitation is solely for a separate segregated fund kept by the political party limited to use for activities that are not candidate-specific, including generic voter registration and get-out-the-vote efforts, pollings, mailings, and other general activities and advertising that do not refer to a specific individual candidate.

(b) No legislator, executive branch official, or candidate campaign committee or the real or purported agent of that legislator, executive branch official, or candidate campaign committee shall do any of the following:

(1) Solicit a contribution from a lobbyist registered under Article 9A of Chapter 120 of the General Statutes.

(2) Solicit a third party, requesting or directing that the third party directly or indirectly solicit a contribution from a lobbyist registered under Article 9A of Chapter 120 of the General Statutes or relay to the lobbyist registered under Article 9A of Chapter 120 of the General Statutes the legislator's, executive branch official's, or candidate campaign committee's solicitation of a contribution.

(3) Accept a contribution from a lobbyist registered under Article 9A of Chapter 120 of the General Statutes.

(c) It shall not be deemed a violation of this section for a legislator or executive branch official to serve on a board or committee of an organization that makes a solicitation of a lobbyist registered under Article 9A of Chapter 120 of the General Statutes as long as that legislator or executive branch official does not directly participate in the solicitation and that legislator or executive branch official does not directly benefit from the solicitation.

(d) As used in this section, the following terms mean:

(1) Candidate campaign committee. – As defined in G.S. 163-278.38Z and that candidate has filed a notice of candidacy for office as a member of the General Assembly or a Constitutional officer of the State.

(2) Executive branch official. – As defined in G.S. 120-47.1(1d)(a).

(3) Legislator. – As defined in G.S. 120-47.1(4d).

(e) A violation of this section is a Class 2 misdemeanor.

SECTION 5.3. G.S. 163-278.13B(a)(1) reads as rewritten:

"(1) "Limited contributor" means a ~~lobbyist registered pursuant to Article 9A of Chapter 120 of the General Statutes, that lobbyist's agent, that~~ lobbyist's principal as defined in ~~G.S. 120-47.1(7),~~ G.S. 120-47 or a political committee that employs or contracts with or whose parent entity employs or contracts with a lobbyist registered pursuant to Article 9A of Chapter 120 of the General Statutes."

SECTION 6. If any section or provision of this act is declared unconstitutional or invalid by the courts, it does not affect the validity of this act as a whole or any part other than the part so declared to be unconstitutional or invalid.

SECTION 7. Sections 1, 2, 6, and 7 of this act are effective when the act becomes law, and the new G.S. 120-47.7C(d) applies to appointments made on or after that date. The remainder of this act becomes effective January 1, 2007.

Attachment VI

HOUSE BILL 1849: Lobbying Reforms 2006

BILL ANALYSIS

Committee:	House Judiciary I	**Date:**	May 11, 2006
Introduced by:	Reps. Hackney, Howard, Gibson, Sherrill	**Summary by:**	R. Erika Churchill Committee Counsel
Version:	First Edition		

SUMMARY: House Bill 1849 amends North Carolina's lobbying laws to do all of the following:

1. *Implements earlier certain prohibitions creating waiting periods before certain State officers may lobby and barring lobbyists from certain appointments and other activities.*
2. *Bans certain gifts by lobbyists and lobbyists' principals to covered persons (legislators, legislative employees, and executive branch officers).*
3. *Expands coverage of the lobbying laws to additional executive branch officers and employees, with a combined single registration, fee, regulation, and reporting periods for both legislative and executive branch lobbying.*
4. *Bans campaign contributions by registered lobbyists.*
5. *Permits the issuance of advisory opinions and requires lobbying education programs.*

CURRENT LAW:

Under current law effective until January 1, 2007, a person who is paid to try to influence legislative action (action on a specific bill, resolution, amendment, etc.) is required to register as a lobbyist with the Secretary of State and report at the end of each regular session, any expenditures in excess of $25 spent on lobbying legislators. Expenditures spent for the general goodwill of legislators not tied to specific legislative action do not need to be reported, nor do expenditures spent on legislative staff or legislators' family members. There is no limitation on the types or amount of expenditures that a lobbyist can spend on a legislator for lobbying purposes. Every principal who hires the services of a lobbyist also has to file reports on expenditures that the principal made for lobbying, including the amount of compensation paid to lobbyists. Exempt from the lobbying laws are persons who lobby on their own behalf, persons appearing before the General Assembly at the General Assembly's request, elected and appointed local government officials and employees lobbying on behalf of their local governments, State agency legislative liaison personnel, and members of the General Assembly. Violation of this law is punished as a Class 1 misdemeanor.

S.L. 2005-456 (Senate Bill 612) amended the current law, to take effect January 1, 2007. Changes effective January 1, 2007, include:

- Developing goodwill is added as part of the definition of lobbying.
- The definition of "expenditure" for reporting purposes includes anything of value over $10.
- The lobbying laws are applied to certain persons in the Executive branch under a separate registration, fee and reporting.
- Legislative staff are included under lobbying regulations.
- The frequency of reporting lobbying expenditures is increased to monthly during regular session and quarterly in the interim; and quarterly reports for executive branch lobbying.
- Legislators and certain executive branch officials are prohibited from lobbying within 6 months of leaving office.
- Lobbyists are prohibited from serving as campaign treasurers for legislative races.

BILL ANALYSIS:

House Bill 1849 amends the current lobbying laws in the following ways (Effective when the bill becomes law):

- Prohibits a legislator or former legislator from being employed as a lobbyist within 1 year after the expiration of the term for which the legislator was elected or appointed to serve.
- Prohibits the Governor or Council of State member or head of a cabinet department from being employed as a lobbyist within one year after separation from employment or leaving office, whichever is later.
- Prohibits a lobbyist from serving as a campaign treasurer for a legislative or Council of State campaign.
- Prohibits a lobbyist from being appointed to any board, authority, commission, etc. that regulates the activities of a business, organization, person or agency that the lobbyist represented within 60 days of that representation.
- Prohibits a lobbyist from allowing a covered person or that person's immediate family member to use the lobbyist's cash or credit for the purpose of lobbying without the lobbyist being present at the time of the expenditure.
- Allows the Secretary of State's office to treat investigations of lobbying violations as criminal investigations, meaning the investigation information may not be released as a public record.

House Bill 1849 amends the lobbying laws scheduled to take effect January 1, 2007, in the following ways:

- Combines legislative and executive lobbying registrations and regulations into one.
- Changes the definition of covered person to mean legislators, executive branch officers, and legislative staff.
- Prohibits lobbyists and lobbyist's principals from giving gifts to covered persons. The following exceptions apply:
  - Gifts from lobbyists to their family members who are legislators or legislative employees.
  - Lawful campaign contributions.
  - Commercially available loans made in the normal course of business and not made for the purpose of lobbying.
  - Meals and beverages for immediate consumption in connection with public events.
  - Scholarships with terms not more favorable than scholarships available to the public.
  - Nonmonetary items, other than food or beverages, with a value not to exceed $10 by a lobbyist or principal in a single calendar day.
  - Informational materials related to the covered person's public duties.
  - Reasonable actual expenses when a covered person speaks at a meeting relating to the covered person's duties.
  - Items valued at less than $100 given to a covered person when the covered person is in another country as part of an overseas trade mission and the giving of gifts is customary protocol in the other country.
  - Gifts accepted on behalf of the State, anything generally available to the general public or all State employees,
  - Anything for which fair market value is paid.
- Expands the definition of executive branch officer to correlate those persons covered by the Executive Branch Ethics Act (House Bill 1844).
- Expenditures by liaison personnel and State agencies have to be reported the same as expenditures.
- The registration period for a lobbyist and lobbyist's principal is one year.
- Clarifies that the lobbyist must file a separate registration for each principal the lobbyist represents, and that either the lobbyist or the principal must pay a separate fee for each registration.
- Quarterly reporting of lobbying expenditures is required, with increased reporting to monthly of legislative lobbying while the General Assembly is in session.

- Increases the details of lobbying expenditure reports to include the fair market value or face value if shown, date, a description of the expenditure, name and address of the payee or beneficiary, name of any covered person benefiting from the expenditure (or legislative employee or those person's immediate family members) in each of the following categories:
    - Transportation and lodging
    - Entertainment, food, and beverages
    - Meetings and events
    - Gifts
    - Solicitation of others to lobby
    - Other expenditures

  The Secretary of State is granted rulemaking authority to facilitate disclosure of expenditures, including the format of the report and additional categories.
- The lobbyist's principal must also report, in addition to the expenditures reported by the lobbyist, the compensation paid or agreed to be paid to each lobbyist.
- Requires expenditures of $200 made for the purpose of lobbying from persons not required to register and report as lobbyists or lobbyist's principals or more to be reported. If the person giving the gift is in North Carolina, that person shall make the report. If the person giving the gift is outside North Carolina, the person accepting the gift shall make the report. Certain exceptions apply.
- Authorizes the Secretary of State to issue advisory opinions on issues arising under the lobbying law.
- Requires continuing lobbying education programs for legislators, legislative employees, executive branch officers, lobbyists and lobbyists' principals.
- Clarifies the no-gift registry for gifts from lobbyists.
- Bans campaign contributions by lobbyists to candidates or candidate's committees if the candidate has filed for office as a member of the General Assembly or a Constitutional officer of the State. ****This prohibition may have constitutional implications.

EFFECTIVE DATE: Except as noted above, the act becomes effective January 1, 2007.

BACKGROUND: In 2005, the North Carolina General Assembly passed S.L. 2005-456 (SB 612), which amended North Carolina's lobbying laws effective January 1, 2007. The bill is a recommendation of the House Select Committee on Ethics and Governmental Reform. That Committee's charge, as amended on February 20, 2006, directs the Committee to "Examine the provisions of the 2005 rewrite of the lobbying law, S.L. 2005-456 (Senate Bill 612) to determine if portions of that law could be implemented prior to its original effective date of January 1, 2007 and determine whether any additional areas of lobbying regulation should be clarified or strengthened, including prohibiting lobbyists from raising funds for or personally contributing to political campaigns, and from holding any position in a legislative or executive branch campaign."

** Walker Reagan and Brad Krehely contributed substantially to the drafting of this summary.*

H1849e1-SMST

HOUSE JUDICIARY I COMMITTEE

May 23, 2006
10:00 a.m.

Minutes

The House Judiciary I Committee met on Tuesday, May 23, 2006 at 10:00 a.m. in Room 1228 of the Legislative Building. The Chairman, Representative Joe Hackney, called the meeting to order. Representative Hackney and the following members were present: Representatives Blust, Capps, Goodwin, Harrison, Insko, Miller, Ross, Stam, Stiller, and West. Chairman Hackney introduced the pages. A copy of the agenda and visitor registration is attached (Attachments I and II).

Before the committee for further consideration was House Bill 1847, A BILL TO STRENGTHEN POLITICAL COMMITTEE TREASURER TRAINING, AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON ETHICS AND GOVERNMENTAL REFORM, (Attachment III). The bill had bee previously discussed during the May 18, 2006 meeting of the Committee. A Proposed Committee Substitute was distributed, (Attachment IV). Representative Ross moved its adoption for the purpose of discussion. The motion carried. Ms. Erika Churchill, Committee Counsel, was recognized to explain the Committee Substitute. She noted a change on page 2, lines 31 and 32 regarding the designation of assistant treasurers saying that if an assistant treasurer is designated by the political committee, that assistant treasurer shall be fully responsible for any act or acts committed by the assistant treasurer. Another change was pointed out on page 3, line 15 regarding allowing the treasurer to designate an assistant treasurer to participate in any training that is required by the State Board of Elections. A third change was found on page 3, lines 20-25 regarding the inclusion of a new provision that would require only a treasurer or an assistant treasurer who has completed the training offered by the State Board of Elections be the one to sign any reports due under Article 22-A and that person would hold the responsibility for the act committed in that report. A bill analysis prepared by Ms. Churchill is attached, (Attachment V).

Chairman Hackney asked if there might be a transitional problem with people who file reports after July 1, who have not had time to receive the training. Ms. Churchill replied that this might be a problem. She said that the question would be whether the State Board of Elections can complete training of all existing treasurers within three months.

Ms. Kim Strach, Deputy Director of the State Board of Elections, stated that they currently train every month in their office. She said that at this point, treasurers will have to come to Raleigh for training.

Representative Ross stated that she had an amendment that hopefully would address this issue by changing the effective date to say that it would apply after the State

Board of Elections develops training through interactive electronic means tailored to the duties of the office. She expressed hope that the amendment would make it clear that it s not the responsibility of the treasurer to receive training before it is available.

There was considerable discussion of concerns of portions of the bill.

Representative Stam expressed regarding the language on page 3, lines 24 and 25 regarding the liability of the treasurer. He offered an amendment, (Attachment VI), to delete those lines which would leave the controlling law in subsection (8) on page 2 which is the treasurer is responsible for the assistant treasurer. Upon motion by Representative Stam, the amendment was adopted.

Concern was expressed regarding the effective date of July 1, 2006. Representative Ross offered a verbal amendment to change the effective date in Section 3 of the bill to say "this act becomes effective July 1, 2006 and applies to appointed and assistant treasurers immediately after the State Board of Elections develops training programs through interactive electronic means tailored to the duties of the office."

Chairman Hackney questioned how one would know when the act becomes effective because one cannot tell by reading the statute. Mr. Strach stated that the State Board of Elections could send out a notice to all political committees.

Ms. Churchill suggested that the effective date be changed to October 1 allowing people until January 1 to receive the training. Representative Ross acknowledged that the July 1 date would not be workable.

Representative Ross moved to amend the bill on page 3, line 26 by deleting the word "July" and substituting the word "October." Upon a vote of the Committee, the amendment was adopted. There is no available copy of the amendment for inclusion in the attachments.

Representative Ross moved that the amendments be rolled into a new Proposed Committee Substitute, that it be given a favorable report and the original bill an unfavorable report. The motion carried, (Attachment VII). A copy of the new Committee Substitute is attached, (Attachment VIII)

The next bill before the Committee was House Bill 1849, A BILL TO BE ENTITLED AN ACT TO AMEND THE LEGISLATIVE LOBBYING LAWS BY ESTABLISHING WAITING PERIODS BEFORE CERTAIN STATE OFFICERS MAY LOBBY; BY BARRING LOBBYISTS FROM CERTAIN APPOINTMENTS AND OTHER ACTIVITIES; BY BANNING CERTAIN GIFTS; BY ESTABLISHING QUARTERLY REPORTING OF EXPENDITURS WITH ADDITIONAL INTERIM REPORTING; BY EXPANDING THE COVERAGE OF THE LOBBYING LAWS TO INCLUDE EXECUTIVE BRANCH OFFICERS; BY LIMITING CAMPAIGN CONTRIBUTIONS BY REGISTERED LOBBYISTS; AND BY MAKING OTHER CONFORMING CHANGES, AS RECOMMENDED BY THE HOUSE SELECT

COMMITTEE ON ETHICS AND GOVERNMENTAL REFORM, (Attachment IX). The bill was previously discussed during the May 18, 2006 meeting of the Committee. A bill analysis prepared by Ms. Churchill is attached, (Attachment X).

Chairman Hackney began the discussion by identifying some of the concerns that have been expressed. He called attention to page 9, line 1 regarding informational materials, He said that a concern had been raised that the cost of informational materials would have to be reported as expenditures and may trigger monthly reporting for practically all lobbyists during sessions of the General Assembly.

Ms. Christie Barbee, Lobbyist Association, stated that part of the confusion stemmed from how lobbyist would report the expenditure and expressed a hope that there would be some way to exempt the giving of information from the reporting requirement, or at least place a limit on what materials must be reported.

Representative Blust suggested that a threshold be added to the requirement.

Chairman Hackney directed Ms. Churchill to develop some suggested language for a reporting exemption for informational materials under subsection (3) on page 9 with a threshold. Committee discussion followed regarding what that threshold should be.

The next area of concern was on page 9, lines 16 and 17 regarding gifts – "anything generally available or distributed to the general public or all other State employees." Representative Ross suggested possible language to address the concern: "anything generally made available or distributed by the lobbyist or lobbyist's principal to the general public..."

Another concern was identified on page 9, lines 11 and 12 regarding items and services received relating to an educational conference or meeting. Chairman Hackney said that some have asked if this might be an overbroad exemption.

The next area of concern was noted on page 6, lines 5-15 and page 2, lines 40-42 regarding Advocacy Day. Discussion followed regarding groups that might reimburse their membership for travel, etc. when they come to the General Assembly for their Advocacy Day events.

The Committee was adjourned at 10:55 a. m.

Representative Joe Hackney
Chair

Emily Reynolds Freeman
Committee Clerk

Attachment I

HOUSE COMMITTEE ON JUDICIARY I

May 23, 2006
10:00 a.m.

AGENDA

OPENING REMARKS

AGENDA ITEMS

House Bill 1847 – Treasurer Training
Representatives Hackney, Howard and Ross

House Bill 1849 – Lobbying Reform 2006
Representatives Hackney, Howard, Gibson and Sherrill

ADJOURNMENT

Attachment II

VISITOR REGISTRATION SHEET

House Judiciary I — May 23, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Ed T	BP
Gary Robertson	Associated Press
Rob Schofield	NC Center for Nonprofits
Ben Tuite	Rep. Hackney's Office
Ben Alley	A. Alley associates
Haley D. Montgomery	SOS
[illegible]	JD, AL, PA
Sandra Lang	Martin Marietta
Adam [illegible]	Rep. Gibson's Office
Scott Collier	Leadership Union
Paig Hurst	Leadership Union
[illegible]	Leadership Union
PAUL REMINGTON	"
Steve Keen	NC Med Society

VISITOR REGISTRATION SHEET

House Judiciary I — May 23, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Bob Thompson	NCPIRG
Gail Prewette	Leadership Union
Michael Dan	" "
Sheila Cruddath	Leadership Union - Union Co.
Linda Kappany	Leadership Union - Union Co., NC
Denise White	Leadership Union - Union Co.
Jennifer Gaskins	Leadership - Union
Kay Bragg	LU - Union Co
Mike Dyer	"
Beth Deal	Leadership Union - Union Co.
Wendy Gravely	Leadership Union - Union Co.

VISITOR REGISTRATION SHEET

House Judiciary I — May 23, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Carlo Dyatt	NCTA

VISITOR REGISTRATION SHEET

House Judiciary I — May 23, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Tom West	Poyner + Spruill LLP 3600 Glenwood Ave.
Michelle Frazier	NC Bar Ass'n
Alyn Berry	Civitas Institute
[illegible]	SBE
Caroline Howe	Lt. Gov's Office
Megan Glazier	Rep. Glazier's office
Emily Kirby	NCCN
Hilarey Hatoff	N.C.B.A.
Butch Gunnells	NC Beverage Ass'n.
Rob Schofield	NC Center for NP's
Bob Phillips	Common Cause NC

VISITOR REGISTRATION SHEET

House Judiciary I — **Name of Committee**

May 23, 2006 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Boyd Cauble	City of Charlotte
Cameron Contrizano	Daily Bulletin
Jeff Wolfe	Daily Bulletin
Jeff Mixon	Civitas Institute
Ben Matthas	NCSEA
John Phelps	NCLM
Ramsey Carpenter	TCG
Todd Barlow	NCATL
[illegible]	Capitol Group
Joe Grew	Intern for Grier Martin
Jill Shotzberger	ACLU

VISITOR REGISTRATION SHEET

House Judiciary I — May 23, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Rebekah Gancarovs	ACLU-NC
Alastair Macaulay	NCHBA
Betty Turner	Bank of America
BERRY JENKINS	CAROLINAS AGC
RON OTTAVIO	WACHOVIA
	RAMC
Nancy Thompson	MICIC
	NMRS
	Poyner & Spruill
Michael Howes	NCAE
	Electricities
John Boardman	Ashe Jones

VISITOR REGISTRATION SHEET

House Judiciary I — May 23, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Karen Johnson	Smith Anderson
Chris Hoyt	NC Coalition for Vehicle Choice
Susan Valaitis	Nationwide
Holly Epler	NCLHA
Brian Shank	AstraZeneca
Marlowe Foster	NCAHP
Bill Scoggin	KCLH
Marion Suitt	GSK
Stephanie Dorko	Charlotte Chamber
Tracy Kimbrell	Parker Poe
[illegible]	CHPA
V L McBride	NCDA

Attachment III

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 1

HOUSE BILL 1847

Short Title:	Treasurer Training.	(Public)
Sponsors:	Representatives Hackney, Howard, Ross (Primary Sponsors); Barnhart, Bell, Brubaker, Coates, Earle, Fisher, Gibson, Harrison, Jones, Justice, Lucas, Luebke, Martin, McLawhorn, Nye, Sauls, Setzer, Sherrill, Steen, West, Alexander, L. Allen, Bordsen, Dickson, Glazier, Harrell, Hill, Insko, Jeffus, Preston, Underhill, and Weiss.	
Referred to:	Judiciary I.	

May 10, 2006

A BILL TO BE ENTITLED

AN ACT TO STRENGTHEN POLITICAL COMMITTEE TREASURER TRAINING, AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON ETHICS AND GOVERNMENTAL REFORM.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 163-278.7(f) reads as rewritten:

"(f) ~~The State Board of Elections shall provide training for every~~Every treasurer of a political ~~committee, prior to the election in which the political committee is involved,~~ committee shall participate in training as to the duties of the ~~office.~~office within three months of appointment, and at least once every four years thereafter. The State Board of Elections shall provide ~~each treasurer with a CD-ROM, DVD, videotape, or other electronic document containing~~ the training as to the duties of the ~~office,~~office in person, through ~~and shall conduct~~ regional ~~seminars for in-person training.~~ seminars, and through interactive electronic means. The treasurer may choose to participate in training prior to each election in which the political committee is involved. All such training shall be free of charge to the treasurer."

SECTION 2. This act becomes effective July 1, 2006.

Attachment IV

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 1847
PROPOSED COMMITTEE SUBSTITUTE H1847-CSST-103 [v.5]

5/22/2006 6:12:05 PM

Short Title: Treasurer Training. (Public)

Sponsors:

Referred to:

May 10, 2006

A BILL TO BE ENTITLED

AN ACT TO STRENGTHEN POLITICAL COMMITTEE TREASURER TRAINING, AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON ETHICS AND GOVERNMENTAL REFORM.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 163-278.7 reads as rewritten:

"**§ 163-278.7. Appointment of political treasurers.**

(a) Each candidate, political committee, and referendum committee shall appoint a treasurer and, under verification, report the name and address of the treasurer to the Board. A candidate may appoint himself or any other individual, including any relative except his spouse, as his treasurer, and, upon failure to file report designating a treasurer, the candidate shall be concluded to have appointed himself as treasurer and shall be required to personally fulfill the duties and responsibilities imposed upon the appointed treasurer and subject to the penalties and sanctions hereinafter provided.

(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:

(1) The Name, Address and Purpose of the Candidate, Political Committee, or Referendum Committee. – When the political committee or referendum committee is created pursuant to G.S. 163-278.19(b), the name shall be or include the name of the corporation, insurance company, business entity, labor union or professional association whose officials, employees, or members established the committee. When the political committee or referendum committee is not created pursuant to G.S. 163-278.19(b), the name shall be or include the economic interest, if identifiable, principally represented by the committee's organizers or intended to be advanced by use of the committee's receipts.

(2) The names, addresses, and relationships of affiliated or connected candidates, political committees, referendum committees, political parties, or similar organizations;

(3) The territorial area, scope, or jurisdiction of the candidate, political committee, or referendum committee;

(4) The name, address, and position with the candidate or political committee of the custodian of books and accounts;

(5) The name and party affiliation of the candidate(s) whom the committee is supporting or opposing, and the office(s) involved;

(5a) The name of the referendum(s) which the referendum committee is supporting or opposing, and whether the committee is supporting or opposing the referendum;

(6) The name of the political committee or political party being supported or opposed if the committee is supporting the ticket of a particular political or political party;

(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.

(8) The name or names and address or addresses of any assistant treasurers appointed by the treasurer. Such assistant treasurers shall be authorized to act in the name of the ~~treasurer,~~ candidate, political committee, or referendum committee ~~who~~ and shall be fully responsible for any act or acts committed by ~~an~~ the assistant ~~treasurer,~~treasurer. ~~and the~~The treasurer shall be fully liable for any violation of this Article committed by any assistant treasurer; and

(9) Any other information which might be requested by the Board that deals with the campaign organization of the candidate or referendum committee.

(c) Any change in information previously submitted in a statement of organization shall be reported to the Board within a 10-day period following the change.

(d) A candidate, political committee or referendum committee may remove his or its treasurer. In case of the death, resignation or removal of his or its treasurer before compliance with all obligations of a treasurer under this Article, such candidate, political committee or referendum committee shall appoint a successor within 10 days

of the vacancy of such office, and certify the name and address of the successor in the manner provided in the case of an original appointment.

(e) Every treasurer of a referendum committee shall receive, prior to every election in which the referendum committee is involved, training from the State Board of Elections as to the duties of the office, including the requirements of G.S. 163-278.13(e1), provided that the treasurer may designate an employee or volunteer of the committee to receive the training.

(f) ~~The State Board of Elections shall provide training for every~~Every treasurer of a political ~~committee, prior to the election in which the political committee is involved,~~ committee shall participate in training as to the duties of the ~~office.~~office within three months of appointment, and at least once every four years thereafter. The State Board of Elections shall provide ~~each treasurer with a CD-ROM, DVD, videotape, or other electronic document containing~~ the training as to the duties of the ~~office,~~office in person, through ~~and shall conduct~~ regional ~~seminars for in-person training.~~ seminars, and through interactive electronic means. The treasurer may designate an assistant treasurer to participate in the training, if one is named under subdivision (b)(8) of this section. The treasurer may choose to participate in training prior to each election in which the political committee is involved. All such training shall be free of charge to the ~~treasurer.~~treasurer and assistant treasurer."

SECTION 2. G.S. 163-278.9 is amended by adding a new subsection to read:

"(k) All reports under this section must be filed by a treasurer or assistant treasurer who has completed all training as to the duties of the office required by G.S. 163-278.7(f). The treasurer or assistant treasurer signing the report shall be fully liable for any violation of this Article with respect to the report signed."

SECTION 3. This act becomes effective July 1, 2006.

Attachment V

HOUSE BILL 1847: Treasurer Training

BILL ANALYSIS

Committee:	House Judiciary I	**Date:**	May 22, 2006
Introduced by:	Reps. Hackney, Howard, Ross	**Summary by:**	R. Erika Churchill
Version:	PCS to First Edition H1847-CSST-103v.5		Committee Counsel

SUMMARY: The proposed committee substitute for House Bill 1847:

1. ***Requires all treasurers of political committees to participate in training as to the duties of the office within 3 months of appointment, and at least once every 4 years thereafter. The training would be either in person or electronically.***
2. ***Allows the treasurer to designate the assistant treasure to attend the training.***
3. ***Requires that only a treasurer or assistant treasurer who has completed the training may sign the reports due under Article 22A, and that if an assistant treasurer is the person signing, that assistant treasurer assumes responsibility for the contents of that report.***

CURRENT LAW: Current law requires that all treasurers of referendum committees must receive training from the State Board of Elections. The law specifically says the training must include instruction that referendum committees that have received a contribution from a corporation, labor union, insurance company, business entity or professional association may in turn may a contribution to another referendum committee, candidate or a political committee. The treasurer of the referendum committee may designate an employee or volunteer of the referendum committee to receive the training. G.S. 163-278.7(e).

Current law also provides that political committee treasurers must receive training as to the duties of the office, prior to the election in which the political committee is involved. The State Board is to provide the training by providing each treasurer with a CD-ROM, DVD, videotape or other electronic document containing training as to the duties of the office. The State Board is also required to conduct regional seminars for in-person training. There is no requirement that the treasurer attend an in-person training. All training is free of charge to the treasurer. G.S. 163-278.7(f).

BILL ANALYSIS: The proposed committee substitute would require all political committee treasurers to participate in training as to the duties of the office within 3 months of the appointment to the office, and at least once every 4 years thereafter. The political committee treasurer would have the option to participate in training prior to every election in which the political committee was involved.

The political committee treasurer would also have the option of designating the training to an assistant treasurer, if one has been officially named by the political committee. Only a treasurer or assistant treasurer who had completed the training would be able to sign the reports required by Article 22A of Chapter 163. The proposed committee substitute would establish liability for the assistant treasurer signing any such reports.

The State Board of Elections would provide the training, either in-person through regional seminars or by interactive electronic means. The training would remain free of charge to the treasurer and assistant treasurer.

EFFECTIVE DATE: July 1, 2006.

H1847e1-SMST-CSST-103v5

Attachment VI

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. PCS to 1st Edition

H. B. No. 1847 DATE May 23, 2006

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

COMMITTEE SUBSTITUTE ✓

(Rep.) Sen.) Starn

moves to amend the bill on page 3, lines 24-25

( ) WHICH CHANGES THE TITLE

by deleting the words :

" The treasurer or assistant treasurer signing the report shall be fully liable for any violation of this Article with respect to the report signed. " "

SIGNED Starn

ADOPTED ✓ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

Attachment VII

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative Hackney (Chair) for the Committee on JUDICIARY I.

☐ Committee Substitute for
HB 1847 A BILL TO BE ENTITLED AN ACT TO STRENGTHEN POLITICAL COMMITTEE TREASURER TRAINING, AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON ETHICS AND GOVERNMENTAL REFORM.

☒ With a favorable report as to the committee substitute bill, unfavorable as to the original bill.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

_____ Pursuant to Rule 36(b), the (House/Senate) committee substitute bill/(joint) resolution (No._____) is placed on the Calendar of _____. (The original bill resolution No._____) is placed on the Unfavorable Calendar.

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

Attachment VIII

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

H D

HOUSE BILL 1847
PROPOSED COMMITTEE SUBSTITUTE H1847-PCS10552-ST-103

Short Title: Treasurer Training. (Public)

Sponsors:

Referred to:

May 10, 2006

A BILL TO BE ENTITLED

AN ACT TO STRENGTHEN POLITICAL COMMITTEE TREASURER TRAINING, AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON ETHICS AND GOVERNMENTAL REFORM.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 163-278.7 reads as rewritten:

"**§ 163-278.7. Appointment of political treasurers.**

(a) Each candidate, political committee, and referendum committee shall appoint a treasurer and, under verification, report the name and address of the treasurer to the Board. A candidate may appoint himself or any other individual, including any relative except his spouse, as his treasurer, and, upon failure to file report designating a treasurer, the candidate shall be concluded to have appointed himself as treasurer and shall be required to personally fulfill the duties and responsibilities imposed upon the appointed treasurer and subject to the penalties and sanctions hereinafter provided.

(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:

(1) The Name, Address and Purpose of the Candidate, Political Committee, or Referendum Committee. – When the political committee or referendum committee is created pursuant to G.S. 163-278.19(b), the name shall be or include the name of the corporation, insurance company, business entity, labor union or professional association whose officials, employees, or members established the committee. When the political committee or referendum committee is not created pursuant to G.S. 163-278.19(b), the name shall be or include the economic interest, if identifiable, principally represented by the committee's organizers or intended to be advanced by use of the committee's receipts.

(2) The names, addresses, and relationships of affiliated or connected candidates, political committees, referendum committees, political parties, or similar organizations;

(3) The territorial area, scope, or jurisdiction of the candidate, political committee, or referendum committee;

(4) The name, address, and position with the candidate or political committee of the custodian of books and accounts;

(5) The name and party affiliation of the candidate(s) whom the committee is supporting or opposing, and the office(s) involved;

(5a) The name of the referendum(s) which the referendum committee is supporting or opposing, and whether the committee is supporting or opposing the referendum;

(6) The name of the political committee or political party being supported or opposed if the committee is supporting the ticket of a particular political or political party;

(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.

(8) The name or names and address or addresses of any assistant treasurers appointed by the treasurer. Such assistant treasurers shall be authorized to act in the name of the ~~treasurer,~~ candidate, political committee, or referendum committee ~~who~~ and shall be fully responsible for any act or acts committed by ~~an~~ the assistant ~~treasurer;~~treasurer. ~~and the~~The treasurer shall be fully liable for any violation of this Article committed by any assistant treasurer; and

(9) Any other information which might be requested by the Board that deals with the campaign organization of the candidate or referendum committee.

(c) Any change in information previously submitted in a statement of organization shall be reported to the Board within a 10-day period following the change.

(d) A candidate, political committee or referendum committee may remove his or its treasurer. In case of the death, resignation or removal of his or its treasurer before compliance with all obligations of a treasurer under this Article, such candidate, political committee or referendum committee shall appoint a successor within 10 days

of the vacancy of such office, and certify the name and address of the successor in the manner provided in the case of an original appointment.

(e) Every treasurer of a referendum committee shall receive, prior to every election in which the referendum committee is involved, training from the State Board of Elections as to the duties of the office, including the requirements of G.S. 163-278.13(e1), provided that the treasurer may designate an employee or volunteer of the committee to receive the training.

(f) ~~The State Board of Elections shall provide training for every~~Every treasurer of a political ~~committee, prior to the election in which the political committee is involved,~~ committee shall participate in training as to the duties of the ~~office.~~office within three months of appointment, and at least once every four years thereafter. The State Board of Elections shall provide ~~each treasurer with a CD-ROM, DVD, videotape, or other electronic document containing~~ the training as to the duties of the ~~office,~~office in person, through ~~and shall conduct~~ regional ~~seminars for in-person training.~~ seminars, and through interactive electronic means. The treasurer may designate an assistant treasurer to participate in the training, if one is named under subdivision (b)(8) of this section. The treasurer may choose to participate in training prior to each election in which the political committee is involved. All such training shall be free of charge to the ~~treasurer.~~treasurer and assistant treasurer."

SECTION 2. G.S. 163-278.9 is amended by adding a new subsection to read:

"(k) All reports under this section must be filed by a treasurer or assistant treasurer who has completed all training as to the duties of the office required by G.S. 163-278.7(f)."

SECTION 3. This act becomes effective October 1, 2006.

Attachment IX

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 1

HOUSE BILL 1849

Short Title:	Lobbying Reforms 2006.	(Public)
Sponsors:	Representatives Hackney, Howard, Gibson, Sherrill (Primary Sponsors); Barnhart, Bell, Brubaker, Coates, Earle, Eddins, Fisher, Harrison, Justice, Lucas, Luebke, Martin, McLawhorn, Nye, Ross, Sauls, Setzer, Steen, West, Alexander, L. Allen, Bordsen, Dickson, Glazier, Harrell, Hill, Insko, Jeffus, McGee, Moore, Spear, Underhill, Walend, and Weiss.	
Referred to:	Judiciary I.	

May 10, 2006

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LEGISLATIVE LOBBYING LAWS BY ESTABLISHING WAITING PERIODS BEFORE CERTAIN STATE OFFICERS MAY LOBBY; BY BARRING LOBBYISTS FROM CERTAIN APPOINTMENTS AND OTHER ACTIVITIES; BY BANNING CERTAIN GIFTS; BY ESTABLISHING QUARTERLY REPORTING OF EXPENDITURES WITH ADDITIONAL INTERIM REPORTING; BY EXPANDING THE COVERAGE OF THE LOBBYING LAWS TO INCLUDE EXECUTIVE BRANCH OFFICERS; BY LIMITING CAMPAIGN CONTRIBUTIONS BY REGISTERED LOBBYISTS; AND BY MAKING OTHER CONFORMING CHANGES, AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON ETHICS AND GOVERNMENTAL REFORM.

The General Assembly of North Carolina enacts:

SECTION 1. Article 9A of Chapter 120 of the General Statutes is amended to add a new section to read:

"**§ 120-47.7C. Prohibitions.**

(a) No member or former member of the General Assembly may be employed as a legislative lobbyist by a lobbyist's principal to lobby as defined in this Article within one year after the end of that member's service in the General Assembly.

(b) No person serving, or formerly having served, as Governor, a member of the Council of State, or a head of a principal State department listed in G.S. 143B-6 may be employed as a legislative lobbyist by a lobbyist's principal to lobby as defined in this Article within one year after separation from employment or leaving office.

(c) No individual registered as a legislative lobbyist shall serve as a campaign treasurer under Chapter 163 of the General Statutes as defined in G.S. 163-278.6(19) for

a campaign for election as a member of the General Assembly, Governor, or Council of State.

(d) A legislative lobbyist shall not be eligible for appointment by a State official to any body created under the laws of this State that has regulatory authority over the activities of a person that the legislative lobbyist currently represents or has represented within 60 days after the expiration of the legislative lobbyist's registration representing that person. Nothing herein shall be construed to prohibit appointment by any unit of local government.

(e) No legislative lobbyist or another acting on the legislative lobbyist's behalf shall permit a covered person, legislative employee, or that person's immediate family member to use the cash or credit of the lobbyist for the purpose of lobbying unless the lobbyist is in attendance at the time of the expenditure."

SECTION 2. Article 9A of Chapter 120 of the General Statutes is amended to add a new section to read:

"**§ 120-47.7B. Powers and duties of the Secretary of State.**

(a) The Secretary of State shall perform systematic reviews of reports required to be filed under G.S. 120-47.6 and G.S. 120-47.7 on a regular basis to assure complete and timely disclosure of expenditures.

(b) The Secretary of State may petition the Superior Court of Wake County for the approval to issue subpoenas and subpoenas duces tecum as necessary to conduct investigations of violations of this Article. The court shall authorize subpoenas under this subsection when the court determines they are necessary for the enforcement of this Article. Subpoenas issued pursuant to this subsection shall be enforceable by the court through contempt powers. Venue shall be with the Superior Court of Wake County for any nonresident person, or that person's agent, who makes a reportable expenditure under this Article, and personal jurisdiction may be asserted under G.S. 1-75.4.

(c) Complaints of violations of this Article and all other records accumulated in conjunction with the investigation of these complaints shall be considered records of criminal investigations under G.S. 132-1.4."

SECTION 3. Article 9A of Chapter 120 of the General Statutes reads as rewritten:

"Article 9A.

"~~Legislative Branch~~ Lobbying.

"**§ 120-47.1. Definitions.**

~~The following definitions shall apply in this Article:~~As used in this Article, the following terms mean:

(1) ~~The term "covered person" means a legislator, the Governor, or the Lieutenant Governor.~~Covered person. – A legislator, legislative employee, or executive branch officer.

(1a) Advocacy day. – A day that any lobbyist's principal collectively assembles its membership or employees and advocates for legislative or executive action.

(1b) Constitutional officers of the State. – Officers whose offices are established in Article III of the Constitution.

(1c) Executive action. – Any decision, including administration, approval, disapproval, preparation, recommendation, the rendering of advice, and investigation, made or contemplated in any proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, investigation, charge, or rule making.

(1d) Executive branch officer. – All of the following:

a. Constitutional officers of the State, persons elected or appointed as a Constitutional officer of the State prior to taking office, or a person having filed a notice of candidacy for such office under G.S. 163-106 or Article 11 of Chapter 163 of the General Statutes.

b. Employees of the Office of the Governor.

c. Heads of all principal State departments, as set forth in G.S. 143B-6, who are appointed by the Governor.

d. The chief deputy or chief administrative assistant of each person designated under sub-subdivisions a. and c. of this subdivision.

e. Confidential assistants and secretaries as defined in G.S. 126-5(c)(2), to persons designated under sub-subdivisions a., c., and d. of this subdivision.

f. Employees in exempt positions as defined in G.S. 126-5(b) and employees in exempt positions designated in accordance with G.S. 126-5(d)(1), (2), or (2a), and confidential secretaries to these individuals.

g. Any other employees or appointees in the principal State departments as may be designated by the Governor to the extent that the designation does not conflict with the State Personnel Act.

h. All voting members of boards, including ex officio members and members serving by executive, legislative, or judicial branch appointment.

i. For The University of North Carolina, the voting members of the Board of Governors of The University of North Carolina, the president, the vice-presidents, and the chancellors, the vice-chancellors, and voting members of the boards of trustees of the constituent institutions.

j. For the System of Community Colleges, the voting members of the State Board of Community Colleges, the President and chief financial officer of the System of Community Colleges, the president, chief financial officer and chief administrative officer of each community college, and voting members of the boards of trustees of each community college.

~~(1a)~~(1e) ~~The term "expenditure" means any~~ Expenditure. – Any advance, contribution, conveyance, deposit, distribution, payment, gift, retainer,

fee, salary, honorarium, reimbursement, loan, pledge or thing of value greater than ten dollars ~~($10.00),~~($10.00) per single calendar day or a contract, agreement, promise or other obligation whether or not legally enforceable, that directly or indirectly is made to, at the request of, for the benefit of, or on the behalf of a covered ~~person, legislative employee,~~ person or that person's immediate family member.

(1f) Extended family. – Spouse, descendant, ascendant, or sibling of the covered person or, descendant, ascendant, or sibling of the spouse of the covered person.

~~(1b) The term "executive lobbyist" means a lobbyist registered pursuant to Article 4C of Chapter 147 of the General Statutes.~~

(2),(3) Repealed by Session Laws 1991, c. 740, s. 1.1.

(2a) Gift. – Anything of value without valuable consideration.

(3a) ~~The term "immediate family member" means spouse, descendant, or ascendant.~~Immediate family member. – An unemancipated child of the covered person residing in the household, and the covered person's spouse, if not legally separated.

(4) ~~The term "legislative action" means the~~Legislative action. – The preparation, research, drafting, introduction, consideration, modification, amendment, approval, passage, enactment, tabling, postponement, defeat, or rejection of a bill, resolution, amendment, motion, report, nomination, appointment, or other matter, whether or not the matter is identified by an official title, general title, or other specific reference, by the legislature or by a member or employee of the legislature acting or purporting to act in an official capacity. It also includes the consideration of any bill by the Governor for the Governor's approval or veto under Article II, Section 22(1) of the Constitution or for the Governor to allow the bill to become law under Article II, Section 22(7) of the Constitution.

(4a) ~~The term "legislative employee" means employees~~Legislative employee. – Employees and officers of the General Assembly.

(4b) ~~The term "legislative liaison personnel" means any~~Liaison personnel. – Any State employee or officer whose principal duties, in practice or as set forth in that person's job description, include lobbying the General ~~Assembly.~~Assembly or executive branch officers.

~~(4c) The term "legislative lobbyist" means any lobbyist for or against legislative action.~~

(4d) ~~The term "legislator" means a~~Legislator. – A member or presiding officer of the General ~~Assembly or~~Assembly, a person elected or appointed a member or presiding officer of the General Assembly prior to taking ~~office~~office, or a person having filed a notice of candidacy for such office under G.S. 163-106 or Article 11 of Chapter 163 of the General Statutes.

(5) ~~The term "lobbying" means any~~Lobbying. – Any of the following:

a. Influencing or attempting to influence legislative or executive action, or both, through direct communication or activities with a covered ~~person, legislative employee,~~person or that person's immediate family member.

b. Solicitation of others by ~~legislative~~ lobbyists or lobbyists' principals to influence legislative or executive ~~action.~~action, or both.

c. Developing goodwill through communications or activities, including the building of relationships, with a covered ~~person, legislative employee,~~ person or that person's immediate family member with the intention of influencing current or future legislative action, but does not include communications or activities with a covered ~~person, legislative employee,~~person or that person's immediate family member in a business, civic, religious, fraternal, or commercial relationship which is not connected to legislative or executive ~~action.~~action, or both.

(6) ~~The term "lobbyist" means an~~Lobbyist. – An individual who meets any of the following criteria:

a. Is employed and receives compensation, or who contracts for economic consideration, for the purpose of lobbying.

b. Represents another person and receives compensation for the purpose of lobbying.

~~c. Is legislative liaison personnel.~~

The term "lobbyist" shall not include those individuals who are specifically exempted from this Article by G.S. 120-47.8. For the purpose of determining whether an individual is a lobbyist under this subdivision, reimbursement of actual travel and subsistence expenses shall not be considered compensation; provided, however, that reimbursement in the ordinary course of business of these expenses shall be considered compensation if a significant part of the individual's duties involve lobbying before the General ~~Assembly.~~Assembly or executive branch officers.

(7) ~~The terms "lobbyist's principal" and "principal" mean the~~Lobbyist principal and principal. – The person on whose behalf the ~~legislative~~ lobbyist lobbies. In the case where a lobbyist is compensated by a law firm, consulting firm, or other entity retained by a person for ~~legislative~~ lobbying, the principal is the person whose interests the lobbyist represents in lobbying. In the case of a lobbyist employed or retained by an association or other organization, the lobbyist's principal is the association or other organization, not the members of the association or other organization.

(7a) ~~The term "news medium" means mainstream~~News medium. – Mainstream media providers whose sole purpose is to report events and that does not involve research or advocacy.

(8) ~~The term "person" means any~~Person. – Any individual, firm, partnership, committee, association, corporation, business entity, or any other organization or group of persons which has an independent legal existence.

(8a) Public event. – Either of the following:

a. An organized gathering of individuals open to the general public or to which a legislator or legislative employee is invited along with the entire membership of the House, Senate, a committee, a subcommittee, a county legislative delegation, a joint committee or legislative caucus and to which at least 10 employees or members of the principal actually attend.

b. An organized gathering of individuals open to the general public or to which at least ten executive branch officers are invited to attend and at least 10 employees or members of the principal actually attend.

(9) ~~The General Assembly is in "regular session" from the~~ In regular session. – The date set by law or resolution that the General Assembly convenes until the General Assembly either:

a. Adjourns sine die; or

b. Recesses or adjourns for more than 10 days.

§ 120-47.2. Registration procedure.

(a) A ~~legislative~~ lobbyist shall file a registration statement with the Secretary of State in a manner prescribed by the Secretary before engaging in any lobbying. It shall be unlawful for a person to lobby without registering unless exempted by this Article. A lobbyist shall file a separate registration statement for each principal the lobbyist represents. ~~The registration shall indicate whether it is registration as a legislative lobbyist, executive lobbyist, or both, and a separate registration fee shall be paid for each separate type of registration.~~

(b) The form of the registration shall be prescribed by the Secretary of State and shall include the registrant's full name, firm, complete address and telephone number; the registrant's place of business; the full name, complete address and telephone number of each person by whom the registrant is employed or retained; and a general description of the matters on which the registrant expects to act as a ~~legislative~~ lobbyist. The Secretary of State shall make available as soon as practicable the registrations of the lobbyists and lobbyists' principals in an electronic, searchable format.

(c) Each ~~legislative~~ lobbyist shall file an amended registration form with the Secretary of State no later than 10 business days after any change in the information supplied in the ~~legislative~~ lobbyist's last registration under subsection (b). Each supplementary registration shall include a complete statement of the information that has changed.

(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~~ Assembly, Constitutional officers of the State, the head of each principal department of the Executive Branch, and the State Legislative Library a list of all persons who have

registered as ~~executive or legislative~~ lobbyists and whom they represent. ~~Within 20 days after the beginning of the term of a Governor, the Secretary of State shall furnish the Governor, each other member of the Council of State, the head of each principal department of the Executive Branch, and the State Legislative Library a list of all persons who have registered as executive or legislative lobbyists and whom they represent.~~ A supplemental list of ~~legislative~~ lobbyists shall be furnished periodically each 20 days ~~thereafter as the session progresses.~~ while the General Assembly is in session, and every 60 days thereafter. ~~A supplemental list of executive lobbyists shall be furnished periodically each 60 days thereafter.~~ For each special session of the General Assembly, a supplemental list of ~~legislative~~ lobbyists shall be furnished to the State Legislative Library. All lists required by this section may be furnished electronically.

(e) Each registration statement of a ~~legislative~~ lobbyist required under this Article shall be effective from the date of filing until January 1 of the following year. The ~~legislative~~ lobbyist shall file a new registration statement after that date, and the applicable fee shall be due and payable.

"**§ 120-47.3. Registration fee.**

A fee of one hundred dollars ($100.00) is due and payable to the Secretary of State by either the lobbyist or the lobbyist's principal at the time of each lobbyist registration. Fees so collected shall be deposited in the General Fund of the State. The Secretary of State shall allow fees required under this section to be paid electronically but may not require the fees to be paid electronically. The Secretary of State shall adopt rules providing for the waiver or reduction of the fees required by this section in cases of hardship.

"**§ 120-47.4. Authorization from lobbyist's principal; fee from principal.**

(a) Each ~~legislative~~ lobbyist or lobbyist's principal shall file with the Secretary of State within 10 business days after the ~~legislative~~ lobbyist's registration a written authorization signed by the lobbyist's principal authorizing the lobbyist to represent the principal.

(b) The form of the authorization shall be prescribed by the Secretary of State and shall include the lobbyist's principal's full name, complete address and telephone number, name and title of the official signing for the lobbyist's principal, and the name of each lobbyist registered to represent the lobbyist's principal. The Secretary of State shall make available as soon as practicable the authorization of the lobbyists' principals in an electronic, searchable format.

(c) An amended authorization shall be filed with the Secretary of State no later than 10 days after any change in the information supplied for the lobbyist's principal on the previous authorization. Each supplementary authorization shall include a complete statement of the information that has changed.

(d) Except as provided for in subsection (e) of this section, a fee of one hundred dollars ($100.00) is due and payable to the Secretary of State at the time the lobbyist's principal's first authorization statement is filed each calendar year for a ~~legislative~~ lobbyist. ~~The fee for the legislative lobbyist's authorization shall be seventy-five dollars ($75.00) if an authorization for the principal to be represented by an executive lobbyist~~

~~is filed at the same time~~. ~~No additional fee is due for additional authorizations filed for legislative lobbyists.~~

(e) The Secretary of State shall adopt rules providing for the waiver or reduction of the fees required by ~~fee in~~ subsection (d) of this section. The rules shall provide that the fees be reduced to a total of twenty-five dollars ($25.00) if the lobbyist's principal had annual revenues in its most recent fiscal year of three hundred thousand dollars ($300,000) or less and is represented by no more than two different lobbyists. ~~This reduced fee covers authorizations filed for the principal's legislative and executive lobbyists.~~

"§ 120-47.5. Contingency lobbying fees and election influence prohibited.

(a) No person shall act as a ~~legislative~~ lobbyist for compensation that is dependent upon the result or outcome of any legislative action.

(b) No ~~legislative lobbyist or legislative lobbyist's principal~~ person shall attempt to influence the action of any covered person by the promise of financial support of the covered person's candidacy, or by threat of financial support in opposition to the covered person's candidacy in any future election.

"§ 120-47.5A. Certain gifts by lobbyists and lobbyist's principals prohibited; ~~Exemptions and inclusions for reporting purposes.~~exemptions.

(a) No lobbyist or lobbyist's principal may give a gift to a covered person.

~~(a)~~(a1) ~~For purposes of G.S. 120-47.6 and G.S. 120-47.7, the following expenditures need not be reported:~~Subsection (a) of this section shall not apply to:

~~(1) Gifts between an immediate family member or person who is the stepchild, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, or members of the household of the covered person or legislative employee~~

~~(2) Lawful campaign contributions.~~

~~(3) Commercially available loans made on terms not more favorable than generally available to the public in the normal course of business if not made for the purpose of lobbying.~~

~~(4) Contractual arrangements or business relationships or arrangements made in the normal course of business if not made for the purpose of lobbying.~~

~~(5) The cost of attendance or participation provided by the sponsoring entity of lodging, and of food and beverages consumed, at events sponsored by or in conjunction with a civic, charitable, community, or diplomatic event if the activity or event does not last longer than three hours.~~

~~(6) Academic scholarships made on terms not more favorable than scholarships generally available to the public.~~

(1) Meals and beverages for immediate consumption in connection with public events.

(2) Nonmonetary items, other than food or beverages, with a value not to exceed ten dollars ($10.00) provided by a single donor during a single calendar day.

(3) Informational materials relevant to the duties of the covered person.

(4) Reasonable actual expenses for food, registration, travel, and lodging of the covered person for a meeting at which the covered person participates in a panel or speaking engagement at the meeting related to the public servant's duties and when expenses are incurred on the actual day of participation in the engagement or incurred within a 24-hour time period before or after the engagement.

(5) Items or services received in connection with a state, national, or regional organization in which the covered person or the covered person's agency is a member.

(6) Items and services received relating to an educational conference or meeting.

(7) A plaque or similar nonmonetary memento recognizing individual services in a field or specialty or to a charitable cause.

(8) Gifts accepted on behalf of the State.

(9) Anything generally available or distributed to the general public or all other State employees.

(10) Anything for which fair market value is paid.

(11) Commercially available loans made on terms not more favorable than generally available to the public in the normal course of business if not made for the purpose of lobbying.

(12) Contractual arrangements or business relationships or arrangements made in the normal course of business if not made for the purpose of lobbying.

(13) Academic scholarships made on terms not more favorable than scholarships generally available to the public.

(14) Political contributions properly received and reported as required under Article 22A of Chapter 163 of the General Statutes.

(15) Gifts from the covered person's extended family, or a member of the same household of the covered person, or gifts received in conjunction with a marriage, birth, adoption, or death.

(16) Things of monetary value given to a executive branch officer valued in excess of ten dollars ($10.00) where the thing of monetary value is entertainment or related expenses associated with the public business of industry recruitment, promotion of international trade, or the promotion of travel and tourism, and the executive branch officer is responsible for conducting the business on behalf of the State, provided all the following conditions apply:

a. The executive branch officer did not solicit the thing of value, and the executive branch officer did not accept the thing of value in the performance of the executive branch officer's official duties.

b. The executive branch officer reports electronically to the Commission within 30 days of receipt of the thing of value. The

report shall include a description and value of the thing of value and a description how the thing of value contributed to the public business of industry recruitment, promotion of international trade, or the promotion of travel and tourism. This report shall be posted to the Commission's public Web site.

c. A tangible thing of value in excess of ten dollars ($10.00), other than meals or beverages, shall be turned over as State property to the Department of Commerce within 30 days of receipt.

(17) Things of monetary value of personal property valued at less than one hundred dollars ($100.00) given to an executive branch officer in the commission of the executive branch officer's official duties if the gift is given to the executive branch officer as a personal gift in another country as part of an overseas trade mission, and the giving and receiving of such personal gifts is considered a customary protocol in the other country.

(b) For purposes of G.S. 120-47.6 and G.S. 120-47.7, all expenditures made for the purpose of lobbying shall be reported, including the following:

(1) Expenditures benefiting or made on behalf of a covered person, ~~a legislative employee,~~ or those persons' immediate family members, in the regular course of that person's ~~nonlegislative~~ employment.

(2) Contractual arrangements or direct business relationships between a ~~legislative~~ lobbyist or ~~legislative~~ lobbyist's principal and a covered person, ~~legislative employee,~~ or that person's immediate family member, in effect during the reporting period or the previous 12 months.

(3) Expenditures reimbursed to a ~~legislative~~ lobbyist in the ordinary course of business by the lobbyist's principal or other employer. Expenditures reimbursed by the lobbyist's principal or other employer are reported only by the lobbyist.

(4) Expenditures for items exempted by subsection (a1) of this section.

~~(c) For reporting purposes of G.S. 120-47.6 and G.S. 120-47.7, legislative lobbying with respect to only the legislative actions of the Governor and Lieutenant Governor shall be reported.~~

(d) The offering or giving of a gift in compliance with this Article without corrupt intent shall not constitute a violation of G.S. 14-217 or G.S. 14-218.

"**§ 120-47.6. Statements of ~~legislative~~ lobbyist's lobbying expenditures required.**

(a) Each ~~legislative~~ lobbyist shall file ~~monthly~~ quarterly expenditure reports under oath with the Secretary of State, in a manner prescribed by the Secretary of State, which may include electronic reports, with respect to each lobbyist's ~~principal, while the General Assembly is in regular session, and quarterly thereafter.~~ principal. The expenditure report shall include all expenditures during the reporting period and shall be due 10 business days after the end of the reporting period. The ~~legislative~~ lobbyist shall file ~~expense~~ expenditure reports whether or not expenditures are made.

(a1) In addition to the reports required by subsection (a) of this section, each lobbyist incurring expenditures with respect to lobbying legislators and legislative employees shall file a monthly expenditure report while the General Assembly is in regular session. The monthly expenditure report shall contain information required by this section with respect to all lobbying of legislators and legislative employees, and is due within 10 business days of the end of the month. The information on the monthly expenditure report shall also be included in each quarterly report required by subsection (a) of this section.

(b) Each expenditure report shall set forth the fair market ~~value,~~value or face value if shown, date, a description of the expenditure, name and address of the payee, or beneficiary, and name of any covered person, ~~legislative employee,~~ or that person's immediate family member benefiting from the expenditure. Such expenditures shall be reported using the following categories:

(1) Transportation and lodging.
(2) Entertainment, food, and beverages.
(3) Meetings and events.
(4) Gifts.
(5) Other expenditures.
(6) Solicitation of others to lobby, including if such expenditures are incurred in connection or in concert with other reportable expenditures.

~~In addition, expenses for the solicitation of others to lobby, whether or not a covered person, legislative employee, or family member is affected, shall be reportable if such expenses are incurred in connection, or in concert, with other expenditures reportable under this subsection.~~

(c) All reports shall be in the form prescribed by the Secretary of State and shall be open to public inspection upon filing. When more than 15 covered persons benefit from an expenditure, no names of individuals need be reported provided that the report identifies the approximate number of covered persons benefiting and, with particularity, the basis for their selection, including the name of the legislative body, committee, caucus, or other group whose membership list is a matter of public record in accordance with G.S. 132-1 or including a description of the group that clearly distinguishes its purpose or composition from the general membership of the General Assembly. The approximate number of ~~legislative employees and~~ immediate family members of covered persons ~~and legislative employees~~ who benefited from the expenditure shall be listed separately.

(d) When a ~~legislative~~ lobbyist fails to file an expenditure report as required in this section, the Secretary of State shall send a certified or registered letter advising the ~~legislative~~ lobbyist of the delinquency and the penalties provided by law. Within 20 days of the receipt of the letter, the ~~legislative~~ lobbyist shall deliver or post by United States mail to the Secretary of State the required report and an additional late filing fee in an amount equal to the late filing fee under G.S. 163-278.34(a)(2).

(e) Filing of the required report and payment of the additional fee within the time extended shall constitute compliance with this section. Failure to file an expenditure

report in one of the manners prescribed in this section shall result in revocation of any and all registrations of a legislative lobbyist under this Article. No ~~legislative~~ lobbyist may register or reregister under this Article until the ~~legislative~~ lobbyist has fully complied with this section.

(f) Appeal of a decision by the Secretary of State under this section shall be in accordance with Article 3 of Chapter 150B of the General Statutes.

(g) The Secretary of State may adopt rules to facilitate complete and timely disclosure of expenditures, including the format of reports and additional categories of information, and to protect the addresses of payees under protective order issued pursuant to Chapter 50B of the General Statutes or participating in the Address Confidentiality Program pursuant to Chapter 15C of the General Statutes. The Secretary of State shall not impose any penalties or late filing fees upon a ~~legislative~~ lobbyist for subsequent failures to comply with the requirements of this section if the Secretary of State failed to provide ~~to~~ the lobbyist with required notifications of the initial violation. This provision shall not apply to a failure by the lobbyist to file an expenditure report in a timely manner.

"**§ 120-47.7. Statements of ~~legislative~~ lobbyist's principal lobbying expenditures required.**

(a) Each ~~legislative~~ lobbyist's principal shall file ~~monthly~~ quarterly expenditure reports under oath with the Secretary of State, in a manner prescribed by the Secretary of State, which may include electronic ~~reports, while the General Assembly is in regular session, and quarterly thereafter.~~reports. The expenditure report shall include all expenditures during the reporting period and shall be due 10 business days after the end of the reporting period. The lobbyist's principal shall file the expenditure reports whether or not expenditures are made during a reporting period.

(a1) In addition to the reports required by subsection (a) of this section, each lobbyist's principal incurring expenditures with respect to lobbying legislators and legislative employees shall file a monthly expenditure report while the General Assembly is in regular session. The monthly expenditure report shall contain information required by this section with respect to all lobbying of legislators and legislative employees, and is due within 10 business days of the end of the month. The information on the monthly expenditure report shall also be included in each quarterly report required by subsection (a) of this section.

(b) Each expenditure report shall set forth the fair market ~~value,~~value or face value if shown, date, a description of the expenditure, name and address of the payee, or beneficiary, and name of any covered person, ~~legislative employee,~~ or that person's immediate family member affected by the expenditure. Such expenditures shall be reported using the following categories:

(1) Transportation and lodging.
(2) Entertainment, food, and beverages.
(3) Meetings and events.
(4) Gifts.
(5) Other expenditures.

(6) Solicitation of others to lobby, including if such expenditures are incurred in connection or in concert with other expenditures reportable under this Article.

(7) Compensation paid to all lobbyists during the reporting period. If a legislative lobbyist is a full-time employee of the lobbyist's principal, or is compensated by means of an annual fee or retainer, the lobbyist's principal shall estimate and report the portion of the salary, fee, or retainer that compensates for lobbying.

(8) Expenditures reimbursed or paid to lobbyists for lobbying that are not reported on the lobbyist's report, with an itemized description of those expenditures.

~~In addition, expenses for the solicitation of others to lobby, whether or not a covered person, legislative employee, or family member is affected, shall be reportable if such expenses are incurred in connection, or in concert, with other expenditures reportable under this subsection.~~

~~In addition, the compensation paid or agreed to be paid to all legislative lobbyists shall be reported, whether or not a covered person, legislative employee, or family member is affected. If a legislative lobbyist is a full-time employee of the lobbyist's principal, or is compensated by means of an annual fee or retainer, the lobbyist's principal shall estimate and report the portion of the salary, fee, or retainer that compensates for lobbying. The lobbyist's principal's expenditure report shall include an itemized description of all expenditures reimbursed or paid to legislative lobbyists for lobbying that are not reported on the legislative lobbyists' reports.~~

(c) All reports shall be in the form prescribed by the Secretary of State and open to public inspection upon filing. When more than 15 covered persons benefit from an expenditure, no names of individuals need be reported provided that the report identifies the approximate number of covered persons benefiting and, with particularity, the basis for their selection, including the name of the legislative body, committee, caucus, or other group whose membership list is a matter of public record in accordance with G.S. 132-1 or including a description of the group that clearly distinguishes its purpose or composition from the general membership of the General Assembly. The approximate number of ~~legislative employees and~~ immediate family members of covered persons ~~and legislative employees~~ who benefited from the expenditure shall be listed separately.

(d) When a lobbyist's principal fails to file an expenditure report as required in this section, the Secretary of State shall send a certified or registered letter advising the lobbyist's principal of the delinquency and the penalties provided by law. Within 20 days of the receipt of the letter, the lobbyist's principal shall deliver or post by United States mail to the Secretary of State the required report and a late filing fee in an amount equal to the late filing fee under G.S. 163-278.34(a)(2).

(e) Filing of the required report and payment of the late fee within the time extended shall constitute compliance with this section. Failure to file an expenditure report in one of the manners prescribed in this section shall result in revocation of any and all registrations of a lobbyist's principal under this Article. No lobbyist's principal

may register or reregister under this Article until the lobbyist's principal has fully complied with this section.

(f) Appeal of a decision by the Secretary of State under this section shall be in accordance with Article 3 of Chapter 150B of the General Statutes.

(g) The Secretary of State may adopt rules to facilitate complete and timely disclosure of expenditures, including the format of reports and additional categories of information, and to protect the addresses of payees under protective order issued pursuant to Chapter 50B of the General Statutes or participating in the Address Confidentiality Program pursuant to Chapter 15C of the General Statutes. The Secretary of State shall not impose any penalties or late filing fees upon a principal for subsequent failures to comply with the requirements of this section if the Secretary of State failed to provide to the lobbyist's principal with required notifications of the initial violation. This provision shall not apply to a failure by the principal to file an expenditure report in a timely manner.

"**§ 120-47.7A.** Reserved for future codification purposes.

"**§ 120-47.7B. Powers and duties of the Secretary of State.**

(a) The Secretary of State shall perform systematic reviews of reports required to be filed under G.S. 120-47.6 and G.S. 120-47.7 on a regular basis to assure complete and timely disclosure of allowable expenditures.

(b) The Secretary of State may petition the Superior Court of Wake County for the approval to issue subpoenas and subpoenas duces tecum as necessary to conduct investigations of violations of this Article. The court shall authorize subpoenas under this subsection when the court determines they are necessary for the enforcement of this Article. Subpoenas issued pursuant to this subsection shall be enforceable by the court through contempt powers. Venue shall be with the Superior Court of Wake County for any nonresident person, or that person's agent, who makes a reportable expenditure under this Article, and personal jurisdiction may be asserted under G.S. 1-75.4.

(c) Complaints of violations of this Article and all other records accumulated in conjunction with the investigation of these complaints shall be considered records of criminal investigations under G.S. 132-1.4.

"**§ 120-47.7C. Prohibitions.**

(a) No member or former member of the General Assembly may be employed as ~~an executive or legislative~~ a lobbyist by a lobbyist's principal to lobby as defined in this Article ~~or Article 4C of Chapter 147 of the General Statutes~~ within ~~six months~~one year after the end of that member's service in the General Assembly.

(b) No person serving as ~~Governor, as a member of the Council of State,~~a Constitutional officer of the State or as a head of a principal State department listed in G.S. 143B-6 may be employed as ~~an executive or legislative~~a lobbyist by a lobbyist's principal to lobby as defined in this Article ~~or Article 4C of Chapter 147 of the General Statutes~~ within ~~six months~~one year after separation from employment or leaving office.

(c) No individual registered as a ~~legislative~~ lobbyist shall serve as a campaign treasurer ~~under Chapter 163 of the General Statutes~~ as defined in G.S. 163-278.6(19) for a campaign for election as a member of the General ~~Assembly.~~Assembly or a Constitutional officer of the State.

(d) A ~~legislative or executive~~ lobbyist shall not be eligible for appointment by a State official to any body created under the laws of this State that has regulatory authority over the activities of a person that the lobbyist currently represents or has represented within 60 days after the expiration of the lobbyist's registration representing that person. Nothing herein shall be construed to prohibit appointment by any unit of local government.

(e) No ~~legislative or executive~~ lobbyist or another acting on the lobbyist's behalf shall permit a covered person ~~person, legislative employee, executive branch officer,~~ or that person's immediate family member, to use the cash or credit of the lobbyist for the purpose of lobbying unless the lobbyist is in attendance at the time of the expenditure.

"§ 120-47.8. Persons exempted from provisions of Article.

Except as otherwise provided in this Article, the provisions of this Article shall not be construed to apply to any of the ~~following:~~following lobbying activities:

(1) An individual solely engaged in expressing a personal opinion or stating facts or recommendations on legislative matters to members of the General Assembly and not acting as a legislative lobbyist.

(2) A person appearing before a ~~legislative committee~~ committee, commission, board, council, or other collective body whose membership includes one or more covered persons at the invitation or request of the committee or a member thereof and who engages in no further activities as a legislative lobbyist.

(3) a. A duly elected or appointed official or employee of the State, the United States, a county, municipality, school district or other governmental agency, when appearing solely in connection with matters pertaining to the office and public duties.

b. Notwithstanding the persons exempted in this Article, the ~~Governor, Council of State,~~ Constitutional officers of the State and all appointed heads of State departments, agencies and institutions, shall designate all authorized official ~~legislative~~ liaison personnel and shall file and maintain current lists of designated ~~legislative~~ liaison personnel with the Secretary of State.

(4) A person performing professional services in drafting ~~bills~~ bills, or in advising and rendering opinions to clients, or to covered persons on behalf of clients, as to the construction and effect of proposed or pending ~~legislation~~ legislative or executive action where the professional services are not otherwise connected with the legislative or executive action.

(5) A person who owns, publishes or is employed by any news medium while engaged in the acquisition or dissemination of news on behalf of the news medium.

(6) Repealed by Session Laws 1991, c. 740, s. 1.1.

(7) Covered ~~persons and legislative employees.~~persons while acting in their official capacity.

(8) A person responding to inquiries from a ~~member of the General Assembly or a legislative employee,~~covered person and who engages in no further activities as a ~~legislative~~ lobbyist in connection with that or any other legislative ~~matter.~~or executive action.

(9) An ~~employee who represents the employer's interests in action for no more than three hours in a quarter, provided that neither the employee nor the employer makes any expenditure as defined in G.S. 120-47.1.~~ individual while participating in an advocacy day.

(10) A person appearing before an executive branch agency or department on behalf of another person, on an individual application for a license or permit, or a disciplinary action on a license or permit.

(11) A person appearing before an executive branch officer on behalf of another person with respect to a proposed sale or lease of real property, goods or services to the State, or construction of property by the State.

(12) A person appearing before an executive branch agency or department or an executive branch officer on behalf of another person or entity in connection with an application for a grant, loan, determination or eligibility, or certification.

"**§ 120-47.8A. Expenditures made by persons exempted or not covered by this Article.**

(a) If a covered person ~~or a legislative employee~~ accepts an expenditure made for the purpose of lobbying valued over two hundred dollars ($200.00) from a person or group of persons acting together, exempted or not otherwise covered by this Article, the person, or group of persons, making the expenditure shall report the date, a description of the expenditure, the name and address of the person, or group of persons, making the expenditure, the name of the covered person ~~or legislative employee~~ accepting the expenditure, and the estimated fair market value of the expenditure.

(b) If the person making the expenditure in subsection (a) of this section is outside North Carolina, and the covered person ~~or legislative employee~~ accepting the expenditure is also outside North Carolina at the time the person accepts the expenditure, then the person accepting the expenditure shall be responsible for filing the report using available information.

(c) If a covered person ~~or a legislative employee~~ accepts a scholarship valued over two hundred dollars ($200.00) from a person, or group of persons, acting together, exempted or not covered by this Article, the person, or group of persons, granting the scholarship shall report the date of the scholarship, a description of the event involved, the name and address of the person, or group of persons, granting the scholarship, the name of the covered person ~~or legislative employee~~ accepting the scholarship, and the estimated fair market value.

(d) If the person granting the scholarship in subsection (c) of this section is outside North Carolina, the covered person ~~or legislative employee~~ accepting the scholarship shall be responsible for filing the report.

(e) This section shall not apply to any of the following:

(1) Lawful campaign ~~contributions.~~ contributions properly received and reported as required under Article 22A of Chapter 163 of the General Statutes.

(2) Any gift from ~~a~~ an extended family member to a covered person. ~~person or legislative employee.~~

(3) Gifts associated primarily with the covered ~~person's, legislative employee's,~~ person's or that person's immediate family member's ~~nonlegislative~~ employment.

(4) Gifts, other than food, beverages, travel, and lodging, which are received from a person who is a citizen of a country other than the United States or a state other than North Carolina and given during a ceremonial presentation or as a custom.

(5) A thing of value that is paid for by the State.

(f) Reports required by this section shall be filed within 10 business days after the end of the quarter in which the expenditure was made, with the Secretary of State in a manner prescribed by the Secretary of State, which may include electronic reports.

"**§ 120-47.8B. Advocacy Day.**

(a) No lobbyist's principal may conduct more than one advocacy day per calendar year.

(b) All advocacy days to lobby the General Assembly must be scheduled through the Legislative Services Office.

(c) All advocacy days to lobby executive branch officers must be scheduled through the Governor's Office.

(d) All lobbyists' principals conducting an advocacy day shall comply with this Article while conducting the advocacy day.

"**§ 120-47.9. Punishment for violation.**

(a) Whoever willfully violates any provision of this Article shall be guilty of a Class 1 misdemeanor. In addition, no ~~legislative~~ lobbyist who is convicted of a violation of the provisions of this Article shall in any way act as a ~~legislative or executive~~ lobbyist for a period of two years following conviction.

(b) In addition to the criminal penalties set forth in this section, the Secretary of State may levy civil fines for willful false or incomplete reporting up to five thousand dollars ($5,000) per violation.

"**§ 120-47.10. Enforcement of Article by Attorney General.**

(a) The Secretary of State may investigate complaints of violations of this Article, ~~The Secretary of State~~ and shall report apparent violations of this Article to the Attorney General. The Attorney General shall, upon complaint, make an appropriate investigation thereof, and the Attorney General shall forward a copy of the investigation to the district attorney of the prosecutorial district as defined in G.S. 7A-60 of which Wake County is a part, who shall prosecute any person who violates any provisions of this Article.

(b) Complaints of violations of this Article involving the Secretary of State or any member of the Department of the Secretary of State shall be referred to the

Attorney General for investigation in accordance with G.S. 120-47.7B. Any portion of the complaint not involving alleged violations of this Article by the Secretary of State or any member of the Department of the Secretary of State shall remain with the Secretary of State for investigation. The Attorney General shall, upon receipt of a complaint, make an appropriate investigation thereof, and the Attorney General shall forward a copy of the investigation to the District Attorney of the prosecutorial district as defined in G.S. 7A-60 of which Wake County is a part, who shall prosecute any person who violates any provisions of this Article.

(c) Complaints of improper lobbying involving the Attorney General or any member of the Department of Justice shall be investigated by the Secretary of State and any apparent violations reported to the District Attorney of that prosecutorial district as defined in G.S. 7A-60 of which Wake County is a part. The District Attorney of that prosecutorial district shall, upon receipt of the Secretary of State's report, prosecute any person who violates any provisions of this Article.

"**§ 120-47.11. Rules and forms.**

(a) The Secretary of State shall adopt any rules, orders, forms, and definitions as are necessary to carry out the provisions of this Article. The Secretary of State may appoint a council to advise the Secretary in adopting rules under this section.

(b) The Secretary of State shall adopt rules to protect from disclosure all confidential information under Chapter 132 related to economic development initiatives or to industrial or business recruitment activities. The information shall remain confidential until the State, a unit of local government or the business has announced a commitment by the business to expand or locate a specific project in this State or a final decision not to do so and the business has communicated that commitment or decision to the State or local government agency involved with the project.

"**§ 120-47.12. Limitations on agency ~~legislative~~ liaison personnel.**

(a) No State department may use State funds to contract with persons who are not employed by the State to lobby the General Assembly.

(b) No more than two persons in each State department and constituent institution of The University of North Carolina may be registered to lobby the General Assembly or designated as ~~legislative~~ liaison personnel pursuant to this Article.

(c) All persons designated as ~~legislative~~ liaison personnel pursuant to this Article and the State department or constituent institution of The University of North Carolina that employs the ~~legislative~~ liaison personnel shall report all expenditures made for lobbying purposes in the same manner as required for ~~legislative~~ lobbyists under G.S. 120-47.6 and lobbyists' principals under G.S. 120-47.7. The registration and authorization fees required under G.S. 120-47.3 and G.S. 120-47.4 shall not apply to ~~legislative~~ liaison personnel or the State department or constituent institution that employs the ~~legislative~~ liaison personnel."

"**§ 120-47.13. Advisory opinions.**

(a) At the request of any person affected by this Article, the Secretary of State shall render advisory opinions on specific questions involving the meaning and application of this Article and the covered person's compliance therewith. The request shall be in writing and relate prospectively to real or reasonably anticipated fact settings

or circumstances. The Secretary of State shall issue advisory opinions having prospective application only. Reliance upon a requested written advisory opinion on a specific matter shall immunize the covered person, on that matter, from both of the following:

(1) Investigation by the Secretary of State.

(2) Any adverse action by the employing entity.

(b) Staff to the Secretary of State may issue advisory opinions under rules adopted by the Secretary of State.

(c) The Secretary of State shall interpret the provisions of this Article by rules, and these interpretations shall be binding on all covered persons, lobbyists, and lobbyists' principal upon publication.

(d) The Secretary of State shall publish its advisory opinions at least once a year, edited as necessary to protect the identities of the individuals requesting opinions.

(e) Except as provided under subsection (d) of this section, requests for advisory opinions and advisory opinions issued pursuant to this section are confidential and not matters of public record.

"**§ 120A-14. Lobbying education program.**

(a) The Secretary of State shall develop and implement a lobbying education and awareness program designed to instill in all covered persons, lobbyists, and lobbyists' principals a keen and continuing awareness of their obligations and a sensitivity to situations that might result in real or potential violation of this Article or other related laws. The Secretary shall make basic lobbying education and awareness presentations to all covered persons upon their election, appointment or hiring and shall offer periodic refresher presentations as the Secretary deems appropriate. Every covered person shall participate in a lobbying presentation approved by the Secretary within six months of the person's election, appointment or hiring, and shall attend refresher ethics education presentations at least every two years thereafter in a manner the Secretary deems appropriate. Upon request, the Secretary shall assist each agency in developing in-house education programs and procedures necessary or desirable to meet the agency's particular needs for lobbying education.

(b) The Secretary shall publish a newsletter containing summaries of the Secretary's opinions, policies, procedures, and interpretive bulletins as issued from time to time. The newsletter shall be distributed to all covered persons, lobbyists, and lobbyists' principals. Publication under this subsection may be done electronically.

(c) The Secretary shall assemble and maintain a collection of relevant State laws, rules, and regulations that set forth lobbying standards applicable to covered persons. The collection of laws, rules and regulations shall be made available electronically as resource material to covered persons, lobbyists and lobbyists' principals, upon request.

"**§ 120-15. No gift registry.**

(a) The Secretary of State shall establish a "No Gifts" registry for persons subject to this Article. The "No Gifts" registry shall be published and updated with the list of lobbyists and lobbyists' principals required under G.S. 120-47.2.

(b) Except as provided in this subsection, lobbyists and lobbyists' principals shall not give unsolicited gifts allowed under G.S. 120-47.5A(a1)(2) to persons placing their

names on the registry, without the persons' expressed consent. Gifts of informational directories may be given to persons placing their names on the registry.

(c) The Secretary shall have the authority to adopt rules to implement this section in compliance with the following criteria:

(1) The registration is valid from the time the person registers until January 1 of the following year, unless the person requests in writing the removal of that person's name.

(2) The registration shall be in writing.

(d) Violations of this section shall not constitute a crime but shall be subject to civil fines of up to five hundred dollars ($500.00) as levied by the Secretary of State."

SECTION 4. Sections 2 and 3 of S.L. 2005-456 are repealed.

SECTION 5.1. G.S. 163-278.6 is amended by adding a new subsection to read:

"**§ 163-278.6. Definitions.**

When used in this Article:

...

(5a) The term 'Constitutional officers of the State' means officers whose offices are established in Article III of the Constitution.

..."

SECTION 5.2. Article 22A of Chapter 163 of the General Statutes is amended by adding a new section G.S. 163-278.19A to read:

"**§ 163-278.13C. Limitation on contributions by registered lobbyists.**

(a) No lobbyist registered under Article 9A of Chapter 120 shall do any of the following:

(1) Make or offer to make a contribution to a legislator, executive branch official, or candidate campaign committee.

(2) Make a contribution to any candidate, officeholder, or political committee, directing or requesting that the contribution be made in turn to a legislator, executive branch official, or candidate campaign committee.

(3) Transfer any amount of money or anything of value to any entity, directing or requesting that the entity use what was transferred to contribute to a legislator, executive branch officer, or candidate campaign committee.

(4) Solicit a contribution from any individual, political committee, or other entity on behalf of a legislator, executive branch official, or candidate campaign committee. This subdivision does not apply to a registered lobbyist soliciting a contribution on behalf of a political party executive committee if the solicitation is solely for a separate segregated fund kept by the political party limited to use for activities that are not candidate-specific, including generic voter registration and get-out-the-vote efforts, pollings, mailings, and other general activities and advertising that do not refer to a specific individual candidate.

(b) No legislator, executive branch official, or candidate campaign committee or the real or purported agent of that legislator, executive branch official, or candidate campaign committee shall do any of the following:

(1) Solicit a contribution from a lobbyist registered under Article 9A of Chapter 120 of the General Statutes.

(2) Solicit a third party, requesting or directing that the third party directly or indirectly solicit a contribution from a lobbyist registered under Article 9A of Chapter 120 of the General Statutes or relay to the lobbyist registered under Article 9A of Chapter 120 of the General Statutes the legislator's, executive branch official's, or candidate campaign committee's solicitation of a contribution.

(3) Accept a contribution from a lobbyist registered under Article 9A of Chapter 120 of the General Statutes.

(c) It shall not be deemed a violation of this section for a legislator or executive branch official to serve on a board or committee of an organization that makes a solicitation of a lobbyist registered under Article 9A of Chapter 120 of the General Statutes as long as that legislator or executive branch official does not directly participate in the solicitation and that legislator or executive branch official does not directly benefit from the solicitation.

(d) As used in this section, the following terms mean:

(1) Candidate campaign committee. – As defined in G.S. 163-278.38Z and that candidate has filed a notice of candidacy for office as a member of the General Assembly or a Constitutional officer of the State.

(2) Executive branch official. – As defined in G.S. 120-47.1(1d)(a).

(3) Legislator. – As defined in G.S. 120-47.1(4d).

(e) A violation of this section is a Class 2 misdemeanor.

SECTION 5.3. G.S. 163-278.13B(a)(1) reads as rewritten:

"(1) "Limited contributor" means a ~~lobbyist registered pursuant to Article 9A of Chapter 120 of the General Statutes, that lobbyist's agent, that~~ lobbyist's principal as defined in ~~G.S. 120-47.1(7),~~ G.S. 120-47 or a political committee that employs or contracts with or whose parent entity employs or contracts with a lobbyist registered pursuant to Article 9A of Chapter 120 of the General Statutes."

SECTION 6. If any section or provision of this act is declared unconstitutional or invalid by the courts, it does not affect the validity of this act as a whole or any part other than the part so declared to be unconstitutional or invalid.

SECTION 7. Sections 1, 2, 6, and 7 of this act are effective when the act becomes law, and the new G.S. 120-47.7C(d) applies to appointments made on or after that date. The remainder of this act becomes effective January 1, 2007.

Attachment X

HOUSE BILL 1849: Lobbying Reforms 2006

BILL ANALYSIS

Committee:	House Judiciary I	**Date:**	May 11, 2006
Introduced by:	Reps. Hackney, Howard, Gibson, Sherrill	**Summary by:**	R. Erika Churchill
Version:	First Edition		Committee Counsel

SUMMARY: House Bill 1849 amends North Carolina's lobbying laws to do all of the following:

1. *Implements earlier certain prohibitions creating waiting periods before certain State officers may lobby and barring lobbyists from certain appointments and other activities.*
2. *Bans certain gifts by lobbyists and lobbyists' principals to covered persons (legislators, legislative employees, and executive branch officers).*
3. *Expands coverage of the lobbying laws to additional executive branch officers and employees, with a combined single registration, fee, regulation, and reporting periods for both legislative and executive branch lobbying.*
4. *Bans campaign contributions by registered lobbyists.*
5. *Permits the issuance of advisory opinions and requires lobbying education programs.*

CURRENT LAW:

Under current law effective until January 1, 2007, a person who is paid to try to influence legislative action (action on a specific bill, resolution, amendment, etc.) is required to register as a lobbyist with the Secretary of State and report at the end of each regular session, any expenditures in excess of $25 spent on lobbying legislators. Expenditures spent for the general goodwill of legislators not tied to specific legislative action do not need to be reported, nor do expenditures spent on legislative staff or legislators' family members. There is no limitation on the types or amount of expenditures that a lobbyist can spend on a legislator for lobbying purposes. Every principal who hires the services of a lobbyist also has to file reports on expenditures that the principal made for lobbying, including the amount of compensation paid to lobbyists. Exempt from the lobbying laws are persons who lobby on their own behalf, persons appearing before the General Assembly at the General Assembly's request, elected and appointed local government officials and employees lobbying on behalf of their local governments, State agency legislative liaison personnel, and members of the General Assembly. Violation of this law is punished as a Class 1 misdemeanor.

S.L. 2005-456 (Senate Bill 612) amended the current law, to take effect January 1, 2007. Changes effective January 1, 2007, include:

- Developing goodwill is added as part of the definition of lobbying.
- The definition of "expenditure" for reporting purposes includes anything of value over $10.
- The lobbying laws are applied to certain persons in the Executive branch under a separate registration, fee and reporting.
- Legislative staff are included under lobbying regulations.
- The frequency of reporting lobbying expenditures is increased to monthly during regular session and quarterly in the interim; and quarterly reports for executive branch lobbying.
- Legislators and certain executive branch officials are prohibited from lobbying within 6 months of leaving office.
- Lobbyists are prohibited from serving as campaign treasurers for legislative races.

BILL ANALYSIS:

House Bill 1849 amends the current lobbying laws in the following ways (Effective when the bill becomes law):

- Prohibits a legislator or former legislator from being employed as a lobbyist within 1 year after the expiration of the term for which the legislator was elected or appointed to serve.
- Prohibits the Governor or Council of State member or head of a cabinet department from being employed as a lobbyist within one year after separation from employment or leaving office, whichever is later.
- Prohibits a lobbyist from serving as a campaign treasurer for a legislative or Council of State campaign.
- Prohibits a lobbyist from being appointed to any board, authority, commission, etc. that regulates the activities of a business, organization, person or agency that the lobbyist represented within 60 days of that representation.
- Prohibits a lobbyist from allowing a covered person or that person's immediate family member to use the lobbyist's cash or credit for the purpose of lobbying without the lobbyist being present at the time of the expenditure.
- Allows the Secretary of State's office to treat investigations of lobbying violations as criminal investigations, meaning the investigation information may not be released as a public record.

House Bill 1849 amends the lobbying laws scheduled to take effect January 1, 2007, in the following ways:

- Combines legislative and executive lobbying registrations and regulations into one.
- Changes the definition of covered person to mean legislators, executive branch officers, and legislative staff.
- Prohibits lobbyists and lobbyist's principals from giving gifts to covered persons. The following exceptions apply:
  - Gifts from lobbyists to their family members who are legislators or legislative employees.
  - Lawful campaign contributions.
  - Commercially available loans made in the normal course of business and not made for the purpose of lobbying.
  - Meals and beverages for immediate consumption in connection with public events.
  - Scholarships with terms not more favorable than scholarships available to the public.
  - Nonmonetary items, other than food or beverages, with a value not to exceed $10 by a lobbyist or principal in a single calendar day.
  - Informational materials related to the covered person's public duties.
  - Reasonable actual expenses when a covered person speaks at a meeting relating to the covered person's duties.
  - Items valued at less than $100 given to a covered person when the covered person is in another country as part of an overseas trade mission and the giving of gifts is customary protocol in the other country.
  - Gifts accepted on behalf of the State, anything generally available to the general public or all State employees,
  - Anything for which fair market value is paid.
- Expands the definition of executive branch officer to correlate those persons covered by the Executive Branch Ethics Act (House Bill 1844).
- Expenditures by liaison personnel and State agencies have to be reported the same as expenditures.
- The registration period for a lobbyist and lobbyist's principal is one year.
- Clarifies that the lobbyist must file a separate registration for each principal the lobbyist represents, and that either the lobbyist or the principal must pay a separate fee for each registration.
- Quarterly reporting of lobbying expenditures is required, with increased reporting to monthly of legislative lobbying while the General Assembly is in session.

- Increases the details of lobbying expenditure reports to include the fair market value or face value if shown, date, a description of the expenditure, name and address of the payee or beneficiary, name of any covered person benefiting from the expenditure (or legislative employee or those person's immediate family members) in each of the following categories:
    - Transportation and lodging
    - Entertainment, food, and beverages
    - Meetings and events
    - Gifts
    - Solicitation of others to lobby
    - Other expenditures

  The Secretary of State is granted rulemaking authority to facilitate disclosure of expenditures, including the format of the report and additional categories.
- The lobbyist's principal must also report, in addition to the expenditures reported by the lobbyist, the compensation paid or agreed to be paid to each lobbyist.
- Requires expenditures of $200 made for the purpose of lobbying from persons not required to register and report as lobbyists or lobbyist's principals or more to be reported. If the person giving the gift is in North Carolina, that person shall make the report. If the person giving the gift is outside North Carolina, the person accepting the gift shall make the report. Certain exceptions apply.
- Authorizes the Secretary of State to issue advisory opinions on issues arising under the lobbying law.
- Requires continuing lobbying education programs for legislators, legislative employees, executive branch officers, lobbyists and lobbyists' principals.
- Clarifies the no-gift registry for gifts from lobbyists.
- Bans campaign contributions by lobbyists to candidates or candidate's committees if the candidate has filed for office as a member of the General Assembly or a Constitutional officer of the State. ****This prohibition may have constitutional implications.

EFFECTIVE DATE: Except as noted above, the act becomes effective January 1, 2007.

BACKGROUND: In 2005, the North Carolina General Assembly passed S.L. 2005-456 (SB 612), which amended North Carolina's lobbying laws effective January 1, 2007. The bill is a recommendation of the House Select Committee on Ethics and Governmental Reform. That Committee's charge, as amended on February 20, 2006, directs the Committee to "Examine the provisions of the 2005 rewrite of the lobbying law, S.L. 2005-456 (Senate Bill 612) to determine if portions of that law could be implemented prior to its original effective date of January 1, 2007 and determine whether any additional areas of lobbying regulation should be clarified or strengthened, including prohibiting lobbyists from raising funds for or personally contributing to political campaigns, and from holding any position in a legislative or executive branch campaign."

* *Walker Reagan and Brad Krehely contributed substantially to the drafting of this summary.*

H1849e1-SMST

House Judiciary I Committee

May 25, 2006
10:00 a.m.

Minutes

The House Judiciary I Committee met on Thursday, May 25, 2006 at 10:00 a.m. in Room 1228 of the Legislative Building. Chairman Joe Hackney called the meeting to order and the following members were present: Representatives Alexander, Blust, Capps, Goodwin, Harrison, Insko, Miller, Ross, Stam, Stiller and West. A copy of the agenda and the visitor registration is attached, (Attachment I and II).

The first bill to be considered by the Committee was House Bill 1848, AN ACT TO PROHIBIT THE USE OF BLANK CHECKS AS CAMPAIGN CONTRIBUTIONS AND TO DELINEATE WHAT IS LAWFUL AND UNLAWFUL, PARTICIPATON BY AN IUNTERMEDIARY IN POLITICAL FUND-RAISING, ASD RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON ETHICS AND GOVERNMENTAL REFORM, (Attachment III).

Representative Ross was recognized to comment on the bill. She said that the bill was intended to address the issue of blank contributor checks that are filled in by an intermediary and regulates what an intermediary can and cannot do with a check. She offered a Proposed Committee Substitute, (Attachment IV), and moved its adoption for the purpose of discussion. The motion carried. The Committee Substitute was prepared to correct drafting and was not intended to change any of the meaning of the original bill.

Ms. Erika Churchill, Committee Counsel, was recognized for an explanation of the bill. She stated that the bill would establish a process by which an individual can make a contribution to a political committee through a third party. She discussed the definitions contained in the bill. Those definitions are defined on page one of a bill analysis prepared by Ms. Churchill. That bill analysis is included in the attachments to the minutes, (Attachment V).

Chairman Hackney stated that he thought the definition for 'intermediary" was complicated. He noted that it contemplates that there is not a deposit of a check, but that the language is not clear.

Ms. Churchill continued the explanation of the bill stating the conditions that would have to be met in order to make a contribution through an intermediary. Those are also outlined in the bill analysis.

Discussion followed regarding the requirement that a contribution be delivered in person or deposited in the mail to the contributee within 20 days after the intermediary takes possession of the contribution.

Ms. Churchill continued the explanation of the bill with comment on the record keeping requirements for the intermediary and the penalties for violation.

Representative Blust questioned the need to have contributions delivered by an intermediary.

Chairman Hackney stated that he thought small contributions should be encouraged and that they are easier to get if many people are helping to collect them.

Representative Ross suggested that the language could be amended to state that the intermediary would forward the contribution "in the form received" to the contributee. She offered an amendment to do so, (Attachment VI), and moved its adoption.

Discussion followed regarding electronic transfer and the use of the internet with respect to making contributions.

Upon vote of the Committee, the amendment was adopted.

Representative Ross offered a second amendment, (Attachment VII), and moved its adoption. The technical amendment would amend the bill on page 1, line 16 by inserting the phrase "unless prohibited by G. S. 163-278.13(e1) between "committee" and "making." The amendment was adopted.

Representative Capps offered an amendment to amend the bill on page 2, lines 4 and 5 by deleting the words "makes a" and substituting the word "the." (A copy of the amendment is not included in the attachments). Representative Capps stated that he thought the amendment would clarify the sentences.

Following brief discussion, Representative Capps withdrew the amendment.

Representative Stam moved that the adopted amendments be rolled into a new Committee Substitute, that it be given a favorable report and the original bill an unfavorable report. The motion carried, (Attachment VIII). A copy of the new Committee Substitute is attached, (Attachment IX).

House Bill 1849, A BILL TO BE ENTITLED AN ACT TO AMEND THE LEGISLATIVE LOBBYING LAWS BY ESTABLISHING WAITING PERIODS BEFORE CERTAIN STATE OFFICERS MAY LOBBY; BY BARRING LOBBYISTS FROM CERTAIN APPOINTMENTS AND OTHER ACTIVITIES; BY BANNING CERTAIN GIFTS; BY ESTABLISHING QUARTERLY REPORTING OF EXPENDITURS WITH ADDITIONAL INTERIM REPORTING; BY EXPANDING THE COVERAGE OF THE LOBBYING LAWS TO INCLUDE EXECUTIVE BRANCH OFFICERS; BY LIMITING CAMPAIGN CONTRIBUTIONS BY REGISTERED LOBBYISTS; AND BY MAKING OTHER CONFORMING CHANGES, AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON

ETHICS AND GOVERNMENTAL REFORM, (Attachment X) was before the Committee. It was previously discussed during the Committee's meetings on May 18 and May 23, 2006.

Mr. Nick Fountain, Young, Moore and Henderson, was recognized for comment. Mr. Fountain, speaking on behalf of the Administrative Law Section of the Bar Association, commented on the bill's definition of lobbying saying that it was extremely broad and intended to be so. He stated that the concern is that by extension of that definition to cover the executive branch of government, it includes virtually everything that lawyers do to help their clients with any department of group within state government. He said that it is likely to paralyze things and drive the costs up for consumers and clients. Mr. Fountain urged the Committee to consider some language that had been offered to address this situation.

Representative Stam commented about the banning of contributions from lobbyists and offered a suggestion to limit lobbyist to $4,000 for the primary, $4,000 to the general election cumulative for all races.

Representative Blust suggested that the Committee look more at the reporting issue for lobbyists.

Representative Ross expressed interest in seeing the language of an amendment to attempt to clarify the definition of lobbyist.

Chairman Hackney stated that language had been prepared and encouraged members to get a copy from Ms. Churchill.

The meeting was adjourned at 11:00 a. m.

Representative Joe Hackney
Chair

Emily Reynolds Freeman
Committee Clerk

Attachment I

HOUSE COMMITTEE ON JUDICIARY I

May 25, 2006
10:00 a.m.

AGENDA

OPENING REMARKS

AGENDA ITEMS

House Bill 1848 – No Blank Contribution Checks
Representatives Hackney, Howard, Eddins and Ross

House Bill 1849 – Lobbying Reform 2006
Representatives Hackney, Howard, Gibson and Sherrill

ADJOURNMENT

Attachment II

VISITOR REGISTRATION SHEET

House Judiciary I — May 25, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Mark Johnson	The Charlotte Observer
Emily Kirby	NCCN
John Burdeshaw	Astra Zeneca
[illegible]	JD, AC, PA
[illegible]	ElectriCities
Jill Shutzberger	ACLU
Rebekah Gancarski	ACLU
Bob Gillam	Public Staff NCUC
Nick Fountain	Young Moore & Henderson
Jeff Mixon	Civitas Institute
Rob Schofield	NC Center for NP's

VISITOR REGISTRATION SHEET

House Judiciary I — May 25, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jeff Wolfe	Daily Bulletin
Chris Heagarty	NC Center for Voter Education
PAUL STOCK	NCBA
Betty Turner	Bank of America
Bill Rustin	AJP
Michelle Frazier	NC Bar Ass'n
John McKay	GOV OFFICE
Chris Ball	CAPA
Bill McCoy	NMRS
Bill Scobbin	ICCLB
Bob Hall	Democracy North Carolina

VISITOR REGISTRATION SHEET

House Judiciary I — May 25, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Barbara Cameron	BSBCA
Bill Scoggin	KCLK
Gary Michael	NC AGO
Todd Barlow	NCATL
Ryan Preston	Rep. Glazier
Michael Honser	NCAE
Ken Melton	N.C. D.O.R.
Lee Hodge	KCCH
[illegible]	Bode & Assoc.
Andrew Meeker	NCAEC
John Phelps	NCLM

VISITOR REGISTRATION SHEET

House Judiciary I — May 25, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
John Rustin	NC Family Policy Council
[illegible]	Poyner & Spruill LLP
Tom West	Poyner + Spruill LLP
Haley Montgomery	SOS
Joel Brown	SOS
Ellen Greaves	PCNC
Ted Mayard	EPIC Association
Bill Rowe	NC Justice Center
Rose Sawitt	NC Child Care Coalition
Luke Chu	Research
Matt Latrick	NCGA
Dana Faucs	STAM
Ben Matthews	NCSEA

VISITOR REGISTRATION SHEET

House Judiciary I — May 25, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Bob Thompson	NCPTA
[illegible]	NCACC
Holly Bryan	NCATL
Bill McGee	NC House
Dick Taylor	NCATL
Chris Mc[illegible]	AOC
Mike Carey	CHF - NC fund
Chad Hilton	Civitas Institute
Regina Bone	Bone & Assoc
Kenneth Langhorne	NS
Dan Lynn	NCU
Chris Kelly	Office of Gov.
Kristy Kelly	Office of Gov.
Kevin Leonard	WCSR
Cally Wiggins	Gov. Offices

May. 25. 2006

Jann Fitzgerald	NCFPC
Jere Royall	NC Family Policy Council
[signature]	[illegible]
Colleen Kochanek	Smith Moore

Attachment III

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

HOUSE BILL 1848

Short Title:	No Blank Contribution Checks.	(Public)
Sponsors:	Representatives Hackney, Howard, Eddins, Ross (Primary Sponsors); Barnhart, Bell, Brubaker, Coates, Earle, Fisher, Gibson, Harrison, Justice, Lucas, Luebke, Martin, McLawhorn, Nye, Sauls, Setzer, Sherrill, Steen, West, Alexander, L. Allen, Bordsen, Dickson, Glazier, Harrell, Hill, Insko, Jeffus, Jones, Lewis, McGee, Preston, Spear, Starnes, Underhill, Walker, and Weiss.	
Referred to:	Judiciary I.	

May 10, 2006

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT THE USE OF BLANK CHECKS AS CAMPAIGN CONTRIBUTIONS AND TO DELINEATE WHAT IS LAWFUL AND UNLAWFUL PARTICIPATION BY AN INTERMEDIARY IN POLITICAL FUND-RAISING, AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON ETHICS AND GOVERNMENTAL REFORM.

The General Assembly of North Carolina enacts:

SECTION 1. Article 22A of Chapter 163 of the General Statutes is amended by adding a new section to read:

"**§ 163-278.20A. Making a contribution through an intermediary.**

(a) Lawful Contributions Through Intermediaries. – It is lawful for any entity that is not otherwise prohibited from making the contribution to make one through an intermediary as long as all the following conditions are satisfied:

(1) The original contributor, on the instrument with which the contribution is made, makes a complete designation of the amount of the contribution, the date the contribution is made, and the political committee, candidate, or other lawful entity that the contributor intends to be the recipient of the contribution. If the contribution is by check, the contributor must sign and date the check and must complete the amount and payee spaces on the check. If an individual contributor, because of disability, lack of knowledge of the precise name of the contributee, or another justifiable reason, is unable to complete the check or other instrument, that contributor may receive assistance in

completing it, but the substance of the completion shall be entirely at the direction of the contributor.

(2) The contribution is within the limits provided in G.S. 163-278.13.

(3) The transaction is reported by the contributee and the contributor if reporting is required by this Article.

(4) The intermediary is not prohibited from soliciting contributions by G.S. 163-278.13B.

(5) The contribution is delivered to the contributee within 20 days after the intermediary takes possession of the instrument by which the contribution is made.

(b) Unlawful Contributions Through Intermediaries. – It is unlawful for any entity to make a contribution through an intermediary if the conditions of subsection (a) of this section are not satisfied. No one but the contributor shall complete any portion of a contribution check or other contribution instrument. If an individual contributor, because of disability, lack of knowledge of the precise name of the contributee, or another justifiable reason, is unable to complete the check or other instrument, that contributor may receive assistance in completing it, but the substance of the completion shall be entirely at the direction of the contributor.

(c) No Reporting Required of Intermediary. – If a contribution involving an intermediary satisfies the conditions of subsection (a) of this section, the participation of an intermediary of a contribution is not required to be reported.

(d) Duty of Intermediary to Deliver or Return Contribution. – If an intermediary takes possession of a contribution and agrees to forward that contribution to another entity, that intermediary shall forward the contribution to the donee entity or return the contribution to the donor within 20 days of taking possession.

(e) Definition of "Intermediary". – As used in this Article, the term "intermediary" means an entity that receives money or anything of value from an entity with the understanding that it will be forwarded as a contribution by the donor entity to a candidate, political committee, or other entity intended to accept a contribution.

(f) Penalties. – A violation of this section is a Class 2 misdemeanor. A violation of this section constitutes "mak[ing] or accept[ing] a contribution in violation of this Article" for purposes of the imposition of civil penalties under G.S. 163-278.34.

(g) Rules. – The State Board of Elections shall adopt rules for the implementation of this section."

SECTION 2. G.S. 163-278.27(a) reads as rewritten:

"(a) Any individual, candidate, political committee, referendum committee, treasurer, person or media who intentionally violates the applicable provisions of G.S. 163-278.7, 163-278.8, 163-278.9, 163-278.10, 163-278.11, 163-278.12, 163-278.13, 163-278.13B, 163-278.14, 163-278.16, 163-278.17, 163-278.18, 163-278.19, 163-278.20, 163-278.20A, 163-278.39, 163-278.40A, 163-278.40B, 163-278.40C, 163-278.40D or 163-278.40E is guilty of a Class 2 misdemeanor. The statute of limitations shall run from the day the last report is due to be filed with the appropriate board of elections for the election cycle for which the violation occurred."

SECTION 3. G.S. 163-278.20 reads as rewritten:

"**§ 163-278.20. Disclosure before soliciting contributions.**

(a) It shall be unlawful for one or more individuals acting in concert, or for any group, committee, club or organization, of any type or nature, of two or more individuals, to solicit, attempt to solicit, or receive contributions for the purpose of supporting a candidate, political committee, referendum committee, or political party without first clearly advising those solicited as follows:

(1) The name of the candidate(s) for whom the contribution will be used; or

(2) The name of the political committee or party for which the funds will be used; or

~~(3) That a decision will be reached later as to the candidate(s), political committee(s), or political party(ies) to be supported and that the contributions solicited will be expended in a manner and for a purpose to be determined at a future date but no later than 20 days prior to the pending primary or general election; or~~

(4) The name of the referendum committee for which the funds will be used.

(b) A violation of this section is a Class 2 misdemeanor."

SECTION 4. This act becomes effective January 1, 2007, and applies to any contribution made or accepted on or after that date and to any contribution received or forwarded on or after that date.

Attachment IV

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 1848
PROPOSED COMMITTEE SUBSTITUTE H1848-CSST-105 [v.4]

5/24/2006 5:50:22 PM

Short Title: No Blank Contribution Checks. (Public)

Sponsors:

Referred to:

May 10, 2006

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT THE USE OF BLANK CHECKS AS CAMPAIGN CONTRIBUTIONS AND TO DELINEATE WHAT IS LAWFUL AND UNLAWFUL PARTICIPATION BY AN INTERMEDIARY IN POLITICAL FUND-RAISING, AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON ETHICS AND GOVERNMENTAL REFORM.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 163-278.6 is amended by adding new subdivisions to read:

"**§ 163-278.6. Definitions.**

When used in this Article:

...

(6a) The term 'contributee' means a candidate, political committee or referendum committee accepting a contribution.

(6b) The term 'contributor' means an individual, political committee or referendum committee making a contribution.

...

(11a) The term 'intermediary' means an individual, political committee or referendum committee that takes possession of a contribution to a contributee other than the intermediary with the understanding that intermediary will forward the contribution to the contributee intended to receive the contribution."

SECTION 2. Article 22A of Chapter 163 of the General Statutes is amended by adding a new section to read:

"**§ 163-278.20A. Making a contribution through an intermediary.**

(a) Contributions Through Intermediaries. – It is unlawful for a contributor to make a contribution through an intermediary unless all the following conditions are satisfied:

(1) The contributor is authorized to make a contribution under this Article.
(2) The instrument with which the contribution is made meets all of the following conditions:
a. Makes a complete designation of the amount of the contribution.
b. Makes a complete designation of the intended contributee.
c. Is dated.
d. Is signed or otherwise authorized by the contributor.
e. Is made and completed by or at the direction of the contributor.
(3) The contribution is within the limits provided in G.S. 163-278.13.
(4) The transaction is reported by the contributee and the contributor if reporting is required by this Article.
(5) The intermediary is not prohibited from soliciting contributions by G.S. 163-278.13B(c).
(6) The contribution is delivered in person or deposited in the mail to the contributee within 20 days after the intermediary takes possession of the contribution.

(b) Record of Intermediary. – If a contribution involving an intermediary satisfies the conditions of subsection (a) of this section, the participation of an intermediary of a contribution is not required to be reported under this Article. The contributee shall maintain a record of the intermediary's identity and receipt of the contributions.

(c) Duty of Intermediary to Deliver or Return Contribution. – If an intermediary takes possession of a contribution and agrees to forward that contribution to a contributee, that intermediary shall forward the contribution to the contributee or return the contribution to the contributor within 20 days of taking possession.

(d) Penalties. – A violation of this section is a Class 2 misdemeanor. Civil penalties under G.S. 163-278.34(b) may be imposed for a violation of this section.

(e) Rules. – The State Board of Elections shall adopt rules for the implementation of this section."

SECTION 3. G.S. 163-278.27(a) reads as rewritten:

"(a) Any individual, candidate, political committee, referendum committee, treasurer, person or media who intentionally violates the applicable provisions of G.S. 163-278.7, 163-278.8, 163-278.9, 163-278.10, 163-278.11, 163-278.12, 163-278.13, 163-278.13B, 163-278.14, 163-278.16, 163-278.17, 163-278.18, 163-278.19, 163-278.20, 163-278.20A, 163-278.39, 163-278.40A, 163-278.40B, 163-278.40C, 163-278.40D or 163-278.40E is guilty of a Class 2 misdemeanor. The statute of limitations shall run from the day the last report is due to be filed with the appropriate board of elections for the election cycle for which the violation occurred."

SECTION 4. G.S. 163-278.20 reads as rewritten:

"**§ 163-278.20. Disclosure before soliciting contributions.**

(a) It shall be unlawful for one or more individuals acting in concert, or for any group, committee, club or organization, of any type or nature, of two or more individuals, to solicit, attempt to solicit, or receive contributions for the purpose of supporting a candidate, political committee, referendum committee, or political party without first clearly advising those solicited as follows:

(1) The name of the candidate(s) for whom the contribution will be used; or

(2) The name of the political committee or party for which the funds will be used; or

~~(3) That a decision will be reached later as to the candidate(s), political committee(s), or political party(ies) to be supported and that the contributions solicited will be expended in a manner and for a purpose to be determined at a future date but no later than 20 days prior to the pending primary or general election; or~~

(4) The name of the referendum committee for which the funds will be used.

(b) A violation of this section is a Class 2 misdemeanor."

SECTION 5. This act becomes effective January 1, 2007, and applies to any contribution made or accepted on or after that date and to any contribution received or forwarded on or after that date.

Attachment V

HOUSE BILL 1848:
No Blank Contribution Checks

BILL ANALYSIS

Committee:	House Judiciary I	**Date:**	May 24, 2006
Introduced by:	Reps. Hackney, Howard, Eddins, Ross	**Summary by:**	R. Erika Churchill Committee Counsel
Version:	PCS to First Edition H1848-CSST-105v.4		

SUMMARY: ***The Proposed Committee Substitute (PCS) would establish a process by which a contribution may be made through an intermediary. Failure to comply with this process could result in criminal and civil penalties. This bill is a recommendation of the House Select Committee on Ethics and Governmental Reform.***

CURRENT LAW: Currently, North Carolina campaign finance law does not address "bundling," a practice in which an intermediary gathers up contribution checks from individuals and delivers them to a candidate or political committee. The State Board of Elections has given the opinion that the practice is not illegal as long as the check is completed.

G.S. 163-278.20, dating to the enactment of the current Campaign Finance Law in 1974, states that no one may solicit contributions without advising those solicited of any of following:

1. The name of the candidate, political committee, or referendum committee for whom the contribution will be used.
2. That a decision will be reached later regarding how the contribution will be used, but not later than 20 days prior to the pending primary or general election.

That statute has been cited as authority that intermediaries may fill in blank contributor checks.

BILL ANALYSIS:

Section 1 of the bill includes definitions for the following terms:

- **Contributee-** a candidate, political committee or referendum committee accepting a contribution.
- **Contributor-** an individual, political committee or referendum committee making a contribution.
- **Intermediary-** an individual, political committee or referendum committee that takes possession of a contribution to a contributee other than the intermediary with the understanding that intermediary will forward the contribution to the contributee intended to receive the contribution.

Section 2 explains that it is unlawful for a contributor to make a contribution through an intermediary unless **all** of the following apply:

- The contributor is authorized to make a contribution under this Article.
- The instrument with which the contribution is made meets **all** of the following conditions:
  - Makes a complete designation of the amount of the contribution.
  - Makes a complete designation of the intended contributee.

- Is dated.
- Is signed or otherwise authorized by the contributor.
- Is made or completed by or at the direction of the contributor.

- The contribution is within the limits provided in G.S. 163-278.13.
- The transaction is reported by the contributee and the contributor if required by this Article.
- The intermediary is not prohibited from soliciting contributions by G.S. 163-278.13B(c). (Meaning the intermediary is not a lobbyist, lobbyist's principal, or an associated while the General Assembly is in session.)
- The contribution is delivered in person or deposited in the mail to the contributee within 20 days after the intermediary takes possession of the contribution.

If all of these requirements are met, the participation of an intermediary does not have to be reported. However, the contributee must maintain a record of the intermediary's identity and receipt of the contributions.

If an intermediary takes possession of a contribution and agrees to forward that contribution to a contributee, that intermediary must forward the contribution to the contributee or return the contribution to the contributor within 20 days of taking possession.

A violation of this section is a Class 2 misdemeanor, and civil penalties may also apply. The State Board of Elections must adopt rules to implement this section.

Sections 3 and 4 make conforming changes.

EFFECTIVE DATE: This act becomes effective January 1, 2007, and applies to any contribution made or accepted on or after that date and to any contribution received or forwarded on or after that date.

H1848e1-SMST-CSST-105

**Bill Gilkeson and Brad Krehely contributed to the drafting of this summary.*

Attachment VI

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. 1ST

H. B. No. 1848 DATE May 25, 2006

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

COMMITTEE SUBSTITUTE ✓

(Rep.) ROSS
Sen.)

1 moves to amend the bill on page 1, line 21
2 ( ) WHICH CHANGES THE TITLE
3 by inserting between the words "contribution"
4 and "to" the words "in the form received".
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SIGNED _____

ADOPTED ✓ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

Attachment VII

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 1848 DATE _____

S. B. No. _____ Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE ✓

(Rep.) Ross
Sen.)

1 moves to amend the bill on page 1, line 16

2 ( ) WHICH CHANGES THE TITLE

3 by _____

4 inserting the phrase "Unless prohibited by G.S. 163-

5 278.13(e1)" between "committee" and "making".

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SIGNED _____

ADOPTED ✓ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

Attachment VIII

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative Hackney (Chair) for the Committee on JUDICIARY I.

☐Committee Substitute for
HB 1848 A BILL TO BE ENTITLED AN ACT TO PROHIBIT THE USE OF BLANK CHECKS AS CAMPAIGN CONTRIBUTIONS AND TO DELINEATE WHAT IS LAWFUL AND UNLAWFUL PARTICIPATION BY AN INTERMEDIARY IN POLITICAL FUND-RAISING, AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON ETHICS AND GOVERNMENTAL REFORM.

☒ With a favorable report as to the committee substitute bill, unfavorable as to the original bill.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

_____ Pursuant to Rule 36(b), the (House/Senate) committee substitute bill/(joint) resolution (No._____) is placed on the Calendar of _____. (The original bill resolution No._____) is placed on the Unfavorable Calendar.

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

Attachment IX

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 1848
PROPOSED COMMITTEE SUBSTITUTE H1848-PCS50718-ST-105

Short Title: No Blank Contribution Checks. (Public)

Sponsors:

Referred to:

May 10, 2006

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT THE USE OF BLANK CHECKS AS CAMPAIGN CONTRIBUTIONS AND TO DELINEATE WHAT IS LAWFUL AND UNLAWFUL PARTICIPATION BY AN INTERMEDIARY IN POLITICAL FUND-RAISING, AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON ETHICS AND GOVERNMENTAL REFORM.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 163-278.6 is amended by adding new subdivisions to read:

"**§ 163-278.6. Definitions.**

When used in this Article:

...

(6a) The term "contributee" means a candidate, political committee, or referendum committee accepting a contribution.

(6b) The term "contributor" means an individual, political committee, or referendum committee unless prohibited by G.S. 163-278.13(e1) making a contribution.

...

(11a) The term "intermediary" means an individual, political committee, or referendum committee that takes possession of a contribution to a contributee other than the intermediary with the understanding that intermediary will forward the contribution in the form received to the contributee intended to receive the contribution."

SECTION 2. Article 22A of Chapter 163 of the General Statutes is amended by adding a new section to read:

"**§ 163-278.20A. Making a contribution through an intermediary.**

(a) Contributions Through Intermediaries. – It is unlawful for a contributor to make a contribution through an intermediary unless all the following conditions are satisfied:

(1) The contributor is authorized to make a contribution under this Article.

(2) The instrument with which the contribution is made meets all of the following conditions:

a. Makes a complete designation of the amount of the contribution.

b. Makes a complete designation of the intended contributee.

c. Is dated.

d. Is signed or otherwise authorized by the contributor.

e. Is made and completed by or at the direction of the contributor.

(3) The contribution is within the limits provided in G.S. 163-278.13.

(4) The transaction is reported by the contributee and the contributor if reporting is required by this Article.

(5) The intermediary is not prohibited from soliciting contributions by G.S. 163-278.13B(c).

(6) The contribution is delivered in person or deposited in the mail to the contributee within 20 days after the intermediary takes possession of the contribution.

(b) Record of Intermediary. – If a contribution involving an intermediary satisfies the conditions of subsection (a) of this section, the participation of an intermediary of a contribution is not required to be reported under this Article. The contributee shall maintain a record of the intermediary's identity and receipt of the contributions.

(c) Duty of Intermediary to Deliver or Return Contribution. – If an intermediary takes possession of a contribution and agrees to forward that contribution to a contributee, that intermediary shall forward the contribution to the contributee or return the contribution to the contributor within 20 days of taking possession.

(d) Penalties. – A violation of this section is a Class 2 misdemeanor. Civil penalties under G.S. 163-278.34(b) may be imposed for a violation of this section.

(e) Rules. – The State Board of Elections shall adopt rules for the implementation of this section."

SECTION 3. G.S. 163-278.27(a) reads as rewritten:

"(a) Any individual, candidate, political committee, referendum committee, treasurer, person or media who intentionally violates the applicable provisions of G.S. 163-278.7, 163-278.8, 163-278.9, 163-278.10, 163-278.11, 163-278.12, 163-278.13, 163-278.13B, 163-278.14, 163-278.16, 163-278.17, 163-278.18, 163-278.19, 163-278.20, 163-278.20A, 163-278.39, 163-278.40A, 163-278.40B, 163-278.40C, 163-278.40D or 163-278.40E is guilty of a Class 2 misdemeanor. The statute of limitations shall run from the day the last report is due to be filed with the appropriate board of elections for the election cycle for which the violation occurred."

SECTION 4. G.S. 163-278.20 reads as rewritten:

"**§ 163-278.20. Disclosure before soliciting contributions.**

(a) It shall be unlawful for one or more individuals acting in concert, or for any group, committee, club or organization, of any type or nature, of two or more

individuals, to solicit, attempt to solicit, or receive contributions for the purpose of supporting a candidate, political committee, referendum committee, or political party without first clearly advising those solicited as follows:

(1) The name of the candidate(s) for whom the contribution will be used; or

(2) The name of the political committee or party for which the funds will be used; or

~~(3) That a decision will be reached later as to the candidate(s), political committee(s), or political party(ies) to be supported and that the contributions solicited will be expended in a manner and for a purpose to be determined at a future date but no later than 20 days prior to the pending primary or general election; or~~

(4) The name of the referendum committee for which the funds will be used.

(b) A violation of this section is a Class 2 misdemeanor."

SECTION 5. This act becomes effective January 1, 2007, and applies to any contribution made or accepted on or after that date and to any contribution received or forwarded on or after that date.

Attachment X

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 1

HOUSE BILL 1849

Short Title:	Lobbying Reforms 2006.	(Public)
Sponsors:	Representatives Hackney, Howard, Gibson, Sherrill (Primary Sponsors); Barnhart, Bell, Brubaker, Coates, Earle, Eddins, Fisher, Harrison, Justice, Lucas, Luebke, Martin, McLawhorn, Nye, Ross, Sauls, Setzer, Steen, West, Alexander, L. Allen, Bordsen, Dickson, Glazier, Harrell, Hill, Insko, Jeffus, McGee, Moore, Spear, Underhill, Walend, and Weiss.	
Referred to:	Judiciary I.	

May 10, 2006

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LEGISLATIVE LOBBYING LAWS BY ESTABLISHING WAITING PERIODS BEFORE CERTAIN STATE OFFICERS MAY LOBBY; BY BARRING LOBBYISTS FROM CERTAIN APPOINTMENTS AND OTHER ACTIVITIES; BY BANNING CERTAIN GIFTS; BY ESTABLISHING QUARTERLY REPORTING OF EXPENDITURES WITH ADDITIONAL INTERIM REPORTING; BY EXPANDING THE COVERAGE OF THE LOBBYING LAWS TO INCLUDE EXECUTIVE BRANCH OFFICERS; BY LIMITING CAMPAIGN CONTRIBUTIONS BY REGISTERED LOBBYISTS; AND BY MAKING OTHER CONFORMING CHANGES, AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON ETHICS AND GOVERNMENTAL REFORM.

The General Assembly of North Carolina enacts:

SECTION 1. Article 9A of Chapter 120 of the General Statutes is amended to add a new section to read:

"**§ 120-47.7C. Prohibitions.**

(a) No member or former member of the General Assembly may be employed as a legislative lobbyist by a lobbyist's principal to lobby as defined in this Article within one year after the end of that member's service in the General Assembly.

(b) No person serving, or formerly having served, as Governor, a member of the Council of State, or a head of a principal State department listed in G.S. 143B-6 may be employed as a legislative lobbyist by a lobbyist's principal to lobby as defined in this Article within one year after separation from employment or leaving office.

(c) No individual registered as a legislative lobbyist shall serve as a campaign treasurer under Chapter 163 of the General Statutes as defined in G.S. 163-278.6(19) for

a campaign for election as a member of the General Assembly, Governor, or Council of State.

(d) A legislative lobbyist shall not be eligible for appointment by a State official to any body created under the laws of this State that has regulatory authority over the activities of a person that the legislative lobbyist currently represents or has represented within 60 days after the expiration of the legislative lobbyist's registration representing that person. Nothing herein shall be construed to prohibit appointment by any unit of local government.

(e) No legislative lobbyist or another acting on the legislative lobbyist's behalf shall permit a covered person, legislative employee, or that person's immediate family member to use the cash or credit of the lobbyist for the purpose of lobbying unless the lobbyist is in attendance at the time of the expenditure."

SECTION 2. Article 9A of Chapter 120 of the General Statutes is amended to add a new section to read:

"**§ 120-47.7B. Powers and duties of the Secretary of State.**

(a) The Secretary of State shall perform systematic reviews of reports required to be filed under G.S. 120-47.6 and G.S. 120-47.7 on a regular basis to assure complete and timely disclosure of expenditures.

(b) The Secretary of State may petition the Superior Court of Wake County for the approval to issue subpoenas and subpoenas duces tecum as necessary to conduct investigations of violations of this Article. The court shall authorize subpoenas under this subsection when the court determines they are necessary for the enforcement of this Article. Subpoenas issued pursuant to this subsection shall be enforceable by the court through contempt powers. Venue shall be with the Superior Court of Wake County for any nonresident person, or that person's agent, who makes a reportable expenditure under this Article, and personal jurisdiction may be asserted under G.S. 1-75.4.

(c) Complaints of violations of this Article and all other records accumulated in conjunction with the investigation of these complaints shall be considered records of criminal investigations under G.S. 132-1.4."

SECTION 3. Article 9A of Chapter 120 of the General Statutes reads as rewritten:

"Article 9A.

"~~Legislative Branch~~ Lobbying.

"**§ 120-47.1. Definitions.**

~~The following definitions shall apply in this Article:~~As used in this Article, the following terms mean:

(1) ~~The term "covered person" means a legislator, the Governor, or the Lieutenant Governor.~~Covered person. – A legislator, legislative employee, or executive branch officer.

(1a) Advocacy day. – A day that any lobbyist's principal collectively assembles its membership or employees and advocates for legislative or executive action.

(1b) Constitutional officers of the State. – Officers whose offices are established in Article III of the Constitution.

(1c) Executive action. – Any decision, including administration, approval, disapproval, preparation, recommendation, the rendering of advice, and investigation, made or contemplated in any proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, investigation, charge, or rule making.

(1d) Executive branch officer. – All of the following:

a. Constitutional officers of the State, persons elected or appointed as a Constitutional officer of the State prior to taking office, or a person having filed a notice of candidacy for such office under G.S. 163-106 or Article 11 of Chapter 163 of the General Statutes.

b. Employees of the Office of the Governor.

c. Heads of all principal State departments, as set forth in G.S. 143B-6, who are appointed by the Governor.

d. The chief deputy or chief administrative assistant of each person designated under sub-subdivisions a. and c. of this subdivision.

e. Confidential assistants and secretaries as defined in G.S. 126-5(c)(2), to persons designated under sub-subdivisions a., c., and d. of this subdivision.

f. Employees in exempt positions as defined in G.S. 126-5(b) and employees in exempt positions designated in accordance with G.S. 126-5(d)(1), (2), or (2a), and confidential secretaries to these individuals.

g. Any other employees or appointees in the principal State departments as may be designated by the Governor to the extent that the designation does not conflict with the State Personnel Act.

h. All voting members of boards, including ex officio members and members serving by executive, legislative, or judicial branch appointment.

i. For The University of North Carolina, the voting members of the Board of Governors of The University of North Carolina, the president, the vice-presidents, and the chancellors, the vice-chancellors, and voting members of the boards of trustees of the constituent institutions.

j. For the System of Community Colleges, the voting members of the State Board of Community Colleges, the President and chief financial officer of the System of Community Colleges, the president, chief financial officer and chief administrative officer of each community college, and voting members of the boards of trustees of each community college.

~~(1a)~~(1e) ~~The term "expenditure" means any~~ Expenditure. – Any advance, contribution, conveyance, deposit, distribution, payment, gift, retainer,

fee, salary, honorarium, reimbursement, loan, pledge or thing of value greater than ten dollars ~~($10.00),~~($10.00) per single calendar day or a contract, agreement, promise or other obligation whether or not legally enforceable, that directly or indirectly is made to, at the request of, for the benefit of, or on the behalf of a covered ~~person, legislative employee,~~ person or that person's immediate family member.

(1f) Extended family. – Spouse, descendant, ascendant, or sibling of the covered person or, descendant, ascendant, or sibling of the spouse of the covered person.

~~(1b) The term "executive lobbyist" means a lobbyist registered pursuant to Article 4C of Chapter 147 of the General Statutes.~~

(2),(3) Repealed by Session Laws 1991, c. 740, s. 1.1.

(2a) Gift. – Anything of value without valuable consideration.

(3a) ~~The term "immediate family member" means spouse, descendant, or ascendant.~~Immediate family member. – An unemancipated child of the covered person residing in the household, and the covered person's spouse, if not legally separated.

(4) ~~The term "legislative action" means the~~Legislative action. – The preparation, research, drafting, introduction, consideration, modification, amendment, approval, passage, enactment, tabling, postponement, defeat, or rejection of a bill, resolution, amendment, motion, report, nomination, appointment, or other matter, whether or not the matter is identified by an official title, general title, or other specific reference, by the legislature or by a member or employee of the legislature acting or purporting to act in an official capacity. It also includes the consideration of any bill by the Governor for the Governor's approval or veto under Article II, Section 22(1) of the Constitution or for the Governor to allow the bill to become law under Article II, Section 22(7) of the Constitution.

(4a) ~~The term "legislative employee" means employees~~Legislative employee. – Employees and officers of the General Assembly.

(4b) ~~The term "legislative liaison personnel" means any~~Liaison personnel. – Any State employee or officer whose principal duties, in practice or as set forth in that person's job description, include lobbying the General ~~Assembly.~~Assembly or executive branch officers.

~~(4c) The term "legislative lobbyist" means any lobbyist for or against legislative action.~~

(4d) ~~The term "legislator" means a~~Legislator. – A member or presiding officer of the General ~~Assembly or~~Assembly, a person elected or appointed a member or presiding officer of the General Assembly prior to taking ~~office~~office, or a person having filed a notice of candidacy for such office under G.S. 163-106 or Article 11 of Chapter 163 of the General Statutes.

(5) ~~The term "lobbying" means any~~Lobbying. – Any of the following:

a. Influencing or attempting to influence legislative or executi action, or both, through direct communication or activities w a covered ~~person, legislative employee,~~person or that person immediate family member.

b. Solicitation of others by ~~legislative~~ lobbyists or lobbyists' principals to influence legislative or executive ~~action.~~action, or both.

c. Developing goodwill through communications or activities, including the building of relationships, with a covered ~~person, legislative employee,~~ person or that person's immediate family member with the intention of influencing current or future legislative action, but does not include communications or activities with a covered ~~person, legislative employee,~~person or that person's immediate family member in a business, civic, religious, fraternal, or commercial relationship which is not connected to legislative or executive ~~action.~~action, or both.

(6) ~~The term "lobbyist" means an~~Lobbyist. – An individual who meets any of the following criteria:

a. Is employed and receives compensation, or who contracts for economic consideration, for the purpose of lobbying.

b. Represents another person and receives compensation for the purpose of lobbying.

~~c. Is legislative liaison personnel.~~

The term "lobbyist" shall not include those individuals who are specifically exempted from this Article by G.S. 120-47.8. For the purpose of determining whether an individual is a lobbyist under this subdivision, reimbursement of actual travel and subsistence expenses shall not be considered compensation; provided, however, that reimbursement in the ordinary course of business of these expenses shall be considered compensation if a significant part of the individual's duties involve lobbying before the General ~~Assembly.~~Assembly or executive branch officers.

(7) ~~The terms "lobbyist's principal" and "principal" mean the~~Lobbyist principal and principal. – The person on whose behalf the ~~legislative~~ lobbyist lobbies. In the case where a lobbyist is compensated by a law firm, consulting firm, or other entity retained by a person for ~~legislative~~ lobbying, the principal is the person whose interests the lobbyist represents in lobbying. In the case of a lobbyist employed or retained by an association or other organization, the lobbyist's principal is the association or other organization, not the members of the association or other organization.

(7a) ~~The term "news medium" means mainstream~~News medium. – Mainstream media providers whose sole purpose is to report events and that does not involve research or advocacy.

(8) ~~The term "person" means any~~Person. – Any individual, firm, partnership, committee, association, corporation, business entity, or any other organization or group of persons which has an independent legal existence.

(8a) Public event. – Either of the following:

a. An organized gathering of individuals open to the general public or to which a legislator or legislative employee is invited along with the entire membership of the House, Senate, a committee, a subcommittee, a county legislative delegation, a joint committee or legislative caucus and to which at least 10 employees or members of the principal actually attend.

b. An organized gathering of individuals open to the general public or to which at least ten executive branch officers are invited to attend and at least 10 employees or members of the principal actually attend.

(9) ~~The General Assembly is in "regular session" from the~~ In regular session. – The date set by law or resolution that the General Assembly convenes until the General Assembly either:

a. Adjourns sine die; or

b. Recesses or adjourns for more than 10 days.

§ 120-47.2. Registration procedure.

(a) A ~~legislative~~ lobbyist shall file a registration statement with the Secretary of State in a manner prescribed by the Secretary before engaging in any lobbying. It shall be unlawful for a person to lobby without registering unless exempted by this Article. A lobbyist shall file a separate registration statement for each principal the lobbyist represents. ~~The registration shall indicate whether it is registration as a legislative lobbyist, executive lobbyist, or both, and a separate registration fee shall be paid for each separate type of registration.~~

(b) The form of the registration shall be prescribed by the Secretary of State and shall include the registrant's full name, firm, complete address and telephone number; the registrant's place of business; the full name, complete address and telephone number of each person by whom the registrant is employed or retained; and a general description of the matters on which the registrant expects to act as a ~~legislative~~ lobbyist. The Secretary of State shall make available as soon as practicable the registrations of the lobbyists and lobbyists' principals in an electronic, searchable format.

(c) Each ~~legislative~~ lobbyist shall file an amended registration form with the Secretary of State no later than 10 business days after any change in the information supplied in the ~~legislative~~ lobbyist's last registration under subsection (b). Each supplementary registration shall include a complete statement of the information that has changed.

(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~~ Assembly, Constitutional officers of the State, the head of each principal department of the Executive Branch, and the State Legislative Library a list of all persons who have

registered as ~~executive or legislative~~ lobbyists and whom they represent. ~~Within 20 days after the beginning of the term of a Governor, the Secretary of State shall furnish the Governor, each other member of the Council of State, the head of each principal department of the Executive Branch, and the State Legislative Library a list of all persons who have registered as executive or legislative lobbyists and whom they represent.~~ A supplemental list of ~~legislative~~ lobbyists shall be furnished periodically each 20 days ~~thereafter as the session progresses.~~ while the General Assembly is in session, and every 60 days thereafter. ~~A supplemental list of executive lobbyists shall be furnished periodically each 60 days thereafter.~~ For each special session of the General Assembly, a supplemental list of ~~legislative~~ lobbyists shall be furnished to the State Legislative Library. All lists required by this section may be furnished electronically.

(e) Each registration statement of a ~~legislative~~ lobbyist required under this Article shall be effective from the date of filing until January 1 of the following year. The ~~legislative~~ lobbyist shall file a new registration statement after that date, and the applicable fee shall be due and payable.

"§ 120-47.3. Registration fee.

A fee of one hundred dollars ($100.00) is due and payable to the Secretary of State by either the lobbyist or the lobbyist's principal at the time of each lobbyist registration. Fees so collected shall be deposited in the General Fund of the State. The Secretary of State shall allow fees required under this section to be paid electronically but may not require the fees to be paid electronically. The Secretary of State shall adopt rules providing for the waiver or reduction of the fees required by this section in cases of hardship.

"§ 120-47.4. Authorization from lobbyist's principal; fee from principal.

(a) Each ~~legislative~~ lobbyist or lobbyist's principal shall file with the Secretary of State within 10 business days after the ~~legislative~~ lobbyist's registration a written authorization signed by the lobbyist's principal authorizing the lobbyist to represent the principal.

(b) The form of the authorization shall be prescribed by the Secretary of State and shall include the lobbyist's principal's full name, complete address and telephone number, name and title of the official signing for the lobbyist's principal, and the name of each lobbyist registered to represent the lobbyist's principal. The Secretary of State shall make available as soon as practicable the authorization of the lobbyists' principals in an electronic, searchable format.

(c) An amended authorization shall be filed with the Secretary of State no later than 10 days after any change in the information supplied for the lobbyist's principal on the previous authorization. Each supplementary authorization shall include a complete statement of the information that has changed.

(d) Except as provided for in subsection (e) of this section, a fee of one hundred dollars ($100.00) is due and payable to the Secretary of State at the time the lobbyist's principal's first authorization statement is filed each calendar year for a ~~legislative~~ lobbyist. ~~The fee for the legislative lobbyist's authorization shall be seventy-five dollars ($75.00) if an authorization for the principal to be represented by an executive lobbyist~~

~~is filed at the same time. No additional fee is due for additional authorizations filed f~~ ~~legislative lobbyists.~~

(e) The Secretary of State shall adopt rules providing for the waiver or reduction of the fees required by ~~fee in~~ subsection (d) of this section. The rules shall provide that the fees be reduced to a total of twenty-five dollars ($25.00) if the lobbyist's principal had annual revenues in its most recent fiscal year of three hundred thousand dollars ($300,000) or less and is represented by no more than two different lobbyists. ~~This reduced fee covers authorizations filed for the principal's legislative and executive lobbyists.~~

"§ 120-47.5. Contingency lobbying fees and election influence prohibited.

(a) No person shall act as a ~~legislative~~ lobbyist for compensation that is dependent upon the result or outcome of any legislative action.

(b) No ~~legislative lobbyist or legislative lobbyist's principal~~ person shall attempt to influence the action of any covered person by the promise of financial support of the covered person's candidacy, or by threat of financial support in opposition to the covered person's candidacy in any future election.

"§ 120-47.5A. Certain gifts by lobbyists and lobbyist's principals prohibited; ~~Exemptions and inclusions for reporting purposes.~~exemptions.

(a) No lobbyist or lobbyist's principal may give a gift to a covered person.

~~(a)~~(a1) ~~For purposes of G.S. 120-47.6 and G.S. 120-47.7, the following expenditures need not be reported:~~Subsection (a) of this section shall not apply to:

~~(1) Gifts between an immediate family member or person who is the stepchild, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, or members of the household of the covered person or legislative employee~~

~~(2) Lawful campaign contributions.~~

~~(3) Commercially available loans made on terms not more favorable than generally available to the public in the normal course of business if not made for the purpose of lobbying.~~

~~(4) Contractual arrangements or business relationships or arrangements made in the normal course of business if not made for the purpose of lobbying.~~

~~(5) The cost of attendance or participation provided by the sponsoring entity of lodging, and of food and beverages consumed, at events sponsored by or in conjunction with a civic, charitable, community, or diplomatic event if the activity or event does not last longer than three hours.~~

~~(6) Academic scholarships made on terms not more favorable than scholarships generally available to the public.~~

(1) Meals and beverages for immediate consumption in connection with public events.

(2) Nonmonetary items, other than food or beverages, with a value not to exceed ten dollars ($10.00) provided by a single donor during a single calendar day.

(3) Informational materials relevant to the duties of the covered person.
(4) Reasonable actual expenses for food, registration, travel, and lodging of the covered person for a meeting at which the covered person participates in a panel or speaking engagement at the meeting related to the public servant's duties and when expenses are incurred on the actual day of participation in the engagement or incurred within a 24-hour time period before or after the engagement.
(5) Items or services received in connection with a state, national, or regional organization in which the covered person or the covered person's agency is a member.
(6) Items and services received relating to an educational conference or meeting.
(7) A plaque or similar nonmonetary memento recognizing individual services in a field or specialty or to a charitable cause.
(8) Gifts accepted on behalf of the State.
(9) Anything generally available or distributed to the general public or all other State employees.
(10) Anything for which fair market value is paid.
(11) Commercially available loans made on terms not more favorable than generally available to the public in the normal course of business if not made for the purpose of lobbying.
(12) Contractual arrangements or business relationships or arrangements made in the normal course of business if not made for the purpose of lobbying.
(13) Academic scholarships made on terms not more favorable than scholarships generally available to the public.
(14) Political contributions properly received and reported as required under Article 22A of Chapter 163 of the General Statutes.
(15) Gifts from the covered person's extended family, or a member of the same household of the covered person, or gifts received in conjunction with a marriage, birth, adoption, or death.
(16) Things of monetary value given to a executive branch officer valued in excess of ten dollars ($10.00) where the thing of monetary value is entertainment or related expenses associated with the public business of industry recruitment, promotion of international trade, or the promotion of travel and tourism, and the executive branch officer is responsible for conducting the business on behalf of the State, provided all the following conditions apply:
a. The executive branch officer did not solicit the thing of value, and the executive branch officer did not accept the thing of value in the performance of the executive branch officer's official duties.
b. The executive branch officer reports electronically to the Commission within 30 days of receipt of the thing of value. The

report shall include a description and value of the thing of value and a description how the thing of value contributed to the public business of industry recruitment, promotion of international trade, or the promotion of travel and tourism. This report shall be posted to the Commission's public Web site.

c. A tangible thing of value in excess of ten dollars ($10.00), other than meals or beverages, shall be turned over as State property to the Department of Commerce within 30 days of receipt.

(17) Things of monetary value of personal property valued at less than one hundred dollars ($100.00) given to an executive branch officer in the commission of the executive branch officer's official duties if the gift is given to the executive branch officer as a personal gift in another country as part of an overseas trade mission, and the giving and receiving of such personal gifts is considered a customary protocol in the other country.

(b) For purposes of G.S. 120-47.6 and G.S. 120-47.7, all expenditures made for the purpose of lobbying shall be reported, including the following:

(1) Expenditures benefiting or made on behalf of a covered person, ~~a legislative employee,~~ or those persons' immediate family members, in the regular course of that person's ~~nonlegislative~~ employment.

(2) Contractual arrangements or direct business relationships between a ~~legislative~~ lobbyist or ~~legislative~~ lobbyist's principal and a covered person, ~~legislative employee,~~ or that person's immediate family member, in effect during the reporting period or the previous 12 months.

(3) Expenditures reimbursed to a ~~legislative~~ lobbyist in the ordinary course of business by the lobbyist's principal or other employer. Expenditures reimbursed by the lobbyist's principal or other employer are reported only by the lobbyist.

(4) Expenditures for items exempted by subsection (a1) of this section.

~~(c) For reporting purposes of G.S. 120-47.6 and G.S. 120-47.7, legislative lobbying with respect to only the legislative actions of the Governor and Lieutenant Governor shall be reported.~~

(d) The offering or giving of a gift in compliance with this Article without corrupt intent shall not constitute a violation of G.S. 14-217 or G.S. 14-218.

"§ 120-47.6. Statements of ~~legislative~~ lobbyist's lobbying expenditures required.

(a) Each ~~legislative~~ lobbyist shall file ~~monthly~~ quarterly expenditure reports under oath with the Secretary of State, in a manner prescribed by the Secretary of State, which may include electronic reports, with respect to each lobbyist's ~~principal, while the General Assembly is in regular session, and quarterly thereafter.~~ principal. The expenditure report shall include all expenditures during the reporting period and shall be due 10 business days after the end of the reporting period. The ~~legislative~~ lobbyist shall file ~~expense~~ expenditure reports whether or not expenditures are made.

(a1) In addition to the reports required by subsection (a) of this section, each lobbyist incurring expenditures with respect to lobbying legislators and legislative employees shall file a monthly expenditure report while the General Assembly is in regular session. The monthly expenditure report shall contain information required by this section with respect to all lobbying of legislators and legislative employees, and is due within 10 business days of the end of the month. The information on the monthly expenditure report shall also be included in each quarterly report required by subsection (a) of this section.

(b) Each expenditure report shall set forth the fair market ~~value,~~value or face value if shown, date, a description of the expenditure, name and address of the payee, or beneficiary, and name of any covered person, ~~legislative employee,~~ or that person's immediate family member benefiting from the expenditure. Such expenditures shall be reported using the following categories:

(1) Transportation and lodging.
(2) Entertainment, food, and beverages.
(3) Meetings and events.
(4) Gifts.
(5) Other expenditures.
(6) Solicitation of others to lobby, including if such expenditures are incurred in connection or in concert with other reportable expenditures.

~~In addition, expenses for the solicitation of others to lobby, whether or not a covered person, legislative employee, or family member is affected, shall be reportable if such expenses are incurred in connection, or in concert, with other expenditures reportable under this subsection.~~

(c) All reports shall be in the form prescribed by the Secretary of State and shall be open to public inspection upon filing. When more than 15 covered persons benefit from an expenditure, no names of individuals need be reported provided that the report identifies the approximate number of covered persons benefiting and, with particularity, the basis for their selection, including the name of the legislative body, committee, caucus, or other group whose membership list is a matter of public record in accordance with G.S. 132-1 or including a description of the group that clearly distinguishes its purpose or composition from the general membership of the General Assembly. The approximate number of ~~legislative employees and~~ immediate family members of covered persons ~~and legislative employees~~ who benefited from the expenditure shall be listed separately.

(d) When a ~~legislative~~ lobbyist fails to file an expenditure report as required in this section, the Secretary of State shall send a certified or registered letter advising the ~~legislative~~ lobbyist of the delinquency and the penalties provided by law. Within 20 days of the receipt of the letter, the ~~legislative~~ lobbyist shall deliver or post by United States mail to the Secretary of State the required report and an additional late filing fee in an amount equal to the late filing fee under G.S. 163-278.34(a)(2).

(e) Filing of the required report and payment of the additional fee within the time extended shall constitute compliance with this section. Failure to file an expenditure

report in one of the manners prescribed in this section shall result in revocation of any and all registrations of a legislative lobbyist under this Article. No ~~legislative~~ lobbyist may register or reregister under this Article until the ~~legislative~~ lobbyist has fully complied with this section.

(f) Appeal of a decision by the Secretary of State under this section shall be in accordance with Article 3 of Chapter 150B of the General Statutes.

(g) The Secretary of State may adopt rules to facilitate complete and timely disclosure of expenditures, including the format of reports and additional categories of information, and to protect the addresses of payees under protective order issued pursuant to Chapter 50B of the General Statutes or participating in the Address Confidentiality Program pursuant to Chapter 15C of the General Statutes. The Secretary of State shall not impose any penalties or late filing fees upon a ~~legislative~~ lobbyist for subsequent failures to comply with the requirements of this section if the Secretary of State failed to provide ~~to~~ the lobbyist with required notifications of the initial violation. This provision shall not apply to a failure by the lobbyist to file an expenditure report in a timely manner.

"§ 120-47.7. Statements of ~~legislative~~ lobbyist's principal lobbying expenditures required.

(a) Each ~~legislative~~ lobbyist's principal shall file ~~monthly~~ quarterly expenditure reports under oath with the Secretary of State, in a manner prescribed by the Secretary of State, which may include electronic ~~reports, while the General Assembly is in regular session, and quarterly thereafter.~~reports. The expenditure report shall include all expenditures during the reporting period and shall be due 10 business days after the end of the reporting period. The lobbyist's principal shall file the expenditure reports whether or not expenditures are made during a reporting period.

(a1) In addition to the reports required by subsection (a) of this section, each lobbyist's principal incurring expenditures with respect to lobbying legislators and legislative employees shall file a monthly expenditure report while the General Assembly is in regular session. The monthly expenditure report shall contain information required by this section with respect to all lobbying of legislators and legislative employees, and is due within 10 business days of the end of the month. The information on the monthly expenditure report shall also be included in each quarterly report required by subsection (a) of this section.

(b) Each expenditure report shall set forth the fair market ~~value,~~value or face value if shown, date, a description of the expenditure, name and address of the payee, or beneficiary, and name of any covered person, ~~legislative employee,~~ or that person's immediate family member affected by the expenditure. Such expenditures shall be reported using the following categories:

(1) Transportation and lodging.
(2) Entertainment, food, and beverages.
(3) Meetings and events.
(4) Gifts.
(5) Other expenditures.

(6) Solicitation of others to lobby, including if such expenditures are incurred in connection or in concert with other expenditures reportable under this Article.

(7) Compensation paid to all lobbyists during the reporting period. If a legislative lobbyist is a full-time employee of the lobbyist's principal, or is compensated by means of an annual fee or retainer, the lobbyist's principal shall estimate and report the portion of the salary, fee, or retainer that compensates for lobbying.

(8) Expenditures reimbursed or paid to lobbyists for lobbying that are not reported on the lobbyist's report, with an itemized description of those expenditures.

~~In addition, expenses for the solicitation of others to lobby, whether or not a covered person, legislative employee, or family member is affected, shall be reportable if such expenses are incurred in connection, or in concert, with other expenditures reportable under this subsection.~~

~~In addition, the compensation paid or agreed to be paid to all legislative lobbyists shall be reported, whether or not a covered person, legislative employee, or family member is affected. If a legislative lobbyist is a full-time employee of the lobbyist's principal, or is compensated by means of an annual fee or retainer, the lobbyist's principal shall estimate and report the portion of the salary, fee, or retainer that compensates for lobbying. The lobbyist's principal's expenditure report shall include an itemized description of all expenditures reimbursed or paid to legislative lobbyists for lobbying that are not reported on the legislative lobbyists' reports.~~

(c) All reports shall be in the form prescribed by the Secretary of State and open to public inspection upon filing. When more than 15 covered persons benefit from an expenditure, no names of individuals need be reported provided that the report identifies the approximate number of covered persons benefiting and, with particularity, the basis for their selection, including the name of the legislative body, committee, caucus, or other group whose membership list is a matter of public record in accordance with G.S. 132-1 or including a description of the group that clearly distinguishes its purpose or composition from the general membership of the General Assembly. The approximate number of ~~legislative employees and~~ immediate family members of covered persons ~~and legislative employees~~ who benefited from the expenditure shall be listed separately.

(d) When a lobbyist's principal fails to file an expenditure report as required in this section, the Secretary of State shall send a certified or registered letter advising the lobbyist's principal of the delinquency and the penalties provided by law. Within 20 days of the receipt of the letter, the lobbyist's principal shall deliver or post by United States mail to the Secretary of State the required report and a late filing fee in an amount equal to the late filing fee under G.S. 163-278.34(a)(2).

(e) Filing of the required report and payment of the late fee within the time extended shall constitute compliance with this section. Failure to file an expenditure report in one of the manners prescribed in this section shall result in revocation of any and all registrations of a lobbyist's principal under this Article. No lobbyist's principal

may register or reregister under this Article until the lobbyist's principal has fully complied with this section.

(f) Appeal of a decision by the Secretary of State under this section shall be in accordance with Article 3 of Chapter 150B of the General Statutes.

(g) The Secretary of State may adopt rules to facilitate complete and timely disclosure of expenditures, including the format of reports and additional categories of information, and to protect the addresses of payees under protective order issued pursuant to Chapter 50B of the General Statutes or participating in the Address Confidentiality Program pursuant to Chapter 15C of the General Statutes. The Secretary of State shall not impose any penalties or late filing fees upon a principal for subsequent failures to comply with the requirements of this section if the Secretary of State failed to provide to the lobbyist's principal with required notifications of the initial violation. This provision shall not apply to a failure by the principal to file an expenditure report in a timely manner.

"**§ 120-47.7A.** Reserved for future codification purposes.

"**§ 120-47.7B. Powers and duties of the Secretary of State.**

(a) The Secretary of State shall perform systematic reviews of reports required to be filed under G.S. 120-47.6 and G.S. 120-47.7 on a regular basis to assure complete and timely disclosure of allowable expenditures.

(b) The Secretary of State may petition the Superior Court of Wake County for the approval to issue subpoenas and subpoenas duces tecum as necessary to conduct investigations of violations of this Article. The court shall authorize subpoenas under this subsection when the court determines they are necessary for the enforcement of this Article. Subpoenas issued pursuant to this subsection shall be enforceable by the court through contempt powers. Venue shall be with the Superior Court of Wake County for any nonresident person, or that person's agent, who makes a reportable expenditure under this Article, and personal jurisdiction may be asserted under G.S. 1-75.4.

(c) Complaints of violations of this Article and all other records accumulated in conjunction with the investigation of these complaints shall be considered records of criminal investigations under G.S. 132-1.4.

"**§ 120-47.7C. Prohibitions.**

(a) No member or former member of the General Assembly may be employed as ~~an executive or legislative~~ a lobbyist by a lobbyist's principal to lobby as defined in this Article ~~or Article 4C of Chapter 147 of the General Statutes~~ within ~~six months~~one year after the end of that member's service in the General Assembly.

(b) No person serving as ~~Governor, as a member of the Council of State,~~a Constitutional officer of the State or as a head of a principal State department listed in G.S. 143B-6 may be employed as ~~an executive or legislative~~a lobbyist by a lobbyist's principal to lobby as defined in this Article ~~or Article 4C of Chapter 147 of the General Statutes~~ within ~~six months~~one year after separation from employment or leaving office.

(c) No individual registered as a ~~legislative~~ lobbyist shall serve as a campaign treasurer ~~under Chapter 163 of the General Statutes~~ as defined in G.S. 163-278.6(19) for a campaign for election as a member of the General ~~Assembly.~~Assembly or a Constitutional officer of the State.

(d) A ~~legislative or executive~~ lobbyist shall not be eligible for appointment by a State official to any body created under the laws of this State that has regulatory authority over the activities of a person that the lobbyist currently represents or has represented within 60 days after the expiration of the lobbyist's registration representing that person. Nothing herein shall be construed to prohibit appointment by any unit of local government.

(e) No ~~legislative or executive~~ lobbyist or another acting on the lobbyist's behalf shall permit a covered person ~~person, legislative employee, executive branch officer,~~ or that person's immediate family member, to use the cash or credit of the lobbyist for the purpose of lobbying unless the lobbyist is in attendance at the time of the expenditure.

"§ 120-47.8. Persons exempted from provisions of Article.

Except as otherwise provided in this Article, the provisions of this Article shall not be construed to apply to any of the ~~following:~~following lobbying activities:

(1) An individual solely engaged in expressing a personal opinion or stating facts or recommendations on legislative matters to members of the General Assembly and not acting as a legislative lobbyist.

(2) A person appearing before a ~~legislative committee~~ committee, commission, board, council, or other collective body whose membership includes one or more covered persons at the invitation or request of the committee or a member thereof and who engages in no further activities as a legislative lobbyist.

(3) a. A duly elected or appointed official or employee of the State, the United States, a county, municipality, school district or other governmental agency, when appearing solely in connection with matters pertaining to the office and public duties.

b. Notwithstanding the persons exempted in this Article, the ~~Governor, Council of State,~~ Constitutional officers of the State and all appointed heads of State departments, agencies and institutions, shall designate all authorized official ~~legislative~~ liaison personnel and shall file and maintain current lists of designated ~~legislative~~ liaison personnel with the Secretary of State.

(4) A person performing professional services in drafting ~~bills~~ bills, or in advising and rendering opinions to clients, or to covered persons on behalf of clients, as to the construction and effect of proposed or pending ~~legislation~~ legislative or executive action where the professional services are not otherwise connected with the legislative or executive action.

(5) A person who owns, publishes or is employed by any news medium while engaged in the acquisition or dissemination of news on behalf of the news medium.

(6) Repealed by Session Laws 1991, c. 740, s. 1.1.

(7) Covered ~~persons and legislative employees.~~persons while acting in their official capacity.

(8) A person responding to inquiries from a ~~member of the General Assembly or a legislative employee,~~covered person and who engages in no further activities as a ~~legislative~~ lobbyist in connection with that or any other legislative ~~matter.~~or executive action.

(9) An ~~employee who represents the employer's interests in action for no more than three hours in a quarter, provided that neither the employee nor the employer makes any expenditure as defined in G.S. 120-47.1.~~ individual while participating in an advocacy day.

(10) A person appearing before an executive branch agency or department on behalf of another person, on an individual application for a license or permit, or a disciplinary action on a license or permit.

(11) A person appearing before an executive branch officer on behalf of another person with respect to a proposed sale or lease of real property, goods or services to the State, or construction of property by the State.

(12) A person appearing before an executive branch agency or department or an executive branch officer on behalf of another person or entity in connection with an application for a grant, loan, determination or eligibility, or certification.

"**§ 120-47.8A. Expenditures made by persons exempted or not covered by this Article.**

(a) If a covered person ~~or a legislative employee~~ accepts an expenditure made for the purpose of lobbying valued over two hundred dollars ($200.00) from a person or group of persons acting together, exempted or not otherwise covered by this Article, the person, or group of persons, making the expenditure shall report the date, a description of the expenditure, the name and address of the person, or group of persons, making the expenditure, the name of the covered person ~~or legislative employee~~ accepting the expenditure, and the estimated fair market value of the expenditure.

(b) If the person making the expenditure in subsection (a) of this section is outside North Carolina, and the covered person ~~or legislative employee~~ accepting the expenditure is also outside North Carolina at the time the person accepts the expenditure, then the person accepting the expenditure shall be responsible for filing the report using available information.

(c) If a covered person ~~or a legislative employee~~ accepts a scholarship valued over two hundred dollars ($200.00) from a person, or group of persons, acting together, exempted or not covered by this Article, the person, or group of persons, granting the scholarship shall report the date of the scholarship, a description of the event involved, the name and address of the person, or group of persons, granting the scholarship, the name of the covered person ~~or legislative employee~~ accepting the scholarship, and the estimated fair market value.

(d) If the person granting the scholarship in subsection (c) of this section is outside North Carolina, the covered person ~~or legislative employee~~ accepting the scholarship shall be responsible for filing the report.

(e) This section shall not apply to any of the following:

(1) Lawful campaign ~~contributions.~~ contributions properly received and reported as required under Article 22A of Chapter 163 of the General Statutes.

(2) Any gift from ~~a~~ an extended family member to a covered person. ~~person or legislative employee.~~

(3) Gifts associated primarily with the covered ~~person's, legislative employee's,~~ person's or that person's immediate family member's ~~nonlegislative~~ employment.

(4) Gifts, other than food, beverages, travel, and lodging, which are received from a person who is a citizen of a country other than the United States or a state other than North Carolina and given during a ceremonial presentation or as a custom.

(5) A thing of value that is paid for by the State.

(f) Reports required by this section shall be filed within 10 business days after the end of the quarter in which the expenditure was made, with the Secretary of State in a manner prescribed by the Secretary of State, which may include electronic reports.

"**§ 120-47.8B. Advocacy Day.**

(a) No lobbyist's principal may conduct more than one advocacy day per calendar year.

(b) All advocacy days to lobby the General Assembly must be scheduled through the Legislative Services Office.

(c) All advocacy days to lobby executive branch officers must be scheduled through the Governor's Office.

(d) All lobbyists' principals conducting an advocacy day shall comply with this Article while conducting the advocacy day.

"**§ 120-47.9. Punishment for violation.**

(a) Whoever willfully violates any provision of this Article shall be guilty of a Class 1 misdemeanor. In addition, no ~~legislative~~ lobbyist who is convicted of a violation of the provisions of this Article shall in any way act as a ~~legislative or executive~~ lobbyist for a period of two years following conviction.

(b) In addition to the criminal penalties set forth in this section, the Secretary of State may levy civil fines for willful false or incomplete reporting up to five thousand dollars ($5,000) per violation.

"**§ 120-47.10. Enforcement of Article by Attorney General.**

(a) The Secretary of State may investigate complaints of violations of this Article, ~~The Secretary of State~~ and shall report apparent violations of this Article to the Attorney General. The Attorney General shall, upon complaint, make an appropriate investigation thereof, and the Attorney General shall forward a copy of the investigation to the district attorney of the prosecutorial district as defined in G.S. 7A-60 of which Wake County is a part, who shall prosecute any person who violates any provisions of this Article.

(b) Complaints of violations of this Article involving the Secretary of State or any member of the Department of the Secretary of State shall be referred to the

Attorney General for investigation in accordance with G.S. 120-47.7B. Any portion of the complaint not involving alleged violations of this Article by the Secretary of State or any member of the Department of the Secretary of State shall remain with the Secretary of State for investigation. The Attorney General shall, upon receipt of a complaint, make an appropriate investigation thereof, and the Attorney General shall forward a copy of the investigation to the District Attorney of the prosecutorial district as defined in G.S. 7A-60 of which Wake County is a part, who shall prosecute any person who violates any provisions of this Article.

(c) Complaints of improper lobbying involving the Attorney General or any member of the Department of Justice shall be investigated by the Secretary of State and any apparent violations reported to the District Attorney of that prosecutorial district as defined in G.S. 7A-60 of which Wake County is a part. The District Attorney of that prosecutorial district shall, upon receipt of the Secretary of State's report, prosecute any person who violates any provisions of this Article.

"**§ 120-47.11. Rules and forms.**

(a) The Secretary of State shall adopt any rules, orders, forms, and definitions as are necessary to carry out the provisions of this Article. The Secretary of State may appoint a council to advise the Secretary in adopting rules under this section.

(b) The Secretary of State shall adopt rules to protect from disclosure all confidential information under Chapter 132 related to economic development initiatives or to industrial or business recruitment activities. The information shall remain confidential until the State, a unit of local government or the business has announced a commitment by the business to expand or locate a specific project in this State or a final decision not to do so and the business has communicated that commitment or decision to the State or local government agency involved with the project.

"**§ 120-47.12. Limitations on agency ~~legislative~~ liaison personnel.**

(a) No State department may use State funds to contract with persons who are not employed by the State to lobby the General Assembly.

(b) No more than two persons in each State department and constituent institution of The University of North Carolina may be registered to lobby the General Assembly or designated as ~~legislative~~ liaison personnel pursuant to this Article.

(c) All persons designated as ~~legislative~~ liaison personnel pursuant to this Article and the State department or constituent institution of The University of North Carolina that employs the ~~legislative~~ liaison personnel shall report all expenditures made for lobbying purposes in the same manner as required for ~~legislative~~ lobbyists under G.S. 120-47.6 and lobbyists' principals under G.S. 120-47.7. The registration and authorization fees required under G.S. 120-47.3 and G.S. 120-47.4 shall not apply to ~~legislative~~ liaison personnel or the State department or constituent institution that employs the ~~legislative~~ liaison personnel."

"**§ 120-47.13. Advisory opinions.**

(a) At the request of any person affected by this Article, the Secretary of State shall render advisory opinions on specific questions involving the meaning and application of this Article and the covered person's compliance therewith. The request shall be in writing and relate prospectively to real or reasonably anticipated fact settings

or circumstances. The Secretary of State shall issue advisory opinions having prospective application only. Reliance upon a requested written advisory opinion on a specific matter shall immunize the covered person, on that matter, from both of the following:

(1) Investigation by the Secretary of State.

(2) Any adverse action by the employing entity.

(b) Staff to the Secretary of State may issue advisory opinions under rules adopted by the Secretary of State.

(c) The Secretary of State shall interpret the provisions of this Article by rules, and these interpretations shall be binding on all covered persons, lobbyists, and lobbyists' principal upon publication.

(d) The Secretary of State shall publish its advisory opinions at least once a year, edited as necessary to protect the identities of the individuals requesting opinions.

(e) Except as provided under subsection (d) of this section, requests for advisory opinions and advisory opinions issued pursuant to this section are confidential and not matters of public record.

"**§ 120A-14. Lobbying education program.**

(a) The Secretary of State shall develop and implement a lobbying education and awareness program designed to instill in all covered persons, lobbyists, and lobbyists' principals a keen and continuing awareness of their obligations and a sensitivity to situations that might result in real or potential violation of this Article or other related laws. The Secretary shall make basic lobbying education and awareness presentations to all covered persons upon their election, appointment or hiring and shall offer periodic refresher presentations as the Secretary deems appropriate. Every covered person shall participate in a lobbying presentation approved by the Secretary within six months of the person's election, appointment or hiring, and shall attend refresher ethics education presentations at least every two years thereafter in a manner the Secretary deems appropriate. Upon request, the Secretary shall assist each agency in developing in-house education programs and procedures necessary or desirable to meet the agency's particular needs for lobbying education.

(b) The Secretary shall publish a newsletter containing summaries of the Secretary's opinions, policies, procedures, and interpretive bulletins as issued from time to time. The newsletter shall be distributed to all covered persons, lobbyists, and lobbyists' principals. Publication under this subsection may be done electronically.

(c) The Secretary shall assemble and maintain a collection of relevant State laws, rules, and regulations that set forth lobbying standards applicable to covered persons. The collection of laws, rules and regulations shall be made available electronically as resource material to covered persons, lobbyists and lobbyists' principals, upon request.

"**§ 120-15. No gift registry.**

(a) The Secretary of State shall establish a "No Gifts" registry for persons subject to this Article. The "No Gifts" registry shall be published and updated with the list of lobbyists and lobbyists' principals required under G.S. 120-47.2.

(b) Except as provided in this subsection, lobbyists and lobbyists' principals shall not give unsolicited gifts allowed under G.S. 120-47.5A(a1)(2) to persons placing their

names on the registry, without the persons' expressed consent. Gifts of informational directories may be given to persons placing their names on the registry.

(c) The Secretary shall have the authority to adopt rules to implement this section in compliance with the following criteria:

(1) The registration is valid from the time the person registers until January 1 of the following year, unless the person requests in writing the removal of that person's name.

(2) The registration shall be in writing.

(d) Violations of this section shall not constitute a crime but shall be subject to civil fines of up to five hundred dollars ($500.00) as levied by the Secretary of State."

SECTION 4. Sections 2 and 3 of S.L. 2005-456 are repealed.

SECTION 5.1. G.S. 163-278.6 is amended by adding a new subsection to read:

"**§ 163-278.6. Definitions.**

When used in this Article:

...

(5a) The term 'Constitutional officers of the State' means officers whose offices are established in Article III of the Constitution.

..."

SECTION 5.2. Article 22A of Chapter 163 of the General Statutes is amended by adding a new section G.S. 163-278.19A to read:

"**§ 163-278.13C. Limitation on contributions by registered lobbyists.**

(a) No lobbyist registered under Article 9A of Chapter 120 shall do any of the following:

(1) Make or offer to make a contribution to a legislator, executive branch official, or candidate campaign committee.

(2) Make a contribution to any candidate, officeholder, or political committee, directing or requesting that the contribution be made in turn to a legislator, executive branch official, or candidate campaign committee.

(3) Transfer any amount of money or anything of value to any entity, directing or requesting that the entity use what was transferred to contribute to a legislator, executive branch officer, or candidate campaign committee.

(4) Solicit a contribution from any individual, political committee, or other entity on behalf of a legislator, executive branch official, or candidate campaign committee. This subdivision does not apply to a registered lobbyist soliciting a contribution on behalf of a political party executive committee if the solicitation is solely for a separate segregated fund kept by the political party limited to use for activities that are not candidate-specific, including generic voter registration and get-out-the-vote efforts, pollings, mailings, and other general activities and advertising that do not refer to a specific individual candidate.

(b) No legislator, executive branch official, or candidate campaign committee or the real or purported agent of that legislator, executive branch official, or candidate campaign committee shall do any of the following:

(1) Solicit a contribution from a lobbyist registered under Article 9A of Chapter 120 of the General Statutes.

(2) Solicit a third party, requesting or directing that the third party directly or indirectly solicit a contribution from a lobbyist registered under Article 9A of Chapter 120 of the General Statutes or relay to the lobbyist registered under Article 9A of Chapter 120 of the General Statutes the legislator's, executive branch official's, or candidate campaign committee's solicitation of a contribution.

(3) Accept a contribution from a lobbyist registered under Article 9A of Chapter 120 of the General Statutes.

(c) It shall not be deemed a violation of this section for a legislator or executive branch official to serve on a board or committee of an organization that makes a solicitation of a lobbyist registered under Article 9A of Chapter 120 of the General Statutes as long as that legislator or executive branch official does not directly participate in the solicitation and that legislator or executive branch official does not directly benefit from the solicitation.

(d) As used in this section, the following terms mean:

(1) Candidate campaign committee. – As defined in G.S. 163-278.38Z and that candidate has filed a notice of candidacy for office as a member of the General Assembly or a Constitutional officer of the State.

(2) Executive branch official. – As defined in G.S. 120-47.1(1d)(a).

(3) Legislator. – As defined in G.S. 120-47.1(4d).

(e) A violation of this section is a Class 2 misdemeanor.

SECTION 5.3. G.S. 163-278.13B(a)(1) reads as rewritten:

"(1) "Limited contributor" means a ~~lobbyist registered pursuant to Article 9A of Chapter 120 of the General Statutes, that lobbyist's agent, that~~ lobbyist's principal as defined in ~~G.S. 120-47.1(7),~~ G.S. 120-47 or a political committee that employs or contracts with or whose parent entity employs or contracts with a lobbyist registered pursuant to Article 9A of Chapter 120 of the General Statutes."

SECTION 6. If any section or provision of this act is declared unconstitutional or invalid by the courts, it does not affect the validity of this act as a whole or any part other than the part so declared to be unconstitutional or invalid.

SECTION 7. Sections 1, 2, 6, and 7 of this act are effective when the act becomes law, and the new G.S. 120-47.7C(d) applies to appointments made on or after that date. The remainder of this act becomes effective January 1, 2007.

Attachment XI

HOUSE BILL 1849: Lobbying Reforms 2006

BILL ANALYSIS

Committee:	House Judiciary I	**Date:**	May 11, 2006
Introduced by:	Reps. Hackney, Howard, Gibson, Sherrill	**Summary by:**	R. Erika Churchill
Version:	First Edition		Committee Counsel

SUMMARY: House Bill 1849 amends North Carolina's lobbying laws to do all of the following:

1. *Implements earlier certain prohibitions creating waiting periods before certain State officers may lobby and barring lobbyists from certain appointments and other activities.*
2. *Bans certain gifts by lobbyists and lobbyists' principals to covered persons (legislators, legislative employees, and executive branch officers).*
3. *Expands coverage of the lobbying laws to additional executive branch officers and employees, with a combined single registration, fee, regulation, and reporting periods for both legislative and executive branch lobbying.*
4. *Bans campaign contributions by registered lobbyists.*
5. *Permits the issuance of advisory opinions and requires lobbying education programs.*

CURRENT LAW:

Under current law effective until January 1, 2007, a person who is paid to try to influence legislative action (action on a specific bill, resolution, amendment, etc.) is required to register as a lobbyist with the Secretary of State and report at the end of each regular session, any expenditures in excess of $25 spent on lobbying legislators. Expenditures spent for the general goodwill of legislators not tied to specific legislative action do not need to be reported, nor do expenditures spent on legislative staff or legislators' family members. There is no limitation on the types or amount of expenditures that a lobbyist can spend on a legislator for lobbying purposes. Every principal who hires the services of a lobbyist also has to file reports on expenditures that the principal made for lobbying, including the amount of compensation paid to lobbyists. Exempt from the lobbying laws are persons who lobby on their own behalf, persons appearing before the General Assembly at the General Assembly's request, elected and appointed local government officials and employees lobbying on behalf of their local governments, State agency legislative liaison personnel, and members of the General Assembly. Violation of this law is punished as a Class 1 misdemeanor.

S.L. 2005-456 (Senate Bill 612) amended the current law, to take effect January 1, 2007. Changes effective January 1, 2007, include:

- Developing goodwill is added as part of the definition of lobbying.
- The definition of "expenditure" for reporting purposes includes anything of value over $10.
- The lobbying laws are applied to certain persons in the Executive branch under a separate registration, fee and reporting.
- Legislative staff are included under lobbying regulations.
- The frequency of reporting lobbying expenditures is increased to monthly during regular session and quarterly in the interim; and quarterly reports for executive branch lobbying.
- Legislators and certain executive branch officials are prohibited from lobbying within 6 months of leaving office.
- Lobbyists are prohibited from serving as campaign treasurers for legislative races.

BILL ANALYSIS:

House Bill 1849 amends the current lobbying laws in the following ways (Effective when the bill becomes law):

- Prohibits a legislator or former legislator from being employed as a lobbyist within 1 year after the expiration of the term for which the legislator was elected or appointed to serve.
- Prohibits the Governor or Council of State member or head of a cabinet department from being employed as a lobbyist within one year after separation from employment or leaving office, whichever is later.
- Prohibits a lobbyist from serving as a campaign treasurer for a legislative or Council of State campaign.
- Prohibits a lobbyist from being appointed to any board, authority, commission, etc. that regulates the activities of a business, organization, person or agency that the lobbyist represented within 60 days of that representation.
- Prohibits a lobbyist from allowing a covered person or that person's immediate family member to use the lobbyist's cash or credit for the purpose of lobbying without the lobbyist being present at the time of the expenditure.
- Allows the Secretary of State's office to treat investigations of lobbying violations as criminal investigations, meaning the investigation information may not be released as a public record.

House Bill 1849 amends the lobbying laws scheduled to take effect January 1, 2007, in the following ways:

- Combines legislative and executive lobbying registrations and regulations into one.
- Changes the definition of covered person to mean legislators, executive branch officers, and legislative staff.
- Prohibits lobbyists and lobbyist's principals from giving gifts to covered persons. The following exceptions apply:
  - Gifts from lobbyists to their family members who are legislators or legislative employees.
  - Lawful campaign contributions.
  - Commercially available loans made in the normal course of business and not made for the purpose of lobbying.
  - Meals and beverages for immediate consumption in connection with public events.
  - Scholarships with terms not more favorable than scholarships available to the public.
  - Nonmonetary items, other than food or beverages, with a value not to exceed $10 by a lobbyist or principal in a single calendar day.
  - Informational materials related to the covered person's public duties.
  - Reasonable actual expenses when a covered person speaks at a meeting relating to the covered person's duties.
  - Items valued at less than $100 given to a covered person when the covered person is in another country as part of an overseas trade mission and the giving of gifts is customary protocol in the other country.
  - Gifts accepted on behalf of the State, anything generally available to the general public or all State employees,
  - Anything for which fair market value is paid.
- Expands the definition of executive branch officer to correlate those persons covered by the Executive Branch Ethics Act (House Bill 1844).
- Expenditures by liaison personnel and State agencies have to be reported the same as expenditures.
- The registration period for a lobbyist and lobbyist's principal is one year.
- Clarifies that the lobbyist must file a separate registration for each principal the lobbyist represents, and that either the lobbyist or the principal must pay a separate fee for each registration.
- Quarterly reporting of lobbying expenditures is required, with increased reporting to monthly of legislative lobbying while the General Assembly is in session.

- Increases the details of lobbying expenditure reports to include the fair market value or face value if shown, date, a description of the expenditure, name and address of the payee or beneficiary, name of any covered person benefiting from the expenditure (or legislative employee or those person's immediate family members) in each of the following categories:
    - Transportation and lodging
    - Entertainment, food, and beverages
    - Meetings and events
    - Gifts
    - Solicitation of others to lobby
    - Other expenditures

  The Secretary of State is granted rulemaking authority to facilitate disclosure of expenditures, including the format of the report and additional categories.
- The lobbyist's principal must also report, in addition to the expenditures reported by the lobbyist, the compensation paid or agreed to be paid to each lobbyist.
- Requires expenditures of $200 made for the purpose of lobbying from persons not required to register and report as lobbyists or lobbyist's principals or more to be reported. If the person giving the gift is in North Carolina, that person shall make the report. If the person giving the gift is outside North Carolina, the person accepting the gift shall make the report. Certain exceptions apply.
- Authorizes the Secretary of State to issue advisory opinions on issues arising under the lobbying law.
- Requires continuing lobbying education programs for legislators, legislative employees, executive branch officers, lobbyists and lobbyists' principals.
- Clarifies the no-gift registry for gifts from lobbyists.
- Bans campaign contributions by lobbyists to candidates or candidate's committees if the candidate has filed for office as a member of the General Assembly or a Constitutional officer of the State. ****This prohibition may have constitutional implications.

EFFECTIVE DATE: Except as noted above, the act becomes effective January 1, 2007.

BACKGROUND: In 2005, the North Carolina General Assembly passed S.L. 2005-456 (SB 612), which amended North Carolina's lobbying laws effective January 1, 2007. The bill is a recommendation of the House Select Committee on Ethics and Governmental Reform. That Committee's charge, as amended on February 20, 2006, directs the Committee to "Examine the provisions of the 2005 rewrite of the lobbying law, S.L. 2005-456 (Senate Bill 612) to determine if portions of that law could be implemented prior to its original effective date of January 1, 2007 and determine whether any additional areas of lobbying regulation should be clarified or strengthened, including prohibiting lobbyists from raising funds for or personally contributing to political campaigns, and from holding any position in a legislative or executive branch campaign."

* *Walker Reagan and Brad Krehely contributed substantially to the drafting of this summary.*

H1849e1-SMST

House Judiciary I Committee

May 30, 2006
10:00 a.m.

Minutes

The House Judiciary I Committee met on Tuesday, May 30, 2006 at 10:00 a. m. in Room 1228 of the Legislative Building. The Chairman, Representative Joe Hackney, called the meeting to order and the following members were present: Representatives Alexander, Blust, Capps, Goodwin, Harrison, Ross, Stam, and Stiller. A copy of the agenda and visitor registration is attached, (Attachments I and II).

Following introduction of pages, Chairman Hackney stated that the Committee would continue with discussion of House Bill 1849, AN ACT TO AMEND THE LEGISLATIVE LOBBYING LAWS BY ESTABLISHING WAITING PERIODS BEFORE CERTAIN STATE OFFICERS MAY LOBBY; BY BARRING LOBBYISDTS FROM CERTAIN APPOINTMENTS AND OTHER ACTIVITIES; BY BANNING CERTAIN GIFTS; BY ESTABLISHING QUARTERLY REPORTING OF EXPENDITURES WITH ADDITIONAL INTERIM REPORTING; BY EXPANDING THE COVERAGE OF THE LOBBYING LAWS TO INCLUDE EXECUTIVE BRANCH OFFICERS; BY LIMITING CAMPAIGN CONTRIBUTIONS BY REGISTERED LOBBYISTS; AND BY MAKING OTHER CONFORMING CHANGES, AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON ETHICS AND GOVERNMENTAL REFORM, (Attachment III). A bill analysis for House Bill 1849, prepared by Ms. Erika Churchill, Committee Counsel, is attached, (Attachment IV).

An amendment was offered by Representative Ross, (Attachment V), that inserted the phrase "as defined in G.S. 120-47.1(1e)" between the words "expenditures" and "made" on page 10, line 16. Ms. Churchill commented on the amendment saying that it would clarify that the reporting would start when the ten dollars and one cent is spent. Upon a motion made by Representative Ross, the amendment was adopted.

A second amendment was offered by Representative Ross, (Attachment VI). The amendment addressed the gift ban exception that some had said was too broad regarding the language "generally available to the general public." The amendment would clarify that it is made generally available to the general public by the lobbyist or the lobbyist's principal.

Mr. John Rustin, Family Policy Council, suggested the addition of the word "made" in several places in the amendment. The Committee agreed to this proposal and the word was inserted in the amendment. Upon a motion by Representative Ross, the amendment was adopted.

Representative Hackney offered an amendment, (Attachment VII) to amend the bill on page 9, lines 11-12 and on page 21, lines 33-34 with regard to reasonable actual expenditures. Following Committee discussion, Representative stated that he felt that additional work needed to be done on the amendment and withdrew it to allow staff time to do so.

Representative Hackney offered an amendment, (Attachment VIII) to amend the bill on page 11, lines 19-21. The amendment addressed lobbying reporting rules. Committee discussion followed.

The Committee heard comments from Ms. Christie Barbee, Professional Lobbyist Association, Mr. Bob Hall, Democracy North Carolina and Mr. John Rustin, North Carolina Family Policy Council who offered suggestions for possible changes to the amendment. Chairman Hackney withdrew the amendment to allow time for staff to work on further changes.

Chairman Hackney offered an amendment, (Attachment IX). The amendment addressed concerns that had been expressed regarding "Advocacy Day" issues.

Representative Stiller commented on the need to extend the 8-hour provision in the amendment.

Ms. Barbeé was recognized and also expressed concern regarding the 8-hour provision, as well as concern for clarification regarding whether the reporting would be monthly or quarterly.

Mr. Jay Rouse, North Carolina Electric Co-operatives, spoke in support of the amendment.

Ms. Susan Valauri, Nationwide Insurance, was recognized and expressed some concern regarding the 8-hour provision.

No action was taken on the amendment.

Chairman Hackney stated that further work would be done on the amendments and invited input from interested parties.

The meeting was adjourned at 10:50 a.m.

Representative Joe Hackney
Chair

Emily Reynolds Freeman
Committee Clerk

Attachment I

HOUSE COMMITTEE ON JUDICIARY I

May 30, 2006
10:00 a.m.

AGENDA

OPENING REMARKS

AGENDA ITEMS

House Bill 1849 – Lobbying Reform 2006
Representatives Hackney, Howard, Gibson and Sherrill

ADJOURNMENT

Attachment II

VISITOR REGISTRATION SHEET

House Judiciary I — May 30, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Tony Adams	NC Outdoor Advertising Assoc.
Peyton MAyHARD	GPM
J Craig Lance	UHS
Claude Rafer	SAJ
Melody Sikes	Leadership Anson
Brook Crider	Leadership Anson
Vince Bennett	Leadership Anson
Carol B. Tucker	Leadership Anson
Kim Wilson	Leadership Anson
Glendrea Hagins	Leadership Anson
Jennifer Horne	Leadership Anson
Amy Jo Horne	NCMS
Karen Johnson	SA

VISITOR REGISTRATION SHEET

House Judiciary I — May 30, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Melanie McLarty	Leadership Anson
Misty Harris	Leadership Anson
Crystal [illegible]	Leadership Anson
Sylvia Tillman	Leadership Anson
Jackie Robinson	Leadership Anson
Tilla D. Gathings	Leadership Anson
Lydia Vann	NCACC
Jim Blackburn	NC ACC
Kathy Hawkins	Progress Energy
Charlene Carey	NC [illegible]
John Goodman	NCCBI

VISITOR REGISTRATION SHEET

House Judiciary I — May 30, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Joal Broun	NCSOS
Bob Gillam	Public Staff - NCUC
Bill Rush	AGP
Lisa Martin	NC HBA
Rick Zechini	NC AR
Angie Harris	Maupin Taylor
Lou Wilson	NCAATCF
[signature]	NCAATCF
Michael Houser	NCAE
JAMES L. FORTE	OSA
Cecil Bark	NCAE

VISITOR REGISTRATION SHEET

House Judiciary I — May 30, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Todd Barlow	NCATL
Megan Gilchrist	Rep. Glazier's office
John Phelps	NCLM
Esther Jean Davis	Electricities
[signature]	JD, AL, PA
Rebekah Gonzalez	ACLU-NC
Jill Shotzberger	ACLU-NC
Paula A. Wolf	NC Coalition on Lobbying Reform/El Pueblo
Erin Kinsey	NC Conservation Network
Emily Kirby	NC Conservation Network
Sandra Long	Martin Marietta

VISITOR REGISTRATION SHEET

House Judiciary I — May 30, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Kathleen Edwards	UNC-CH Daily Bulletin
Alex Sewell	WCSR
Susan Valaani	Nationwide
Michelle Frazier	NC Bar Ass'n
John McMillan	MFJS
Christa Barker	CAPA
John Rust	NCFPC
Bill Scoggin	KCCH
Rob Schofield	NCCNP
Lorisa Warren	NCCLR
John Mobley	600 office

VISITOR REGISTRATION SHEET

Name of Committee | Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY
Caroline Ham	G. Gov's Office
Bob Hall	Democracy North Carolina
[illegible]	Rep Gibson's Office
Joanne Stevens	NCNA
Trent Proctor	NCNA
[illegible]	Fund Raising R.A.
Robert Wilson	SOS
DAVID CARTER	NC Bar Association

Attachment III

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 1

HOUSE BILL 1849

Short Title:	Lobbying Reforms 2006.	(Public)
Sponsors:	Representatives Hackney, Howard, Gibson, Sherrill (Primary Sponsors); Barnhart, Bell, Brubaker, Coates, Earle, Eddins, Fisher, Harrison, Justice, Lucas, Luebke, Martin, McLawhorn, Nye, Ross, Sauls, Setzer, Steen, West, Alexander, L. Allen, Bordsen, Dickson, Glazier, Harrell, Hill, Insko, Jeffus, McGee, Moore, Spear, Underhill, Walend, and Weiss.	
Referred to:	Judiciary I.	

May 10, 2006

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LEGISLATIVE LOBBYING LAWS BY ESTABLISHING WAITING PERIODS BEFORE CERTAIN STATE OFFICERS MAY LOBBY; BY BARRING LOBBYISTS FROM CERTAIN APPOINTMENTS AND OTHER ACTIVITIES; BY BANNING CERTAIN GIFTS; BY ESTABLISHING QUARTERLY REPORTING OF EXPENDITURES WITH ADDITIONAL INTERIM REPORTING; BY EXPANDING THE COVERAGE OF THE LOBBYING LAWS TO INCLUDE EXECUTIVE BRANCH OFFICERS; BY LIMITING CAMPAIGN CONTRIBUTIONS BY REGISTERED LOBBYISTS; AND BY MAKING OTHER CONFORMING CHANGES, AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON ETHICS AND GOVERNMENTAL REFORM.

The General Assembly of North Carolina enacts:

SECTION 1. Article 9A of Chapter 120 of the General Statutes is amended to add a new section to read:

"**§ 120-47.7C. Prohibitions.**

(a) No member or former member of the General Assembly may be employed as a legislative lobbyist by a lobbyist's principal to lobby as defined in this Article within one year after the end of that member's service in the General Assembly.

(b) No person serving, or formerly having served, as Governor, a member of the Council of State, or a head of a principal State department listed in G.S. 143B-6 may be employed as a legislative lobbyist by a lobbyist's principal to lobby as defined in this Article within one year after separation from employment or leaving office.

(c) No individual registered as a legislative lobbyist shall serve as a campaign treasurer under Chapter 163 of the General Statutes as defined in G.S. 163-278.6(19) for

a campaign for election as a member of the General Assembly, Governor, or Council of State.

(d) A legislative lobbyist shall not be eligible for appointment by a State official to any body created under the laws of this State that has regulatory authority over the activities of a person that the legislative lobbyist currently represents or has represented within 60 days after the expiration of the legislative lobbyist's registration representing that person. Nothing herein shall be construed to prohibit appointment by any unit of local government.

(e) No legislative lobbyist or another acting on the legislative lobbyist's behalf shall permit a covered person, legislative employee, or that person's immediate family member to use the cash or credit of the lobbyist for the purpose of lobbying unless the lobbyist is in attendance at the time of the expenditure."

SECTION 2. Article 9A of Chapter 120 of the General Statutes is amended to add a new section to read:

"**§ 120-47.7B. Powers and duties of the Secretary of State.**

(a) The Secretary of State shall perform systematic reviews of reports required to be filed under G.S. 120-47.6 and G.S. 120-47.7 on a regular basis to assure complete and timely disclosure of expenditures.

(b) The Secretary of State may petition the Superior Court of Wake County for the approval to issue subpoenas and subpoenas duces tecum as necessary to conduct investigations of violations of this Article. The court shall authorize subpoenas under this subsection when the court determines they are necessary for the enforcement of this Article. Subpoenas issued pursuant to this subsection shall be enforceable by the court through contempt powers. Venue shall be with the Superior Court of Wake County for any nonresident person, or that person's agent, who makes a reportable expenditure under this Article, and personal jurisdiction may be asserted under G.S. 1-75.4.

(c) Complaints of violations of this Article and all other records accumulated in conjunction with the investigation of these complaints shall be considered records of criminal investigations under G.S. 132-1.4."

SECTION 3. Article 9A of Chapter 120 of the General Statutes reads as rewritten:

"Article 9A.

"~~Legislative Branch~~ Lobbying.

"**§ 120-47.1. Definitions.**

~~The following definitions shall apply in this Article:~~As used in this Article, the following terms mean:

(1) ~~The term "covered person" means a legislator, the Governor, or the Lieutenant Governor.~~Covered person. – A legislator, legislative employee, or executive branch officer.

(1a) Advocacy day. – A day that any lobbyist's principal collectively assembles its membership or employees and advocates for legislative or executive action.

(1b) Constitutional officers of the State. – Officers whose offices are established in Article III of the Constitution.

(1c) Executive action. – Any decision, including administration, approval, disapproval, preparation, recommendation, the rendering of advice, and investigation, made or contemplated in any proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, investigation, charge, or rule making.

(1d) Executive branch officer. – All of the following:

a. Constitutional officers of the State, persons elected or appointed as a Constitutional officer of the State prior to taking office, or a person having filed a notice of candidacy for such office under G.S. 163-106 or Article 11 of Chapter 163 of the General Statutes.

b. Employees of the Office of the Governor.

c. Heads of all principal State departments, as set forth in G.S. 143B-6, who are appointed by the Governor.

d. The chief deputy or chief administrative assistant of each person designated under sub-subdivisions a. and c. of this subdivision.

e. Confidential assistants and secretaries as defined in G.S. 126-5(c)(2), to persons designated under sub-subdivisions a., c., and d. of this subdivision.

f. Employees in exempt positions as defined in G.S. 126-5(b) and employees in exempt positions designated in accordance with G.S. 126-5(d)(1), (2), or (2a), and confidential secretaries to these individuals.

g. Any other employees or appointees in the principal State departments as may be designated by the Governor to the extent that the designation does not conflict with the State Personnel Act.

h. All voting members of boards, including ex officio members and members serving by executive, legislative, or judicial branch appointment.

i. For The University of North Carolina, the voting members of the Board of Governors of The University of North Carolina, the president, the vice-presidents, and the chancellors, the vice-chancellors, and voting members of the boards of trustees of the constituent institutions.

j. For the System of Community Colleges, the voting members of the State Board of Community Colleges, the President and chief financial officer of the System of Community Colleges, the president, chief financial officer and chief administrative officer of each community college, and voting members of the boards of trustees of each community college.

~~(1a)~~(1e) ~~The term "expenditure" means any~~ Expenditure. – Any advance, contribution, conveyance, deposit, distribution, payment, gift, retainer,

fee, salary, honorarium, reimbursement, loan, pledge or thing of value greater than ten dollars ~~($10.00),~~($10.00) per single calendar day or a contract, agreement, promise or other obligation whether or not legally enforceable, that directly or indirectly is made to, at the request of, for the benefit of, or on the behalf of a covered ~~person, legislative employee,~~ person or that person's immediate family member.

(1f) Extended family. – Spouse, descendant, ascendant, or sibling of the covered person or, descendant, ascendant, or sibling of the spouse of the covered person.

~~(1b) The term "executive lobbyist" means a lobbyist registered pursuant to Article 4C of Chapter 147 of the General Statutes.~~

(2),(3) Repealed by Session Laws 1991, c. 740, s. 1.1.

(2a) Gift. – Anything of value without valuable consideration.

(3a) ~~The term "immediate family member" means spouse, descendant, or ascendant.~~Immediate family member. – An unemancipated child of the covered person residing in the household, and the covered person's spouse, if not legally separated.

(4) ~~The term "legislative action" means the~~Legislative action. – The preparation, research, drafting, introduction, consideration, modification, amendment, approval, passage, enactment, tabling, postponement, defeat, or rejection of a bill, resolution, amendment, motion, report, nomination, appointment, or other matter, whether or not the matter is identified by an official title, general title, or other specific reference, by the legislature or by a member or employee of the legislature acting or purporting to act in an official capacity. It also includes the consideration of any bill by the Governor for the Governor's approval or veto under Article II, Section 22(1) of the Constitution or for the Governor to allow the bill to become law under Article II, Section 22(7) of the Constitution.

(4a) ~~The term "legislative employee" means employees~~Legislative employee. – Employees and officers of the General Assembly.

(4b) ~~The term "legislative liaison personnel" means any~~Liaison personnel. – Any State employee or officer whose principal duties, in practice or as set forth in that person's job description, include lobbying the General ~~Assembly.~~Assembly or executive branch officers.

~~(4c) The term "legislative lobbyist" means any lobbyist for or against legislative action.~~

(4d) ~~The term "legislator" means a~~Legislator. – A member or presiding officer of the General ~~Assembly or~~Assembly, a person elected or appointed a member or presiding officer of the General Assembly prior to taking ~~office~~office, or a person having filed a notice of candidacy for such office under G.S. 163-106 or Article 11 of Chapter 163 of the General Statutes.

(5) ~~The term "lobbying" means any~~Lobbying. – Any of the following:

a. Influencing or attempting to influence legislative or executi action, or both, through direct communication or activities w a covered ~~person, legislative employee,~~person or that person immediate family member.

b. Solicitation of others by ~~legislative~~ lobbyists or lobbyists' principals to influence legislative or executive ~~action.~~action, or both.

c. Developing goodwill through communications or activities, including the building of relationships, with a covered ~~person, legislative employee,~~ person or that person's immediate family member with the intention of influencing current or future legislative action, but does not include communications or activities with a covered ~~person, legislative employee,~~person or that person's immediate family member in a business, civic, religious, fraternal, or commercial relationship which is not connected to legislative or executive ~~action.~~action, or both.

(6) ~~The term "lobbyist" means an~~Lobbyist. – An individual who meets any of the following criteria:

a. Is employed and receives compensation, or who contracts for economic consideration, for the purpose of lobbying.

b. Represents another person and receives compensation for the purpose of lobbying.

~~c. Is legislative liaison personnel.~~

The term "lobbyist" shall not include those individuals who are specifically exempted from this Article by G.S. 120-47.8. For the purpose of determining whether an individual is a lobbyist under this subdivision, reimbursement of actual travel and subsistence expenses shall not be considered compensation; provided, however, that reimbursement in the ordinary course of business of these expenses shall be considered compensation if a significant part of the individual's duties involve lobbying before the General ~~Assembly.~~Assembly or executive branch officers.

(7) ~~The terms "lobbyist's principal" and "principal" mean the~~Lobbyist principal and principal. – The person on whose behalf the ~~legislative~~ lobbyist lobbies. In the case where a lobbyist is compensated by a law firm, consulting firm, or other entity retained by a person for ~~legislative~~ lobbying, the principal is the person whose interests the lobbyist represents in lobbying. In the case of a lobbyist employed or retained by an association or other organization, the lobbyist's principal is the association or other organization, not the members of the association or other organization.

(7a) ~~The term "news medium" means mainstream~~News medium. – Mainstream media providers whose sole purpose is to report events and that does not involve research or advocacy.

(8) ~~The term "person" means any~~Person. – Any individual, firm, partnership, committee, association, corporation, business entity, or any other organization or group of persons which has an independent legal existence.

(8a) Public event. – Either of the following:

a. An organized gathering of individuals open to the general public or to which a legislator or legislative employee is invited along with the entire membership of the House, Senate, a committee, a subcommittee, a county legislative delegation, a joint committee or legislative caucus and to which at least 10 employees or members of the principal actually attend.

b. An organized gathering of individuals open to the general public or to which at least ten executive branch officers are invited to attend and at least 10 employees or members of the principal actually attend.

(9) ~~The General Assembly is in "regular session" from the~~ In regular session. – The date set by law or resolution that the General Assembly convenes until the General Assembly either:

a. Adjourns sine die; or

b. Recesses or adjourns for more than 10 days.

§ 120-47.2. Registration procedure.

(a) A ~~legislative~~ lobbyist shall file a registration statement with the Secretary of State in a manner prescribed by the Secretary before engaging in any lobbying. It shall be unlawful for a person to lobby without registering unless exempted by this Article. A lobbyist shall file a separate registration statement for each principal the lobbyist represents. ~~The registration shall indicate whether it is registration as a legislative lobbyist, executive lobbyist, or both, and a separate registration fee shall be paid for each separate type of registration.~~

(b) The form of the registration shall be prescribed by the Secretary of State and shall include the registrant's full name, firm, complete address and telephone number; the registrant's place of business; the full name, complete address and telephone number of each person by whom the registrant is employed or retained; and a general description of the matters on which the registrant expects to act as a ~~legislative~~ lobbyist. The Secretary of State shall make available as soon as practicable the registrations of the lobbyists and lobbyists' principals in an electronic, searchable format.

(c) Each ~~legislative~~ lobbyist shall file an amended registration form with the Secretary of State no later than 10 business days after any change in the information supplied in the ~~legislative~~ lobbyist's last registration under subsection (b). Each supplementary registration shall include a complete statement of the information that has changed.

(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~~ Assembly, Constitutional officers of the State, the head of each principal department of the Executive Branch, and the State Legislative Library a list of all persons who have

registered as ~~executive or legislative~~ lobbyists and whom they represent. ~~Within 20 days after the beginning of the term of a Governor, the Secretary of State shall furnish the Governor, each other member of the Council of State, the head of each principal department of the Executive Branch, and the State Legislative Library a list of all persons who have registered as executive or legislative lobbyists and whom they represent.~~ A supplemental list of ~~legislative~~ lobbyists shall be furnished periodically each 20 days ~~thereafter as the session progresses.~~ while the General Assembly is in session, and every 60 days thereafter. ~~A supplemental list of executive lobbyists shall be furnished periodically each 60 days thereafter.~~ For each special session of the General Assembly, a supplemental list of ~~legislative~~ lobbyists shall be furnished to the State Legislative Library. All lists required by this section may be furnished electronically.

(e) Each registration statement of a ~~legislative~~ lobbyist required under this Article shall be effective from the date of filing until January 1 of the following year. The ~~legislative~~ lobbyist shall file a new registration statement after that date, and the applicable fee shall be due and payable.

"§ 120-47.3. Registration fee.

A fee of one hundred dollars ($100.00) is due and payable to the Secretary of State by either the lobbyist or the lobbyist's principal at the time of each lobbyist registration. Fees so collected shall be deposited in the General Fund of the State. The Secretary of State shall allow fees required under this section to be paid electronically but may not require the fees to be paid electronically. The Secretary of State shall adopt rules providing for the waiver or reduction of the fees required by this section in cases of hardship.

"§ 120-47.4. Authorization from lobbyist's principal; fee from principal.

(a) Each ~~legislative~~ lobbyist or lobbyist's principal shall file with the Secretary of State within 10 business days after the ~~legislative~~ lobbyist's registration a written authorization signed by the lobbyist's principal authorizing the lobbyist to represent the principal.

(b) The form of the authorization shall be prescribed by the Secretary of State and shall include the lobbyist's principal's full name, complete address and telephone number, name and title of the official signing for the lobbyist's principal, and the name of each lobbyist registered to represent the lobbyist's principal. The Secretary of State shall make available as soon as practicable the authorization of the lobbyists' principals in an electronic, searchable format.

(c) An amended authorization shall be filed with the Secretary of State no later than 10 days after any change in the information supplied for the lobbyist's principal on the previous authorization. Each supplementary authorization shall include a complete statement of the information that has changed.

(d) Except as provided for in subsection (e) of this section, a fee of one hundred dollars ($100.00) is due and payable to the Secretary of State at the time the lobbyist's principal's first authorization statement is filed each calendar year for a ~~legislative~~ lobbyist. ~~The fee for the legislative lobbyist's authorization shall be seventy-five dollars ($75.00) if an authorization for the principal to be represented by an executive lobbyist~~

~~is filed at the same time. No additional fee is due for additional authorizations filed f legislative lobbyists.~~

(e) The Secretary of State shall adopt rules providing for the waiver or reduction of the fees required by ~~fee in~~ subsection (d) of this section. The rules shall provide that the fees be reduced to a total of twenty-five dollars ($25.00) if the lobbyist's principal had annual revenues in its most recent fiscal year of three hundred thousand dollars ($300,000) or less and is represented by no more than two different lobbyists. ~~This reduced fee covers authorizations filed for the principal's legislative and executive lobbyists.~~

"§ 120-47.5. Contingency lobbying fees and election influence prohibited.

(a) No person shall act as a ~~legislative~~ lobbyist for compensation that is dependent upon the result or outcome of any legislative action.

(b) No ~~legislative lobbyist or legislative lobbyist's principal~~ person shall attempt to influence the action of any covered person by the promise of financial support of the covered person's candidacy, or by threat of financial support in opposition to the covered person's candidacy in any future election.

"§ 120-47.5A. Certain gifts by lobbyists and lobbyist's principals prohibited; ~~Exemptions and inclusions for reporting purposes.~~exemptions.

(a) No lobbyist or lobbyist's principal may give a gift to a covered person.

~~(a)~~(a1) ~~For purposes of G.S. 120-47.6 and G.S. 120-47.7, the following expenditures need not be reported:~~Subsection (a) of this section shall not apply to:

~~(1) Gifts between an immediate family member or person who is the stepchild, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, or members of the household of the covered person or legislative employee~~

~~(2) Lawful campaign contributions.~~

~~(3) Commercially available loans made on terms not more favorable than generally available to the public in the normal course of business if not made for the purpose of lobbying.~~

~~(4) Contractual arrangements or business relationships or arrangements made in the normal course of business if not made for the purpose of lobbying.~~

~~(5) The cost of attendance or participation provided by the sponsoring entity of lodging, and of food and beverages consumed, at events sponsored by or in conjunction with a civic, charitable, community, or diplomatic event if the activity or event does not last longer than three hours.~~

~~(6) Academic scholarships made on terms not more favorable than scholarships generally available to the public.~~

(1) Meals and beverages for immediate consumption in connection with public events.

(2) Nonmonetary items, other than food or beverages, with a value not to exceed ten dollars ($10.00) provided by a single donor during a single calendar day.

(3) Informational materials relevant to the duties of the covered person.
(4) Reasonable actual expenses for food, registration, travel, and lodging of the covered person for a meeting at which the covered person participates in a panel or speaking engagement at the meeting related to the public servant's duties and when expenses are incurred on the actual day of participation in the engagement or incurred within a 24-hour time period before or after the engagement.
(5) Items or services received in connection with a state, national, or regional organization in which the covered person or the covered person's agency is a member.
(6) Items and services received relating to an educational conference or meeting.
(7) A plaque or similar nonmonetary memento recognizing individual services in a field or specialty or to a charitable cause.
(8) Gifts accepted on behalf of the State.
(9) Anything generally available or distributed to the general public or all other State employees.
(10) Anything for which fair market value is paid.
(11) Commercially available loans made on terms not more favorable than generally available to the public in the normal course of business if not made for the purpose of lobbying.
(12) Contractual arrangements or business relationships or arrangements made in the normal course of business if not made for the purpose of lobbying.
(13) Academic scholarships made on terms not more favorable than scholarships generally available to the public.
(14) Political contributions properly received and reported as required under Article 22A of Chapter 163 of the General Statutes.
(15) Gifts from the covered person's extended family, or a member of the same household of the covered person, or gifts received in conjunction with a marriage, birth, adoption, or death.
(16) Things of monetary value given to a executive branch officer valued in excess of ten dollars ($10.00) where the thing of monetary value is entertainment or related expenses associated with the public business of industry recruitment, promotion of international trade, or the promotion of travel and tourism, and the executive branch officer is responsible for conducting the business on behalf of the State, provided all the following conditions apply:
a. The executive branch officer did not solicit the thing of value, and the executive branch officer did not accept the thing of value in the performance of the executive branch officer's official duties.
b. The executive branch officer reports electronically to the Commission within 30 days of receipt of the thing of value. The

report shall include a description and value of the thing of value and a description how the thing of value contributed to the public business of industry recruitment, promotion of international trade, or the promotion of travel and tourism. This report shall be posted to the Commission's public Web site.

c. A tangible thing of value in excess of ten dollars ($10.00), other than meals or beverages, shall be turned over as State property to the Department of Commerce within 30 days of receipt.

(17) Things of monetary value of personal property valued at less than one hundred dollars ($100.00) given to an executive branch officer in the commission of the executive branch officer's official duties if the gift is given to the executive branch officer as a personal gift in another country as part of an overseas trade mission, and the giving and receiving of such personal gifts is considered a customary protocol in the other country.

(b) For purposes of G.S. 120-47.6 and G.S. 120-47.7, all expenditures made for the purpose of lobbying shall be reported, including the following:

(1) Expenditures benefiting or made on behalf of a covered person, ~~a legislative employee,~~ or those persons' immediate family members, in the regular course of that person's ~~nonlegislative~~ employment.

(2) Contractual arrangements or direct business relationships between a ~~legislative~~ lobbyist or ~~legislative~~ lobbyist's principal and a covered person, ~~legislative employee,~~ or that person's immediate family member, in effect during the reporting period or the previous 12 months.

(3) Expenditures reimbursed to a ~~legislative~~ lobbyist in the ordinary course of business by the lobbyist's principal or other employer. Expenditures reimbursed by the lobbyist's principal or other employer are reported only by the lobbyist.

(4) Expenditures for items exempted by subsection (a1) of this section.

~~(c) For reporting purposes of G.S. 120-47.6 and G.S. 120-47.7, legislative lobbying with respect to only the legislative actions of the Governor and Lieutenant Governor shall be reported.~~

(d) The offering or giving of a gift in compliance with this Article without corrupt intent shall not constitute a violation of G.S. 14-217 or G.S. 14-218.

"§ 120-47.6. Statements of ~~legislative~~ lobbyist's lobbying expenditures required.

(a) Each ~~legislative~~ lobbyist shall file ~~monthly~~ quarterly expenditure reports under oath with the Secretary of State, in a manner prescribed by the Secretary of State, which may include electronic reports, with respect to each lobbyist's ~~principal, while the General Assembly is in regular session, and quarterly thereafter.~~ principal. The expenditure report shall include all expenditures during the reporting period and shall be due 10 business days after the end of the reporting period. The ~~legislative~~ lobbyist shall file ~~expense~~ expenditure reports whether or not expenditures are made.

(a1) In addition to the reports required by subsection (a) of this section, each lobbyist incurring expenditures with respect to lobbying legislators and legislative employees shall file a monthly expenditure report while the General Assembly is in regular session. The monthly expenditure report shall contain information required by this section with respect to all lobbying of legislators and legislative employees, and is due within 10 business days of the end of the month. The information on the monthly expenditure report shall also be included in each quarterly report required by subsection (a) of this section.

(b) Each expenditure report shall set forth the fair market ~~value,~~value or face value if shown, date, a description of the expenditure, name and address of the payee, or beneficiary, and name of any covered person, ~~legislative employee,~~ or that person's immediate family member benefiting from the expenditure. Such expenditures shall be reported using the following categories:

(1) Transportation and lodging.
(2) Entertainment, food, and beverages.
(3) Meetings and events.
(4) Gifts.
(5) Other expenditures.
(6) Solicitation of others to lobby, including if such expenditures are incurred in connection or in concert with other reportable expenditures.

~~In addition, expenses for the solicitation of others to lobby, whether or not a covered person, legislative employee, or family member is affected, shall be reportable if such expenses are incurred in connection, or in concert, with other expenditures reportable under this subsection.~~

(c) All reports shall be in the form prescribed by the Secretary of State and shall be open to public inspection upon filing. When more than 15 covered persons benefit from an expenditure, no names of individuals need be reported provided that the report identifies the approximate number of covered persons benefiting and, with particularity, the basis for their selection, including the name of the legislative body, committee, caucus, or other group whose membership list is a matter of public record in accordance with G.S. 132-1 or including a description of the group that clearly distinguishes its purpose or composition from the general membership of the General Assembly. The approximate number of ~~legislative employees and~~ immediate family members of covered persons ~~and legislative employees~~ who benefited from the expenditure shall be listed separately.

(d) When a ~~legislative~~ lobbyist fails to file an expenditure report as required in this section, the Secretary of State shall send a certified or registered letter advising the ~~legislative~~ lobbyist of the delinquency and the penalties provided by law. Within 20 days of the receipt of the letter, the ~~legislative~~ lobbyist shall deliver or post by United States mail to the Secretary of State the required report and an additional late filing fee in an amount equal to the late filing fee under G.S. 163-278.34(a)(2).

(e) Filing of the required report and payment of the additional fee within the time extended shall constitute compliance with this section. Failure to file an expenditure

report in one of the manners prescribed in this section shall result in revocation of any and all registrations of a legislative lobbyist under this Article. No ~~legislative~~ lobbyist may register or reregister under this Article until the ~~legislative~~ lobbyist has fully complied with this section.

(f) Appeal of a decision by the Secretary of State under this section shall be in accordance with Article 3 of Chapter 150B of the General Statutes.

(g) The Secretary of State may adopt rules to facilitate complete and timely disclosure of expenditures, including the format of reports and additional categories of information, and to protect the addresses of payees under protective order issued pursuant to Chapter 50B of the General Statutes or participating in the Address Confidentiality Program pursuant to Chapter 15C of the General Statutes. The Secretary of State shall not impose any penalties or late filing fees upon a ~~legislative~~ lobbyist for subsequent failures to comply with the requirements of this section if the Secretary of State failed to provide ~~to~~ the lobbyist with required notifications of the initial violation. This provision shall not apply to a failure by the lobbyist to file an expenditure report in a timely manner.

"§ 120-47.7. Statements of ~~legislative~~ lobbyist's principal lobbying expenditures required.

(a) Each ~~legislative~~ lobbyist's principal shall file ~~monthly~~ quarterly expenditure reports under oath with the Secretary of State, in a manner prescribed by the Secretary of State, which may include electronic ~~reports, while the General Assembly is in regular session, and quarterly thereafter.~~reports. The expenditure report shall include all expenditures during the reporting period and shall be due 10 business days after the end of the reporting period. The lobbyist's principal shall file the expenditure reports whether or not expenditures are made during a reporting period.

(a1) In addition to the reports required by subsection (a) of this section, each lobbyist's principal incurring expenditures with respect to lobbying legislators and legislative employees shall file a monthly expenditure report while the General Assembly is in regular session. The monthly expenditure report shall contain information required by this section with respect to all lobbying of legislators and legislative employees, and is due within 10 business days of the end of the month. The information on the monthly expenditure report shall also be included in each quarterly report required by subsection (a) of this section.

(b) Each expenditure report shall set forth the fair market ~~value,~~value or face value if shown, date, a description of the expenditure, name and address of the payee, or beneficiary, and name of any covered person, ~~legislative employee,~~ or that person's immediate family member affected by the expenditure. Such expenditures shall be reported using the following categories:

(1) Transportation and lodging.
(2) Entertainment, food, and beverages.
(3) Meetings and events.
(4) Gifts.
(5) Other expenditures.

(6) Solicitation of others to lobby, including if such expenditures ar incurred in connection or in concert with other expenditures reportabl under this Article.

(7) Compensation paid to all lobbyists during the reporting period. If a legislative lobbyist is a full-time employee of the lobbyist's principal, or is compensated by means of an annual fee or retainer, the lobbyist's principal shall estimate and report the portion of the salary, fee, or retainer that compensates for lobbying.

(8) Expenditures reimbursed or paid to lobbyists for lobbying that are not reported on the lobbyist's report, with an itemized description of those expenditures.

~~In addition, expenses for the solicitation of others to lobby, whether or not a covered person, legislative employee, or family member is affected, shall be reportable if such expenses are incurred in connection, or in concert, with other expenditures reportable under this subsection.~~

~~In addition, the compensation paid or agreed to be paid to all legislative lobbyists shall be reported, whether or not a covered person, legislative employee, or family member is affected. If a legislative lobbyist is a full-time employee of the lobbyist's principal, or is compensated by means of an annual fee or retainer, the lobbyist's principal shall estimate and report the portion of the salary, fee, or retainer that compensates for lobbying. The lobbyist's principal's expenditure report shall include an itemized description of all expenditures reimbursed or paid to legislative lobbyists for lobbying that are not reported on the legislative lobbyists' reports.~~

(c) All reports shall be in the form prescribed by the Secretary of State and open to public inspection upon filing. When more than 15 covered persons benefit from an expenditure, no names of individuals need be reported provided that the report identifies the approximate number of covered persons benefiting and, with particularity, the basis for their selection, including the name of the legislative body, committee, caucus, or other group whose membership list is a matter of public record in accordance with G.S. 132-1 or including a description of the group that clearly distinguishes its purpose or composition from the general membership of the General Assembly. The approximate number of ~~legislative employees and~~ immediate family members of covered persons ~~and legislative employees~~ who benefited from the expenditure shall be listed separately.

(d) When a lobbyist's principal fails to file an expenditure report as required in this section, the Secretary of State shall send a certified or registered letter advising the lobbyist's principal of the delinquency and the penalties provided by law. Within 20 days of the receipt of the letter, the lobbyist's principal shall deliver or post by United States mail to the Secretary of State the required report and a late filing fee in an amount equal to the late filing fee under G.S. 163-278.34(a)(2).

(e) Filing of the required report and payment of the late fee within the time extended shall constitute compliance with this section. Failure to file an expenditure report in one of the manners prescribed in this section shall result in revocation of any and all registrations of a lobbyist's principal under this Article. No lobbyist's principal

may register or reregister under this Article until the lobbyist's principal has fully complied with this section.

(f) Appeal of a decision by the Secretary of State under this section shall be in accordance with Article 3 of Chapter 150B of the General Statutes.

(g) The Secretary of State may adopt rules to facilitate complete and timely disclosure of expenditures, including the format of reports and additional categories of information, and to protect the addresses of payees under protective order issued pursuant to Chapter 50B of the General Statutes or participating in the Address Confidentiality Program pursuant to Chapter 15C of the General Statutes. The Secretary of State shall not impose any penalties or late filing fees upon a principal for subsequent failures to comply with the requirements of this section if the Secretary of State failed to provide to the lobbyist's principal with required notifications of the initial violation. This provision shall not apply to a failure by the principal to file an expenditure report in a timely manner.

"**§ 120-47.7A.** Reserved for future codification purposes.

"**§ 120-47.7B. Powers and duties of the Secretary of State.**

(a) The Secretary of State shall perform systematic reviews of reports required to be filed under G.S. 120-47.6 and G.S. 120-47.7 on a regular basis to assure complete and timely disclosure of allowable expenditures.

(b) The Secretary of State may petition the Superior Court of Wake County for the approval to issue subpoenas and subpoenas duces tecum as necessary to conduct investigations of violations of this Article. The court shall authorize subpoenas under this subsection when the court determines they are necessary for the enforcement of this Article. Subpoenas issued pursuant to this subsection shall be enforceable by the court through contempt powers. Venue shall be with the Superior Court of Wake County for any nonresident person, or that person's agent, who makes a reportable expenditure under this Article, and personal jurisdiction may be asserted under G.S. 1-75.4.

(c) Complaints of violations of this Article and all other records accumulated in conjunction with the investigation of these complaints shall be considered records of criminal investigations under G.S. 132-1.4.

"**§ 120-47.7C. Prohibitions.**

(a) No member or former member of the General Assembly may be employed as ~~an executive or legislative~~ a lobbyist by a lobbyist's principal to lobby as defined in this Article ~~or Article 4C of Chapter 147 of the General Statutes~~ within ~~six months~~one year after the end of that member's service in the General Assembly.

(b) No person serving as ~~Governor, as a member of the Council of State,~~a Constitutional officer of the State or as a head of a principal State department listed in G.S. 143B-6 may be employed as ~~an executive or legislative~~a lobbyist by a lobbyist's principal to lobby as defined in this Article ~~or Article 4C of Chapter 147 of the General Statutes~~ within ~~six months~~one year after separation from employment or leaving office.

(c) No individual registered as a ~~legislative~~ lobbyist shall serve as a campaign treasurer ~~under Chapter 163 of the General Statutes~~ as defined in G.S. 163-278.6(19) for a campaign for election as a member of the General ~~Assembly.~~Assembly or a Constitutional officer of the State.

(d) A ~~legislative or executive~~ lobbyist shall not be eligible for appointment by a State official to any body created under the laws of this State that has regulatory authority over the activities of a person that the lobbyist currently represents or has represented within 60 days after the expiration of the lobbyist's registration representing that person. Nothing herein shall be construed to prohibit appointment by any unit of local government.

(e) No ~~legislative or executive~~ lobbyist or another acting on the lobbyist's behalf shall permit a covered person ~~person, legislative employee, executive branch officer,~~ or that person's immediate family member, to use the cash or credit of the lobbyist for the purpose of lobbying unless the lobbyist is in attendance at the time of the expenditure.

"§ 120-47.8. Persons exempted from provisions of Article.

Except as otherwise provided in this Article, the provisions of this Article shall not be construed to apply to any of the ~~following:~~following lobbying activities:

(1) An individual solely engaged in expressing a personal opinion or stating facts or recommendations on legislative matters to members of the General Assembly and not acting as a legislative lobbyist.

(2) A person appearing before a ~~legislative committee~~ committee, commission, board, council, or other collective body whose membership includes one or more covered persons at the invitation or request of the committee or a member thereof and who engages in no further activities as a legislative lobbyist.

(3) a. A duly elected or appointed official or employee of the State, the United States, a county, municipality, school district or other governmental agency, when appearing solely in connection with matters pertaining to the office and public duties.

b. Notwithstanding the persons exempted in this Article, the ~~Governor, Council of State,~~ Constitutional officers of the State and all appointed heads of State departments, agencies and institutions, shall designate all authorized official ~~legislative~~ liaison personnel and shall file and maintain current lists of designated ~~legislative~~ liaison personnel with the Secretary of State.

(4) A person performing professional services in drafting ~~bills~~ bills, or in advising and rendering opinions to clients, or to covered persons on behalf of clients, as to the construction and effect of proposed or pending ~~legislation~~ legislative or executive action where the professional services are not otherwise connected with the legislative or executive action.

(5) A person who owns, publishes or is employed by any news medium while engaged in the acquisition or dissemination of news on behalf of the news medium.

(6) Repealed by Session Laws 1991, c. 740, s. 1.1.

(7) Covered ~~persons and legislative employees.~~persons while acting in their official capacity.

(8) A person responding to inquiries from a ~~member of the General Assembly or a legislative employee,~~covered person and who engages in no further activities as a ~~legislative~~ lobbyist in connection with that or any other legislative ~~matter.~~or executive action.

(9) An ~~employee who represents the employer's interests in action for no more than three hours in a quarter, provided that neither the employee nor the employer makes any expenditure as defined in G.S. 120-47.1.~~ individual while participating in an advocacy day.

(10) A person appearing before an executive branch agency or department on behalf of another person, on an individual application for a license or permit, or a disciplinary action on a license or permit.

(11) A person appearing before an executive branch officer on behalf of another person with respect to a proposed sale or lease of real property, goods or services to the State, or construction of property by the State.

(12) A person appearing before an executive branch agency or department or an executive branch officer on behalf of another person or entity in connection with an application for a grant, loan, determination or eligibility, or certification.

"**§ 120-47.8A. Expenditures made by persons exempted or not covered by this Article.**

(a) If a covered person ~~or a legislative employee~~ accepts an expenditure made for the purpose of lobbying valued over two hundred dollars ($200.00) from a person or group of persons acting together, exempted or not otherwise covered by this Article, the person, or group of persons, making the expenditure shall report the date, a description of the expenditure, the name and address of the person, or group of persons, making the expenditure, the name of the covered person ~~or legislative employee~~ accepting the expenditure, and the estimated fair market value of the expenditure.

(b) If the person making the expenditure in subsection (a) of this section is outside North Carolina, and the covered person ~~or legislative employee~~ accepting the expenditure is also outside North Carolina at the time the person accepts the expenditure, then the person accepting the expenditure shall be responsible for filing the report using available information.

(c) If a covered person ~~or a legislative employee~~ accepts a scholarship valued over two hundred dollars ($200.00) from a person, or group of persons, acting together, exempted or not covered by this Article, the person, or group of persons, granting the scholarship shall report the date of the scholarship, a description of the event involved, the name and address of the person, or group of persons, granting the scholarship, the name of the covered person ~~or legislative employee~~ accepting the scholarship, and the estimated fair market value.

(d) If the person granting the scholarship in subsection (c) of this section is outside North Carolina, the covered person ~~or legislative employee~~ accepting the scholarship shall be responsible for filing the report.

(e) This section shall not apply to any of the following:

(1) Lawful campaign ~~contributions.~~ contributions properly received and reported as required under Article 22A of Chapter 163 of the General Statutes.

(2) Any gift from ~~a~~ an extended family member to a covered person. ~~person or legislative employee.~~

(3) Gifts associated primarily with the covered ~~person's, legislative employee's,~~ person's or that person's immediate family member's ~~nonlegislative~~ employment.

(4) Gifts, other than food, beverages, travel, and lodging, which are received from a person who is a citizen of a country other than the United States or a state other than North Carolina and given during a ceremonial presentation or as a custom.

(5) A thing of value that is paid for by the State.

(f) Reports required by this section shall be filed within 10 business days after the end of the quarter in which the expenditure was made, with the Secretary of State in a manner prescribed by the Secretary of State, which may include electronic reports.

"**§ 120-47.8B. Advocacy Day.**

(a) No lobbyist's principal may conduct more than one advocacy day per calendar year.

(b) All advocacy days to lobby the General Assembly must be scheduled through the Legislative Services Office.

(c) All advocacy days to lobby executive branch officers must be scheduled through the Governor's Office.

(d) All lobbyists' principals conducting an advocacy day shall comply with this Article while conducting the advocacy day.

"**§ 120-47.9. Punishment for violation.**

(a) Whoever willfully violates any provision of this Article shall be guilty of a Class 1 misdemeanor. In addition, no ~~legislative~~ lobbyist who is convicted of a violation of the provisions of this Article shall in any way act as a ~~legislative or executive~~ lobbyist for a period of two years following conviction.

(b) In addition to the criminal penalties set forth in this section, the Secretary of State may levy civil fines for willful false or incomplete reporting up to five thousand dollars ($5,000) per violation.

"**§ 120-47.10. Enforcement of Article by Attorney General.**

(a) The Secretary of State may investigate complaints of violations of this Article, ~~The Secretary of State~~ and shall report apparent violations of this Article to the Attorney General. The Attorney General shall, upon complaint, make an appropriate investigation thereof, and the Attorney General shall forward a copy of the investigation to the district attorney of the prosecutorial district as defined in G.S. 7A-60 of which Wake County is a part, who shall prosecute any person who violates any provisions of this Article.

(b) Complaints of violations of this Article involving the Secretary of State or any member of the Department of the Secretary of State shall be referred to the

Attorney General for investigation in accordance with G.S. 120-47.7B. Any portion of the complaint not involving alleged violations of this Article by the Secretary of State or any member of the Department of the Secretary of State shall remain with the Secretary of State for investigation. The Attorney General shall, upon receipt of a complaint, make an appropriate investigation thereof, and the Attorney General shall forward a copy of the investigation to the District Attorney of the prosecutorial district as defined in G.S. 7A-60 of which Wake County is a part, who shall prosecute any person who violates any provisions of this Article.

(c) Complaints of improper lobbying involving the Attorney General or any member of the Department of Justice shall be investigated by the Secretary of State and any apparent violations reported to the District Attorney of that prosecutorial district as defined in G.S. 7A-60 of which Wake County is a part. The District Attorney of that prosecutorial district shall, upon receipt of the Secretary of State's report, prosecute any person who violates any provisions of this Article.

"§ 120-47.11. Rules and forms.

(a) The Secretary of State shall adopt any rules, orders, forms, and definitions as are necessary to carry out the provisions of this Article. The Secretary of State may appoint a council to advise the Secretary in adopting rules under this section.

(b) The Secretary of State shall adopt rules to protect from disclosure all confidential information under Chapter 132 related to economic development initiatives or to industrial or business recruitment activities. The information shall remain confidential until the State, a unit of local government or the business has announced a commitment by the business to expand or locate a specific project in this State or a final decision not to do so and the business has communicated that commitment or decision to the State or local government agency involved with the project.

"§ 120-47.12. Limitations on agency ~~legislative~~ liaison personnel.

(a) No State department may use State funds to contract with persons who are not employed by the State to lobby the General Assembly.

(b) No more than two persons in each State department and constituent institution of The University of North Carolina may be registered to lobby the General Assembly or designated as ~~legislative~~ liaison personnel pursuant to this Article.

(c) All persons designated as ~~legislative~~ liaison personnel pursuant to this Article and the State department or constituent institution of The University of North Carolina that employs the ~~legislative~~ liaison personnel shall report all expenditures made for lobbying purposes in the same manner as required for ~~legislative~~ lobbyists under G.S. 120-47.6 and lobbyists' principals under G.S. 120-47.7. The registration and authorization fees required under G.S. 120-47.3 and G.S. 120-47.4 shall not apply to ~~legislative~~ liaison personnel or the State department or constituent institution that employs the ~~legislative~~ liaison personnel."

"§ 120-47.13. Advisory opinions.

(a) At the request of any person affected by this Article, the Secretary of State shall render advisory opinions on specific questions involving the meaning and application of this Article and the covered person's compliance therewith. The request shall be in writing and relate prospectively to real or reasonably anticipated fact settings

or circumstances. The Secretary of State shall issue advisory opinions having prospective application only. Reliance upon a requested written advisory opinion on a specific matter shall immunize the covered person, on that matter, from both of the following:

(1) Investigation by the Secretary of State.

(2) Any adverse action by the employing entity.

(b) Staff to the Secretary of State may issue advisory opinions under rules adopted by the Secretary of State.

(c) The Secretary of State shall interpret the provisions of this Article by rules, and these interpretations shall be binding on all covered persons, lobbyists, and lobbyists' principal upon publication.

(d) The Secretary of State shall publish its advisory opinions at least once a year, edited as necessary to protect the identities of the individuals requesting opinions.

(e) Except as provided under subsection (d) of this section, requests for advisory opinions and advisory opinions issued pursuant to this section are confidential and not matters of public record.

"**§ 120A-14. Lobbying education program.**

(a) The Secretary of State shall develop and implement a lobbying education and awareness program designed to instill in all covered persons, lobbyists, and lobbyists' principals a keen and continuing awareness of their obligations and a sensitivity to situations that might result in real or potential violation of this Article or other related laws. The Secretary shall make basic lobbying education and awareness presentations to all covered persons upon their election, appointment or hiring and shall offer periodic refresher presentations as the Secretary deems appropriate. Every covered person shall participate in a lobbying presentation approved by the Secretary within six months of the person's election, appointment or hiring, and shall attend refresher ethics education presentations at least every two years thereafter in a manner the Secretary deems appropriate. Upon request, the Secretary shall assist each agency in developing in-house education programs and procedures necessary or desirable to meet the agency's particular needs for lobbying education.

(b) The Secretary shall publish a newsletter containing summaries of the Secretary's opinions, policies, procedures, and interpretive bulletins as issued from time to time. The newsletter shall be distributed to all covered persons, lobbyists, and lobbyists' principals. Publication under this subsection may be done electronically.

(c) The Secretary shall assemble and maintain a collection of relevant State laws, rules, and regulations that set forth lobbying standards applicable to covered persons. The collection of laws, rules and regulations shall be made available electronically as resource material to covered persons, lobbyists and lobbyists' principals, upon request.

"**§ 120-15. No gift registry.**

(a) The Secretary of State shall establish a "No Gifts" registry for persons subject to this Article. The "No Gifts" registry shall be published and updated with the list of lobbyists and lobbyists' principals required under G.S. 120-47.2.

(b) Except as provided in this subsection, lobbyists and lobbyists' principals shall not give unsolicited gifts allowed under G.S. 120-47.5A(a1)(2) to persons placing their

names on the registry, without the persons' expressed consent. Gifts of informational directories may be given to persons placing their names on the registry.

(c) The Secretary shall have the authority to adopt rules to implement this section in compliance with the following criteria:

(1) The registration is valid from the time the person registers until January 1 of the following year, unless the person requests in writing the removal of that person's name.

(2) The registration shall be in writing.

(d) Violations of this section shall not constitute a crime but shall be subject to civil fines of up to five hundred dollars ($500.00) as levied by the Secretary of State."

SECTION 4. Sections 2 and 3 of S.L. 2005-456 are repealed.

SECTION 5.1. G.S. 163-278.6 is amended by adding a new subsection to read:

"**§ 163-278.6. Definitions.**

When used in this Article:

...

(5a) The term 'Constitutional officers of the State' means officers whose offices are established in Article III of the Constitution.

..."

SECTION 5.2. Article 22A of Chapter 163 of the General Statutes is amended by adding a new section G.S. 163-278.19A to read:

"**§ 163-278.13C. Limitation on contributions by registered lobbyists.**

(a) No lobbyist registered under Article 9A of Chapter 120 shall do any of the following:

(1) Make or offer to make a contribution to a legislator, executive branch official, or candidate campaign committee.

(2) Make a contribution to any candidate, officeholder, or political committee, directing or requesting that the contribution be made in turn to a legislator, executive branch official, or candidate campaign committee.

(3) Transfer any amount of money or anything of value to any entity, directing or requesting that the entity use what was transferred to contribute to a legislator, executive branch officer, or candidate campaign committee.

(4) Solicit a contribution from any individual, political committee, or other entity on behalf of a legislator, executive branch official, or candidate campaign committee. This subdivision does not apply to a registered lobbyist soliciting a contribution on behalf of a political party executive committee if the solicitation is solely for a separate segregated fund kept by the political party limited to use for activities that are not candidate-specific, including generic voter registration and get-out-the-vote efforts, pollings, mailings, and other general activities and advertising that do not refer to a specific individual candidate.

(b) No legislator, executive branch official, or candidate campaign committee or the real or purported agent of that legislator, executive branch official, or candidate campaign committee shall do any of the following:

(1) Solicit a contribution from a lobbyist registered under Article 9A of Chapter 120 of the General Statutes.

(2) Solicit a third party, requesting or directing that the third party directly or indirectly solicit a contribution from a lobbyist registered under Article 9A of Chapter 120 of the General Statutes or relay to the lobbyist registered under Article 9A of Chapter 120 of the General Statutes the legislator's, executive branch official's, or candidate campaign committee's solicitation of a contribution.

(3) Accept a contribution from a lobbyist registered under Article 9A of Chapter 120 of the General Statutes.

(c) It shall not be deemed a violation of this section for a legislator or executive branch official to serve on a board or committee of an organization that makes a solicitation of a lobbyist registered under Article 9A of Chapter 120 of the General Statutes as long as that legislator or executive branch official does not directly participate in the solicitation and that legislator or executive branch official does not directly benefit from the solicitation.

(d) As used in this section, the following terms mean:

(1) Candidate campaign committee. – As defined in G.S. 163-278.38Z and that candidate has filed a notice of candidacy for office as a member of the General Assembly or a Constitutional officer of the State.

(2) Executive branch official. – As defined in G.S. 120-47.1(1d)(a).

(3) Legislator. – As defined in G.S. 120-47.1(4d).

(e) A violation of this section is a Class 2 misdemeanor.

SECTION 5.3. G.S. 163-278.13B(a)(1) reads as rewritten:

"(1) "Limited contributor" means a ~~lobbyist registered pursuant to Article 9A of Chapter 120 of the General Statutes, that lobbyist's agent, that~~ lobbyist's principal as defined in ~~G.S. 120-47.1(7),~~ G.S. 120-47 or a political committee that employs or contracts with or whose parent entity employs or contracts with a lobbyist registered pursuant to Article 9A of Chapter 120 of the General Statutes."

SECTION 6. If any section or provision of this act is declared unconstitutional or invalid by the courts, it does not affect the validity of this act as a whole or any part other than the part so declared to be unconstitutional or invalid.

SECTION 7. Sections 1, 2, 6, and 7 of this act are effective when the act becomes law, and the new G.S. 120-47.7C(d) applies to appointments made on or after that date. The remainder of this act becomes effective January 1, 2007.

Attachment IV

HOUSE BILL 1849: Lobbying Reforms 2006

BILL ANALYSIS

Committee:	House Judiciary I	**Date:**	May 11, 2006
Introduced by:	Reps. Hackney, Howard, Gibson, Sherrill	**Summary by:**	R. Erika Churchill
Version:	First Edition		Committee Counsel

SUMMARY: House Bill 1849 amends North Carolina's lobbying laws to do all of the following:

1. *Implements earlier certain prohibitions creating waiting periods before certain State officers may lobby and barring lobbyists from certain appointments and other activities.*
2. *Bans certain gifts by lobbyists and lobbyists' principals to covered persons (legislators, legislative employees, and executive branch officers).*
3. *Expands coverage of the lobbying laws to additional executive branch officers and employees, with a combined single registration, fee, regulation, and reporting periods for both legislative and executive branch lobbying.*
4. *Bans campaign contributions by registered lobbyists.*
5. *Permits the issuance of advisory opinions and requires lobbying education programs.*

CURRENT LAW:

Under current law effective until January 1, 2007, a person who is paid to try to influence legislative action (action on a specific bill, resolution, amendment, etc.) is required to register as a lobbyist with the Secretary of State and report at the end of each regular session, any expenditures in excess of $25 spent on lobbying legislators. Expenditures spent for the general goodwill of legislators not tied to specific legislative action do not need to be reported, nor do expenditures spent on legislative staff or legislators' family members. There is no limitation on the types or amount of expenditures that a lobbyist can spend on a legislator for lobbying purposes. Every principal who hires the services of a lobbyist also has to file reports on expenditures that the principal made for lobbying, including the amount of compensation paid to lobbyists. Exempt from the lobbying laws are persons who lobby on their own behalf, persons appearing before the General Assembly at the General Assembly's request, elected and appointed local government officials and employees lobbying on behalf of their local governments, State agency legislative liaison personnel, and members of the General Assembly. Violation of this law is punished as a Class 1 misdemeanor.

S.L. 2005-456 (Senate Bill 612) amended the current law, to take effect January 1, 2007. Changes effective January 1, 2007, include:

- Developing goodwill is added as part of the definition of lobbying.
- The definition of "expenditure" for reporting purposes includes anything of value over $10.
- The lobbying laws are applied to certain persons in the Executive branch under a separate registration, fee and reporting.
- Legislative staff are included under lobbying regulations.
- The frequency of reporting lobbying expenditures is increased to monthly during regular session and quarterly in the interim; and quarterly reports for executive branch lobbying.
- Legislators and certain executive branch officials are prohibited from lobbying within 6 months of leaving office.
- Lobbyists are prohibited from serving as campaign treasurers for legislative races.

BILL ANALYSIS:

House Bill 1849 amends the current lobbying laws in the following ways (Effective when the bill becomes law):

- Prohibits a legislator or former legislator from being employed as a lobbyist within 1 year after the expiration of the term for which the legislator was elected or appointed to serve.
- Prohibits the Governor or Council of State member or head of a cabinet department from being employed as a lobbyist within one year after separation from employment or leaving office, whichever is later.
- Prohibits a lobbyist from serving as a campaign treasurer for a legislative or Council of State campaign.
- Prohibits a lobbyist from being appointed to any board, authority, commission, etc. that regulates the activities of a business, organization, person or agency that the lobbyist represented within 60 days of that representation.
- Prohibits a lobbyist from allowing a covered person or that person's immediate family member to use the lobbyist's cash or credit for the purpose of lobbying without the lobbyist being present at the time of the expenditure.
- Allows the Secretary of State's office to treat investigations of lobbying violations as criminal investigations, meaning the investigation information may not be released as a public record.

House Bill 1849 amends the lobbying laws scheduled to take effect January 1, 2007, in the following ways:

- Combines legislative and executive lobbying registrations and regulations into one.
- Changes the definition of covered person to mean legislators, executive branch officers, and legislative staff.
- Prohibits lobbyists and lobbyist's principals from giving gifts to covered persons. The following exceptions apply:
  - Gifts from lobbyists to their family members who are legislators or legislative employees.
  - Lawful campaign contributions.
  - Commercially available loans made in the normal course of business and not made for the purpose of lobbying.
  - Meals and beverages for immediate consumption in connection with public events.
  - Scholarships with terms not more favorable than scholarships available to the public.
  - Nonmonetary items, other than food or beverages, with a value not to exceed $10 by a lobbyist or principal in a single calendar day.
  - Informational materials related to the covered person's public duties.
  - Reasonable actual expenses when a covered person speaks at a meeting relating to the covered person's duties.
  - Items valued at less than $100 given to a covered person when the covered person is in another country as part of an overseas trade mission and the giving of gifts is customary protocol in the other country.
  - Gifts accepted on behalf of the State, anything generally available to the general public or all State employees,
  - Anything for which fair market value is paid.
- Expands the definition of executive branch officer to correlate those persons covered by the Executive Branch Ethics Act (House Bill 1844).
- Expenditures by liaison personnel and State agencies have to be reported the same as expenditures.
- The registration period for a lobbyist and lobbyist's principal is one year.
- Clarifies that the lobbyist must file a separate registration for each principal the lobbyist represents, and that either the lobbyist or the principal must pay a separate fee for each registration.
- Quarterly reporting of lobbying expenditures is required, with increased reporting to monthly of legislative lobbying while the General Assembly is in session.

- Increases the details of lobbying expenditure reports to include the fair market value or face value if shown, date, a description of the expenditure, name and address of the payee or beneficiary, name of any covered person benefiting from the expenditure (or legislative employee or those person's immediate family members) in each of the following categories:
    - Transportation and lodging
    - Entertainment, food, and beverages
    - Meetings and events
    - Gifts
    - Solicitation of others to lobby
    - Other expenditures

  The Secretary of State is granted rulemaking authority to facilitate disclosure of expenditures, including the format of the report and additional categories.
- The lobbyist's principal must also report, in addition to the expenditures reported by the lobbyist, the compensation paid or agreed to be paid to each lobbyist.
- Requires expenditures of $200 made for the purpose of lobbying from persons not required to register and report as lobbyists or lobbyist's principals or more to be reported. If the person giving the gift is in North Carolina, that person shall make the report. If the person giving the gift is outside North Carolina, the person accepting the gift shall make the report. Certain exceptions apply.
- Authorizes the Secretary of State to issue advisory opinions on issues arising under the lobbying law.
- Requires continuing lobbying education programs for legislators, legislative employees, executive branch officers, lobbyists and lobbyists' principals.
- Clarifies the no-gift registry for gifts from lobbyists.
- Bans campaign contributions by lobbyists to candidates or candidate's committees if the candidate has filed for office as a member of the General Assembly or a Constitutional officer of the State. ****This prohibition may have constitutional implications.

EFFECTIVE DATE: Except as noted above, the act becomes effective January 1, 2007.

BACKGROUND: In 2005, the North Carolina General Assembly passed S.L. 2005-456 (SB 612), which amended North Carolina's lobbying laws effective January 1, 2007. The bill is a recommendation of the House Select Committee on Ethics and Governmental Reform. That Committee's charge, as amended on February 20, 2006, directs the Committee to "Examine the provisions of the 2005 rewrite of the lobbying law, S.L. 2005-456 (Senate Bill 612) to determine if portions of that law could be implemented prior to its original effective date of January 1, 2007 and determine whether any additional areas of lobbying regulation should be clarified or strengthened, including prohibiting lobbyists from raising funds for or personally contributing to political campaigns, and from holding any position in a legislative or executive branch campaign."

* *Walker Reagan and Brad Krehely contributed substantially to the drafting of this summary.*

H1849e1-SMST

Attachment V

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1849

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

H1849-AST-108 [v.2]

Date _____,2006

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

Representative Ross

moves to amend the bill on page 10, line 16 by inserting the following phrase between "expenditures" and "made":
"as defined in G.S. 120-47.1(1e)".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

Attachment VI

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1849

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

H1849-AST-109 [v.3]

Date _____,2006

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

Representative Ross

moves to amend the bill on page 9, lines 16-17 by those lines to read:

"(9) Anything generally available or distributed to the general public by the lobbyist or lobbyist's principal or generally available to all other State employees."

and moves to amend the bill on page 21, lines 33-34 by inserting the following between those lines:

"**SECTION 5.5.** If House Bill 1843, 2005 Regular Session, becomes law, G.S. 120-290(c)(9) as enacted by that law, reads as rewritten:

'(9) Anything generally available or distributed to the general public by the lobbyist or lobbyist's principal or generally available to all other State employees.'

SECTION 5.6. If House Bill 1844, 2005 regular Session, becomes law, G.S. 138A-7(d)(9) as enacted by that law, reads as rewritten:

'(9) Anything generally available or distributed to the general public by the lobbyist or lobbyist's principal or generally available to all other State employees.'".

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1849

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

H1849-AST-109 [v.3]

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

Attachment VII

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1849

AMENDMENT NO. 3
(to be filled in by Principal Clerk)

H1849-AST-110 [v.2]

Date May 30 ,2006

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

Representative Hackney

moves to amend the bill on page 9, lines 11-12 by rewriting those lines to read:

"(6) Reasonable actual expenditures for food, registration, travel, and lodging of the covered person for an educational conference or meeting and when the expenditures are incurred on the actual day of participation in the conference or meeting or incurred within a 24-hour time period before or after the conference or meeting.";

and moves to amend the bill on page 21, lines 33-34 by inserting the following between those lines:

"**SECTION 5.5.** If House Bill 1843, 2005 Regular Session, becomes law, G.S. 120-290(c)(6) as enacted by that law, reads as rewritten:

'(6) ~~Items and services received relating to~~Reasonable actual expenditures for food, registration, travel, and lodging of the legislator or legislative employee for an educational conference or ~~meeting.~~meeting and when the expenditures are incurred on the actual day of participation in the conference or meeting or incurred within a 24-hour time period before or after the conference or meeting.'

SECTION 5.6. If House Bill 1844, 2005 Regular Session, becomes law, G.S. 138A-7(d)(6) as enacted by that law, reads as rewritten:

'(6) ~~Items and services received relating to~~Reasonable actual expenditures for food, registration, travel, and lodging of the public servant for an educational conference or ~~meeting.~~meeting and when the expenditures are incurred on the actual day of participation in the conference or

#3
5-30
w/drawn

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1849

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

H1849-AST-110 [v.1]

meeting or incurred within a 24-hour time period before or after the conference or meeting.'".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

Attachment VIII

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1849

AMENDMENT NO. 5
(to be filled in by Principal Clerk)

H1849-AST-112 [v.1]

Date May 30 ,2006

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

Representative Hackney

moves to amend the bill on page 11, lines 19-21 by rewriting those lines to read:

"(6) Solicitation of others to lobby as defined in G.S. 120-47.1(5), including expenditures for all of the following:
a. Media, in excess of one thousand dollars ($1000) in a reporting period or if a third party is employed or contracted for such purpose.
b. Mail, in excess of five hundred dollars ($500) in a reporting period or if a third party is employed or contracted for such purpose.
c. Conferences or other similar events in excess five hundred ($500), or if a third party is employed or contracted for such purpose.

The following need not be reported:
a. Telephone contacts by volunteers or employees, where a third party is not employed for such purpose.
b. Electronic mail transmissions, by volunteers or employees, where a third party is not employed for such purpose.
c. Newsletters, sent on a regular basis to members, employees, or those allied in interest.
d. Maintenance of websites for information about legislative or executive action, or both.";

#5
May 30
w/ drawn temp

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1849

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

H1849-AST-112 [v.1]

and on page 13, lines 1-3 by rewriting those lines to read:

"(6) Solicitation of others to lobby as defined in G.S. 120-47.1(5), including expenditures for all of the following:

a. Media, in excess of one thousand dollars ($1000) in a reporting period or if a third party is employed or contracted for such purpose.

b. Mail, in excess of five hundred dollars ($500) in a reporting period or if a third party is employed or contracted for such purpose.

c. Conferences or other similar events in excess five hundred ($500), or if a third party is employed or contracted for such purpose.

The following need not be reported:

a. Telephone contacts by volunteers or employees, where a third party is not employed for such purpose.

b. Electronic mail transmissions, by volunteers or employees, where a third party is not employed for such purpose.

c. Newsletters, sent on a regular basis to members, employees, or those allied in interest.

d. Maintenance of websites for information about legislative or executive action, or both.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

Attachment IX

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1849

AMENDMENT NO. 4
(to be filled in by Principal Clerk)

H1849-AST-111 [v.2]

Date May 30 ,2006

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

Representative Hackney

moves to amend the bill on page 5, lines 24-25 by rewriting those lines to read:

" The term "lobbyist" shall not include any of the following:

a. ~~those~~ Those individuals who are specifically exempted from this Article by G.S. 120-47.8.

b. An employee, board member, or officer of a lobbyist's principal when the employee, board member or officer's lobbying duties are a minor or incidental part of that individual's overall duties. Such lobbying duties are minor or incidental if the lobbying is fewer than eight hours per reporting period.

c. Members of a lobbyist's principal or those allied in interest with a lobbyist's principal whose lobbying activity is fewer than eight hours per reporting period.";

and on page 2, lines 40-42 by deleting those lines;

and on page 16, lines 7-10 by removing the redlining on those lines and repealing G.S. 120-47.8(9);

#4
5/30
dismissed no action

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1849

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

H1849-AST-111 [v.2]

and on page 17, lines 18-26 by deleting those lines.

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

House Judiciary I Committee

June 1, 2006
10:00 a.m.

Minutes

The House Judiciary I Committee met on Thursday, June 1, 2006 at 10:00 a. m. in Room 1228 of the Legislative Building. The Chairman, Representative Joe Hackney, called the meeting to order and the following members were present: Representatives Alexander, Blust, Capps, Goodwin, Harrison, Miller, Ross, Stam, Stiller, and West. A copy of the agenda and visitor registration is attached, (Attachments I and II).

Chairman Hackney announced that additional work was needed on House Bill 1846, Contribution Changes, and that it had been removed from the meeting's agenda.

Representative Ross was recognized for an explanation of House Bill 1845, AN ACT TO RESTRICT THE USE OF CONTRIBUTIONS TO CANDIDATES AND CANDIDATES' CAMPAIGN FUNDS TO THOSE RELATED TO CAMPAIAGNS AND OFFICE-HOLDING DUTIES; TO PROHIBIT PERSONAL USE OF CONTRIBUTIONS BY CANDIDATES AND CANDIDATE CAMPAIGN COMMITTEES; AND TO STRENGTHEN REPORTING REQUIREMENTS TO PREVENT VIOLATIONS, (Attachment III). A Proposed Committee Substitute was offered by Representative Ross, (Attachment IV), who moved its adoption. The motion carried. The Proposed Committee Substitute contained no substantive changes, but was a rewrite to improve the way in which the bill was drafted.

Representative Ross stated that currently there are no restrictions on the use of candidate campaign funds in North Carolina. She said that the bill lays out specific things that candidates and public officials can use their campaign funds. Those purposes are identified in the bill. Representative Ross noted that there may be no need for subsection (b) on page 2 of the bill. She offered further explanation of the bill regarding reporting requirements. A bill analysis prepared by Ms. Erika Churchill, Committee Counsel is attached to the minutes, (Attachment V).

Chairman Hackney asked if there was a reason that referendum committees are not covered in the bill. Representative Ross replied that the subcommittee was asked to look at what candidates did with their own campaign committees, and that referendum committees were not in their prevue, and she further noted that referendum committees do have certain restrictions on how they spend their money.

Representative Stam stated that because of the inclusion of the word "only" on page 1, line 12, he did not think that there was a need for subsection (b) on page 2 of the bill. He also expressed concern regarding the listing of expenditures made by consultants with credit cards.

Ms. Kim Strach, State Board of Elections, was recognized and stated that the language was crafted to address both credit cards and consultants. Discussion regarding the reporting of expenditures to credit card companies followed.

There was considerable discussion regarding the use of campaign funds for personal use.

Representative Stam stated that he had prepared an amendment that would make Section 1 effective October 1, 2006. Representative Blust also expressed support for the October effective date. He further expressed concern about the language regarding expenditures resulting from holding public office, saying that a candidate might defray many personal expenses under that provision. He said that he thought Section 2 creates a huge loophole in the bill and that the Committee should give thought to that section.

Representative Ross said that other states have this provision and that there are some members who might need to defray some of the expenses incurred by being a public servant.

There was discussion regarding the use of the word "caucus" on page 1, line 23.

Representative Harrison questioned the provision on page 1, line 20 prohibiting contributions of campaign funds to a charitable board if the candidate, the candidate's spouse, children, parents, brothers or sisters are on the board governing that organization. Representative Stam said that he would work on language to address this provision.

Chairman Hackney stated that there is much uncertainty regarding the credit card provision and that the State Board of Elections needs some direction on the issue. He said that the section needed to be expanded and should be more precise. He welcomed input from the Board of Elections.

Chairman Hackney directed staff to work on expanded language regarding the credit card provision and invited input from interested parties.

The meeting was adjourned at 10:50 a.m.,

Representative Joe Hackney
Chair

Emily Reynolds Freeman
Committee Clerk

Attachment I

HOUSE COMMITTEE ON JUDICIARY I

June 1, 2006
10:00 a.m.

AGENDA

OPENING REMARKS

AGENDA ITEMS

House Bill 1845 – Permitted Use of Campaign Funds
Representatives Hackney, Howard, Eddins and Ross

House Bill 1846 Contribution Changes
Representatives Hackney, Howard, Eddins and Ross

House Bill 2188 – Candidate Challenge Procedure
Representatives Hackney and Howard

ADJOURNMENT

Attachment II

VISITOR REGISTRATION SHEET

House Judiciary I — **Name of Committee**

June 1, 2006 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Marlowe Foster	NCAHP
Megan Glazier	Rep. Glazier
Sarah Schmidt	NC Justice Center
Paula A. Stoef.	NC Lobbying Reform Coalition
Rob Schofield	NCCNP
Dan Kane	NIO
Johnnie McLean	SBE
Ken Strach	SBE
John Phelps	NCLM
JOYCE POPE	civitas institute
J Bentley	

VISITOR REGISTRATION SHEET

House Judiciary I — **Name of Committee**

June 1, 2006 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
J Craig Lane	UHS
John Medlin	GOO office
Caroline Hoke	Lt. Gov's Office
Neil Dermody	Lt. Gov's Office
Barbara Carsley	BSCGR
Linda Dunton	NCAE
Todd Barlow	NCATL
Richard O'Brien	PFFPNC
Charlene Carey	NC Right to Life
Jana Estes	Rep. Starn
Christie Bardin	CDPH

VISITOR REGISTRATION SHEET

House Judiciary I — June 1, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Margaret Farland	Intern (Rep. Harrison)
STEVE KEENE	NC MEDICAL SOCIETY
Evelyn Hawthorne	OTGR
Jere Royall	NC Family Policy Council
Elizabeth Dutton	NARMA
Bob Hall	Democracy NC
PATRICK BUFFKIN	ALLEY ASSOC, INC
Emily Kirby	NC Conservation Network

Attachment III

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

HOUSE BILL 1845

Short Title:	Permitted Use of Campaign Funds.	(Public)
Sponsors:	Representatives Hackney, Howard, Eddins, Ross (Primary Sponsors); Barnhart, Bell, Brubaker, Coates, Earle, Fisher, Gibson, Harrison, Justice, Lucas, Luebke, Martin, McLawhorn, Nye, Sauls, Setzer, Sherrill, Steen, West, Alexander, L. Allen, Bordsen, Dickson, Glazier, Harrell, Hill, Insko, Jeffus, McGee, Moore, Stiller, Underhill, Walker, and Weiss.	
Referred to:	Judiciary I.	

May 10, 2006

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT THE USE OF CANDIDATES' CAMPAIGN FUNDS FOR PERSONAL PURPOSES UNRELATED TO CAMPAIGNS AND OFFICE-HOLDING DUTIES; AND TO STRENGTHEN REPORTING REQUIREMENTS TO PREVENT VIOLATIONS, AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON ETHICS AND GOVERNMENTAL REFORM.

The General Assembly of North Carolina enacts:

SECTION 1. Article 22A of Chapter 163 of the General Statutes is amended by adding a new section to read:

"**§ 163-278.16B. Use of contributed amounts for certain purposes.**

(a) Permitted Uses. – A contribution accepted by a candidate or candidate's committee may be used only for the following purposes:

(1) Ordinary expenditures in connection with the campaign for public office of the candidate.

(2) Ordinary expenses in connection with the duties and activities of the individual as holder of an elective office.

(3) Donations to an organization described in section 170(c) of the Internal Revenue Code of 1986 (26 U.S.C. § 170(c)).

(4) Contributions to a national, State, or local committee of a political party.

(5) Contributions to another candidate for office in North Carolina or to a candidate's committee.

(6) To return all or a portion of a contribution to the contributor.

(7) Payment of any penalties against the committee imposed by a board of elections or a court of competent jurisdiction.

(b) Prohibited Use. –

(1) In general. – A contribution described in subsection (a) of this section shall not be converted by any individual to personal use.

(2) Conversion. – For purposes of subdivision (1) of this subsection, a contribution shall be considered to be converted to personal use if the contribution or amount is used to fulfill any commitment, obligation, or expense of an individual or other entity that would exist irrespective of the candidate's election campaign or duties and activities as officeholder, including the following:

a. A home mortgage, rent, or utility payment.
b. A clothing purchase.
c. A noncampaign-related automobile expense.
d. A country club membership.
e. A vacation or other noncampaign-related trip.
f. A household food item.
g. A tuition payment.
h. Admission to a sporting event, concert, theater, or other form of entertainment not associated with an election campaign.
i. Dues, fees, and other payments to a health club or recreational facility.
j. A retirement account or other retirement purpose.

(c) Rules. – The State Board of Elections shall adopt rules for the implementation of this section."

SECTION 2. G.S. 163-278.11(a)(2) reads as rewritten:

"(2) Expenditures. – A list of all expenditures required under G.S. 163-278.8 made by or on behalf of a candidate, political committee, or referendum committee. The statement shall list the name and complete mailing address of each payee, the amount paid, the purpose, and the date such payment was made. The total sum of all expenditures to date shall be plainly exhibited. Forms for required reports shall be prescribed by the Board. When a payment is made in a lump sum to one payee for several goods or services or both, the statement shall itemize with a reasonable degree of specificity the amount paid for each purpose. In the case of a payment to a credit card company, the statement shall provide a reasonably specific itemization of the bills the credit card was used to pay. In the case of a payment to a provider of services, the statement shall itemize any media advertising purchases made on behalf of the campaign and, with a reasonable degree of specificity, itemize other payments the provider has made on behalf of the campaign. The State Board of Elections shall adopt rules for the implementation of this subdivision."

SECTION 3. G.S. 163-278.27(a) reads as rewritten:

"(a) Any individual, candidate, political committee, referendum committee, treasurer, person or media who intentionally violates the applicable provisions of G.S. 163-278.7, 163-278.8, 163-278.9, 163-278.10, 163-278.11, 163-278.12, 163-278.13, 163-278.13B, 163-278.14, 163-278.16, 163-278.16B, 163-278.17, 163-278.18, 163-278.19, 163-278.20, 163-278.39, 163-278.40A, 163-278.40B, 163-278.40C, 163-278.40D or 163-278.40E is guilty of a Class 2 misdemeanor. The statute of limitations shall run from the day the last report is due to be filed with the appropriate board of elections for the election cycle for which the violation occurred."

SECTION 4. This act becomes effective January 1, 2007, and applies to all candidates, officeholders, and political committees with accounts that are active with the State Board of Elections or a county board of elections on or after that date.

Attachment IV

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 1845
PROPOSED COMMITTEE SUBSTITUTE H1845-CSST-101 [v.7]

5/31/2006 12:31:34 PM

Short Title: Permitted Use of Campaign Funds. (Public)

Sponsors:

Referred to:

May 10, 2006

A BILL TO BE ENTITLED

AN ACT TO RESTRICT THE USE OF CONTRIBUTIONS TO CANDIDATES AND CANDIDATES' CAMPAIGN FUNDS TO THOSE RELATED TO CAMPAIGNS AND OFFICE-HOLDING DUTIES; TO PROHIBIT PERSONAL USE OF CONTRIBUTIONS BY CANDIDATES AND CANDIDATE CAMPAIGN COMMITTEES; AND TO STRENGTHEN REPORTING REQUIREMENTS TO PREVENT VIOLATIONS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 22A of Chapter 163 of the General Statutes is amended by adding a new section to read:

"**§ 163-278.16B. Use of contributions for certain purposes.**

(a) A candidate or candidate's campaign committee may use contributions only for the following purposes:

(1) Expenditures resulting from the campaign for public office by the candidate or candidate's campaign committee.

(2) Expenditures resulting from holding public office.

(3) Contributions to an organization described in section 170(c) of the Internal Revenue Code of 1986 (26 U.S.C. § 170(c)), provided that the candidate or the candidate's spouse, children, parents, brothers or sisters are not employed by the organization or on any board governing the organization.

(4) Contributions to a national, State, or district or county committee of a political party or a caucus of the political party.

(5) Contributions to another candidate or candidate's campaign committee.

(6) To return all or a portion of a contribution to the contributor.

(7) Payment of any penalties against the candidate or candidate's campaign committee imposed by a board of elections or a court of competent jurisdiction.

(b) When making expenditures under subsection (a)(1) and subsection (a)(2) of this section, a candidate or candidate's campaign committee may not use contributions to fulfill any commitment, obligation, or expense of a candidate, individual, or other entity that would exist regardless of the candidate's campaign for public office or holding public office.

(c) As used in this section, the term 'candidate campaign committee' means the same as in G.S. 163-278.38Z(3)."

SECTION 2. G.S. 163-278.8(e) reads as rewritten:

"(e) All expenditures for media expenses shall be made by a verifiable form of payment. The State Board of Elections shall prescribe methods to ensure an audit trail for every expenditure so that the identity of each payee can be determined. All media expenditures in any amount shall be accounted for and reported individually and ~~separately.~~ separately, with specific descriptions to provide a reasonable understanding of the expenditure."

SECTION 3. G.S. 163-278.8(f) reads as rewritten:

"(f) All expenditures for nonmedia expenses (except postage) of more than fifty dollars ($50.00) shall be made by a verifiable form of payment. The State Board of Elections shall prescribe methods to ensure an audit trail for every expenditure so that the identity of each payee can be determined. All expenditures for nonmedia expenses of fifty dollars ($50.00) or less may be made by check or by cash payment. All nonmedia expenditures of more than fifty dollars ($50.00) shall be accounted for and reported individually and ~~separately,~~ separately with a specific description to provide a reasonable understanding of the expenditure, but expenditures of fifty dollars ($50.00) or less may be accounted for and reported in an aggregated amount, but in that case the treasurer shall account for and report that ~~he~~ the treasurer made expenditures of fifty dollars ($50.00) or less each, the amounts, dates, and the purposes for which made. In the case of a nonmedia expenditure required to be accounted for individually and separately with a specific description to provide a reasonable understanding of the expenditure by this subsection, if the expenditure was to an individual, the report shall list the name and address of the individual."

SECTION 4. G.S. 163-278.11(a)(2) reads as rewritten:

"(2) Expenditures. – A list of all expenditures required under G.S. 163-278.8 made by or on behalf of a candidate, political committee, or referendum committee. The statement shall list the name and complete mailing address of each payee, the amount paid, the purpose, and the date such payment was made. The total sum of all expenditures to date shall be plainly exhibited. Forms for required reports shall be prescribed by the Board. In accounting for all expenditures in accordance with G.S. 163-278.8(e) and G.S. 163-278.8(f), the payee shall be the individual or person to whom the candidate, political committee, or referendum committee is obligated to make the expenditure. If the obligation is for more than one good or service, the statement shall include a specific itemization

of the obligation so as to provide a reasonable understanding of the obligation."

SECTION 5. G.S. 163-278.27(a) reads as rewritten:

"(a) Any individual, candidate, political committee, referendum committee, treasurer, person or media who intentionally violates the applicable provisions of G.S. 163-278.7, 163-278.8, 163-278.9, 163-278.10, 163-278.11, 163-278.12, 163-278.13, 163-278.13B, 163-278.14, 163-278.16, 163-278.16B, 163-278.17, 163-278.18, 163-278.19, 163-278.20, 163-278.39, 163-278.40A, 163-278.40B, 163-278.40C, 163-278.40D or 163-278.40E is guilty of a Class 2 misdemeanor. The statute of limitations shall run from the day the last report is due to be filed with the appropriate board of elections for the election cycle for which the violation occurred."

SECTION 6. Sections 1 and 5 of this act become effective January 1, 2007, and apply to all candidates and candidate campaign committees with active accounts with the State Board of Elections or a county board of elections on or after that date. Sections 2, 3, and 4 of this act become effective January 1, 2007, and apply to all political committees and referendum committees with active accounts with the State Board of Elections or a county board of elections on or after that date. The remainder of this act becomes effective January 1, 2007.

Attachment V

HOUSE BILL 1845:
Permitted Use of Campaign Funds

BILL ANALYSIS

Committee:	House Judiciary I	**Date:**	May 31, 2006
Introduced by:	Reps. Hackney, Howard, Eddins, Ross	**Summary by:**	R. Erika Churchill
Version:	PCS to First Edition H1845-CSST-101v.7		Committee Counsel

SUMMARY: ***The proposed committee substitute for House Bill 1845 establishes permitted uses of contributions to candidates and campaign funds, and establishes prohibited uses for those contributions. It also amends the campaign finance reporting statutes to require additional detail in reporting of expenditures. Effective January 1, 2007.***

CURRENT LAW: Generally, North Carolina is one of 10 states that do not restrict how a candidate or campaign committee may spend the funds in their accounts. Converting those funds to personal use is not specifically prohibited. Such personal use may trigger tax liability for the candidate, but does not violate the campaign finance laws as long as the personal use is publicly reported.

Exceptions to this rule are candidates and political parties whose campaigns receive public funding. Candidates for appellate judge who receive payments from the North Carolina Public Campaign Fund must limit their use of those funds to "campaign-related purposes only." *GS 163-278.64.* The State Board of Elections is required to publish guidelines for what that term means, and has done so. Also, parties that receive money from the North Carolina Political Parties Financing Fund must use that money "only for legitimate campaign expenses," examples of which are listed in the statute. *GS 163-278.42.*

BILL ANALYSIS:

Sections 1 and 5. The proposed committee substitute would add a new statute to Article 22A of Chapter 163 setting forth permitted and prohibited uses of contributions accepted by a candidate or candidate's committee.

A candidate or candidate's campaign committee could use contributions only for the following purposes:

- Expenditures resulting from the campaign for public office
- Expenditures resulting from holding public office.
- Contributions to a charitable organization provided that the candidate or the candidate's spouse, children, parents, brothers or sisters are not employed by the organization or on any board governing the organization.
- Contributions to a national, State, or district or county committee of a political party or a caucus of the political party.
- Contributions to another candidate or candidate's campaign committee.
- To return all or a portion of a contribution to the contributor.
- Payment of any penalties against the candidate or candidate's campaign committee imposed by a board of elections or a court of competent jurisdiction.

A candidate or candidate's campaign committee would be prohibited from using contributions to fulfill any commitment, obligation, or expense of a candidate, individual, or other entity that would exist regardless of the campaign for public office or holding public office when making expenditures resulting from running for office or holding public office.

The criminal penalty for violation of these provisions would be a Class 2 misdemeanor.

Effective January 1, 2007, and applies to all candidates and candidate campaign committees with active accounts on that date.

Sections 2-4. The proposed committee substitute would amend the existing reporting requirements to require political committee and referendum committee treasurers to report expenditures with a specific description to provide a reasonable understanding of the expenditure. The proposed committee substitute would further require that the treasurer report the ultimate payee of the expenditure, meaning the individual or person to whom the political committee is obligated to make the expenditure. If the obligation is for more than 1 good or service, an itemization of the goods and services must be included.

Effective January 1, 2007, and applies to all political committee and referendum committees with active accounts on that date.

BACKGROUND: The bill is a recommendation of the House Select Committee on Ethics and Governmental Reform, which was charged with the task to "Explore current campaign finance and election laws and recommend changes that will foster clarity and transparency, including imposing restrictions on how a candidate can spend leftover funds from a political campaign ..."

H1845e1-SMST-CSST-101v7

Bill Gilkeson contributed to this summary.

House Judiciary I Committee

June 6, 2006
10:00 a.m.

Minutes

The House Judiciary I Committee met on Tuesday, June 6, 2006 at 10:00 a.m. in Room 1228 of the Legislative Building. Vice Chairman Deborah Ross called the meeting to order and the following members were present: Representatives Alexander, Blust, Capps, Clary, Goodwin, Harrison, Insko, Miller, Ross, Stam and Stiller. A copy of the agenda and visitor registration is attached, (Attachments I and II).

Vice Chair Ross stated that Senate Bill 1377, AN ACT TO AMEND THE TRANSITION PROVISIONS OF ARTICLE 9 OF THE UNIFORM COMMERCIAL CODE TO RESOLVE A TIME-SENSITIVE PROBLEM REGARDING THE EFFECTIVENESS OF CERTAIN FINANCING STATEMENTS, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION, (Attachment III), had been referred to the committee and was time sensitive. The bill was not on the announced agenda for the meeting, but without objection from the members of the committee, the bill was before them for consideration.

Vice Chair Stiller assumed the chair and recognized Representative Ross to explain the bill. She said reminded the Committee that during the last session, the General Assembly revised Article 9 of the Uniform Commercial Code that deals with secure transactions. Representative Ross stated that bill corrects an oversight in that legislation. A memorandum prepared by the General Statutes Commission that provides background and an explanation of the bill was distributed to the members, (Attachment IV).

Representative Stam questioned whether the bill would affect pending litigation. Representative Ross replied that the bill does not affect any pending litigation and avoids any potential litigation.

Ms. Bly Hall, General Statutes Commission, commented briefly on the bill.

Representative Stam moved for a favorable report for the bill. Upon vote of the Committee, the bill was given a favorable report, (Attachment V).

Representative Ross was recognized to explain House Bill 1846, AN ACT TO LOWER THE THRESHOLD FROM ONE HUNDRED DOLLARS TO FIFTY DOLLARS FOR ACCEPTING A POLITICAL CONTRIBUTION IN CASH; TO REQUIRE THE REPORTING OF THE IDENTITY OF A CONTRIBUTOR WHO MAKES A CONTRIBUTION OF MORE THAN FIFTY DOLLARS BY MONEY ORDER; TO SPECIFY THE TIME PERIOD BY WHICH THE THRESHOLD FOR IDENTIFYING AN INDIVIDUAL DONTRIBUTOR'S IDENTITY ISD MEASURED;

TO ADD A PENALTY FOR ACCEPTING CONTRIBUTIONS FROM CERTAIN NONLEGAL SOURCES; AND TO BAR PROSECUTION IUF BEST EFFORTS ARE MADE TO ENSURE THAT A CONTRIBUTION IS FROM A LEGAL SOURCE, AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON ETHICS AND GOVERNMENTAL REFORM, (Attachment VI).

A Proposed Committee Substitute, (Attachment VII), was distributed and Representative Ross moved that it be adopted for the purpose of discussion. The motion carried. A bill analysis prepared by Ms. Erika Churchill, Committee Counsel, is attached to the minutes, (Attachment VIII).

Representative Ross said that the bill reduces the threshold for publicly reporting an individual contributor's identity from $100 to $50. The bill also makes clarifications regarding identifying contributors. The bill adds a penalty for acceptance of a contribution from a source that is prohibited from making a contribution, and establishes a mechanism for contributes to protect themselves from accepting illegal contributions for prosecution for accepting the contribution.

Representative Blust moved for a favorable report for the Proposed Committee Substitute, and an unfavorable report for the original bill. The motion carried, (Attachment IX).

Vice Chair Ross assumed the chair for continued discussion of House Bill 1845, AN ACT TO RESTRICT THE USE OF CONTRIBUTIONS TO CANDIDATES AND CANDIDATES' CAMPAIGN FUNDS TO THOSE RELATED TO CAMPAIGNS AND OFFICE-HOLDING DUTIES; TO PROHIBIT PERSONAL USE OF CONTRIBUTIONS BY CANDIDATES AND CANDIDATE CAMPAIGN COMMITTIES; AND TO STRENGTHEN REPORTING REQUIREMENTS TO PREVENT VIOLATIONS. The bill was previously discussed during the June 1, 2006 meeting of the Committee and a Proposed Committee Substitute, (Attachment X), was adopted for the purpose of discussion at that time. A bill analysis prepared by Ms. Churchill is attached to the minutes, (Attachment XI).

Representative Stam offered an amendment, (Attachment XII), to delete subsection (b) on page 2 and change the title so that it accurately reflects the contents of the bill. He moved adoption of the amendment. Upon vote of the Committee, the amendment was adopted.

Representative Stam offered a second amendment, (Attachment XIII). The amendment would make the bill effective October 1, 2006 instead of January 1, 2007. Representative Capps noted that the amendment did not state the years "2006" and "2007." Representative Stam offered a perfecting amendment by adding "1, 2007" to line 1 of the amendment and "1, 2206" to line two of the amendment.

There was considerable discussion regarding the effective date of the amendment. Representative Blust advocated for the bill to become law quickly.

Representative Stiller stated that from a practical standpoint, he favored keeping the date January 1, 2007.

For the point of clarification, Ms. Churchill reminded the members that the amendment only affected Section 1 of the bill.

Upon a vote of the Committee, the amendment was adopted.

Vice Chair Ross stated that the Committee would resume consideration of the bill at the next meeting.

The meeting was adjourned at 10:50 a.m.

Representative Deborah Ross
Vice Chair

Emily Reynolds Freeman
Committee Clerk

Attachment I

HOUSE COMMITTEE ON JUDICIARY I

June 6, 2006
10:00 a.m.

AGENDA

OPENING REMARKS

AGENDA ITEMS

House Bill 1845 – Permitted Use of Campaign Funds
Representatives Hackney, Howard, Eddins and Ross

House Bill 1846 Contribution Changes
Representatives Hackney, Howard, Eddins and Ross

House Bill 2188 – Candidate Challenge Procedure
Representatives Hackney and Howard

ADJOURNMENT

Attachment II

VISITOR REGISTRATION SHEET

House Judiciary I — **Name of Committee**

June 6, 2006 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Alex Sewell	Womble Carlyle
Megan Glazier	Rep. Glazier
Jeff Drozda	Golden Rule / United Healthcare
Gary Bartlett	SBoE
Chad Hinton	Civitas Institute
Mayhue	NC AHP
Ben Mutchler	NCSCA
Emily Kirby	NC Conservation Network
Jill Moore	Inst of Govt
James Markham	Inst. of Gov't
Danae Sjogren	Inst of Gov't

VISITOR REGISTRATION SHEET

House Judiciary I — June 6, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Andrew Werbrock	Inst. of Government
Mitch Kokai	John Locke Foundation
Jim Stegall	U.C.P.S.
Betty Turner	Bank of America
R. Parks Thomas	NCHBA
Todd Barlow	NCATL
Dave Ingram	USO
Jump Jo Horne	NCMS
Susie Cunningham	NCIMS
Patrick Duffkin	Alley Assoc Inc
Henry Hatap	N.C.B.D.

VISITOR REGISTRATION SHEET

House Judiciary I — June 6, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Caroline House	Lt. Governor's Office
DAVID BARNES	Poyner + Spruill LLP
Josh Otto	Poyner & Spruill LLP
Bob Hall	Democracy North Carolina
Lea Hodges	NCH
John Rittenhouse	NCFPC
J. Craig Jones	NHS
[illegible]	[illegible]
Steve Keene	NC Medical Society
Chris Fitzsimon	NC Policy Watch
Bill Rowe	NC Justice Center

VISITOR REGISTRATION SHEET

House Judiciary I — June 6, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Charlene Carey	NC Right to Life

Attachment III

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 1377*

Short Title:	Amend Transition Provisions Article 9/UCC.	(Public)
Sponsors:	Senator Hartsell.	
Referred to:	Judiciary II.	

May 16, 2006

A BILL TO BE ENTITLED

AN ACT TO AMEND THE TRANSITION PROVISIONS OF ARTICLE 9 OF THE UNIFORM COMMERCIAL CODE TO RESOLVE A TIME-SENSITIVE PROBLEM REGARDING THE EFFECTIVENESS OF CERTAIN FINANCING STATEMENTS, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 25-9-705 reads as rewritten:

"**§ 25-9-705. Effectiveness of action taken before effective date.**

...

(c) Pre-effective-date filing in jurisdiction formerly governing perfection. – This act does not render ineffective an effective financing statement that, before July 1, 2001, is filed and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in G.S. 25-9-103 of former Article 9. However, except as otherwise provided in subsections ~~(d) and (e)~~(d), (e), and (g) of this section and G.S. 25-9-706, the financing statement ceases to be effective at the earlier of:

(1) The time the financing statement would have ceased to be effective under the law of the jurisdiction in which it is filed; or

(2) June 30, 2006.

...

(g) Inapplicability of subdivision (c)(2) to certain financing statements. – With respect to an effective financing statement that:

(1) Before July 1, 2001, was filed and satisfied the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in G.S. 25-9-103 of former Article 9,

(2) Would satisfy the applicable requirements for perfection under this act, and

(3) Was properly continued before July 1, 2001, such that the effectiveness of the financing statement would lapse after June 30, 2006, but before January 1, 2007, but for subdivision (c)(2) of this section,

subdivision (c)(2) of this section shall not apply to the financing statement and the filing of a continuation statement with respect to the financing statement is timely if the filing of the continuation statement occurs before the financing statement ceases to be effective and not before the earlier of (i) December 30, 2005, or (ii) six months before the effectiveness of the financing statement would lapse."

SECTION 2. Nothing in this act renders ineffective a continuation statement that was filed and effective before the effective date of this act.

SECTION 3. This act becomes effective June 30, 2006, or when it becomes law, whichever is earlier.

Attachment IV

State of North Carolina
General Statutes
Commission

9001 Mail Service Center
RALEIGH, NORTH CAROLINA
27699-9001

MEMORANDUM
May 24, 2006

TO: Senate Judiciary II Committee
FROM: General Statutes Commission
RE: **Senate Bill ~~1555~~ 1377** (Amend Transition Provisions Article 9/UCC)

General Comments

This bill amends G.S. 25-9-705 to resolve a problem caused by possible different interpretations of this section as applied to a particular group of "affected" UCC-1 financing statements. The statute is part of the transition provisions from former Article 9 of the Uniform Commercial Code (Chapter 25 of the General Statutes) to Revised Article 9 (both covering security interests in personal property). The way G.S. 25-9-705 is interpreted could change the date on which the affected financing statements will lapse (cease to be effective) unless continued, which in turn changes the time frame for taking action to continue them. The bill protects secured creditors with affected financing statements from inadvertent loss of their lien priority. The issue is time-sensitive, and the bill should become law by June 30, 2006.

Background

A creditor who takes a security interest in a debtor's personal property (collateral) must file a financing statement under Article 9 in the Secretary of State's office, describing the collateral, in order to perfect its security interest in certain collateral. Assuming the creditor does this correctly, the creditor's security interest in such collateral will have priority over most other secured creditors who later file financing statements against the collateral and over all unsecured creditors. A financing statement normally lapses by operation of law five years after it is filed. It may be continued for additional five-year terms; the continuation statement, however, must be filed within the six-month period before the financing statement's lapse date.

The financing statements whose lapse date is affected by G.S. 25-9-705 are those that (i) were properly filed in this State before July 1, 2001, the date Revised Article 9 became effective, (ii) satisfied the applicable requirements of former Article 9, (iii) also satisfy the applicable requirements of Revised Article 9, (iv) were properly continued in this State before July 1, 2001, and (v) would lapse after June 30, 2006, but before January 1, 2007, under normal rules, unless a new continuation statement is properly filed.

How G.S. 25-9-705(b) and (c) are interpreted affects the lapse date of the affected financing statements. Subsection (b) provides that a financing statement filed before July 1, 2001, is effective to perfect a security interest to the extent that the filing would satisfy the applicable requirements of Revised Article 9. Subsection (b) may mean that all financing statements filed before July 1, 2001, that would perfect a security interest under Revised Article 9 (including affected financing statements) remain effective until their normal lapse date,

regardless of when that is. Subsection (c), however, provides that a financing statement properly filed under former Article 9 before July 1, 2001, ceases to be effective at the earlier of (i) its normal lapse date or (ii) June 30, 2006. Subsection (c) may apply only to financing statements that, although proper under former Article 9, would not be effective under Revised Article 9. The statute does not expressly say so, however. If subsection (c) does apply to affected financing statements, they will all lapse on June 30, 2006, before their normal lapse date, unless they are continued.

The interpretation question carries over to the time frame in which to file a continuation statement. As an example, consider an affected financing statement that would lapse on November 1, 2006, but for subsection (c). If subsection (c) does not apply, a continuation statement with respect to this financing statement must be filed between May 1, 2006, and November 1, 2006. If subsection (c) applies, the financing statement will actually lapse on June 30, 2006, not November 1, 2006, and it is not clear when a continuation statement would need to be filed. The six-month period to file a continuation statement may be measured from the June 30, 2006, date, allowing the creditor in this example to file a continuation statement any time between January 1, 2006, and June 30, 2006. Alternatively, the start date for the six-month period may be measured from the normal lapse date of November 1, 2006, and the creditor would have only the time between May 1, 2006, and June 30, 2006, to file a continuation statement. As a result, a creditor who sincerely tries to file a continuation statement at the proper time risks having a court later declare that it was filed too early or too late to be effective.

This bill proposes to resolve the issue by having affected financing statements lapse on their normal lapse date but validating a continuation statement filed under any of the described time frames.

The bill is a cooperative work by the UCC Committee of the Business Law Section of the North Carolina Bar Association, the General Statutes Commission, and the Department of Secretary of State.

Specific Comments

Section 1 amends G.S. 25-9-705 to address the interpretation problem described above. Primarily, Section 1 adds a new subsection (g), which provides that the lapse date of June 30, 2006, in subdivision (c)(2) does not apply to affected financing statements, and that a continuation statement with respect to an affected financing statement is effective if it is filed before the normal lapse date but no earlier than December 30, 2005, or six months before the normal lapse date, whichever is earlier. This change preserves the existing six-month window within which to file a continuation statement and also makes valid all continuations of affected financing statements filed during the time period beginning December 30, 2005, through June 30, 2006. Section 1 also makes a conforming amendment in subsection (c).

Section 2 provides that the act does not make ineffective a continuation statement that was already filed and effective on the effective date of the act.

Section 3 makes the act effective when it becomes law or June 30, 2006, whichever is earlier.

Attachment V

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:

By Representative Hackney (Chair) for the Committee on JUDICIARY I.

☐ Committee Substitute for

SB 1377 A BILL TO BE ENTITLED AN ACT TO AMEND THE TRANSITION PROVISIONS OF ARTICLE 9 OF THE UNIFORM COMMERCIAL CODE TO RESOLVE A TIME-SENSITIVE PROBLEM REGARDING THE EFFECTIVENESS OF CERTAIN FINANCING STATEMENTS, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

_____ Pursuant to Rule 36(b), the bill/resolution is placed on the Calendar of _____.

Attachment VI

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 1

HOUSE BILL 1846

Short Title:	Contribution Changes.	(Public)
Sponsors:	Representatives Hackney, Howard, Eddins, Ross (Primary Sponsors); Barnhart, Bell, Brubaker, Coates, Earle, Fisher, Gibson, Harrison, Justice, Lucas, Luebke, McLawhorn, Martin, Nye, Sauls, Setzer, Sherrill, Steen, West, Alexander, L. Allen, Bordsen, Dickson, Glazier, Harrell, Hill, Insko, Jeffus, McGee, Moore, Stiller, Underhill, Walker, and Weiss.	
Referred to:	Judiciary I.	

May 10, 2006

A BILL TO BE ENTITLED

AN ACT TO LOWER THE THRESHOLD FROM ONE HUNDRED DOLLARS TO FIFTY DOLLARS FOR ACCEPTING A POLITICAL CONTRIBUTION IN CASH; TO REQUIRE THE REPORTING OF THE IDENTITY OF A CONTRIBUTOR WHO MAKES A CONTRIBUTION OF MORE THAN FIFTY DOLLARS BY MONEY ORDER; TO SPECIFY THE TIME PERIOD BY WHICH THE THRESHOLD FOR IDENTIFYING AN INDIVIDUAL CONTRIBUTOR'S IDENTITY IS MEASURED; TO ADD A PENALTY FOR ACCEPTING CONTRIBUTIONS FROM CERTAIN NONLEGAL SOURCES; AND TO BAR PROSECUTION IF BEST EFFORTS ARE MADE TO ENSURE THAT A CONTRIBUTION IS FROM A LEGAL SOURCE, AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON ETHICS AND GOVERNMENTAL REFORM.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 163-278.14(b) reads as rewritten:

"(b) No entity shall give, and no candidate, committee or treasurer shall accept, any monetary contribution in excess of ~~one hundred~~ fifty dollars ~~($100.00)~~ ($50.00) unless such contribution be in the form of a check, draft, money order, credit card charge, debit, or other noncash method that can be subject to written verification. The State Board of Elections may prescribe guidelines as to the reporting and verification of any method of contribution payment allowed under this Article. For contributions by money order, the State Board shall prescribe methods to ensure an audit trail for every contribution so that the identity of the contributor can be determined. For a contribution made by credit card, the credit card account number of a contributor is not a public record."

SECTION 2. G.S. 163-278.8(d) reads as rewritten:

"(d) A treasurer shall not be required to report the name of any individual who is a resident of this State who makes a total contribution of one hundred dollars ($100.00) or less but he shall instead report the fact that he has received a total contribution of one hundred dollars ($100.00) or less, the amount of the contribution, and the date of receipt. However, if a contribution is made by money order, the treasurer shall report the name of the contributor if the amount is more than fifty dollars ($50.00). If a treasurer receives contributions of one hundred dollars ($100.00) or less, each at a single event, he may account for and report the total amount received at that event, the date and place of the event, the nature of the event, and the approximate number of people at the event. With respect to 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, if the price or value received for any single service or goods exceeds one hundred dollars ($100.00), the treasurer shall account for and report the name of the individual paying for such services or goods, the amount received, and the date of receipt, but if the price or value received for any single service or item of goods does not exceed one hundred dollars ($100.00), the treasurer may report only those services or goods rendered or sold at a value that does not exceed one hundred dollars ($100.00), the nature of the services or goods, the amount received in the aggregate for the services or goods, and the date of the receipt. For purposes of the reporting threshold of this subsection, the one hundred dollars ($100.00) shall be an amount contributed during any election cycle."

SECTION 3. G.S. 163-278.15 reads as rewritten:

"**§ 163-278.15. No acceptance of contributions made by corporations, foreign and ~~domestic.~~domestic, or other prohibited sources; best efforts.**

(a) No Acceptance. – No candidate, political committee, political party, or treasurer shall accept any contribution made by any corporation, foreign or domestic, regardless of whether such corporation does business in the State of North ~~Carolina.~~ Carolina, or made by any labor union, professional association, insurance company, or business entity. This section does not apply with regard to entities permitted to make contributions by G.S. 163-278.19(f).

(b) Best Efforts. – When a treasurer shows that best efforts have been made to ensure that contributions are from legal contributors and not from a prohibited source, acceptance of the contribution shall not be the basis for imposition of civil penalties, other than forfeiture of the contribution itself, or for criminal prosecution. The State Board of Elections shall adopt rules that specify what are "best efforts" for purposes of this section. Those rules shall recognize that in some instances contribution checks and other instruments clearly disclose to the contributee that the contribution comes from a prohibited source and must not be accepted, but that in other instances a contribution from a prohibited source is not clearly disclosed on the instrument and the contributee may reasonably believe the contribution is from an individual's personal funds. The State Board shall coordinate the rules with rules required by G.S. 163-278.11(b) for best efforts to obtain, maintain, and submit information on reports required by this Article, so that the contributee can comply with the rules by using one form or a minimal

number of forms to try to obtain needed statements from the contributor. If, despite the use of best efforts, the State Board of Elections determines that a contribution was made from the account of a prohibited contributor, the State Board may order that the amount unlawfully received be paid to the State Board by check, and any money so received by the State Board shall be deposited in the Civil Penalty and Forfeiture Fund of North Carolina."

SECTION 4. This act becomes effective January 1, 2007, and applies to all contributions made and accepted on and after that date.

Attachment VII

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 1846
PROPOSED COMMITTEE SUBSTITUTE H1846-PCS60825-ST-110

Short Title: Contribution Changes. (Public)

Sponsors:

Referred to:

May 10, 2006

A BILL TO BE ENTITLED

AN ACT TO LOWER THE THRESHOLD FROM ONE HUNDRED DOLLARS TO FIFTY DOLLARS FOR ACCEPTING A POLITICAL CONTRIBUTION IN CASH; TO REQUIRE THE REPORTING OF THE IDENTITY OF A CONTRIBUTOR WHO MAKES A CONTRIBUTION OF MORE THAN FIFTY DOLLARS BY MONEY ORDER; TO SPECIFY THE TIME PERIOD BY WHICH THE THRESHOLD FOR IDENTIFYING AN INDIVIDUAL CONTRIBUTOR'S IDENTITY IS MEASURED; TO ADD A PENALTY FOR ACCEPTING CONTRIBUTIONS FROM CERTAIN NONLEGAL SOURCES; AND TO BAR PROSECUTION IF BEST EFFORTS ARE MADE TO ENSURE THAT A CONTRIBUTION IS FROM A LEGAL SOURCE, AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON ETHICS AND GOVERNMENTAL REFORM.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 163-278.14(b) reads as rewritten:

"(b) No entity shall give, and no candidate, committee or treasurer shall accept, any monetary contribution in excess of ~~one hundred~~ fifty dollars ~~($100.00)~~ ($50.00) unless such contribution be in the form of a check, draft, money order, credit card charge, debit, or other noncash method that can be subject to written verification. The State Board of Elections may prescribe guidelines as to the reporting and verification of any method of contribution payment allowed under this Article. For contributions by money order, the State Board shall prescribe methods to ensure an audit trail for every contribution so that the identity of the contributor can be determined. For a contribution made by credit card, the credit card account number of a contributor is not a public record."

SECTION 2. G.S. 163-278.8(d) reads as rewritten:

"(d) A treasurer shall not be required to report the name of any individual who is a resident of this State who makes a total contribution of one hundred dollars ($100.00) or

less in an election cycle, but ~~he~~ the treasurer shall instead report the fact that ~~he~~ the treasurer has received a total contribution of one hundred dollars ($100.00) or ~~less,~~less in an election cycle, the amount of the contribution, and the date of receipt. However, if a contribution is made by money order, the treasurer shall report the name of the contributor if the amount is more than fifty dollars ($50.00). If a treasurer receives contributions of one hundred dollars ($100.00) or ~~less,~~less in an election cycle, each at a single event, ~~he~~ the treasurer may account for and report the total amount received at that event, the date and place of the event, the nature of the event, and the approximate number of people at the event. With respect to 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, if the price or value received for any single service or goods exceeds one hundred dollars ~~($100.00),~~($100.00) in an election cycle, the treasurer shall account for and report the name of the individual paying for such services or goods, the amount received, and the date of receipt, but if the price or value received for any single service or item of goods does not exceed one hundred dollars ~~($100.00),~~($100.00) in an election cycle, the treasurer may report only those services or goods rendered or sold at a value that does not exceed one hundred dollars ~~($100.00),~~($100.00) in an election cycle, the nature of the services or goods, the amount received in the aggregate for the services or goods, and the date of the receipt."

SECTION 3. G.S. 163-278.15 reads as rewritten:

"**§ 163-278.15. No acceptance of contributions made by corporations, foreign and ~~domestic.~~domestic, or other prohibited sources; best efforts.**

No candidate, political committee, political party, or treasurer shall accept any contribution made by any corporation, foreign or domestic, regardless of whether such corporation does business in the State of North ~~Carolina.~~ Carolina, or made by any business entity, labor union, professional association, or insurance company. This section does not apply with regard to entities permitted to make contributions by G.S. 163-278.19(f)."

SECTION 4. G.S. 163-278.11(c) reads as rewritten:

"(c) Best Efforts. – When a treasurer shows that best efforts have been used to obtain, maintain, and submit the information required by this Article for the candidate or political committee, any report of that candidate or committee shall be considered in compliance with this ~~Article.~~Article and shall not be the basis for criminal prosecution or the imposition of civil penalties, other than forfeiture of a contribution improperly accepted under this Article. The State Board of Elections shall promulgate rules that specify what are "best efforts" for purposes of this Article, adapting as it deems suitable the provisions of 11 C.F.R. § 104.7. The rules shall include ~~the~~ a provision that if the treasurer, after complying with this Article and the rules, does not know the occupation of the contributor, it shall suffice for the treasurer to report "unable to obtain"."

SECTION 5. This act becomes effective January 1, 2007, and applies to all contributions made and accepted on and after that date.

Attachment VIII

HOUSE BILL 1846: Contribution Changes

BILL ANALYSIS

Committee:	House Judiciary I	**Date:**	June 5, 2006
Introduced by:	Reps. Hackney, Howard, Eddins, Ross	**Summary by:**	R. Erika Churchill
Version:	PCS to First Edition H1846-CSST-110v.2		Committee Counsel

SUMMARY: The proposed committee substitute for House Bill 1846:

- ***Reduces from $100 to $50 the threshold for publicly reporting an individual contributor's identity for contributions made by money order.***
- ***Reduces from $100 to $50 the amount of a contribution that could be accepted in cash.***
- ***Specifies that identification of contributors must occur when the contributor has given a total of $100.00 in an 'election cycle', thereby codifying the practice of the State Board of Elections.***
- ***Adds a penalty for acceptance of a contribution from any source that is prohibited from making a contribution, and establishes a mechanism for contributees to protect themselves from accepting illegal contributions and from prosecution for accepting such contributions.***

Effective January 1, 2007 and applies to al contributions made and accepted on or after that date.

CURRENT LAW: Currently, North Carolina's campaign finance law requires that political committee treasurers must keep records of contributors, but they are only required to identify an individual contributor on the campaign finance report if the individual's contribution is more than $100. *GS 163-278.8* The law also has a $100 maximum for contributions that may be accepted in cash. *GS 163-278.14*

If a contributor's identity must be reported, that contributor must be identified by name, address, and principal occupation. "Principal occupation" is defined to mean job title or profession, plus employer's name or employer's specific field of business activity. *GS 163-278.11.* When a treasurer shows that "best efforts" have been made to obtain, maintain and submit that information, any report by shall be considered to be in compliance with the law. *GS 163-278.11(c).* The State Board of Elections is directed by statute to adopt rules to specify what "best efforts" are. Although the State Board has not adopted such rules, it provides a form that can be sent to contributors asking for the information and it provides a drop-down menu on its electronic filing software showing names of fields of business activity used by the IRS.

The current law refers to the $100 reporting threshold in terms of "total contribution," implying that once a single contributor makes total contributions of $100 or more, the contributor's identity must be reported. *GS 163-278.8.* But the statute does not specify during which time period a donor's cumulative contributions count toward the threshold. Currently, the State Board of Elections uses the "election cycle" as the measuring period. For purposes of Article 22A of Chapter 163, the term "election cycle" means the time from January 1 after an election for the office through December 31 after the election for the next term of the office, if referring to a specific candidate or elected office. If the term is used in a context that is not specific to offices with the same term, the "election cycle" is January 1 of an odd-numbered year through December 31 of the next even numbered year (corresponding to a biennium of the General Assembly).

Corporations, other business entities, unions, professional associations are all prohibited from making contributions. *(GS 163-278.19).* However, of those prohibited sources, political committees are prohibited from accepting a contribution from only corporations. *(GS 163-278.15).* The effect is there is currently no penalty for a political committee accepting a contribution from a labor union, professional association, insurance company, or other business entity.

BILL ANALYSIS: The proposed committee substitute would do all of the following:

- Reduce the threshold for reporting a contributor's identity from $100 to $50 for contributions by money order. ***Section 2.***
- Codify in statute the State Board of Elections' practice of using as a measuring period for the reporting threshold as the "election cycle." ***Section 2***
- Make a reduction, from $100 to $50, in the threshold for accepting a contribution in cash. ***Section 1.***
- Prohibit the acceptance of contributions by labor unions, professional associations, and business entities. ***Section 3.***
- Bars prosecution when a treasurer shows that "best efforts" have been made to determine that the contribution is in compliance with Article 22A. ***Section 3.***

EFFECTIVE DATE: January 1, 2007 and applies to all contributions made and accepted on and after that date.

BACKGROUND: The bill is a recommendation of the House Select Committee on Ethics and Governmental Reform, which was charged with the task to "Explore current campaign finance and election laws and recommend changes that will foster clarity and transparency, including . . . lowering the threshold requirement for full disclosure on campaign reports for individual contributions from $100 to $50."

H1846e1-SMST-CSST-110v2

Bill Gilkeson contributed substantially to this summary.

Attachment IX

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:

By Representative Hackney (Chair) for the Committee on JUDICIARY I.

☐ Committee Substitute for

HB 1846 A BILL TO BE ENTITLED AN ACT TO LOWER THE THRESHOLD FROM ONE HUNDRED DOLLARS TO FIFTY DOLLARS FOR ACCEPTING A POLITICAL CONTRIBUTION IN CASH; TO REQUIRE THE REPORTING OF THE IDENTITY OF A CONTRIBUTOR WHO MAKES A CONTRIBUTION OF MORE THAN FIFTY DOLLARS BY MONEY ORDER; TO SPECIFY THE TIME PERIOD BY WHICH THE THRESHOLD FOR IDENTIFYING AN INDIVIDUAL CONTRIBUTOR'S IDENTITY IS MEASURED; TO ADD A PENALTY FOR ACCEPTING CONTRIBUTIONS FROM CERTAIN NONLEGAL SOURCES; AND TO BAR PROSECUTION IF BEST EFFORTS ARE MADE TO ENSURE THAT A CONTRIBUTION IS FROM A LEGAL SOURCE, AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON ETHICS AND GOVERNMENTAL REFORM.

☒ With a favorable report as to the committee substitute bill, unfavorable as to the original bill.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

_____ Pursuant to Rule 36(b), the (House/Senate) committee substitute bill/(joint) resolution (No._____) is placed on the Calendar of _____. (The original bill resolution No._____) is placed on the Unfavorable Calendar.

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

Attachment X

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H **D**

HOUSE BILL 1845
PROPOSED COMMITTEE SUBSTITUTE H1845-CSST-101 [v.7]

5/31/2006 12:31:34 PM

Short Title: Permitted Use of Campaign Funds. (Public)

Sponsors:

Referred to:

May 10, 2006

A BILL TO BE ENTITLED

AN ACT TO RESTRICT THE USE OF CONTRIBUTIONS TO CANDIDATES AND CANDIDATES' CAMPAIGN FUNDS TO THOSE RELATED TO CAMPAIGNS AND OFFICE-HOLDING DUTIES; TO PROHIBIT PERSONAL USE OF CONTRIBUTIONS BY CANDIDATES AND CANDIDATE CAMPAIGN COMMITTEES; AND TO STRENGTHEN REPORTING REQUIREMENTS TO PREVENT VIOLATIONS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 22A of Chapter 163 of the General Statutes is amended by adding a new section to read:

"**§ 163-278.16B. Use of contributions for certain purposes.**

(a) A candidate or candidate's campaign committee may use contributions only for the following purposes:

(1) Expenditures resulting from the campaign for public office by the candidate or candidate's campaign committee.

(2) Expenditures resulting from holding public office.

(3) Contributions to an organization described in section 170(c) of the Internal Revenue Code of 1986 (26 U.S.C. § 170(c)), provided that the candidate or the candidate's spouse, children, parents, brothers or sisters are not employed by the organization or on any board governing the organization.

(4) Contributions to a national, State, or district or county committee of a political party or a caucus of the political party.

(5) Contributions to another candidate or candidate's campaign committee.

(6) To return all or a portion of a contribution to the contributor.

(7) Payment of any penalties against the candidate or candidate's campaign committee imposed by a board of elections or a court of competent jurisdiction.

(b) When making expenditures under subsection (a)(1) and subsection (a)(2) of this section, a candidate or candidate's campaign committee may not use contributions to fulfill any commitment, obligation, or expense of a candidate, individual, or other entity that would exist regardless of the candidate's campaign for public office or holding public office.

(c) As used in this section, the term 'candidate campaign committee' means the same as in G.S. 163-278.38Z(3)."

SECTION 2. G.S. 163-278.8(e) reads as rewritten:

"(e) All expenditures for media expenses shall be made by a verifiable form of payment. The State Board of Elections shall prescribe methods to ensure an audit trail for every expenditure so that the identity of each payee can be determined. All media expenditures in any amount shall be accounted for and reported individually and ~~separately.~~ separately, with specific descriptions to provide a reasonable understanding of the expenditure."

SECTION 3. G.S. 163-278.8(f) reads as rewritten:

"(f) All expenditures for nonmedia expenses (except postage) of more than fifty dollars ($50.00) shall be made by a verifiable form of payment. The State Board of Elections shall prescribe methods to ensure an audit trail for every expenditure so that the identity of each payee can be determined. All expenditures for nonmedia expenses of fifty dollars ($50.00) or less may be made by check or by cash payment. All nonmedia expenditures of more than fifty dollars ($50.00) shall be accounted for and reported individually and ~~separately,~~ separately with a specific description to provide a reasonable understanding of the expenditure, but expenditures of fifty dollars ($50.00) or less may be accounted for and reported in an aggregated amount, but in that case the treasurer shall account for and report that ~~he~~ the treasurer made expenditures of fifty dollars ($50.00) or less each, the amounts, dates, and the purposes for which made. In the case of a nonmedia expenditure required to be accounted for individually and separately with a specific description to provide a reasonable understanding of the expenditure by this subsection, if the expenditure was to an individual, the report shall list the name and address of the individual."

SECTION 4. G.S. 163-278.11(a)(2) reads as rewritten:

"(2) Expenditures. – A list of all expenditures required under G.S. 163-278.8 made by or on behalf of a candidate, political committee, or referendum committee. The statement shall list the name and complete mailing address of each payee, the amount paid, the purpose, and the date such payment was made. The total sum of all expenditures to date shall be plainly exhibited. Forms for required reports shall be prescribed by the Board. In accounting for all expenditures in accordance with G.S. 163-278.8(e) and G.S. 163-278.8(f), the payee shall be the individual or person to whom the candidate, political committee, or referendum committee is obligated to make the expenditure. If the obligation is for more than one good or service, the statement shall include a specific itemization

of the obligation so as to provide a reasonable understanding of the obligation."

SECTION 5. G.S. 163-278.27(a) reads as rewritten:

"(a) Any individual, candidate, political committee, referendum committee, treasurer, person or media who intentionally violates the applicable provisions of G.S. 163-278.7, 163-278.8, 163-278.9, 163-278.10, 163-278.11, 163-278.12, 163-278.13, 163-278.13B, 163-278.14, 163-278.16, 163-278.16B, 163-278.17, 163-278.18, 163-278.19, 163-278.20, 163-278.39, 163-278.40A, 163-278.40B, 163-278.40C, 163-278.40D or 163-278.40E is guilty of a Class 2 misdemeanor. The statute of limitations shall run from the day the last report is due to be filed with the appropriate board of elections for the election cycle for which the violation occurred."

SECTION 6. Sections 1 and 5 of this act become effective January 1, 2007, and apply to all candidates and candidate campaign committees with active accounts with the State Board of Elections or a county board of elections on or after that date. Sections 2, 3, and 4 of this act become effective January 1, 2007, and apply to all political committees and referendum committees with active accounts with the State Board of Elections or a county board of elections on or after that date. The remainder of this act becomes effective January 1, 2007.

Attachment XI

HOUSE BILL 1845:
Permitted Use of Campaign Funds

BILL ANALYSIS

Committee:	House Judiciary I	**Date:**	May 31, 2006
Introduced by:	Reps. Hackney, Howard, Eddins, Ross	**Summary by:**	R. Erika Churchill
Version:	PCS to First Edition H1845-CSST-101v.7		Committee Counsel

SUMMARY: ***The proposed committee substitute for House Bill 1845 establishes permitted uses of contributions to candidates and campaign funds, and establishes prohibited uses for those contributions. It also amends the campaign finance reporting statutes to require additional detail in reporting of expenditures. Effective January 1, 2007.***

CURRENT LAW: Generally, North Carolina is one of 10 states that do not restrict how a candidate or campaign committee may spend the funds in their accounts. Converting those funds to personal use is not specifically prohibited. Such personal use may trigger tax liability for the candidate, but does not violate the campaign finance laws as long as the personal use is publicly reported.

Exceptions to this rule are candidates and political parties whose campaigns receive public funding. Candidates for appellate judge who receive payments from the North Carolina Public Campaign Fund must limit their use of those funds to "campaign-related purposes only." *GS 163-278.64.* The State Board of Elections is required to publish guidelines for what that term means, and has done so. Also, parties that receive money from the North Carolina Political Parties Financing Fund must use that money "only for legitimate campaign expenses," examples of which are listed in the statute. *GS 163-278.42.*

BILL ANALYSIS:

Sections 1 and 5. The proposed committee substitute would add a new statute to Article 22A of Chapter 163 setting forth permitted and prohibited uses of contributions accepted by a candidate or candidate's committee.

A candidate or candidate's campaign committee could use contributions only for the following purposes:

- Expenditures resulting from the campaign for public office
- Expenditures resulting from holding public office.
- Contributions to a charitable organization provided that the candidate or the candidate's spouse, children, parents, brothers or sisters are not employed by the organization or on any board governing the organization.
- Contributions to a national, State, or district or county committee of a political party or a caucus of the political party.
- Contributions to another candidate or candidate's campaign committee.
- To return all or a portion of a contribution to the contributor.
- Payment of any penalties against the candidate or candidate's campaign committee imposed by a board of elections or a court of competent jurisdiction.

A candidate or candidate's campaign committee would be prohibited from using contributions to fulfill any commitment, obligation, or expense of a candidate, individual, or other entity that would exist regardless of the campaign for public office or holding public office when making expenditures resulting from running for office or holding public office.

The criminal penalty for violation of these provisions would be a Class 2 misdemeanor.

Effective January 1, 2007, and applies to all candidates and candidate campaign committees with active accounts on that date.

Sections 2-4. The proposed committee substitute would amend the existing reporting requirements to require political committee and referendum committee treasurers to report expenditures with a specific description to provide a reasonable understanding of the expenditure. The proposed committee substitute would further require that the treasurer report the ultimate payee of the expenditure, meaning the individual or person to whom the political committee is obligated to make the expenditure. If the obligation is for more than 1 good or service, an itemization of the goods and services must be included.

Effective January 1, 2007, and applies to all political committee and referendum committees with active accounts on that date.

BACKGROUND: The bill is a recommendation of the House Select Committee on Ethics and Governmental Reform, which was charged with the task to "Explore current campaign finance and election laws and recommend changes that will foster clarity and transparency, including imposing restrictions on how a candidate can spend leftover funds from a political campaign ..."

H1845e1-SMST-CSST-101v7

Bill Gilkeson contributed to this summary.

Attachment XII

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1845

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

H1845-AST-119 [v.2]

Date June 6, 2006 ,2006

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

Representative Stam

moves to amend the bill on ~~page 1, lines 4-6 by rewriting those lines to read:~~
"~~AND OFFICE-HOLDING DUTIES, AND TO STRENGTHEN REPORTING REQUIREMENTS TO";~~

and on page 2, lines 1-5 by deleting those lines and renumbering the remaining subsection accordingly.

SIGNED Stam
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

Attachment XIII

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1845

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

H1845-AST-117 [v.1]

Date _____,2006

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

Representative Stam

moves to amend the bill on page 3, line 12 by deleting the word "January" and substituting "October".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

House Judiciary I Committee

June 8, 2006
10:00 a.m.

Minutes

The House Judiciary I Committee met on Thursday, June 8, 2006 at 10:00 a.m. in Room 1228 of the Legislative Building. Vice Chairman Deborah Ross called the meeting to order and the following members were present: Representatives Alexander, Blust, Capps, Goodwin, Harrison, Miller, Ross, Stam, Stiller and West. A copy of the agenda and visitor registration is attached, (Attachments I and II).

The Committee continued the discussion of the Proposed Committee Substitute for House Bill 1845, AN ACT TO RESTRICT THE USE OF CONTRIBUTIONS TO CANDIDATES AND CANDIDATES' CAMPAIGN FUNDS TO THOSE RELATED TO CAMPAIGNS AND OFFICE-HOLDING DUTIES; TO PROHIBIT PERSONAL USE OF CONTRIBUTIONS BY CANDIDATES AND CANDIDATE CAMPAIGN COMMITTIES; AND TO STRENGTHEN REPORTING REQUIREMENTS TO PREVENT VIOLATIONS, (Attachment III). It was previously discussed during the June 1 and June 6, 2006 meetings of the Committee at which time two amendments were adopted. A bill analysis prepared by Ms. Erika Churchill, Committee Counsel, is attached, (Attachment IV).

Representative Harrison was recognized to offer an amendment, (Attachment V). The amendment would allow candidates to use campaigns contributions to make contributions to a charitable board on which they serve. She moved adoption of the amendment. Upon vote of the Committee, the amendment was adopted.

Representative Stam offered an amendment, (Attachment VI). The amendment clarified how a candidate would report credit card information on campaign reports. Representative Stam offered a perfecting amendment that would strike the word "unsecured" in three places in the amendment. Upon a motion by Representative Stam for adoption of the amendment, it was adopted.

Representative Capps stated that he would like the phrase "to prohibit personal use of contributions by candidates and candidate campaign committees" to be returned to the title of the bill.

Representative Stam moved to reconsider the first amendment that was adopted on June 6, 2006. He moved to strike the words "and office-holding duties, and to strengthen reporting requirements" from that amendment so that the title was no longer altered, (Attachment VII). The motion carried.

Representative Harrison moved that the amendments be rolled into a new Committee Substitute, that it be given a favorable report and the original bill an

unfavorable report. The motion carried, (Attachment VIII). A copy of the new Committee Substitute is attached to the minutes, (Attachment IX).

Representative Howard was recognized for an explanation of House Bill 2188, AN ACT TO PROVIDE FOR A PROCEDURE FOR CHALLENGING THE QUALIFICATIONS OF A CANDIDATE, (Attachment X). Representative Howard stated that the bill establishes a procedure for allowing a qualified voter to challenge the qualifications of a candidate. She said that currently, there is not specific procedure to challenge a notice of candidacy or a petition to be a candidate. Representative Howard offered a section-by-section explanation of the provisions of the bill. Those provisions are outlined in a bill analysis prepared by Ms. Churchill, (Attachment XI).

Ms. Churchill added that the grounds for filing a challenge are that the candidate does not meet the constitutional or statutory requirements for office, including residency.

There was discussion regarding when a challenge could be brought.

Lengthy discussion occurred and suggested changes were offered by members of the Committee.

Vice Chair Ross stated the bill would be displaced to allow time for staff to prepare a proposed committee substitute.

The meeting was adjourned at 10:50 a.m.

Representative Deborah Ross
Vice Chair

Emily Reynolds Freeman
Committee Clerk

Attachment I

HOUSE COMMITTEE ON JUDICIARY I

June 8, 2006
10:00 a.m.

AGENDA

OPENING REMARKS

AGENDA ITEMS

House Bill 1845 – Permitted Use of Campaign Funds
Representatives Hackney, Howard, Eddins and Ross

House Bill 2188 – Candidate Challenge Procedure
Representatives Hackney and Howard

ADJOURNMENT

Attachment II

VISITOR REGISTRATION SHEET

House Judiciary I — June 8, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
John Nazaruk	Eckerd Youth Alternatives
Charlene Carey	NC Right to Life
Ashley M. Blevins	Eckerd Youth Alternatives
James L. Forte	OSA
Kathleen Edwards	UNC-CH Daily Bulletin
John Rustin	NC FPC
Gary O. Bartlett	SBoE
Rob Thompson	NCPDRL
Todd Barlow	NCATL
Neil Dermody	Lt. Governor's Office
Caroline Howe	Lt. Gov's Office

VISITOR REGISTRATION SHEET

House Judiciary I — June 8, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
John Phelps	NCLM
Joel P. Mayer	G. Peyton Mayer & Associates
JOYCE POPE	civitas institute
Megan Glazier	Rep. Glazier
Louisa Warren	NC CLR
Paula A Wolf.	NC CLR
Michelle Judkins	Intern rep. Alexander
Alex Sqwell	Womble Carlyle
J Cranford	UNC
Sam Stegall	U.C.P.S.
Bob Hall	Democracy NC

VISITOR REGISTRATION SHEET

House Judiciary I — June 8, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Kerry Johnson	Eckerd youth Alternatives
Lindsay Etterlough	Eckerd Youth Alternatives
Alexandria Bodden	Eckerd Youth Alternatives
Tara Wong	Eckerd Youth Alternatives
Alison Huston	Eckerd Youth Alternatives
Sarah Mecca	Eckerd Youth Alt. Inc.
Anne Bonett	Eckerd Youth Alternatives.
Jamar Pickens	Eckerd Youth Alternatives
David DeMarco	Eckerd Youth Alternatives
Timothy Foster	Eckerd Youth Alternatives
BRIAN A. GRAY II	ECKERD YOUTH ALTERNATIVES

VISITOR REGISTRATION SHEET

House Judiciary I — June 8, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Abby McEnaney	NMSS

Attachment III

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 1845
PROPOSED COMMITTEE SUBSTITUTE H1845-CSST-101 [v.7]

5/31/2006 12:31:34 PM

Short Title: Permitted Use of Campaign Funds. (Public)

Sponsors:

Referred to:

May 10, 2006

A BILL TO BE ENTITLED

AN ACT TO RESTRICT THE USE OF CONTRIBUTIONS TO CANDIDATES AND CANDIDATES' CAMPAIGN FUNDS TO THOSE RELATED TO CAMPAIGNS AND OFFICE-HOLDING DUTIES; TO PROHIBIT PERSONAL USE OF CONTRIBUTIONS BY CANDIDATES AND CANDIDATE CAMPAIGN COMMITTEES; AND TO STRENGTHEN REPORTING REQUIREMENTS TO PREVENT VIOLATIONS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 22A of Chapter 163 of the General Statutes is amended by adding a new section to read:

"**§ 163-278.16B. Use of contributions for certain purposes.**

(a) A candidate or candidate's campaign committee may use contributions only for the following purposes:

(1) Expenditures resulting from the campaign for public office by the candidate or candidate's campaign committee.

(2) Expenditures resulting from holding public office.

(3) Contributions to an organization described in section 170(c) of the Internal Revenue Code of 1986 (26 U.S.C. § 170(c)), provided that the candidate or the candidate's spouse, children, parents, brothers or sisters are not employed by the organization or on any board governing the organization.

(4) Contributions to a national, State, or district or county committee of a political party or a caucus of the political party.

(5) Contributions to another candidate or candidate's campaign committee.

(6) To return all or a portion of a contribution to the contributor.

(7) Payment of any penalties against the candidate or candidate's campaign committee imposed by a board of elections or a court of competent jurisdiction.

(b) When making expenditures under subsection (a)(1) and subsection (a)(2) of this section, a candidate or candidate's campaign committee may not use contributions to fulfill any commitment, obligation, or expense of a candidate, individual, or other entity that would exist regardless of the candidate's campaign for public office or holding public office.

(c) As used in this section, the term 'candidate campaign committee' means the same as in G.S. 163-278.38Z(3)."

SECTION 2. G.S. 163-278.8(e) reads as rewritten:

"(e) All expenditures for media expenses shall be made by a verifiable form of payment. The State Board of Elections shall prescribe methods to ensure an audit trail for every expenditure so that the identity of each payee can be determined. All media expenditures in any amount shall be accounted for and reported individually and ~~separately.~~ separately, with specific descriptions to provide a reasonable understanding of the expenditure."

SECTION 3. G.S. 163-278.8(f) reads as rewritten:

"(f) All expenditures for nonmedia expenses (except postage) of more than fifty dollars ($50.00) shall be made by a verifiable form of payment. The State Board of Elections shall prescribe methods to ensure an audit trail for every expenditure so that the identity of each payee can be determined. All expenditures for nonmedia expenses of fifty dollars ($50.00) or less may be made by check or by cash payment. All nonmedia expenditures of more than fifty dollars ($50.00) shall be accounted for and reported individually and ~~separately,~~ separately with a specific description to provide a reasonable understanding of the expenditure, but expenditures of fifty dollars ($50.00) or less may be accounted for and reported in an aggregated amount, but in that case the treasurer shall account for and report that ~~he~~ the treasurer made expenditures of fifty dollars ($50.00) or less each, the amounts, dates, and the purposes for which made. In the case of a nonmedia expenditure required to be accounted for individually and separately with a specific description to provide a reasonable understanding of the expenditure by this subsection, if the expenditure was to an individual, the report shall list the name and address of the individual."

SECTION 4. G.S. 163-278.11(a)(2) reads as rewritten:

"(2) Expenditures. – A list of all expenditures required under G.S. 163-278.8 made by or on behalf of a candidate, political committee, or referendum committee. The statement shall list the name and complete mailing address of each payee, the amount paid, the purpose, and the date such payment was made. The total sum of all expenditures to date shall be plainly exhibited. Forms for required reports shall be prescribed by the Board. In accounting for all expenditures in accordance with G.S. 163-278.8(e) and G.S. 163-278.8(f), the payee shall be the individual or person to whom the candidate, political committee, or referendum committee is obligated to make the expenditure. If the obligation is for more than one good or service, the statement shall include a specific itemization

of the obligation so as to provide a reasonable understanding of the obligation."

SECTION 5. G.S. 163-278.27(a) reads as rewritten:

"(a) Any individual, candidate, political committee, referendum committee, treasurer, person or media who intentionally violates the applicable provisions of G.S. 163-278.7, 163-278.8, 163-278.9, 163-278.10, 163-278.11, 163-278.12, 163-278.13, 163-278.13B, 163-278.14, 163-278.16, 163-278.16B, 163-278.17, 163-278.18, 163-278.19, 163-278.20, 163-278.39, 163-278.40A, 163-278.40B, 163-278.40C, 163-278.40D or 163-278.40E is guilty of a Class 2 misdemeanor. The statute of limitations shall run from the day the last report is due to be filed with the appropriate board of elections for the election cycle for which the violation occurred."

SECTION 6. Sections 1 and 5 of this act become effective January 1, 2007, and apply to all candidates and candidate campaign committees with active accounts with the State Board of Elections or a county board of elections on or after that date. Sections 2, 3, and 4 of this act become effective January 1, 2007, and apply to all political committees and referendum committees with active accounts with the State Board of Elections or a county board of elections on or after that date. The remainder of this act becomes effective January 1, 2007.

Attachment IV

HOUSE BILL 1845:
Permitted Use of Campaign Funds

BILL ANALYSIS

Committee:	House Judiciary I	**Date:**	May 31, 2006
Introduced by:	Reps. Hackney, Howard, Eddins, Ross	**Summary by:**	R. Erika Churchill
Version:	PCS to First Edition H1845-CSST-101v.7		Committee Counsel

SUMMARY: ***The proposed committee substitute for House Bill 1845 establishes permitted uses of contributions to candidates and campaign funds, and establishes prohibited uses for those contributions. It also amends the campaign finance reporting statutes to require additional detail in reporting of expenditures. Effective January 1, 2007.***

CURRENT LAW: Generally, North Carolina is one of 10 states that do not restrict how a candidate or campaign committee may spend the funds in their accounts. Converting those funds to personal use is not specifically prohibited. Such personal use may trigger tax liability for the candidate, but does not violate the campaign finance laws as long as the personal use is publicly reported.

Exceptions to this rule are candidates and political parties whose campaigns receive public funding. Candidates for appellate judge who receive payments from the North Carolina Public Campaign Fund must limit their use of those funds to "campaign-related purposes only." *GS 163-278.64.* The State Board of Elections is required to publish guidelines for what that term means, and has done so. Also, parties that receive money from the North Carolina Political Parties Financing Fund must use that money "only for legitimate campaign expenses," examples of which are listed in the statute. *GS 163-278.42.*

BILL ANALYSIS:

Sections 1 and 5. The proposed committee substitute would add a new statute to Article 22A of Chapter 163 setting forth permitted and prohibited uses of contributions accepted by a candidate or candidate's committee.

A candidate or candidate's campaign committee could use contributions only for the following purposes:

- Expenditures resulting from the campaign for public office
- Expenditures resulting from holding public office.
- Contributions to a charitable organization provided that the candidate or the candidate's spouse, children, parents, brothers or sisters are not employed by the organization or on any board governing the organization.
- Contributions to a national, State, or district or county committee of a political party or a caucus of the political party.
- Contributions to another candidate or candidate's campaign committee.
- To return all or a portion of a contribution to the contributor.
- Payment of any penalties against the candidate or candidate's campaign committee imposed by a board of elections or a court of competent jurisdiction.

A candidate or candidate's campaign committee would be prohibited from using contributions to fulfill any commitment, obligation, or expense of a candidate, individual, or other entity that would exist regardless of the campaign for public office or holding public office when making expenditures resulting from running for office or holding public office.

The criminal penalty for violation of these provisions would be a Class 2 misdemeanor.

Effective January 1, 2007, and applies to all candidates and candidate campaign committees with active accounts on that date.

Sections 2-4. The proposed committee substitute would amend the existing reporting requirements to require political committee and referendum committee treasurers to report expenditures with a specific description to provide a reasonable understanding of the expenditure. The proposed committee substitute would further require that the treasurer report the ultimate payee of the expenditure, meaning the individual or person to whom the political committee is obligated to make the expenditure. If the obligation is for more than 1 good or service, an itemization of the goods and services must be included.

Effective January 1, 2007, and applies to all political committee and referendum committees with active accounts on that date.

BACKGROUND: The bill is a recommendation of the House Select Committee on Ethics and Governmental Reform, which was charged with the task to "Explore current campaign finance and election laws and recommend changes that will foster clarity and transparency, including imposing restrictions on how a candidate can spend leftover funds from a political campaign ..."

H1845e1-SMST-CSST-101v7

Bill Gilkeson contributed to this summary.

Attachment V

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1845

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

H1845-AST-121 [v.1]

Date _____,2006

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

Representative Harrison

moves to amend the bill on page 1, lines 20-21 by rewriting that line to read:

"sisters are not employed by the organization.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

Attachment VI

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1845

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

H1845-AST-122 [v.2]

Date _____,2006

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

Representative Stam

moves to amend the bill on page 2, line 42 by inserting the following between "expenditure." and "If":

"If the expenditure is to a financial institution for ~~unsecured~~ revolving credit or a reimbursement for a payment to a financial institution for ~~unsecured~~ revolving credit, the statement shall also include a specific itemization of the goods and services purchased with the ~~unsecured~~ revolving credit.".

SIGNED Stam
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

Attachment VII

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1845

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

H1845-AST-119 [v.2]

Page 1 of 1

Date June 8 ,2006

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

Representative Stam

moves to amend the bill on ~~page 1, lines 4-6 by rewriting those lines to read:~~
~~"AND OFFICE-HOLDING DUTIES, AND TO STRENGTHEN REPORTING REQUIREMENTS TO";~~

~~and on~~ page 2, lines 1-5 by deleting those lines and renumbering the remaining subsection accordingly.

SIGNED Stam
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

This amendment was adopted during the June 6 meeting of the Committee and was reconsidered during the June 8 meeting. On June 8, the amendment deleted lines 2 and 3.

Attachment VIII

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:

By Representative Hackney (Chair) for the Committee on JUDICIARY I.

☐ Committee Substitute for

HB 1845 A BILL TO BE ENTITLED AN ACT TO PROHIBIT THE USE OF CANDIDATES' CAMPAIGN FUNDS FOR PERSONAL PURPOSES UNRELATED TO CAMPAIGNS AND OFFICE-HOLDING DUTIES; AND TO STRENGTHEN REPORTING REQUIREMENTS TO PREVENT VIOLATIONS, AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON ETHICS AND GOVERNMENTAL REFORM.

☒ With a favorable report as to the committee substitute bill, which changes the title, unfavorable as to the original bill.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

_____ Pursuant to Rule 36(b), the (House/Senate) committee substitute bill/(joint) resolution (No._____) is placed on the Calendar of _____. (The original bill resolution No._____) is placed on the Unfavorable Calendar.

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

Attachment IX

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 1845
PROPOSED COMMITTEE SUBSTITUTE H1845-PCS50735-ST-101

Short Title: Permitted Use of Campaign Funds. (Public)

Sponsors:

Referred to:

May 10, 2006

A BILL TO BE ENTITLED

AN ACT TO RESTRICT THE USE OF CONTRIBUTIONS TO CANDIDATES AND CANDIDATES' CAMPAIGN FUNDS TO THOSE RELATED TO CAMPAIGNS AND OFFICE-HOLDING DUTIES; TO PROHIBIT PERSONAL USE OF CONTRIBUTIONS BY CANDIDATES AND CANDIDATE CAMPAIGN COMMITTEES; AND TO STRENGTHEN REPORTING REQUIREMENTS TO PREVENT VIOLATIONS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 22A of Chapter 163 of the General Statutes is amended by adding a new section to read:

"**§ 163-278.16B. Use of contributions for certain purposes.**

(a) A candidate or candidate's campaign committee may use contributions only for the following purposes:

(1) Expenditures resulting from the campaign for public office by the candidate or candidate's campaign committee.

(2) Expenditures resulting from holding public office.

(3) Contributions to an organization described in section 170(c) of the Internal Revenue Code of 1986 (26 U.S.C. § 170(c)), provided that the candidate or the candidate's spouse, children, parents, brothers, or sisters are not employed by the organization.

(4) Contributions to a national, State, or district or county committee of a political party or a caucus of the political party.

(5) Contributions to another candidate or candidate's campaign committee.

(6) To return all or a portion of a contribution to the contributor.

(7) Payment of any penalties against the candidate or candidate's campaign committee imposed by a board of elections or a court of competent jurisdiction.

(b) As used in this section, the term 'candidate campaign committee' means the same as in G.S. 163-278.38Z(3)."

SECTION 2. G.S. 163-278.8(e) reads as rewritten:

"(e) All expenditures for media expenses shall be made by a verifiable form of payment. The State Board of Elections shall prescribe methods to ensure an audit trail for every expenditure so that the identity of each payee can be determined. All media expenditures in any amount shall be accounted for and reported individually and ~~separately.~~ separately with specific descriptions to provide a reasonable understanding of the expenditure."

SECTION 3. G.S. 163-278.8(f) reads as rewritten:

"(f) All expenditures for nonmedia expenses (except postage) of more than fifty dollars ($50.00) shall be made by a verifiable form of payment. The State Board of Elections shall prescribe methods to ensure an audit trail for every expenditure so that the identity of each payee can be determined. All expenditures for nonmedia expenses of fifty dollars ($50.00) or less may be made by check or by cash payment. All nonmedia expenditures of more than fifty dollars ($50.00) shall be accounted for and reported individually and ~~separately,~~ separately with a specific description to provide a reasonable understanding of the expenditure, but expenditures of fifty dollars ($50.00) or less may be accounted for and reported in an aggregated amount, but in that case the treasurer shall account for and report that ~~he~~ the treasurer made expenditures of fifty dollars ($50.00) or less each, the amounts, dates, and the purposes for which made. In the case of a nonmedia expenditure required to be accounted for individually and separately with a specific description to provide a reasonable understanding of the expenditure by this subsection, if the expenditure was to an individual, the report shall list the name and address of the individual."

SECTION 4. G.S. 163-278.11(a)(2) reads as rewritten:

"(2) Expenditures. – A list of all expenditures required under G.S. 163-278.8 made by or on behalf of a candidate, political committee, or referendum committee. The statement shall list the name and complete mailing address of each payee, the amount paid, the purpose, and the date such payment was made. The total sum of all expenditures to date shall be plainly exhibited. Forms for required reports shall be prescribed by the Board. In accounting for all expenditures in accordance with G.S. 163-278.8(e) and G.S. 163-278.8(f), the payee shall be the individual or person to whom the candidate, political committee, or referendum committee is obligated to make the expenditure. If the expenditure is to a financial institution for revolving credit or a reimbursement for a payment to a financial institution for revolving credit, the statement shall also include a specific itemization of the goods and services purchased with the revolving credit. If the obligation is for more than one good or service, the statement shall include a specific itemization of the obligation so as to provide a reasonable understanding of the obligation."

SECTION 5. G.S. 163-278.27(a) reads as rewritten:

"(a) Any individual, candidate, political committee, referendum committee, treasurer, person or media who intentionally violates the applicable provisions of G.S. 163-278.7, 163-278.8, 163-278.9, 163-278.10, 163-278.11, 163-278.12, 163-278.13, 163-278.13B, 163-278.14, 163-278.16, 163-278.16B, 163-278.17, 163-278.18, 163-278.19, 163-278.20, 163-278.39, 163-278.40A, 163-278.40B, 163-278.40C, 163-278.40D or 163-278.40E is guilty of a Class 2 misdemeanor. The statute of limitations shall run from the day the last report is due to be filed with the appropriate board of elections for the election cycle for which the violation occurred."

SECTION 6. Sections 1 and 5 of this act become effective October 1, 2006, and apply to all candidates and candidate campaign committees with active accounts with the State Board of Elections or a county board of elections on or after that date. Sections 2, 3, and 4 of this act become effective January 1, 2007, and apply to all political committees and referendum committees with active accounts with the State Board of Elections or a county board of elections on or after that date. The remainder of this act becomes effective January 1, 2007.

Attachment K

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H **1**

HOUSE BILL 2188

Short Title:	Candidate Challenge Procedure.	(Public)
Sponsors:	Representatives Hackney, Howard (Primary Sponsors); Barnhart, Bell, Brubaker, Coates, Earle, Eddins, Fisher, Gibson, Justice, Harrison, Lucas, Luebke, McLawhorn, Martin, Nye, Ross, Sauls, Sherrill, Steen, and West.	
Referred to:	Judiciary I.	

May 18, 2006

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR A PROCEDURE FOR CHALLENGING THE QUALIFICATIONS OF A CANDIDATE.

The General Assembly of North Carolina enacts:

SECTION 1. Subchapter V of Chapter 163 of the General Statutes is amended by adding a new Article to read:

"Article 11B.

"Challenge to a Candidacy.

"**§ 163-127.1. Definitions.**

As used in this Article, the following terms mean:

(1) Board. – State Board of Elections.

(2) Candidate. – A person having filed a notice of candidacy under Article 10 of Chapter 163 of the General Statutes or having filed a petition under Article 11 of Chapter 163 of the General Statutes.

(3) Challenger. – Any qualified voter registered in the same district as the office for which the candidate has filed or petitioned.

(4) Office. – The elected office for which the candidate has filed or petitioned.

"**§ 163-127.2. When and how a challenge to a candidate may be made.**

(a) When. – A challenge to a candidate may be filed under this Article with the board of elections receiving the notice of the candidacy or petition no later than 10 business days after the candidate has filed a notice of candidacy or petitioned.

(b) How. – The challenge must be made in a verified affidavit by a challenger, based on reasonable suspicion or belief of the facts stated. Grounds for filing a challenge include the candidate does not meet the constitutional or statutory qualifications for the office, including residency.

(c) If Defect Discovered After Deadline, Protest Available. – If a challenger discovers one or more grounds for challenging a candidate after the deadline in subsection (a) of this section, the grounds may be the basis for a protest under G.S. 163-182.9.

"**§ 163-127.3. Panel to conduct the hearing on a challenge.**

(a) Upon filing of a challenge, a panel shall hear the challenge, as follows:

(1) Single county. – If the district for the office subject to the challenge covers all or part of only one county, the panel shall be the county board of elections of that county.

(2) Multicounty but less than entire state. – If the district for the office subject to the challenge covers more than one county but less than the entire State, the Board shall appoint a panel within two business days after the challenge is filed. The panel shall consist of at least one member of the county board of elections in each county in the district of the office. The panel shall have an odd number of members, no fewer than three and no more than five. In appointing members to the panel, the Board shall appoint members from each county in proportion to the relative total number of registered voters of the counties in the district for the office. The Board shall, to the extent possible, appoint members affiliated with different political parties in proportion to the representation of those parties on the county boards of elections in the district for the office. The Board shall designate a chair for the panel.

(3) Entire state. – If the district for the office subject to the challenge covers the entire State, the panel shall be the Board.

"**§ 163-127.4. Conduct of hearing by panel.**

(a) The panel conducting a hearing under this Article shall do all of the following:

(1) Within five business days after the challenge is filed, designate and announce the time of the hearing and the facility where the hearing will be held. The hearing shall be held at a location in the district reasonably convenient to residents in all parts of the district for the office. If the district for the office covers only part of a county, the hearing shall be at a location in the county convenient to residents of the district, but need not be in the district.

(2) Allow for depositions prior to the hearing, if requested by the challenger or candidate before the time of the hearing is designated and announced.

(3) Issue subpoenas for witnesses or documents, or both, upon request of the parties or upon its own motion.

(4) Render a decision within 20 business days after the challenge is filed.

(b) Notice of Hearing. – The panel shall give notice of the hearing to the challenger, to the candidate, to the county chair of each political party in every county in the district for the office, and to those persons likely to have a significant interest in

the resolution of the challenge. Each person given notice shall also be given a copy of the challenge or a summary of its allegations.

Failure to comply with the notice requirements in this subsection shall not delay the holding of a hearing nor invalidate the results if it appears reasonably likely that all interested persons were aware of the hearing and had an opportunity to be heard.

(c) Conduct of Hearing. – The hearing under this Article shall be conducted as follows:

(1) The panel may allow evidence to be presented at the hearing in the form of affidavits, or it may examine witnesses. The chair or any two members of the panel may subpoena witnesses or documents. The parties shall be allowed to issue subpoenas for witnesses or documents, or both, including a subpoena of the candidate. Each witness must be placed under oath before testifying. The Board shall provide the wording of the oath to every panel.

(2) The panel may receive evidence at the hearing from any person with information concerning the subject of the challenge. The challenger shall be permitted to present evidence at the hearing, but the challenger shall not be required to testify unless subpoenaed by a party. The panel may allow evidence by affidavit. The panel may allow evidence to be presented by a person who has received notice of the hearing, if present.

(3) The hearing shall be recorded by a reporter or by mechanical means, and the full record of the hearing shall be preserved by the panel until directed otherwise by the Board.

(d) Findings of Fact and Conclusions of Law by Panel. – The panel shall make a written decision on each challenge by separately stating findings of facts, conclusions of law, and an order based upon the findings of fact and conclusions of law.

(e) Rules by Board. – The Board shall adopt rules providing for adequate notice to parties, scheduling of hearings, and the timing of deliberations and issuance of decisions.

"**§ 163-127.5. Burden of proof.**

(a) No challenge may be sustained by the panel absent clear and convincing evidence of the record as a whole. The burden of proof shall be upon the candidate.

(b) If the challenge is based upon a question of residency, the candidate must show, by clear and convincing evidence, all of the following:

(1) An actual abandonment of the first domicile, coupled with an intent not to return to the first domicile.

(2) The acquisition of a new domicile by actual residence at another place.

(3) The intent of making the newer domicile a permanent domicile.

"**§ 163-127.6. Appeals.**

(a) Appeals From Single- or Multicounty Panel. – The decision of a panel created under G.S. 163-127.3(a)(1) or G.S. 163-127.3(a)(2) may be appealed as of right to the Board by any of the following:

(1) The challenger.

(2) A candidate adversely affected by the panel's decision.
(3) Any other person who participated in the hearing and has a significant interest adversely affected by the panel's decision.

(b) Notice of Appeal. – Appeal must be taken within two business days after the panel files the written decision with the county board of elections in which the candidate filed notice of candidacy or petitioned. The written appeal must be delivered or deposited in the mail to the Board by the end of the second business day after the written decision was filed by the panel. The Board shall prescribe forms for filing appeals from a panel's decision in a challenge. The Board shall base its appellate decision on the whole record of the hearing conducted by the panel and render its opinion on an expedited basis. From the final order or decision by the Board under this subsection, appeal as of right lies directly to the Supreme Court. Appeal shall be filed no later than two business days after the Board files its final order or decision in its office. The appeal shall be in the nature of certiorari. The Supreme Court shall hear the appeal and render a decision on an expedited basis.

(c) Appeals to Superior Court from Statewide Panel. – The decision of a panel created under G.S. 163-127.3(a)(3) may be appealed as of right to the Superior Court of Wake County by any of the following:
(1) The challenger.
(2) A candidate adversely affected by the panel's decision.
(3) Any other person who participated in the hearing and has a significant interest adversely affected by the panel's decision.

Appeal must be taken within two business days after the panel files the written decision. The written appeal must be delivered or deposited in the mail to the Superior Court of Wake County by the end of the second business day after the written decision was filed by the panel. The superior court shall base its appellate decision on the whole record of the hearing conducted by the panel and hear the appeal on an expedited basis. From the final order or decision by the superior court under this subsection, appeal as of right lies directly to the Supreme Court. Appeal shall be filed no later than two business days after the superior court files its final order or decision. The appeal shall be in the nature of certiorari. The Supreme Court shall hear the appeal and render a decision on an expedited basis."

SECTION 2. G.S. 163-106(g) reads as rewritten:

"(g) When any candidate files a notice of candidacy with a ~~county~~ board of elections under subsection (c) of this section or under G.S. 163-291(2), the ~~chairman or director~~board of elections shall, immediately upon receipt of the notice of candidacy, inspect the registration records of the county, and cancel the notice of candidacy of any person who~~ is not eligible under subsection (c) of this section.~~ does not meet the constitutional or statutory qualifications for the office, including residency.

The ~~Board~~ board shall give notice of cancellation to any candidate whose notice of candidacy has been cancelled under this subsection by mail or by having the notice served on him by the ~~sheriff.~~sheriff, and to any other candidate filing for the same office. A candidate who has been adversely affected by a cancellation or another candidate for the same office affected by a substantiation under this subsection may

request a hearing on the cancellation. If the candidate requests a hearing, the hearing shall be conducted in accordance with Article 11B of Chapter 163 of the General Statutes."

SECTION 3. G.S. 163-122 is amended by adding a new subsection to read:

"(d) When any person files a petition with a board of elections under this section, the board of elections shall, immediately upon receipt of the petition, inspect the registration records of the county and cancel the petition of any person who does not meet the constitutional or statutory qualifications for the office, including residency.

The board shall give notice of cancellation to any person whose petition has been cancelled under this subsection by mail or by having the notice served on that person by the sheriff and to any other candidate filing for the same office. A person whose petition has been cancelled or another candidate for the same office affected by a substantiation under this subsection may request a hearing on the issue of constitutional or statutory qualifications for the office. If the person requests a hearing, the hearing shall be conducted in accordance with Article 11B of Chapter 163 of the General Statutes."

SECTION 4. G.S. 163-123 is amended by adding a new subsection to read:

"(f1) When any person files a petition with a board of elections under this section, the board of elections shall, immediately upon receipt of the petition, inspect the registration records of the county and cancel the petition of any person who does not meet the constitutional or statutory qualifications for the office, including residency.

The board shall give notice of cancellation to any person whose petition has been cancelled under this subsection by mail or by having the notice served on that person by the sheriff. A person whose petition has been cancelled or another candidate for the same office affected by a substantiation under this subsection may request a hearing on the issue of constitutional or statutory qualifications for the office. If the person requests a hearing, the hearing shall be conducted in accordance with Article 11B of Chapter 163 of the General Statutes."

SECTION 5. If any section or provision of this act is declared unconstitutional or invalid by the courts, it does not affect the validity of this act as a whole or any part other than the part so declared to be unconstitutional or invalid.

SECTION 6. This act becomes effective January 1, 2007.

Attachment XI

House Bill 2188
Candidate Challenge Procedure

BILL ANALYSIS

Committee:	House Judiciary I	**Date:**	June 1, 2006
Introduced by:	Representatives Hackney and Howard	**Summary by:**	Brad Krehely and R. Erika Churchill, Committee Co-Counsel
Version:	First Edition		

SUMMARY: House Bill 2188 establishes a procedure allowing qualified voters to challenge the qualifications of a candidate. It is a recommendation of the House Select Committee on Ethics and Governmental Reform.

CURRENT LAW: Chapter 163 of the North Carolina General Statutes addresses elections and election laws. Currently, it has no specific procedure to challenge a notice of candidacy or a petition to be a candidate. Article 8 of Chapter 163 deals with challenges to voter registration, and G.S. 163-182.9-182.12, address election protests. The boards of elections now handle these types of challenges through a procedure that combines the challenges-to-voter-registration procedure and the protest procedure.

BILL ANALYSIS:

Section 1 creates a new Article allowing candidate challenges. It describes a **challenger** as any qualified voter registered in the same district as the office for which the candidate has filed or petitioned. The **Board** refers to the State Board of Elections.

It also sets forth parameters for:

- **When a challenge is to be made-** no later than 10 business days after the candidate has filed a notice of candidacy or petitioned. A provision is included to allow a protest petition to be filed if the ground(s) for the challenge are discovered after the time period for filing a candidate challenge has passed.
- **How a challenge is to be made-** in a verified affidavit by a challenger based on a reasonable suspicion or belief of the facts stated.
- **Grounds for challenging the candidate-** The candidate does not meet the constitutional or statutory requirements for office, including residency.

Once a challenge is filed, the challenge is heard by a panel. The panels are as follows:

- **Single county districts -** If the district for the office subject to the challenge covers all or part of only one county, then the panel is the county board of elections of that county.
- **Multicounty but Less Than Entire State** – If the the district for the office subject to the challenge covers more than one county but less than the entire State, then the panel is appointed by the State Board of Elections, with all of the following applying:.
    - The Board shall appoint thepanel within 2 business days after the challenge is filed.
    - The panel must consist of at least 1member of the county board of elections in each county in the district of the office. The panel shall have an odd number of members, no fewer than 3 and no more than 5.
    - In appointing members to the panel, the Board must appoint members from each county in proportion to the relative total number of registered voters of the counties in the district for the office.

- The Board must, to the extent possible, appoint members affiliated with different political parties in proportion to the representation of those parties on the county boards of elections in the district for the office.
- The Board must designate a chair for the panel.

- **Entire State-** If the district for the office subject to the challenge covers the entire state, the panel is the Board of Elections.

Each panel must do all of the following:

- Announce the time and location of the hearing within 5 business days after the challenge is filed.
- Allow for depositions prior to the hearing upon the request of either the challenger or candidate.
- Issue subpoenas upon its own motion or upon the request of the parties.
- Give notice of the hearing and a copy of the challenge or summary of the allegations to the challenger, the candidate, certain county political party chairs, and other persons likely to have a significant interest in the challenge. Failure to comply with the notice requirements does not delay the holding of the hearing or invalidate the results if it appears reasonably likely that all interested persons were aware of the hearing and had an opportunity to be heard.
- Render a decision within 20 business days after the challenge is filed.

Panels may subpoena witnesses and receive evidence from any person with information concerning the subject of the challenge. The challenger is not required to testify unless subpoenaed by a party. The Board must adopt rules addressing notice to parties, scheduling of hearings, timing of deliberations, and issuance of decisions.

The **burden of proof** is on the candidate, and no challenge may be sustained in the absence of clear and convincing evidence based on the whole record. If the challenge is based on residency, the candidate must show **all** of the following by clear and convincing evidence:

- Actual abandonment of the first domicile and an intent not to return to the first domicile.
- Acquisition of a new domicile by actual residence at another place.
- Intent of making the newer domicile a permanent domicile.

There are two distinct procedures for appealing the decision of a panel:

- **Appeals From Single or Multicounty Panel-** The challenger, a candidate adversely affected by the panel's decision, or any other person who participated in the hearing and has a significant interest adversely affected by the panel's decision **may appeal to the Board.** The appeal:
  - Must be taken within 2 business days after the panel files its written decision to the county board of elections where the candidate filed a notice of candidacy or petitioned
  - Must be delivered or deposited in the mail by the end of the second business day after the panel filed its written decision
  - Must be based on the whole record of the hearing with the Board making a decision on an expedited basis.

  The Board's decision may be appealed directly to the North Carolina Supreme Court no later than two business days after the Board files its final order. The Supreme Court must hear the appeal and render a decision on an expedited basis.
- **Appeals From a Statewide Panel-** The challenger, a candidate adversely affected by the panel's decision, or any other person who participated in the hearing and has a significant

interest adversely affected by the panel's decision **may appeal to the Superior Court of Wake County**. An appeal:

- Must be taken within 2 business days after the panel files the written decision.
- Must be delivered or deposited in the mail to the Superior Court of Wake County by the end of the second business day after the panel filed its written decision.
- Must be based on the whole record of the hearing with the superior court making a decision on an expedited basis.

The superior court's decision may be appealed directly to the North Carolina Supreme Court no later than 2 business days after the Board files its final order. The Supreme Court must hear the appeal and render a decision on an expedited basis.

Section 2 modifies the statute dealing with notices of candidacy. It requires the board of elections to cancel the notice of candidacy when a person does not meet the constitutional or statutory qualifications for office, including residency. A candidate who has been adversely affected may request a hearing on the cancellation.

Section 3 adds a new subsection to the statute addressing unaffiliated candidates nominated by petition. It requires the board of elections to immediately inspect the registration records of the county and cancel the petition of any person who does not meet the constitutional or statutory qualifications for office, including residency. A person who has been adversely affected may request a hearing on the cancellation.

Section 4 modifies the statute dealing with petitions for write-in candidates. It requires the board of elections to immediately inspect the registration records of the county and cancel the petition of any person who does not meet the constitutional or statutory qualifications for office, including residency. A person who has been adversely affected may request a hearing on the cancellation.

Section 5 states that if the courts declare any section or provision of this act unconstitutional, this does not affect the remainder of the act.

EFFECTIVE DATE: This act becomes effective January 1, 2007.

H0001res-SMRN

House Judiciary I Committee

June 20, 2006
10:00 a.m.

Minutes

The House Judiciary I Committee met on Tuesday, June 20, 2006 at 10:00 a.m. in Room 1228 of the Legislative Building. Chairman Joe Hackney called the meeting to order and the following members were present: Representatives Blust, Capps, Goodwin, Harrison, Insko, Ross, Stam, Stiller and West. A copy of the agenda and visitor registration is attached, (Attachments I and II).

The first bill before the Committee was House Bill 2188, AN ACT TO PROVIDE FOR A PROCEDURE FOR CHALLENGING THE QUALIFICATIONS OF A CANDIDATE, (Attachment III). The bill was previously explained during the meeting on June 8, 2006. A copy of the bill analysis prepared by Ms. Erika Churchill, Committee Counsel, is attached, (Attachment IV).

A Proposed Committee Substitute, (Attachment V), was distributed and Representative Ross moved its adoption for the purpose of discussion. The motion carried. Ms. Churchill was recognized to explain the differences in the committee substitute. She said that the committee substitute had a change regarding the timeframe for when a challenge must be filed stating that the challenge must be filed within 10 business days after the close of the filing period or the period for notice of petition. A second change was in regard to the grounds for filing a challenge. The committee substitute substitutes the word "that" for the word "include" on page 1, line 25 to read: "that the candidate does not meet the constitutional or statutory qualifications for office." New language was also added on page 2, lines 21-23 to address situations where a challenge is filed in a district that contains more than one county, but not the entire state. The State Board of Elections would be required to hold a public meeting to appoint a panel to hear that challenge. This must be done within two business days after the challenge is filed. Another change in the committee substitute was in regard to the conduct of the hearing by the panel. That change is on page 2, lines 31-33. An additional change was made on page 2, lines 42-43 regarding the rendering of a written decision within 20 days and service of that written decision on the party. The service of the written decision on the party would then trigger the timeframe for appeal. Additional changes in regard to notice of hearing and conduct of hearing and burden of proof on page 3 were explained. Ms. Churchill explained changes on page 4, lines 6-7 regarding appeals and noted the addition of Sections 5 and 6 on page 5. She also noted the addition of the words "and applies to actions filed on or after that date" following the effective date of the bill.

Representative Ross sent forward an amendment, (Attachment VI), to amend the bill on page 5, lines 29-30, to clarify that the entire Supreme Court will adopt rules

necessary to implement the provisions regarding appeal. She moved adoption of the amendment. Upon vote of the Committee, the amendment was adopted.

Ms. Churchill was recognized to comment on the five-county issue (page 2, lines 13-14) where the State Board of Elections is required to appoint a multi-county panel. She said that currently in the Senate plan, there are several districts that have more than five counties and there is no way the State Board of Elections could comply with this provision.

Representative Ross offered a second amendment, (Attachment VII). Committee discussion followed. Upon vote of the Committee, the amendment was adopted.

Following Committee discussion, Representative Ross moved that the amendments be rolled into a new Committee Substitute, that it be given a favorable report and the original bill an unfavorable report. The motion carried, (Attachment VIII).

The next bill before the Committee was House Bill 1845, AN ACT TO PROHIBIT THE USE OF CANDIDATES' CAMPAIGN FUNDS FOR PERSONAL PURPOSES UNRELATED TO CAMPAIGNS AND OFFICE-HOLDING DUTIES; AND TO STRENGTHEN REPORTING REQUIREMENTS TO PREVENT VIOLATIONS, AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON ETHICS AND GOVERNMENTAL REFORM, (Attachment IX). The bill was heard during the meetings of the Committee on June 1, 6 and 8, 2006. It received a favorable report for a Proposed Committee Substitute on June 8. Chairman Hackney noted that the bill had not been reported out and was back before the Committee for consideration of the effective date issue because several people had mentioned that this legislation and the Treasurer Training legislation are not concurrent. He said that a Proposed Committee Substitute had been prepared if the Committee wanted to make them concurrent. He said that the argument that had been expressed to him was that the Treasurer Training is to be completed by January 1, 2007 and the use of campaign funds legislation is put into effect October 1, 2006 and is likely to cause problems.

Representative Stam spoke in opposition to making changes in the legislation.

Mr. Bob Hall, Democracy North Carolina, spoke in support of changing the date to January 1, 2007.

Representatives Blust and Capps spoke in opposition to changing the date to January 1, 2007.

Representative Harrison moved that the Committee consider a new Proposed Committee Substitute to change the effective date to January 1, 2007. The motion failed.

Chairman Hackney stated that the bill would be reported pursuant to the prior motion made on June 8, 2006, (Attachment X).

The meeting was adjourned at 10:50 a.m.

Representative Joe Hackney
Chair

Emily Reynolds Freeman
Committee Clerk

Attachment I

HOUSE COMMITTEE ON JUDICIARY I

June 20, 2006
10:00 a.m.

AGENDA

OPENING REMARKS

AGENDA ITEMS

House Bill 1845 – Permitted Use of Campaign Funds
Representatives Hackney, Howard, Eddins and Ross

House Bill 2188 – Candidate Challenge Procedure
Representatives Hackney and Howard

ADJOURNMENT

Attachment II

VISITOR REGISTRATION SHEET

House Judiciary I — June 20, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Kathleen Edwards	UNC-CH Daily Bulletin
John Phelps	NCLM
Chad Hinton	Civitas Institute
Chare Foster	NCVCE
Caroline Howe	Lt. Governor's Office
ESFURVGjdc	UNC-TV
BB Hall	Democracy NC
Rob Schofield	NCCNP
Chris Fitzsimon	NC Policy Watch
Michelle Judkins	Intern for Rep. Alexander
Tom Vitaglione	Action for Children

VISITOR REGISTRATION SHEET

House Judiciary I — June 20, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Dana Estes	Rep. Stam
Jessica Sage	NCFPC → private citizen
Gary Robertson	AP
[illegible]	NCO
[illegible]	[illegible]
DAVID BARNES	Poyner + Spruill
Danielle Bell	Poyner + Spruill
[illegible]	NC Council of Churches
[illegible]	The Insider
[illegible]	NCSBA
[illegible]	NCFPC

VISITOR REGISTRATION SHEET

House Judiciary I — June 20, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Lu Hodge	ICCLPA
Mitch Kokai	John Locke Foundation
Chris Heagarty	Center for Voter Education
Roger Bone	Bone & Assoc

Attachment III

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

HOUSE BILL 2188

Short Title:	Candidate Challenge Procedure.	(Public)
Sponsors:	Representatives Hackney, Howard (Primary Sponsors); Barnhart, Bell, Brubaker, Coates, Earle, Eddins, Fisher, Gibson, Justice, Harrison, Lucas, Luebke, McLawhorn, Martin, Nye, Ross, Sauls, Sherrill, Steen, and West.	
Referred to:	Judiciary I.	

May 18, 2006

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR A PROCEDURE FOR CHALLENGING THE QUALIFICATIONS OF A CANDIDATE.

The General Assembly of North Carolina enacts:

SECTION 1. Subchapter V of Chapter 163 of the General Statutes is amended by adding a new Article to read:

"Article 11B.

"Challenge to a Candidacy.

"**§ 163-127.1. Definitions.**

As used in this Article, the following terms mean:

(1) Board. – State Board of Elections.

(2) Candidate. – A person having filed a notice of candidacy under Article 10 of Chapter 163 of the General Statutes or having filed a petition under Article 11 of Chapter 163 of the General Statutes.

(3) Challenger. – Any qualified voter registered in the same district as the office for which the candidate has filed or petitioned.

(4) Office. – The elected office for which the candidate has filed or petitioned.

"**§ 163-127.2. When and how a challenge to a candidate may be made.**

(a) When. – A challenge to a candidate may be filed under this Article with the board of elections receiving the notice of the candidacy or petition no later than 10 business days after the candidate has filed a notice of candidacy or petitioned.

(b) How. – The challenge must be made in a verified affidavit by a challenger, based on reasonable suspicion or belief of the facts stated. Grounds for filing a challenge include the candidate does not meet the constitutional or statutory qualifications for the office, including residency.

(c) If Defect Discovered After Deadline, Protest Available. – If a challenger discovers one or more grounds for challenging a candidate after the deadline in subsection (a) of this section, the grounds may be the basis for a protest under G.S. 163-182.9.

"**§ 163-127.3. Panel to conduct the hearing on a challenge.**

(a) Upon filing of a challenge, a panel shall hear the challenge, as follows:

(1) Single county. – If the district for the office subject to the challenge covers all or part of only one county, the panel shall be the county board of elections of that county.

(2) Multicounty but less than entire state. – If the district for the office subject to the challenge covers more than one county but less than the entire State, the Board shall appoint a panel within two business days after the challenge is filed. The panel shall consist of at least one member of the county board of elections in each county in the district of the office. The panel shall have an odd number of members, no fewer than three and no more than five. In appointing members to the panel, the Board shall appoint members from each county in proportion to the relative total number of registered voters of the counties in the district for the office. The Board shall, to the extent possible, appoint members affiliated with different political parties in proportion to the representation of those parties on the county boards of elections in the district for the office. The Board shall designate a chair for the panel.

(3) Entire state. – If the district for the office subject to the challenge covers the entire State, the panel shall be the Board.

"**§ 163-127.4. Conduct of hearing by panel.**

(a) The panel conducting a hearing under this Article shall do all of the following:

(1) Within five business days after the challenge is filed, designate and announce the time of the hearing and the facility where the hearing will be held. The hearing shall be held at a location in the district reasonably convenient to residents in all parts of the district for the office. If the district for the office covers only part of a county, the hearing shall be at a location in the county convenient to residents of the district, but need not be in the district.

(2) Allow for depositions prior to the hearing, if requested by the challenger or candidate before the time of the hearing is designated and announced.

(3) Issue subpoenas for witnesses or documents, or both, upon request of the parties or upon its own motion.

(4) Render a decision within 20 business days after the challenge is filed.

(b) Notice of Hearing. – The panel shall give notice of the hearing to the challenger, to the candidate, to the county chair of each political party in every county in the district for the office, and to those persons likely to have a significant interest in

the resolution of the challenge. Each person given notice shall also be given a copy of the challenge or a summary of its allegations.

Failure to comply with the notice requirements in this subsection shall not delay the holding of a hearing nor invalidate the results if it appears reasonably likely that all interested persons were aware of the hearing and had an opportunity to be heard.

(c) Conduct of Hearing. – The hearing under this Article shall be conducted as follows:

(1) The panel may allow evidence to be presented at the hearing in the form of affidavits, or it may examine witnesses. The chair or any two members of the panel may subpoena witnesses or documents. The parties shall be allowed to issue subpoenas for witnesses or documents, or both, including a subpoena of the candidate. Each witness must be placed under oath before testifying. The Board shall provide the wording of the oath to every panel.

(2) The panel may receive evidence at the hearing from any person with information concerning the subject of the challenge. The challenger shall be permitted to present evidence at the hearing, but the challenger shall not be required to testify unless subpoenaed by a party. The panel may allow evidence by affidavit. The panel may allow evidence to be presented by a person who has received notice of the hearing, if present.

(3) The hearing shall be recorded by a reporter or by mechanical means, and the full record of the hearing shall be preserved by the panel until directed otherwise by the Board.

(d) Findings of Fact and Conclusions of Law by Panel. – The panel shall make a written decision on each challenge by separately stating findings of facts, conclusions of law, and an order based upon the findings of fact and conclusions of law.

(e) Rules by Board. – The Board shall adopt rules providing for adequate notice to parties, scheduling of hearings, and the timing of deliberations and issuance of decisions.

"**§ 163-127.5. Burden of proof.**

(a) No challenge may be sustained by the panel absent clear and convincing evidence of the record as a whole. The burden of proof shall be upon the candidate.

(b) If the challenge is based upon a question of residency, the candidate must show, by clear and convincing evidence, all of the following:

(1) An actual abandonment of the first domicile, coupled with an intent not to return to the first domicile.

(2) The acquisition of a new domicile by actual residence at another place.

(3) The intent of making the newer domicile a permanent domicile.

"**§ 163-127.6. Appeals.**

(a) Appeals From Single- or Multicounty Panel. – The decision of a panel created under G.S. 163-127.3(a)(1) or G.S. 163-127.3(a)(2) may be appealed as of right to the Board by any of the following:

(1) The challenger.

(2) A candidate adversely affected by the panel's decision.
(3) Any other person who participated in the hearing and has a significant interest adversely affected by the panel's decision.

(b) Notice of Appeal. – Appeal must be taken within two business days after the panel files the written decision with the county board of elections in which the candidate filed notice of candidacy or petitioned. The written appeal must be delivered or deposited in the mail to the Board by the end of the second business day after the written decision was filed by the panel. The Board shall prescribe forms for filing appeals from a panel's decision in a challenge. The Board shall base its appellate decision on the whole record of the hearing conducted by the panel and render its opinion on an expedited basis. From the final order or decision by the Board under this subsection, appeal as of right lies directly to the Supreme Court. Appeal shall be filed no later than two business days after the Board files its final order or decision in its office. The appeal shall be in the nature of certiorari. The Supreme Court shall hear the appeal and render a decision on an expedited basis.

(c) Appeals to Superior Court from Statewide Panel. – The decision of a panel created under G.S. 163-127.3(a)(3) may be appealed as of right to the Superior Court of Wake County by any of the following:

(1) The challenger.
(2) A candidate adversely affected by the panel's decision.
(3) Any other person who participated in the hearing and has a significant interest adversely affected by the panel's decision.

Appeal must be taken within two business days after the panel files the written decision. The written appeal must be delivered or deposited in the mail to the Superior Court of Wake County by the end of the second business day after the written decision was filed by the panel. The superior court shall base its appellate decision on the whole record of the hearing conducted by the panel and hear the appeal on an expedited basis. From the final order or decision by the superior court under this subsection, appeal as of right lies directly to the Supreme Court. Appeal shall be filed no later than two business days after the superior court files its final order or decision. The appeal shall be in the nature of certiorari. The Supreme Court shall hear the appeal and render a decision on an expedited basis."

SECTION 2. G.S. 163-106(g) reads as rewritten:

"(g) When any candidate files a notice of candidacy with a ~~county~~ board of elections under subsection (c) of this section or under G.S. 163-291(2), the ~~chairman or director~~board of elections shall, immediately upon receipt of the notice of candidacy, inspect the registration records of the county, and cancel the notice of candidacy of any person who~~ is not eligible under subsection (c) of this section.~~ does not meet the constitutional or statutory qualifications for the office, including residency.

The ~~Board~~ board shall give notice of cancellation to any candidate whose notice of candidacy has been cancelled under this subsection by mail or by having the notice served on him by the ~~sheriff.~~sheriff, and to any other candidate filing for the same office. A candidate who has been adversely affected by a cancellation or another candidate for the same office affected by a substantiation under this subsection may

request a hearing on the cancellation. If the candidate requests a hearing, the hearing shall be conducted in accordance with Article 11B of Chapter 163 of the General Statutes."

SECTION 3. G.S. 163-122 is amended by adding a new subsection to read:

"(d) When any person files a petition with a board of elections under this section, the board of elections shall, immediately upon receipt of the petition, inspect the registration records of the county and cancel the petition of any person who does not meet the constitutional or statutory qualifications for the office, including residency.

The board shall give notice of cancellation to any person whose petition has been cancelled under this subsection by mail or by having the notice served on that person by the sheriff and to any other candidate filing for the same office. A person whose petition has been cancelled or another candidate for the same office affected by a substantiation under this subsection may request a hearing on the issue of constitutional or statutory qualifications for the office. If the person requests a hearing, the hearing shall be conducted in accordance with Article 11B of Chapter 163 of the General Statutes."

SECTION 4. G.S. 163-123 is amended by adding a new subsection to read:

"(f1) When any person files a petition with a board of elections under this section, the board of elections shall, immediately upon receipt of the petition, inspect the registration records of the county and cancel the petition of any person who does not meet the constitutional or statutory qualifications for the office, including residency.

The board shall give notice of cancellation to any person whose petition has been cancelled under this subsection by mail or by having the notice served on that person by the sheriff. A person whose petition has been cancelled or another candidate for the same office affected by a substantiation under this subsection may request a hearing on the issue of constitutional or statutory qualifications for the office. If the person requests a hearing, the hearing shall be conducted in accordance with Article 11B of Chapter 163 of the General Statutes."

SECTION 5. If any section or provision of this act is declared unconstitutional or invalid by the courts, it does not affect the validity of this act as a whole or any part other than the part so declared to be unconstitutional or invalid.

SECTION 6. This act becomes effective January 1, 2007.

Attachment IV

House Bill 2188
Candidate Challenge Procedure

BILL ANALYSIS

Committee:	House Judiciary I	**Date:**	June 1, 2006
Introduced by:	Representatives Hackney and Howard	**Summary by:**	Brad Krehely and R. Erika Churchill, Committee Co-Counsel
Version:	First Edition		

SUMMARY: House Bill 2188 establishes a procedure allowing qualified voters to challenge the qualifications of a candidate. It is a recommendation of the House Select Committee on Ethics and Governmental Reform.

CURRENT LAW: Chapter 163 of the North Carolina General Statutes addresses elections and election laws. Currently, it has no specific procedure to challenge a notice of candidacy or a petition to be a candidate. Article 8 of Chapter 163 deals with challenges to voter registration, and G.S. 163-182.9-182.12, address election protests. The boards of elections now handle these types of challenges through a procedure that combines the challenges-to-voter-registration procedure and the protest procedure.

BILL ANALYSIS:

Section 1 creates a new Article allowing candidate challenges. It describes a **challenger** as any qualified voter registered in the same district as the office for which the candidate has filed or petitioned. The **Board** refers to the State Board of Elections.

It also sets forth parameters for:

- **When a challenge is to be made-** no later than 10 business days after the candidate has filed a notice of candidacy or petitioned. A provision is included to allow a protest petition to be filed if the ground(s) for the challenge are discovered after the time period for filing a candidate challenge has passed.
- **How a challenge is to be made-** in a verified affidavit by a challenger based on a reasonable suspicion or belief of the facts stated.
- **Grounds for challenging the candidate-** The candidate does not meet the constitutional or statutory requirements for office, including residency.

Once a challenge is filed, the challenge is heard by a panel. The panels are as follows:

- **Single county districts -** If the district for the office subject to the challenge covers all or part of only one county, then the panel is the county board of elections of that county.
- **Multicounty but Less Than Entire State** – If the the district for the office subject to the challenge covers more than one county but less than the entire State, then the panel is appointed by the State Board of Elections, with all of the following applying:.
    - The Board shall appoint thepanel within 2 business days after the challenge is filed.
    - The panel must consist of at least 1member of the county board of elections in each county in the district of the office. The panel shall have an odd number of members, no fewer than 3 and no more than 5.
    - In appointing members to the panel, the Board must appoint members from each county in proportion to the relative total number of registered voters of the counties in the district for the office.

  - The Board must, to the extent possible, appoint members affiliated with different political parties in proportion to the representation of those parties on the county boards of elections in the district for the office.
  - The Board must designate a chair for the panel.
- **Entire State-** If the district for the office subject to the challenge covers the entire state, the panel is the Board of Elections.

Each panel must do all of the following:

- Announce the time and location of the hearing within 5 business days after the challenge is filed.
- Allow for depositions prior to the hearing upon the request of either the challenger or candidate.
- Issue subpoenas upon its own motion or upon the request of the parties.
- Give notice of the hearing and a copy of the challenge or summary of the allegations to the challenger, the candidate, certain county political party chairs, and other persons likely to have a significant interest in the challenge. Failure to comply with the notice requirements does not delay the holding of the hearing or invalidate the results if it appears reasonably likely that all interested persons were aware of the hearing and had an opportunity to be heard.
- Render a decision within 20 business days after the challenge is filed.

Panels may subpoena witnesses and receive evidence from any person with information concerning the subject of the challenge. The challenger is not required to testify unless subpoenaed by a party. The Board must adopt rules addressing notice to parties, scheduling of hearings, timing of deliberations, and issuance of decisions.

The **burden of proof** is on the candidate, and no challenge may be sustained in the absence of clear and convincing evidence based on the whole record. If the challenge is based on residency, the candidate must show **all** of the following by clear and convincing evidence:

- Actual abandonment of the first domicile and an intent not to return to the first domicile.
- Acquisition of a new domicile by actual residence at another place.
- Intent of making the newer domicile a permanent domicile.

There are two distinct procedures for appealing the decision of a panel:

- **Appeals From Single or Multicounty Panel-** The challenger, a candidate adversely affected by the panel's decision, or any other person who participated in the hearing and has a significant interest adversely affected by the panel's decision **may appeal to the Board.** The appeal:
  - Must be taken within 2 business days after the panel files its written decision to the county board of elections where the candidate filed a notice of candidacy or petitioned
  - Must be delivered or deposited in the mail by the end of the second business day after the panel filed its written decision
  - Must be based on the whole record of the hearing with the Board making a decision on an expedited basis.

  The Board's decision may be appealed directly to the North Carolina Supreme Court no later than two business days after the Board files its final order. The Supreme Court must hear the appeal and render a decision on an expedited basis.
- **Appeals From a Statewide Panel-** The challenger, a candidate adversely affected by the panel's decision, or any other person who participated in the hearing and has a significant

interest adversely affected by the panel's decision **may appeal to the Superior Court of Wake County**. An appeal:

- Must be taken within 2 business days after the panel files the written decision.
- Must be delivered or deposited in the mail to the Superior Court of Wake County by the end of the second business day after the panel filed its written decision.
- Must be based on the whole record of the hearing with the superior court making a decision on an expedited basis.

The superior court's decision may be appealed directly to the North Carolina Supreme Court no later than 2 business days after the Board files its final order. The Supreme Court must hear the appeal and render a decision on an expedited basis.

Section 2 modifies the statute dealing with notices of candidacy. It requires the board of elections to cancel the notice of candidacy when a person does not meet the constitutional or statutory qualifications for office, including residency. A candidate who has been adversely affected may request a hearing on the cancellation.

Section 3 adds a new subsection to the statute addressing unaffiliated candidates nominated by petition. It requires the board of elections to immediately inspect the registration records of the county and cancel the petition of any person who does not meet the constitutional or statutory qualifications for office, including residency. A person who has been adversely affected may request a hearing on the cancellation.

Section 4 modifies the statute dealing with petitions for write-in candidates. It requires the board of elections to immediately inspect the registration records of the county and cancel the petition of any person who does not meet the constitutional or statutory qualifications for office, including residency. A person who has been adversely affected may request a hearing on the cancellation.

Section 5 states that if the courts declare any section or provision of this act unconstitutional, this does not affect the remainder of the act.

EFFECTIVE DATE: This act becomes effective January 1, 2007.

H0001res-SMRN

Attachment V

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H **D**

HOUSE BILL 2188
PROPOSED COMMITTEE SUBSTITUTE H2188-CSST-113 [v.5]

6/19/2006 1:27:06 PM

Short Title: Candidate Challenge Procedure. (Public)

Sponsors:

Referred to:

May 18, 2006

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR A PROCEDURE FOR CHALLENGING THE QUALIFICATIONS OF A CANDIDATE.

The General Assembly of North Carolina enacts:

SECTION 1. Subchapter V of Chapter 163 of the General Statutes is amended by adding a new Article to read:

"Article 11B.

"Challenge to a Candidacy.

"**§ 163-127.1. Definitions.**

As used in this Article, the following terms mean:

(1) Board. – State Board of Elections.

(2) Candidate. – A person having filed a notice of candidacy under Article 10 of Chapter 163 of the General Statutes or having filed a petition under Article 11 of Chapter 163 of the General Statutes.

(3) Challenger. – Any qualified voter registered in the same district as the office for which the candidate has filed or petitioned.

(4) Office. – The elected office for which the candidate has filed or petitioned.

"**§ 163-127.2. When and how a challenge to a candidate may be made.**

(a) When. – A challenge to a candidate may be filed under this Article with the board of elections receiving the notice of the candidacy or petition no later than 10 business days after the close of the filing period for notice of candidacy or petition.

(b) How. – The challenge must be made in a verified affidavit by a challenger, based on reasonable suspicion or belief of the facts stated. Grounds for filing a challenge are that the candidate does not meet the constitutional or statutory qualifications for the office, including residency.

(c) If Defect Discovered After Deadline, Protest Available. – If a challenger discovers one or more grounds for challenging a candidate after the deadline in

subsection (a) of this section, the grounds may be the basis for a protest under G.S. 163-182.9.

"**§ 163-127.3. Panel to conduct the hearing on a challenge.**

(a) Upon filing of a challenge, a panel shall hear the challenge, as follows:

(1) Single county. – If the district for the office subject to the challenge covers all or part of only one county, the panel shall be the county board of elections of that county.

(2) Multicounty but less than entire state. – If the district for the office subject to the challenge covers more than one county but less than the entire State, the Board shall appoint a panel within two business days after the challenge is filed. The panel shall consist of at least one member of the county board of elections in each county in the district of the office. The panel shall have an odd number of members, no fewer than three and no more than five. In appointing members to the panel, the Board shall appoint members from each county in proportion to the relative total number of registered voters of the counties in the district for the office. The Board shall, to the extent possible, appoint members affiliated with different political parties in proportion to the representation of those parties on the county boards of elections in the district for the office. The Board shall designate a chair for the panel. A meeting of the Board to appoint a panel under this subdivision shall be treated as an emergency meeting for purposes of G.S. 143-318.12.

(3) Entire state. – If the district for the office subject to the challenge covers the entire State, the panel shall be the Board.

"**§ 163-127.4. Conduct of hearing by panel.**

(a) The panel conducting a hearing under this Article shall do all of the following:

(1) Within five business days after the challenge is filed, designate and announce the time of the hearing and the facility where the hearing will be held. The hearing shall be held at a location in the district reasonably convenient to the public, and shall preferably be held in the county receiving the notice of the candidacy or petition. If the district for the office covers only part of a county, the hearing shall be at a location in the county convenient to residents of the district, but need not be in the district.

(2) Allow for depositions prior to the hearing, if requested by the challenger or candidate before the time of the hearing is designated and announced.

(3) Issue subpoenas for witnesses or documents, or both, upon request of the parties or upon its own motion.

(4) Render a written decision within 20 business days after the challenge is filed and serve that written decision on the parties.

(b) Notice of Hearing. – The panel shall give notice of the hearing to the challenger, to the candidate, other candidates filing or petitioning to be elected to the same office, to the county chair of each political party in every county in the district for the office, and to those persons who have requested to be notified. Each person given notice shall also be given a copy of the challenge or a summary of its allegations.

Failure to comply with the notice requirements in this subsection shall not delay the holding of a hearing nor invalidate the results if the individuals required by this section to be notified have been notified.

(c) Conduct of Hearing. – The hearing under this Article shall be conducted as follows:

(1) The panel may allow evidence to be presented at the hearing in the form of affidavits supporting documents or it may examine witnesses. The chair or any two members of the panel may subpoena witnesses or documents. The parties shall be allowed to issue subpoenas for witnesses or documents, or both, including a subpoena of the candidate. Each witness must be placed under oath before testifying. The Board shall provide the wording of the oath to the panel.

(2) The panel may receive evidence at the hearing from any person with information concerning the subject of the challenge, and such presentation of evidence shall be subject to Chapter 8C of the General Statutes. The challenger shall be permitted to present evidence at the hearing, but the challenger shall not be required to testify unless subpoenaed by a party. The panel may allow evidence to be presented by a person who is present.

(3) The hearing shall be recorded by a reporter or by mechanical means, and the full record of the hearing shall be preserved by the panel until directed otherwise by the Board.

(d) Findings of Fact and Conclusions of Law by Panel. – The panel shall make a written decision on each challenge by separately stating findings of facts, conclusions of law, and an order.

(e) Rules by Board. – The Board shall adopt rules providing for adequate notice to parties, scheduling of hearings, and the timing of deliberations and issuance of decisions.

"**§ 163-127.5. Burden of proof.**

(a) The burden of proof shall be upon the candidate, who must show by a preponderance of the evidence of the record as a whole that he or she is qualified to be a candidate for the office.

(b) If the challenge is based upon a question of residency, the candidate must show all of the following:

(1) An actual abandonment of the first domicile, coupled with an intent not to return to the first domicile.

(2) The acquisition of a new domicile by actual residence at another place.

(3) The intent of making the newer domicile a permanent domicile.

"**§ 163-127.6. Appeals.**

(a) Appeals from Single or Multicounty Panel. – The decision of a panel created under G.S. 163-127.3(a)(1) or G.S. 163-127.3(a)(2) may be appealed as of right to the Board by any of the following:

(1) The challenger.

(2) A candidate adversely affected by the panel's decision.

Appeal must be taken within two business days after the panel serves the written decision on the parties. The written appeal must be delivered or deposited in the mail to the Board by the end of the second business day after the written decision was filed by the panel. The Board shall prescribe forms for filing appeals from a panel's decision in a challenge. The Board shall base its appellate decision on the whole record of the hearing conducted by the panel and render its opinion on an expedited basis. From the final order or decision by the Board under this subsection, appeal as of right lies directly to the Court of Appeals. Appeal shall be filed no later than two business days after the Board files its final order or decision in its office. The appeal shall be in the nature of certiorari.

(b) Appeals from Statewide Panel. – The decision of a panel created under G.S. 163-127.3(a)(3) may be appealed as of right to the Court of Appeals by any of the following:

(1) The challenger.

(2) A candidate adversely affected by the panel's decision.

Appeal must be taken within two business days after the panel files the written decision. The written appeal must be delivered or deposited in the mail to the Court of Appeals by the end of the second business day after the written decision was filed by the panel. The appeal shall be in the nature of certiorari."

SECTION 2. G.S. 163-106(g) reads as rewritten:

"(g) When any candidate files a notice of candidacy with a ~~county~~ board of elections under subsection (c) of this section or under G.S. 163-291(2), the ~~chairman or director~~board of elections shall, immediately upon receipt of the notice of candidacy, inspect the registration records of the county, and cancel the notice of candidacy of any person who ~~is not eligible under subsection (c) of this section.~~ does not meet the constitutional or statutory qualifications for the office, including residency.

The ~~Board~~ board shall give notice of cancellation to any candidate whose notice of candidacy has been cancelled under this subsection by mail or by having the notice served on him by the ~~sheriff.~~sheriff, and to any other candidate filing for the same office. A candidate who has been adversely affected by a cancellation or another candidate for the same office affected by a substantiation under this subsection may request a hearing on the cancellation. If the candidate requests a hearing, the hearing shall be conducted in accordance with Article 11B of Chapter 163 of the General Statutes."

SECTION 3. G.S. 163-122 is amended by adding a new subsection to read:

"(d) When any person files a petition with a board of elections under this section, the board of elections shall, immediately upon receipt of the petition, inspect the registration records of the county and cancel the petition of any person who does not meet the constitutional or statutory qualifications for the office, including residency.

The board shall give notice of cancellation to any person whose petition has been cancelled under this subsection by mail or by having the notice served on that person by the sheriff and to any other candidate filing for the same office. A person whose petition has been cancelled or another candidate for the same office affected by a substantiation under this subsection may request a hearing on the issue of constitutional or statutory qualifications for the office. If the person requests a hearing, the hearing shall be conducted in accordance with Article 11B of Chapter 163 of the General Statutes."

SECTION 4. G.S. 163-123 is amended by adding a new subsection to read:

"(f1) When any person files a petition with a board of elections under this section, the board of elections shall, immediately upon receipt of the petition, inspect the registration records of the county and cancel the petition of any person who does not meet the constitutional or statutory qualifications for the office, including residency.

The board shall give notice of cancellation to any person whose petition has been cancelled under this subsection by mail or by having the notice served on that person by the sheriff. A person whose petition has been cancelled or another candidate for the same office affected by a substantiation under this subsection may request a hearing on the issue of constitutional or statutory qualifications for the office. If the person requests a hearing, the hearing shall be conducted in accordance with Article 11B of Chapter 163 of the General Statutes."

SECTION 5. G.S. 163-295 reads as rewritten:

"**§ 163-295. Municipal and special district elections; application of Chapter 163.**

To the extent that the laws, rules and procedures applicable to the conduct of primary, general or special elections by county boards of elections under Articles 3, 4, 5, 6, 7A, 8, 9, 10, 11, 11B, 12, 13, 14, 15, 19 and 22 of this Chapter are not inconsistent with the provisions of this Article, those laws, rules and procedures shall apply to municipal and special district elections and their conduct by the board of elections conducting those elections. The State Board of Elections shall have the same authority over all such elections as it has over county and State elections under those Articles."

SECTION 6. The Chief Justice of the North Carolina Supreme Court is respectfully requested to adopt rules necessary to implement this act.

SECTION 7. If any section or provision of this act is declared unconstitutional or invalid by the courts, it does not affect the validity of this act as a whole or any part other than the part so declared to be unconstitutional or invalid.

SECTION 8. This act becomes effective January 1, 2007, and applies to actions filed on or after that date.

Attachment VI

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 2188

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

H2188-AST-130 [v.1]

Date _____,2006

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

Representative Ross

moves to amend the bill on page 5, lines 29-30 by rewriting those lines to read:

"**SECTION 6.** The North Carolina Supreme Court is respectfully requested to adopt rules necessary to implement the provisions as to appeal in G.S. 163-127.6.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

Attachment VII

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 2188

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

H2188-AST-129 [v.1]

Date _____,2006

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

Representative Ross

moves to amend the bill on page 2, line 20 by inserting the following between "office." and "The" :

"If the district for the office subject to the challenge covers more than five counties, the panel shall consist of five members with at least one member from the county receiving the notice of candidacy or petition and at least one member from the county of residency of the challenger.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

Attachment VIII

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative Hackney (Chair) for the Committee on JUDICIARY I.

☐ Committee Substitute for
HB 2188 A BILL TO BE ENTITLED AN ACT TO PROVIDE FOR A PROCEDURE FOR CHALLENGING THE QUALIFICATIONS OF A CANDIDATE.

☒ With a favorable report as to the committee substitute bill, unfavorable as to the original bill.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

_____ Pursuant to Rule 36(b), the (House/Senate) committee substitute bill/(joint) resolution (No._____) is placed on the Calendar of _____. (The original bill resolution No._____) is placed on the Unfavorable Calendar.

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

FOR JOURNAL USE ONLY

____ Pursuant to Rule 36(b), the bill/resolution is placed on the Calendar of _____.

____ The (committee substitute) bill/resolution (, as amended,) is (ordered engrossed and) re-referred to the Committee on _____.

____ The bill/resolution is re-referred to the Committee on _____.

____ On motion of (Rep. _____,) (the Chair,) the (committee substitute) bill/resolution is (ordered engrossed and) re-referred to the Committee on _____.

____ Pursuant to Rule 36(b), the (House)committee substitute bill (No. ____)/resolution is placed on the Calendar of _____. (The original bill) (House Committee Substitute Bill No. ____)/resolution is placed on the Unfavorable Calendar.

____ On motion of Rep. _____, (the rules are suspended) (Rule ____ is suspended) and the bill/resolution is placed on today's calendar. (for immediate consideration.)

____ On motion of Rep. _____, Committee Amendment No.(s) _____ is/are adopted (by EV____ ____).

____ On motion of Rep. _____, Committee Amendment No.(s) _____ is/are adopted (by EV____ ____).

____ Rep. _____ offers Amendment No. _____ which (is adopted.) (fails of adoption.) (by EV ____ ____.) ( ) This amendment changes the title.

____ The bill/resolution (, as amended,) passes its second reading (by following vote, ____ ____ RC) (, by EV ____ ____,) and (remains on the Calendar,) (and there being no objection is read a third time).

____ The bill/resolution (, as amended,) passes its third reading (by the following vote, ____ ____ RC) (, by EV ____ ____,) and is ordered
____ sent to the Senate.
____ without engrossment. ____ by Special message.
____ sent to the Senate for concurrence in
_____ the House amendment (s).
_____the House committee substitute bill.
____ enrolled.

____ On motion of Rep. _____, the House concurs in the (material) Senate _____ (by the following vote, ____ ____ RC) (, by EV ____ ____,) and the bill is ordered enrolled.

Attachment IX

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 1845
PROPOSED COMMITTEE SUBSTITUTE H1845-PCS50735-ST-101

Short Title: Permitted Use of Campaign Funds. (Public)

Sponsors:

Referred to:

May 10, 2006

A BILL TO BE ENTITLED

AN ACT TO RESTRICT THE USE OF CONTRIBUTIONS TO CANDIDATES AND CANDIDATES' CAMPAIGN FUNDS TO THOSE RELATED TO CAMPAIGNS AND OFFICE-HOLDING DUTIES; TO PROHIBIT PERSONAL USE OF CONTRIBUTIONS BY CANDIDATES AND CANDIDATE CAMPAIGN COMMITTEES; AND TO STRENGTHEN REPORTING REQUIREMENTS TO PREVENT VIOLATIONS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 22A of Chapter 163 of the General Statutes is amended by adding a new section to read:

"**§ 163-278.16B. Use of contributions for certain purposes.**

(a) A candidate or candidate's campaign committee may use contributions only for the following purposes:

(1) Expenditures resulting from the campaign for public office by the candidate or candidate's campaign committee.

(2) Expenditures resulting from holding public office.

(3) Contributions to an organization described in section 170(c) of the Internal Revenue Code of 1986 (26 U.S.C. § 170(c)), provided that the candidate or the candidate's spouse, children, parents, brothers, or sisters are not employed by the organization.

(4) Contributions to a national, State, or district or county committee of a political party or a caucus of the political party.

(5) Contributions to another candidate or candidate's campaign committee.

(6) To return all or a portion of a contribution to the contributor.

(7) Payment of any penalties against the candidate or candidate's campaign committee imposed by a board of elections or a court of competent jurisdiction.

(b) As used in this section, the term 'candidate campaign committee' means the same as in G.S. 163-278.38Z(3)."

SECTION 2. G.S. 163-278.8(e) reads as rewritten:

"(e) All expenditures for media expenses shall be made by a verifiable form of payment. The State Board of Elections shall prescribe methods to ensure an audit trail for every expenditure so that the identity of each payee can be determined. All media expenditures in any amount shall be accounted for and reported individually and ~~separately.~~ separately with specific descriptions to provide a reasonable understanding of the expenditure."

SECTION 3. G.S. 163-278.8(f) reads as rewritten:

"(f) All expenditures for nonmedia expenses (except postage) of more than fifty dollars ($50.00) shall be made by a verifiable form of payment. The State Board of Elections shall prescribe methods to ensure an audit trail for every expenditure so that the identity of each payee can be determined. All expenditures for nonmedia expenses of fifty dollars ($50.00) or less may be made by check or by cash payment. All nonmedia expenditures of more than fifty dollars ($50.00) shall be accounted for and reported individually and ~~separately,~~ separately with a specific description to provide a reasonable understanding of the expenditure, but expenditures of fifty dollars ($50.00) or less may be accounted for and reported in an aggregated amount, but in that case the treasurer shall account for and report that ~~he~~ the treasurer made expenditures of fifty dollars ($50.00) or less each, the amounts, dates, and the purposes for which made. In the case of a nonmedia expenditure required to be accounted for individually and separately with a specific description to provide a reasonable understanding of the expenditure by this subsection, if the expenditure was to an individual, the report shall list the name and address of the individual."

SECTION 4. G.S. 163-278.11(a)(2) reads as rewritten:

"(2) Expenditures. – A list of all expenditures required under G.S. 163-278.8 made by or on behalf of a candidate, political committee, or referendum committee. The statement shall list the name and complete mailing address of each payee, the amount paid, the purpose, and the date such payment was made. The total sum of all expenditures to date shall be plainly exhibited. Forms for required reports shall be prescribed by the Board. In accounting for all expenditures in accordance with G.S. 163-278.8(e) and G.S. 163-278.8(f), the payee shall be the individual or person to whom the candidate, political committee, or referendum committee is obligated to make the expenditure. If the expenditure is to a financial institution for revolving credit or a reimbursement for a payment to a financial institution for revolving credit, the statement shall also include a specific itemization of the goods and services purchased with the revolving credit. If the obligation is for more than one good or service, the statement shall include a specific itemization of the obligation so as to provide a reasonable understanding of the obligation."

SECTION 5. G.S. 163-278.27(a) reads as rewritten:

"(a) Any individual, candidate, political committee, referendum committee, treasurer, person or media who intentionally violates the applicable provisions of G.S. 163-278.7, 163-278.8, 163-278.9, 163-278.10, 163-278.11, 163-278.12, 163-278.13, 163-278.13B, 163-278.14, 163-278.16, 163-278.16B, 163-278.17, 163-278.18, 163-278.19, 163-278.20, 163-278.39, 163-278.40A, 163-278.40B, 163-278.40C, 163-278.40D or 163-278.40E is guilty of a Class 2 misdemeanor. The statute of limitations shall run from the day the last report is due to be filed with the appropriate board of elections for the election cycle for which the violation occurred."

SECTION 6. Sections 1 and 5 of this act become effective October 1, 2006, and apply to all candidates and candidate campaign committees with active accounts with the State Board of Elections or a county board of elections on or after that date. Sections 2, 3, and 4 of this act become effective January 1, 2007, and apply to all political committees and referendum committees with active accounts with the State Board of Elections or a county board of elections on or after that date. The remainder of this act becomes effective January 1, 2007.

Attachment X

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative Hackney (Chair) for the Committee on JUDICIARY I.

☐ Committee Substitute for
HB 1845 A BILL TO BE ENTITLED AN ACT TO PROHIBIT THE USE OF CANDIDATES' CAMPAIGN FUNDS FOR PERSONAL PURPOSES UNRELATED TO CAMPAIGNS AND OFFICE-HOLDING DUTIES; AND TO STRENGTHEN REPORTING REQUIREMENTS TO PREVENT VIOLATIONS, AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON ETHICS AND GOVERNMENTAL REFORM.

☒ With a favorable report as to the committee substitute bill, which changes the title, unfavorable as to the original bill.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

_____ Pursuant to Rule 36(b), the (House/Senate) committee substitute bill/(joint) resolution (No._____) is placed on the Calendar of _____. (The original bill resolution No._____) is placed on the Unfavorable Calendar.

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

House Judiciary I Committee

June 22, 2006
10:00 a.m.

Minutes

The House Judiciary I Committee met on Thursday, June 22, 2006 at 10:00 a.m. in Room 1228 of the Legislative Building. Chairman Joe Hackney called the meeting to order and the following members were present: Representatives Alexander, Blust, Capps, Goodwin, Harrison, Ross, Stam and Stiller. A copy of the agenda and the visitor registration is attached, (Attachment I and II).

Before the Committee was House Bill 1849, AN ACT TO AMEND THE LEGISLATIVE LOBBYING LAWS BY ESTABLISHING WAITING PERIODS BEFORE CERTAIN STATE OFFICERS MAY LOBBY; BY BARRING LOBBYISDTS FROM CERTAIN APPOINTMENTS AND OTHER ACTIVITIES; BY BANNING CERTAIN GIFTS; BY ESTABLISHING QUARTERLY REPORTING OF EXPENDITURES WITH ADDITIONAL INTERIM REPORTING; BY EXPANDING THE COVERAGE OF THE LOBBYING LAWS TO INCLUDE EXECUTIVE BRANCH OFFICERS; BY LIMITING CAMPAIGN CONTRIBUTIONS BY REGISTERED LOBBYISTS; AND BY MAKING OTHER CONFORMING CHANGES, AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON ETHICS AND GOVERNMENTAL REFORM, (Attachment III). The bill previously discussed during the May 18, May 23 and May 30, 2006 meetings. A bill analysis prepared by Ms. Erika Churchill, Committee Counsel, is attached to the minutes, (Attachment IV).

A Proposed Committee Substitute, (Attachment V), was distributed and Representative Stam moved its adoption for the purpose of discussion. The motion carried. Chairman Hackney stated that the new bill incorporated previous amendments and some additional small changes. He further stated that there would be some problem-solving amendments offered during the discussion.

Ms. Churchill was recognized to explain changes in the Committee Substitute. She pointed out a change on page 5, line 10 where the words "or executive" had been added. She continued by noting a change on page 5, line 42 where the word "mainstream" had been removed as a descriptive word of media. A third change was noted on page 9, lines 16 and 17 regarding the exemption from the gift ban. Ms. Churchill pointed out a change on page 10, lines 16 and 17, saying that it was a clarifying amendment that very strictly tied in that the word "expenditure" means that as defined in G. S. 120-47.1 (1.e) for the purposes of reporting and that this addressed previous questions as to what the word "expenditure" meant when it came time to report. Ms. Churchill addressed the next change that was on page 15, beginning on line 11 regarding the exemption statute clarifying that it addresses both legislative and executive actions. The final change was on page 21, lines 34-43 regarding the insertion of two new sections

that were conforming changes to the Executive Ethics bill and the Legislative Ethics bill regarding the two exemptions about anything being made generally available to the public, and were technical in nature.

Chairman Hackney noted that the first amendment addressed the problem of how to have inclusion of lawyers to register who lobby the executive branch, but not get every lawyer who practices law and was in the exemptions section of the bill. He said that input had been received from the Administrative Law Section of the Bar Association and others regarding the amendment and that it applied only to executive branch lobbying and not legislative branch lobbying.

Representative Alexander offered an amendment, (Attachment VI), and moved its adoption. Ms. Churchill was recognized for explanation of the amendment and said that the exemption would apply to having to register to lobby if one is a licensed professional, communicating with or appearing before an executive branch officer on behalf of another person.

Considerable discussion followed and the amendment was displaced.

A second amendment, (Attachment VII), was offered by Representative Alexander who moved its adoption for the purpose of discussion. The motion carried. The amendment addressed the issue of the occasional visit to Raleigh by board members, employees, officers, etc. of an organization representing their employer and was an attempt to draw a rule at 8 hours per calendar quarter.

This amendment was also displaced following discussion by members of the Committee.

An amendment was offered by Representative Stam, (Attachment VIII), who moved its adoption for the purpose of discussion. The motion carried. The amendment addressed contingent lobbying. Following discussion, this amendment was also displaced.

Representative Stam offered an amendment, (Attachment IX), and moved its adoption for the purpose of discussion. The motion carried. The amendment addressed campaign contributions from lobbyists. Representative Stam stated that he thought that the banning of political contributions from lobbyist, as stated in the original bill, violates free speech rights and that the amendment strikes a compromise on that constitutional problem.

No action was taken and the amendment was displaced.

Representative Ross offered an amendment, (Attachment X), and moved its adoption for the purpose of discussion. The motion carried. The amendment addressed the reimbursement of reasonable actual expenses for food, registration, travel and lodging for conferences and meetings.

The amendment was displaced.

Chairman Hackney welcomed input and comments from interested parties as the work of the bill continued.

The meeting was adjourned at 10:55 a.m.

Representative Joe Hackney
Chair

Emily Reynolds Freeman
Committee Clerk

Attachment I

HOUSE COMMITTEE ON JUDICIARY I

June 22, 2006
10: a.m.

AGENDA

OPENING REMARKS

AGENDA ITEM

House Bill 1849 – Lobbying Reforms 2006
Representatives Hackney, Howard, Gibson, Sherrill

ADJOURNMENT

Attachment II

VISITOR REGISTRATION SHEET

House Judiciary I — June 22, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Rob Schofield	NC Ctr. for Nonprofits
Bob Phillips	CCNC
Gary Robertson	AP
Bob Bennink	North Carolina Utilities Commission
John Phelps	NCLM
John Madry	Gov Office
Caley Wiggins	Gov. office
Michael Houser	NCAE
Tony Adams	NCOAA
Betty Turner	Bank of America
Caroline Howe	Lt. Govs Office

VISITOR REGISTRATION SHEET

House Judiciary I — June 22, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Anthony Lanier	NCCE
Celia Cox	OSBM
Michelle Frazier	NC Bar Ass'n
Andrew Meehan	NCAEC
Alex Sewell	WCSR
Ben Tutle	Rep. Hackney's Office
Bob Gillam	Public Staff - NCUC
Jeff Wolfe	Daily Bulletin
Catherine Davies	ElectriCities
John Rust	NCFPC
Heather Randell	NC Sierra Club

VISITOR REGISTRATION SHEET

House Judiciary I — June 22, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Emily Kirby	NC Conservation Network
Kevin Leonard	DCSR
Rick Zechini	NCAR
Butch Gunnells	NC Beverage A.
Jim Ahler	NC Assn of CPAs
Susan Vaiana	Nationwide
Dalequa D. Montgomery	SOS
Michelle Judkins	Rep. Alexander's intern
John Allen	Allen Associates
Jack Betts	Charlotte Observer

VISITOR REGISTRATION SHEET

House Judiciary I — June 22, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Kathleen Edwards	UNC-CH Daily Bulletin
Charlene Carey	NC Right to Life
J. Craig Lewis	WHS
Rick O'Brien	PFFPNC
Angie Harris	Marvin Taylor
Mary Mumbeth	Poyner & Spruill
Lee Hodge	Kennedy Covington
Becki Gray	Civitas Institute
Bm Keen	NCO
Erica Reid	CWMTF
J Bentley	LBJ

VISITOR REGISTRATION SHEET

House Judiciary I — June 22, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Dan Holman	CWAMTF

Attachment III

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 1

HOUSE BILL 1849

Short Title:	Lobbying Reforms 2006.	(Public)
Sponsors:	Representatives Hackney, Howard, Gibson, Sherrill (Primary Sponsors); Barnhart, Bell, Brubaker, Coates, Earle, Eddins, Fisher, Harrison, Justice, Lucas, Luebke, Martin, McLawhorn, Nye, Ross, Sauls, Setzer, Steen, West, Alexander, L. Allen, Bordsen, Dickson, Glazier, Harrell, Hill, Insko, Jeffus, McGee, Moore, Spear, Underhill, Walend, and Weiss.	
Referred to:	Judiciary I.	

May 10, 2006

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LEGISLATIVE LOBBYING LAWS BY ESTABLISHING WAITING PERIODS BEFORE CERTAIN STATE OFFICERS MAY LOBBY; BY BARRING LOBBYISTS FROM CERTAIN APPOINTMENTS AND OTHER ACTIVITIES; BY BANNING CERTAIN GIFTS; BY ESTABLISHING QUARTERLY REPORTING OF EXPENDITURES WITH ADDITIONAL INTERIM REPORTING; BY EXPANDING THE COVERAGE OF THE LOBBYING LAWS TO INCLUDE EXECUTIVE BRANCH OFFICERS; BY LIMITING CAMPAIGN CONTRIBUTIONS BY REGISTERED LOBBYISTS; AND BY MAKING OTHER CONFORMING CHANGES, AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON ETHICS AND GOVERNMENTAL REFORM.

The General Assembly of North Carolina enacts:

SECTION 1. Article 9A of Chapter 120 of the General Statutes is amended to add a new section to read:

"**§ 120-47.7C. Prohibitions.**

(a) No member or former member of the General Assembly may be employed as a legislative lobbyist by a lobbyist's principal to lobby as defined in this Article within one year after the end of that member's service in the General Assembly.

(b) No person serving, or formerly having served, as Governor, a member of the Council of State, or a head of a principal State department listed in G.S. 143B-6 may be employed as a legislative lobbyist by a lobbyist's principal to lobby as defined in this Article within one year after separation from employment or leaving office.

(c) No individual registered as a legislative lobbyist shall serve as a campaign treasurer under Chapter 163 of the General Statutes as defined in G.S. 163-278.6(19) for

a campaign for election as a member of the General Assembly, Governor, or Council of State.

(d) A legislative lobbyist shall not be eligible for appointment by a State official to any body created under the laws of this State that has regulatory authority over the activities of a person that the legislative lobbyist currently represents or has represented within 60 days after the expiration of the legislative lobbyist's registration representing that person. Nothing herein shall be construed to prohibit appointment by any unit of local government.

(e) No legislative lobbyist or another acting on the legislative lobbyist's behalf shall permit a covered person, legislative employee, or that person's immediate family member to use the cash or credit of the lobbyist for the purpose of lobbying unless the lobbyist is in attendance at the time of the expenditure."

SECTION 2. Article 9A of Chapter 120 of the General Statutes is amended to add a new section to read:

"**§ 120-47.7B. Powers and duties of the Secretary of State.**

(a) The Secretary of State shall perform systematic reviews of reports required to be filed under G.S. 120-47.6 and G.S. 120-47.7 on a regular basis to assure complete and timely disclosure of expenditures.

(b) The Secretary of State may petition the Superior Court of Wake County for the approval to issue subpoenas and subpoenas duces tecum as necessary to conduct investigations of violations of this Article. The court shall authorize subpoenas under this subsection when the court determines they are necessary for the enforcement of this Article. Subpoenas issued pursuant to this subsection shall be enforceable by the court through contempt powers. Venue shall be with the Superior Court of Wake County for any nonresident person, or that person's agent, who makes a reportable expenditure under this Article, and personal jurisdiction may be asserted under G.S. 1-75.4.

(c) Complaints of violations of this Article and all other records accumulated in conjunction with the investigation of these complaints shall be considered records of criminal investigations under G.S. 132-1.4."

SECTION 3. Article 9A of Chapter 120 of the General Statutes reads as rewritten:

"Article 9A.

"~~Legislative Branch~~ Lobbying.

"**§ 120-47.1. Definitions.**

~~The following definitions shall apply in this Article:~~As used in this Article, the following terms mean:

(1) ~~The term "covered person" means a legislator, the Governor, or the Lieutenant Governor.~~Covered person. – A legislator, legislative employee, or executive branch officer.

(1a) Advocacy day. – A day that any lobbyist's principal collectively assembles its membership or employees and advocates for legislative or executive action.

(1b) Constitutional officers of the State. – Officers whose offices are established in Article III of the Constitution.

(1c) Executive action. – Any decision, including administration, approval, disapproval, preparation, recommendation, the rendering of advice, and investigation, made or contemplated in any proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, investigation, charge, or rule making.

(1d) Executive branch officer. – All of the following:

a. Constitutional officers of the State, persons elected or appointed as a Constitutional officer of the State prior to taking office, or a person having filed a notice of candidacy for such office under G.S. 163-106 or Article 11 of Chapter 163 of the General Statutes.

b. Employees of the Office of the Governor.

c. Heads of all principal State departments, as set forth in G.S. 143B-6, who are appointed by the Governor.

d. The chief deputy or chief administrative assistant of each person designated under sub-subdivisions a. and c. of this subdivision.

e. Confidential assistants and secretaries as defined in G.S. 126-5(c)(2), to persons designated under sub-subdivisions a., c., and d. of this subdivision.

f. Employees in exempt positions as defined in G.S. 126-5(b) and employees in exempt positions designated in accordance with G.S. 126-5(d)(1), (2), or (2a), and confidential secretaries to these individuals.

g. Any other employees or appointees in the principal State departments as may be designated by the Governor to the extent that the designation does not conflict with the State Personnel Act.

h. All voting members of boards, including ex officio members and members serving by executive, legislative, or judicial branch appointment.

i. For The University of North Carolina, the voting members of the Board of Governors of The University of North Carolina, the president, the vice-presidents, and the chancellors, the vice-chancellors, and voting members of the boards of trustees of the constituent institutions.

j. For the System of Community Colleges, the voting members of the State Board of Community Colleges, the President and chief financial officer of the System of Community Colleges, the president, chief financial officer and chief administrative officer of each community college, and voting members of the boards of trustees of each community college.

~~(1a)~~(1e) ~~The term "expenditure" means any~~ Expenditure. – Any advance, contribution, conveyance, deposit, distribution, payment, gift, retainer,

fee, salary, honorarium, reimbursement, loan, pledge or thing of value greater than ten dollars ~~($10.00),~~($10.00) per single calendar day or a contract, agreement, promise or other obligation whether or not legally enforceable, that directly or indirectly is made to, at the request of, for the benefit of, or on the behalf of a covered ~~person, legislative employee,~~ person or that person's immediate family member.

(1f) Extended family. – Spouse, descendant, ascendant, or sibling of the covered person or, descendant, ascendant, or sibling of the spouse of the covered person.

~~(1b) The term "executive lobbyist" means a lobbyist registered pursuant to Article 4C of Chapter 147 of the General Statutes.~~

(2),(3) Repealed by Session Laws 1991, c. 740, s. 1.1.

(2a) Gift. – Anything of value without valuable consideration.

(3a) ~~The term "immediate family member" means spouse, descendant, or ascendant.~~Immediate family member. – An unemancipated child of the covered person residing in the household, and the covered person's spouse, if not legally separated.

(4) ~~The term "legislative action" means the~~Legislative action. – The preparation, research, drafting, introduction, consideration, modification, amendment, approval, passage, enactment, tabling, postponement, defeat, or rejection of a bill, resolution, amendment, motion, report, nomination, appointment, or other matter, whether or not the matter is identified by an official title, general title, or other specific reference, by the legislature or by a member or employee of the legislature acting or purporting to act in an official capacity. It also includes the consideration of any bill by the Governor for the Governor's approval or veto under Article II, Section 22(1) of the Constitution or for the Governor to allow the bill to become law under Article II, Section 22(7) of the Constitution.

(4a) ~~The term "legislative employee" means employees~~Legislative employee. – Employees and officers of the General Assembly.

(4b) ~~The term "legislative liaison personnel" means any~~Liaison personnel. – Any State employee or officer whose principal duties, in practice or as set forth in that person's job description, include lobbying the General ~~Assembly.~~Assembly or executive branch officers.

~~(4c) The term "legislative lobbyist" means any lobbyist for or against legislative action.~~

(4d) ~~The term "legislator" means a~~Legislator. – A member or presiding officer of the General ~~Assembly or~~Assembly, a person elected or appointed a member or presiding officer of the General Assembly prior to taking ~~office~~office, or a person having filed a notice of candidacy for such office under G.S. 163-106 or Article 11 of Chapter 163 of the General Statutes.

(5) ~~The term "lobbying" means any~~Lobbying. – Any of the following:

a. Influencing or attempting to influence legislative or executive action, or both, through direct communication or activities with a covered ~~person, legislative employee,~~person or that person's immediate family member.

b. Solicitation of others by ~~legislative~~ lobbyists or lobbyists' principals to influence legislative or executive ~~action.~~action, or both.

c. Developing goodwill through communications or activities, including the building of relationships, with a covered ~~person, legislative employee,~~ person or that person's immediate family member with the intention of influencing current or future legislative action, but does not include communications or activities with a covered ~~person, legislative employee,~~person or that person's immediate family member in a business, civic, religious, fraternal, or commercial relationship which is not connected to legislative or executive ~~action.~~action, or both.

(6) ~~The term "lobbyist" means an~~Lobbyist. – An individual who meets any of the following criteria:

a. Is employed and receives compensation, or who contracts for economic consideration, for the purpose of lobbying.

b. Represents another person and receives compensation for the purpose of lobbying.

~~c. Is legislative liaison personnel.~~

The term "lobbyist" shall not include those individuals who are specifically exempted from this Article by G.S. 120-47.8. For the purpose of determining whether an individual is a lobbyist under this subdivision, reimbursement of actual travel and subsistence expenses shall not be considered compensation; provided, however, that reimbursement in the ordinary course of business of these expenses shall be considered compensation if a significant part of the individual's duties involve lobbying before the General ~~Assembly.~~Assembly or executive branch officers.

(7) ~~The terms "lobbyist's principal" and "principal" mean the~~Lobbyist principal and principal. – The person on whose behalf the ~~legislative~~ lobbyist lobbies. In the case where a lobbyist is compensated by a law firm, consulting firm, or other entity retained by a person for ~~legislative~~ lobbying, the principal is the person whose interests the lobbyist represents in lobbying. In the case of a lobbyist employed or retained by an association or other organization, the lobbyist's principal is the association or other organization, not the members of the association or other organization.

(7a) ~~The term "news medium" means mainstream~~News medium. – Mainstream media providers whose sole purpose is to report events and that does not involve research or advocacy.

(8) ~~The term "person" means any~~Person. – Any individual, firm, partnership, committee, association, corporation, business entity, or any other organization or group of persons which has an independent legal existence.

(8a) Public event. – Either of the following:

a. An organized gathering of individuals open to the general public or to which a legislator or legislative employee is invited along with the entire membership of the House, Senate, a committee, a subcommittee, a county legislative delegation, a joint committee or legislative caucus and to which at least 10 employees or members of the principal actually attend.

b. An organized gathering of individuals open to the general public or to which at least ten executive branch officers are invited to attend and at least 10 employees or members of the principal actually attend.

(9) ~~The General Assembly is in "regular session" from the~~ In regular session. – The date set by law or resolution that the General Assembly convenes until the General Assembly either:

a. Adjourns sine die; or

b. Recesses or adjourns for more than 10 days.

§ 120-47.2. Registration procedure.

(a) A ~~legislative~~ lobbyist shall file a registration statement with the Secretary of State in a manner prescribed by the Secretary before engaging in any lobbying. It shall be unlawful for a person to lobby without registering unless exempted by this Article. A lobbyist shall file a separate registration statement for each principal the lobbyist represents. ~~The registration shall indicate whether it is registration as a legislative lobbyist, executive lobbyist, or both, and a separate registration fee shall be paid for each separate type of registration.~~

(b) The form of the registration shall be prescribed by the Secretary of State and shall include the registrant's full name, firm, complete address and telephone number; the registrant's place of business; the full name, complete address and telephone number of each person by whom the registrant is employed or retained; and a general description of the matters on which the registrant expects to act as a ~~legislative~~ lobbyist. The Secretary of State shall make available as soon as practicable the registrations of the lobbyists and lobbyists' principals in an electronic, searchable format.

(c) Each ~~legislative~~ lobbyist shall file an amended registration form with the Secretary of State no later than 10 business days after any change in the information supplied in the ~~legislative~~ lobbyist's last registration under subsection (b). Each supplementary registration shall include a complete statement of the information that has changed.

(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~~ Assembly, Constitutional officers of the State, the head of each principal department of the Executive Branch, and the State Legislative Library a list of all persons who have

registered as ~~executive or legislative~~ lobbyists and whom they represent. ~~Within 20 days after the beginning of the term of a Governor, the Secretary of State shall furnish the Governor, each other member of the Council of State, the head of each principal department of the Executive Branch, and the State Legislative Library a list of all persons who have registered as executive or legislative lobbyists and whom they represent.~~ A supplemental list of ~~legislative~~ lobbyists shall be furnished periodically each 20 days ~~thereafter as the session progresses.~~ while the General Assembly is in session, and every 60 days thereafter. ~~A supplemental list of executive lobbyists shall be furnished periodically each 60 days thereafter.~~ For each special session of the General Assembly, a supplemental list of ~~legislative~~ lobbyists shall be furnished to the State Legislative Library. All lists required by this section may be furnished electronically.

(e) Each registration statement of a ~~legislative~~ lobbyist required under this Article shall be effective from the date of filing until January 1 of the following year. The ~~legislative~~ lobbyist shall file a new registration statement after that date, and the applicable fee shall be due and payable.

"§ 120-47.3. Registration fee.

A fee of one hundred dollars ($100.00) is due and payable to the Secretary of State by either the lobbyist or the lobbyist's principal at the time of each lobbyist registration. Fees so collected shall be deposited in the General Fund of the State. The Secretary of State shall allow fees required under this section to be paid electronically but may not require the fees to be paid electronically. The Secretary of State shall adopt rules providing for the waiver or reduction of the fees required by this section in cases of hardship.

"§ 120-47.4. Authorization from lobbyist's principal; fee from principal.

(a) Each ~~legislative~~ lobbyist or lobbyist's principal shall file with the Secretary of State within 10 business days after the ~~legislative~~ lobbyist's registration a written authorization signed by the lobbyist's principal authorizing the lobbyist to represent the principal.

(b) The form of the authorization shall be prescribed by the Secretary of State and shall include the lobbyist's principal's full name, complete address and telephone number, name and title of the official signing for the lobbyist's principal, and the name of each lobbyist registered to represent the lobbyist's principal. The Secretary of State shall make available as soon as practicable the authorization of the lobbyists' principals in an electronic, searchable format.

(c) An amended authorization shall be filed with the Secretary of State no later than 10 days after any change in the information supplied for the lobbyist's principal on the previous authorization. Each supplementary authorization shall include a complete statement of the information that has changed.

(d) Except as provided for in subsection (e) of this section, a fee of one hundred dollars ($100.00) is due and payable to the Secretary of State at the time the lobbyist's principal's first authorization statement is filed each calendar year for a ~~legislative~~ lobbyist. ~~The fee for the legislative lobbyist's authorization shall be seventy-five dollars ($75.00) if an authorization for the principal to be represented by an executive lobbyist~~

~~is filed at the same time. No additional fee is due for additional authorizations filed for legislative lobbyists.~~

(e) The Secretary of State shall adopt rules providing for the waiver or reduction of the fees required by ~~fee in~~ subsection (d) of this section. The rules shall provide that the fees be reduced to a total of twenty-five dollars ($25.00) if the lobbyist's principal had annual revenues in its most recent fiscal year of three hundred thousand dollars ($300,000) or less and is represented by no more than two different lobbyists. ~~This reduced fee covers authorizations filed for the principal's legislative and executive lobbyists.~~

"§ 120-47.5. Contingency lobbying fees and election influence prohibited.

(a) No person shall act as a ~~legislative~~ lobbyist for compensation that is dependent upon the result or outcome of any legislative action.

(b) No ~~legislative lobbyist or legislative lobbyist's principal~~ person shall attempt to influence the action of any covered person by the promise of financial support of the covered person's candidacy, or by threat of financial support in opposition to the covered person's candidacy in any future election.

"§ 120-47.5A. Certain gifts by lobbyists and lobbyist's principals prohibited; ~~Exemptions and inclusions for reporting purposes.~~exemptions.

(a) No lobbyist or lobbyist's principal may give a gift to a covered person.

~~(a)~~(a1) ~~For purposes of G.S. 120-47.6 and G.S. 120-47.7, the following expenditures need not be reported:~~Subsection (a) of this section shall not apply to:

~~(1) Gifts between an immediate family member or person who is the stepchild, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, or members of the household of the covered person or legislative employee~~

~~(2) Lawful campaign contributions.~~

~~(3) Commercially available loans made on terms not more favorable than generally available to the public in the normal course of business if not made for the purpose of lobbying.~~

~~(4) Contractual arrangements or business relationships or arrangements made in the normal course of business if not made for the purpose of lobbying.~~

~~(5) The cost of attendance or participation provided by the sponsoring entity of lodging, and of food and beverages consumed, at events sponsored by or in conjunction with a civic, charitable, community, or diplomatic event if the activity or event does not last longer than three hours.~~

~~(6) Academic scholarships made on terms not more favorable than scholarships generally available to the public.~~

(1) Meals and beverages for immediate consumption in connection with public events.

(2) Nonmonetary items, other than food or beverages, with a value not to exceed ten dollars ($10.00) provided by a single donor during a single calendar day.

(3) Informational materials relevant to the duties of the covered person.
(4) Reasonable actual expenses for food, registration, travel, and lodging of the covered person for a meeting at which the covered person participates in a panel or speaking engagement at the meeting related to the public servant's duties and when expenses are incurred on the actual day of participation in the engagement or incurred within a 24-hour time period before or after the engagement.
(5) Items or services received in connection with a state, national, or regional organization in which the covered person or the covered person's agency is a member.
(6) Items and services received relating to an educational conference or meeting.
(7) A plaque or similar nonmonetary memento recognizing individual services in a field or specialty or to a charitable cause.
(8) Gifts accepted on behalf of the State.
(9) Anything generally available or distributed to the general public or all other State employees.
(10) Anything for which fair market value is paid.
(11) Commercially available loans made on terms not more favorable than generally available to the public in the normal course of business if not made for the purpose of lobbying.
(12) Contractual arrangements or business relationships or arrangements made in the normal course of business if not made for the purpose of lobbying.
(13) Academic scholarships made on terms not more favorable than scholarships generally available to the public.
(14) Political contributions properly received and reported as required under Article 22A of Chapter 163 of the General Statutes.
(15) Gifts from the covered person's extended family, or a member of the same household of the covered person, or gifts received in conjunction with a marriage, birth, adoption, or death.
(16) Things of monetary value given to a executive branch officer valued in excess of ten dollars ($10.00) where the thing of monetary value is entertainment or related expenses associated with the public business of industry recruitment, promotion of international trade, or the promotion of travel and tourism, and the executive branch officer is responsible for conducting the business on behalf of the State, provided all the following conditions apply:
a. The executive branch officer did not solicit the thing of value, and the executive branch officer did not accept the thing of value in the performance of the executive branch officer's official duties.
b. The executive branch officer reports electronically to the Commission within 30 days of receipt of the thing of value. The

report shall include a description and value of the thing of value and a description how the thing of value contributed to the public business of industry recruitment, promotion of international trade, or the promotion of travel and tourism. This report shall be posted to the Commission's public Web site.

c. A tangible thing of value in excess of ten dollars ($10.00), other than meals or beverages, shall be turned over as State property to the Department of Commerce within 30 days of receipt.

(17) Things of monetary value of personal property valued at less than one hundred dollars ($100.00) given to an executive branch officer in the commission of the executive branch officer's official duties if the gift is given to the executive branch officer as a personal gift in another country as part of an overseas trade mission, and the giving and receiving of such personal gifts is considered a customary protocol in the other country.

(b) For purposes of G.S. 120-47.6 and G.S. 120-47.7, all expenditures made for the purpose of lobbying shall be reported, including the following:

(1) Expenditures benefiting or made on behalf of a covered person, ~~a legislative employee,~~ or those persons' immediate family members, in the regular course of that person's ~~nonlegislative~~ employment.

(2) Contractual arrangements or direct business relationships between a ~~legislative~~ lobbyist or ~~legislative~~ lobbyist's principal and a covered person, ~~legislative employee,~~ or that person's immediate family member, in effect during the reporting period or the previous 12 months.

(3) Expenditures reimbursed to a ~~legislative~~ lobbyist in the ordinary course of business by the lobbyist's principal or other employer. Expenditures reimbursed by the lobbyist's principal or other employer are reported only by the lobbyist.

(4) Expenditures for items exempted by subsection (a1) of this section.

~~(c) For reporting purposes of G.S. 120-47.6 and G.S. 120-47.7, legislative lobbying with respect to only the legislative actions of the Governor and Lieutenant Governor shall be reported.~~

(d) The offering or giving of a gift in compliance with this Article without corrupt intent shall not constitute a violation of G.S. 14-217 or G.S. 14-218.

"§ 120-47.6. Statements of ~~legislative~~ lobbyist's lobbying expenditures required.

(a) Each ~~legislative~~ lobbyist shall file ~~monthly~~ quarterly expenditure reports under oath with the Secretary of State, in a manner prescribed by the Secretary of State, which may include electronic reports, with respect to each lobbyist's ~~principal, while the General Assembly is in regular session, and quarterly thereafter.~~ principal. The expenditure report shall include all expenditures during the reporting period and shall be due 10 business days after the end of the reporting period. The ~~legislative~~ lobbyist shall file ~~expense~~ expenditure reports whether or not expenditures are made.

(a1) In addition to the reports required by subsection (a) of this section, each lobbyist incurring expenditures with respect to lobbying legislators and legislative employees shall file a monthly expenditure report while the General Assembly is in regular session. The monthly expenditure report shall contain information required by this section with respect to all lobbying of legislators and legislative employees, and is due within 10 business days of the end of the month. The information on the monthly expenditure report shall also be included in each quarterly report required by subsection (a) of this section.

(b) Each expenditure report shall set forth the fair market ~~value,~~value or face value if shown, date, a description of the expenditure, name and address of the payee, or beneficiary, and name of any covered person, ~~legislative employee,~~ or that person's immediate family member benefiting from the expenditure. Such expenditures shall be reported using the following categories:

(1) Transportation and lodging.
(2) Entertainment, food, and beverages.
(3) Meetings and events.
(4) Gifts.
(5) Other expenditures.
(6) Solicitation of others to lobby, including if such expenditures are incurred in connection or in concert with other reportable expenditures.

~~In addition, expenses for the solicitation of others to lobby, whether or not a covered person, legislative employee, or family member is affected, shall be reportable if such expenses are incurred in connection, or in concert, with other expenditures reportable under this subsection.~~

(c) All reports shall be in the form prescribed by the Secretary of State and shall be open to public inspection upon filing. When more than 15 covered persons benefit from an expenditure, no names of individuals need be reported provided that the report identifies the approximate number of covered persons benefiting and, with particularity, the basis for their selection, including the name of the legislative body, committee, caucus, or other group whose membership list is a matter of public record in accordance with G.S. 132-1 or including a description of the group that clearly distinguishes its purpose or composition from the general membership of the General Assembly. The approximate number of ~~legislative employees and~~ immediate family members of covered persons ~~and legislative employees~~ who benefited from the expenditure shall be listed separately.

(d) When a ~~legislative~~ lobbyist fails to file an expenditure report as required in this section, the Secretary of State shall send a certified or registered letter advising the ~~legislative~~ lobbyist of the delinquency and the penalties provided by law. Within 20 days of the receipt of the letter, the ~~legislative~~ lobbyist shall deliver or post by United States mail to the Secretary of State the required report and an additional late filing fee in an amount equal to the late filing fee under G.S. 163-278.34(a)(2).

(e) Filing of the required report and payment of the additional fee within the time extended shall constitute compliance with this section. Failure to file an expenditure

report in one of the manners prescribed in this section shall result in revocation of any and all registrations of a legislative lobbyist under this Article. No ~~legislative~~ lobbyist may register or reregister under this Article until the ~~legislative~~ lobbyist has fully complied with this section.

(f) Appeal of a decision by the Secretary of State under this section shall be in accordance with Article 3 of Chapter 150B of the General Statutes.

(g) The Secretary of State may adopt rules to facilitate complete and timely disclosure of expenditures, including the format of reports and additional categories of information, and to protect the addresses of payees under protective order issued pursuant to Chapter 50B of the General Statutes or participating in the Address Confidentiality Program pursuant to Chapter 15C of the General Statutes. The Secretary of State shall not impose any penalties or late filing fees upon a ~~legislative~~ lobbyist for subsequent failures to comply with the requirements of this section if the Secretary of State failed to provide ~~to~~ the lobbyist with required notifications of the initial violation. This provision shall not apply to a failure by the lobbyist to file an expenditure report in a timely manner.

"**§ 120-47.7. Statements of ~~legislative~~ lobbyist's principal lobbying expenditures required.**

(a) Each ~~legislative~~ lobbyist's principal shall file ~~monthly~~ quarterly expenditure reports under oath with the Secretary of State, in a manner prescribed by the Secretary of State, which may include electronic ~~reports, while the General Assembly is in regular session, and quarterly thereafter.~~reports. The expenditure report shall include all expenditures during the reporting period and shall be due 10 business days after the end of the reporting period. The lobbyist's principal shall file the expenditure reports whether or not expenditures are made during a reporting period.

(a1) In addition to the reports required by subsection (a) of this section, each lobbyist's principal incurring expenditures with respect to lobbying legislators and legislative employees shall file a monthly expenditure report while the General Assembly is in regular session. The monthly expenditure report shall contain information required by this section with respect to all lobbying of legislators and legislative employees, and is due within 10 business days of the end of the month. The information on the monthly expenditure report shall also be included in each quarterly report required by subsection (a) of this section.

(b) Each expenditure report shall set forth the fair market ~~value,~~value or face value if shown, date, a description of the expenditure, name and address of the payee, or beneficiary, and name of any covered person, ~~legislative employee,~~ or that person's immediate family member affected by the expenditure. Such expenditures shall be reported using the following categories:

(1) Transportation and lodging.
(2) Entertainment, food, and beverages.
(3) Meetings and events.
(4) Gifts.
(5) Other expenditures.

(6) Solicitation of others to lobby, including if such expenditures are incurred in connection or in concert with other expenditures reportable under this Article.

(7) Compensation paid to all lobbyists during the reporting period. If a legislative lobbyist is a full-time employee of the lobbyist's principal, or is compensated by means of an annual fee or retainer, the lobbyist's principal shall estimate and report the portion of the salary, fee, or retainer that compensates for lobbying.

(8) Expenditures reimbursed or paid to lobbyists for lobbying that are not reported on the lobbyist's report, with an itemized description of those expenditures.

~~In addition, expenses for the solicitation of others to lobby, whether or not a covered person, legislative employee, or family member is affected, shall be reportable if such expenses are incurred in connection, or in concert, with other expenditures reportable under this subsection.~~

~~In addition, the compensation paid or agreed to be paid to all legislative lobbyists shall be reported, whether or not a covered person, legislative employee, or family member is affected. If a legislative lobbyist is a full-time employee of the lobbyist's principal, or is compensated by means of an annual fee or retainer, the lobbyist's principal shall estimate and report the portion of the salary, fee, or retainer that compensates for lobbying. The lobbyist's principal's expenditure report shall include an itemized description of all expenditures reimbursed or paid to legislative lobbyists for lobbying that are not reported on the legislative lobbyists' reports.~~

(c) All reports shall be in the form prescribed by the Secretary of State and open to public inspection upon filing. When more than 15 covered persons benefit from an expenditure, no names of individuals need be reported provided that the report identifies the approximate number of covered persons benefiting and, with particularity, the basis for their selection, including the name of the legislative body, committee, caucus, or other group whose membership list is a matter of public record in accordance with G.S. 132-1 or including a description of the group that clearly distinguishes its purpose or composition from the general membership of the General Assembly. The approximate number of ~~legislative employees and~~ immediate family members of covered persons ~~and legislative employees~~ who benefited from the expenditure shall be listed separately.

(d) When a lobbyist's principal fails to file an expenditure report as required in this section, the Secretary of State shall send a certified or registered letter advising the lobbyist's principal of the delinquency and the penalties provided by law. Within 20 days of the receipt of the letter, the lobbyist's principal shall deliver or post by United States mail to the Secretary of State the required report and a late filing fee in an amount equal to the late filing fee under G.S. 163-278.34(a)(2).

(e) Filing of the required report and payment of the late fee within the time extended shall constitute compliance with this section. Failure to file an expenditure report in one of the manners prescribed in this section shall result in revocation of any and all registrations of a lobbyist's principal under this Article. No lobbyist's principal

may register or reregister under this Article until the lobbyist's principal has fully complied with this section.

(f) Appeal of a decision by the Secretary of State under this section shall be in accordance with Article 3 of Chapter 150B of the General Statutes.

(g) The Secretary of State may adopt rules to facilitate complete and timely disclosure of expenditures, including the format of reports and additional categories of information, and to protect the addresses of payees under protective order issued pursuant to Chapter 50B of the General Statutes or participating in the Address Confidentiality Program pursuant to Chapter 15C of the General Statutes. The Secretary of State shall not impose any penalties or late filing fees upon a principal for subsequent failures to comply with the requirements of this section if the Secretary of State failed to provide to the lobbyist's principal with required notifications of the initial violation. This provision shall not apply to a failure by the principal to file an expenditure report in a timely manner.

"**§ 120-47.7A.** Reserved for future codification purposes.

"**§ 120-47.7B. Powers and duties of the Secretary of State.**

(a) The Secretary of State shall perform systematic reviews of reports required to be filed under G.S. 120-47.6 and G.S. 120-47.7 on a regular basis to assure complete and timely disclosure of allowable expenditures.

(b) The Secretary of State may petition the Superior Court of Wake County for the approval to issue subpoenas and subpoenas duces tecum as necessary to conduct investigations of violations of this Article. The court shall authorize subpoenas under this subsection when the court determines they are necessary for the enforcement of this Article. Subpoenas issued pursuant to this subsection shall be enforceable by the court through contempt powers. Venue shall be with the Superior Court of Wake County for any nonresident person, or that person's agent, who makes a reportable expenditure under this Article, and personal jurisdiction may be asserted under G.S. 1-75.4.

(c) Complaints of violations of this Article and all other records accumulated in conjunction with the investigation of these complaints shall be considered records of criminal investigations under G.S. 132-1.4.

"**§ 120-47.7C. Prohibitions.**

(a) No member or former member of the General Assembly may be employed as ~~an executive or legislative~~ a lobbyist by a lobbyist's principal to lobby as defined in this Article ~~or Article 4C of Chapter 147 of the General Statutes~~ within ~~six months~~one year after the end of that member's service in the General Assembly.

(b) No person serving as ~~Governor, as a member of the Council of State,~~a Constitutional officer of the State or as a head of a principal State department listed in G.S. 143B-6 may be employed as ~~an executive or legislative~~a lobbyist by a lobbyist's principal to lobby as defined in this Article ~~or Article 4C of Chapter 147 of the General Statutes~~ within ~~six months~~one year after separation from employment or leaving office.

(c) No individual registered as a ~~legislative~~ lobbyist shall serve as a campaign treasurer ~~under Chapter 163 of the General Statutes~~ as defined in G.S. 163-278.6(19) for a campaign for election as a member of the General ~~Assembly.~~Assembly or a Constitutional officer of the State.

(d) A ~~legislative or executive~~ lobbyist shall not be eligible for appointment by a State official to any body created under the laws of this State that has regulatory authority over the activities of a person that the lobbyist currently represents or has represented within 60 days after the expiration of the lobbyist's registration representing that person. Nothing herein shall be construed to prohibit appointment by any unit of local government.

(e) No ~~legislative or executive~~ lobbyist or another acting on the lobbyist's behalf shall permit a covered person ~~person, legislative employee, executive branch officer,~~ or that person's immediate family member, to use the cash or credit of the lobbyist for the purpose of lobbying unless the lobbyist is in attendance at the time of the expenditure.

"§ 120-47.8. Persons exempted from provisions of Article.

Except as otherwise provided in this Article, the provisions of this Article shall not be construed to apply to any of the ~~following:~~following lobbying activities:

(1) An individual solely engaged in expressing a personal opinion or stating facts or recommendations on legislative matters to members of the General Assembly and not acting as a legislative lobbyist.

(2) A person appearing before a ~~legislative committee~~ committee, commission, board, council, or other collective body whose membership includes one or more covered persons at the invitation or request of the committee or a member thereof and who engages in no further activities as a legislative lobbyist.

(3) a. A duly elected or appointed official or employee of the State, the United States, a county, municipality, school district or other governmental agency, when appearing solely in connection with matters pertaining to the office and public duties.

b. Notwithstanding the persons exempted in this Article, the ~~Governor, Council of State,~~ Constitutional officers of the State and all appointed heads of State departments, agencies and institutions, shall designate all authorized official ~~legislative~~ liaison personnel and shall file and maintain current lists of designated ~~legislative~~ liaison personnel with the Secretary of State.

(4) A person performing professional services in drafting ~~bills~~ bills, or in advising and rendering opinions to clients, or to covered persons on behalf of clients, as to the construction and effect of proposed or pending ~~legislation~~ legislative or executive action where the professional services are not otherwise connected with the legislative or executive action.

(5) A person who owns, publishes or is employed by any news medium while engaged in the acquisition or dissemination of news on behalf of the news medium.

(6) Repealed by Session Laws 1991, c. 740, s. 1.1.

(7) Covered ~~persons and legislative employees.~~persons while acting in their official capacity.

(8) A person responding to inquiries from a ~~member of the General Assembly or a legislative employee,~~covered person and who engages in no further activities as a ~~legislative~~ lobbyist in connection with that or any other legislative ~~matter.~~or executive action.

(9) An ~~employee who represents the employer's interests in action for no more than three hours in a quarter, provided that neither the employee nor the employer makes any expenditure as defined in G.S. 120-47.1.~~ individual while participating in an advocacy day.

(10) A person appearing before an executive branch agency or department on behalf of another person, on an individual application for a license or permit, or a disciplinary action on a license or permit.

(11) A person appearing before an executive branch officer on behalf of another person with respect to a proposed sale or lease of real property, goods or services to the State, or construction of property by the State.

(12) A person appearing before an executive branch agency or department or an executive branch officer on behalf of another person or entity in connection with an application for a grant, loan, determination or eligibility, or certification.

"§ 120-47.8A. Expenditures made by persons exempted or not covered by this Article.

(a) If a covered person ~~or a legislative employee~~ accepts an expenditure made for the purpose of lobbying valued over two hundred dollars ($200.00) from a person or group of persons acting together, exempted or not otherwise covered by this Article, the person, or group of persons, making the expenditure shall report the date, a description of the expenditure, the name and address of the person, or group of persons, making the expenditure, the name of the covered person ~~or legislative employee~~ accepting the expenditure, and the estimated fair market value of the expenditure.

(b) If the person making the expenditure in subsection (a) of this section is outside North Carolina, and the covered person ~~or legislative employee~~ accepting the expenditure is also outside North Carolina at the time the person accepts the expenditure, then the person accepting the expenditure shall be responsible for filing the report using available information.

(c) If a covered person ~~or a legislative employee~~ accepts a scholarship valued over two hundred dollars ($200.00) from a person, or group of persons, acting together, exempted or not covered by this Article, the person, or group of persons, granting the scholarship shall report the date of the scholarship, a description of the event involved, the name and address of the person, or group of persons, granting the scholarship, the name of the covered person ~~or legislative employee~~ accepting the scholarship, and the estimated fair market value.

(d) If the person granting the scholarship in subsection (c) of this section is outside North Carolina, the covered person ~~or legislative employee~~ accepting the scholarship shall be responsible for filing the report.

(e) This section shall not apply to any of the following:

(1) Lawful campaign ~~contributions.~~ contributions properly received and reported as required under Article 22A of Chapter 163 of the General Statutes.

(2) Any gift from ~~a~~ an extended family member to a covered person. ~~person or legislative employee.~~

(3) Gifts associated primarily with the covered ~~person's, legislative employee's,~~ person's or that person's immediate family member's ~~nonlegislative~~ employment.

(4) Gifts, other than food, beverages, travel, and lodging, which are received from a person who is a citizen of a country other than the United States or a state other than North Carolina and given during a ceremonial presentation or as a custom.

(5) A thing of value that is paid for by the State.

(f) Reports required by this section shall be filed within 10 business days after the end of the quarter in which the expenditure was made, with the Secretary of State in a manner prescribed by the Secretary of State, which may include electronic reports.

"**§ 120-47.8B. Advocacy Day.**

(a) No lobbyist's principal may conduct more than one advocacy day per calendar year.

(b) All advocacy days to lobby the General Assembly must be scheduled through the Legislative Services Office.

(c) All advocacy days to lobby executive branch officers must be scheduled through the Governor's Office.

(d) All lobbyists' principals conducting an advocacy day shall comply with this Article while conducting the advocacy day.

"**§ 120-47.9. Punishment for violation.**

(a) Whoever willfully violates any provision of this Article shall be guilty of a Class 1 misdemeanor. In addition, no ~~legislative~~ lobbyist who is convicted of a violation of the provisions of this Article shall in any way act as a ~~legislative or executive~~ lobbyist for a period of two years following conviction.

(b) In addition to the criminal penalties set forth in this section, the Secretary of State may levy civil fines for willful false or incomplete reporting up to five thousand dollars ($5,000) per violation.

"**§ 120-47.10. Enforcement of Article by Attorney General.**

(a) The Secretary of State may investigate complaints of violations of this Article, ~~The Secretary of State~~ and shall report apparent violations of this Article to the Attorney General. The Attorney General shall, upon complaint, make an appropriate investigation thereof, and the Attorney General shall forward a copy of the investigation to the district attorney of the prosecutorial district as defined in G.S. 7A-60 of which Wake County is a part, who shall prosecute any person who violates any provisions of this Article.

(b) Complaints of violations of this Article involving the Secretary of State or any member of the Department of the Secretary of State shall be referred to the

Attorney General for investigation in accordance with G.S. 120-47.7B. Any portion of the complaint not involving alleged violations of this Article by the Secretary of State or any member of the Department of the Secretary of State shall remain with the Secretary of State for investigation. The Attorney General shall, upon receipt of a complaint, make an appropriate investigation thereof, and the Attorney General shall forward a copy of the investigation to the District Attorney of the prosecutorial district as defined in G.S. 7A-60 of which Wake County is a part, who shall prosecute any person who violates any provisions of this Article.

(c) Complaints of improper lobbying involving the Attorney General or any member of the Department of Justice shall be investigated by the Secretary of State and any apparent violations reported to the District Attorney of that prosecutorial district as defined in G.S. 7A-60 of which Wake County is a part. The District Attorney of that prosecutorial district shall, upon receipt of the Secretary of State's report, prosecute any person who violates any provisions of this Article.

"**§ 120-47.11. Rules and forms.**

(a) The Secretary of State shall adopt any rules, orders, forms, and definitions as are necessary to carry out the provisions of this Article. The Secretary of State may appoint a council to advise the Secretary in adopting rules under this section.

(b) The Secretary of State shall adopt rules to protect from disclosure all confidential information under Chapter 132 related to economic development initiatives or to industrial or business recruitment activities. The information shall remain confidential until the State, a unit of local government or the business has announced a commitment by the business to expand or locate a specific project in this State or a final decision not to do so and the business has communicated that commitment or decision to the State or local government agency involved with the project.

"**§ 120-47.12. Limitations on agency ~~legislative~~ liaison personnel.**

(a) No State department may use State funds to contract with persons who are not employed by the State to lobby the General Assembly.

(b) No more than two persons in each State department and constituent institution of The University of North Carolina may be registered to lobby the General Assembly or designated as ~~legislative~~ liaison personnel pursuant to this Article.

(c) All persons designated as ~~legislative~~ liaison personnel pursuant to this Article and the State department or constituent institution of The University of North Carolina that employs the ~~legislative~~ liaison personnel shall report all expenditures made for lobbying purposes in the same manner as required for ~~legislative~~ lobbyists under G.S. 120-47.6 and lobbyists' principals under G.S. 120-47.7. The registration and authorization fees required under G.S. 120-47.3 and G.S. 120-47.4 shall not apply to ~~legislative~~ liaison personnel or the State department or constituent institution that employs the ~~legislative~~ liaison personnel."

"**§ 120-47.13. Advisory opinions.**

(a) At the request of any person affected by this Article, the Secretary of State shall render advisory opinions on specific questions involving the meaning and application of this Article and the covered person's compliance therewith. The request shall be in writing and relate prospectively to real or reasonably anticipated fact settings

or circumstances. The Secretary of State shall issue advisory opinions having prospective application only. Reliance upon a requested written advisory opinion on a specific matter shall immunize the covered person, on that matter, from both of the following:

(1) Investigation by the Secretary of State.

(2) Any adverse action by the employing entity.

(b) Staff to the Secretary of State may issue advisory opinions under rules adopted by the Secretary of State.

(c) The Secretary of State shall interpret the provisions of this Article by rules, and these interpretations shall be binding on all covered persons, lobbyists, and lobbyists' principal upon publication.

(d) The Secretary of State shall publish its advisory opinions at least once a year, edited as necessary to protect the identities of the individuals requesting opinions.

(e) Except as provided under subsection (d) of this section, requests for advisory opinions and advisory opinions issued pursuant to this section are confidential and not matters of public record.

"**§ 120A-14. Lobbying education program.**

(a) The Secretary of State shall develop and implement a lobbying education and awareness program designed to instill in all covered persons, lobbyists, and lobbyists' principals a keen and continuing awareness of their obligations and a sensitivity to situations that might result in real or potential violation of this Article or other related laws. The Secretary shall make basic lobbying education and awareness presentations to all covered persons upon their election, appointment or hiring and shall offer periodic refresher presentations as the Secretary deems appropriate. Every covered person shall participate in a lobbying presentation approved by the Secretary within six months of the person's election, appointment or hiring, and shall attend refresher ethics education presentations at least every two years thereafter in a manner the Secretary deems appropriate. Upon request, the Secretary shall assist each agency in developing in-house education programs and procedures necessary or desirable to meet the agency's particular needs for lobbying education.

(b) The Secretary shall publish a newsletter containing summaries of the Secretary's opinions, policies, procedures, and interpretive bulletins as issued from time to time. The newsletter shall be distributed to all covered persons, lobbyists, and lobbyists' principals. Publication under this subsection may be done electronically.

(c) The Secretary shall assemble and maintain a collection of relevant State laws, rules, and regulations that set forth lobbying standards applicable to covered persons. The collection of laws, rules and regulations shall be made available electronically as resource material to covered persons, lobbyists and lobbyists' principals, upon request.

"**§ 120-15. No gift registry.**

(a) The Secretary of State shall establish a "No Gifts" registry for persons subject to this Article. The "No Gifts" registry shall be published and updated with the list of lobbyists and lobbyists' principals required under G.S. 120-47.2.

(b) Except as provided in this subsection, lobbyists and lobbyists' principals shall not give unsolicited gifts allowed under G.S. 120-47.5A(a1)(2) to persons placing their

names on the registry, without the persons' expressed consent. Gifts of informational directories may be given to persons placing their names on the registry.

(c) The Secretary shall have the authority to adopt rules to implement this section in compliance with the following criteria:

(1) The registration is valid from the time the person registers until January 1 of the following year, unless the person requests in writing the removal of that person's name.

(2) The registration shall be in writing.

(d) Violations of this section shall not constitute a crime but shall be subject to civil fines of up to five hundred dollars ($500.00) as levied by the Secretary of State."

SECTION 4. Sections 2 and 3 of S.L. 2005-456 are repealed.

SECTION 5.1. G.S. 163-278.6 is amended by adding a new subsection to read:

"**§ 163-278.6. Definitions.**

When used in this Article:

...

(5a) The term 'Constitutional officers of the State' means officers whose offices are established in Article III of the Constitution.

..."

SECTION 5.2. Article 22A of Chapter 163 of the General Statutes is amended by adding a new section G.S. 163-278.19A to read:

"**§ 163-278.13C. Limitation on contributions by registered lobbyists.**

(a) No lobbyist registered under Article 9A of Chapter 120 shall do any of the following:

(1) Make or offer to make a contribution to a legislator, executive branch official, or candidate campaign committee.

(2) Make a contribution to any candidate, officeholder, or political committee, directing or requesting that the contribution be made in turn to a legislator, executive branch official, or candidate campaign committee.

(3) Transfer any amount of money or anything of value to any entity, directing or requesting that the entity use what was transferred to contribute to a legislator, executive branch officer, or candidate campaign committee.

(4) Solicit a contribution from any individual, political committee, or other entity on behalf of a legislator, executive branch official, or candidate campaign committee. This subdivision does not apply to a registered lobbyist soliciting a contribution on behalf of a political party executive committee if the solicitation is solely for a separate segregated fund kept by the political party limited to use for activities that are not candidate-specific, including generic voter registration and get-out-the-vote efforts, pollings, mailings, and other general activities and advertising that do not refer to a specific individual candidate.

(b) No legislator, executive branch official, or candidate campaign committee or the real or purported agent of that legislator, executive branch official, or candidate campaign committee shall do any of the following:

(1) Solicit a contribution from a lobbyist registered under Article 9A of Chapter 120 of the General Statutes.

(2) Solicit a third party, requesting or directing that the third party directly or indirectly solicit a contribution from a lobbyist registered under Article 9A of Chapter 120 of the General Statutes or relay to the lobbyist registered under Article 9A of Chapter 120 of the General Statutes the legislator's, executive branch official's, or candidate campaign committee's solicitation of a contribution.

(3) Accept a contribution from a lobbyist registered under Article 9A of Chapter 120 of the General Statutes.

(c) It shall not be deemed a violation of this section for a legislator or executive branch official to serve on a board or committee of an organization that makes a solicitation of a lobbyist registered under Article 9A of Chapter 120 of the General Statutes as long as that legislator or executive branch official does not directly participate in the solicitation and that legislator or executive branch official does not directly benefit from the solicitation.

(d) As used in this section, the following terms mean:

(1) Candidate campaign committee. – As defined in G.S. 163-278.38Z and that candidate has filed a notice of candidacy for office as a member of the General Assembly or a Constitutional officer of the State.

(2) Executive branch official. – As defined in G.S. 120-47.1(1d)(a).

(3) Legislator. – As defined in G.S. 120-47.1(4d).

(e) A violation of this section is a Class 2 misdemeanor.

SECTION 5.3. G.S. 163-278.13B(a)(1) reads as rewritten:

"(1) "Limited contributor" means a ~~lobbyist registered pursuant to Article 9A of Chapter 120 of the General Statutes, that lobbyist's agent, that~~ lobbyist's principal as defined in ~~G.S. 120-47.1(7),~~ G.S. 120-47 or a political committee that employs or contracts with or whose parent entity employs or contracts with a lobbyist registered pursuant to Article 9A of Chapter 120 of the General Statutes."

SECTION 6. If any section or provision of this act is declared unconstitutional or invalid by the courts, it does not affect the validity of this act as a whole or any part other than the part so declared to be unconstitutional or invalid.

SECTION 7. Sections 1, 2, 6, and 7 of this act are effective when the act becomes law, and the new G.S. 120-47.7C(d) applies to appointments made on or after that date. The remainder of this act becomes effective January 1, 2007.

Attachment IV

HOUSE BILL 1849: Lobbying Reforms 2006

BILL ANALYSIS

Committee:	House Judiciary I	**Date:**	May 11, 2006
Introduced by:	Reps. Hackney, Howard, Gibson, Sherrill	**Summary by:**	R. Erika Churchill
Version:	First Edition		Committee Counsel

SUMMARY: House Bill 1849 amends North Carolina's lobbying laws to do all of the following:

1. *Implements earlier certain prohibitions creating waiting periods before certain State officers may lobby and barring lobbyists from certain appointments and other activities.*
2. *Bans certain gifts by lobbyists and lobbyists' principals to covered persons (legislators, legislative employees, and executive branch officers).*
3. *Expands coverage of the lobbying laws to additional executive branch officers and employees, with a combined single registration, fee, regulation, and reporting periods for both legislative and executive branch lobbying.*
4. *Bans campaign contributions by registered lobbyists.*
5. *Permits the issuance of advisory opinions and requires lobbying education programs.*

CURRENT LAW:

Under current law effective until January 1, 2007, a person who is paid to try to influence legislative action (action on a specific bill, resolution, amendment, etc.) is required to register as a lobbyist with the Secretary of State and report at the end of each regular session, any expenditures in excess of $25 spent on lobbying legislators. Expenditures spent for the general goodwill of legislators not tied to specific legislative action do not need to be reported, nor do expenditures spent on legislative staff or legislators' family members. There is no limitation on the types or amount of expenditures that a lobbyist can spend on a legislator for lobbying purposes. Every principal who hires the services of a lobbyist also has to file reports on expenditures that the principal made for lobbying, including the amount of compensation paid to lobbyists. Exempt from the lobbying laws are persons who lobby on their own behalf, persons appearing before the General Assembly at the General Assembly's request, elected and appointed local government officials and employees lobbying on behalf of their local governments, State agency legislative liaison personnel, and members of the General Assembly. Violation of this law is punished as a Class 1 misdemeanor.

S.L. 2005-456 (Senate Bill 612) amended the current law, to take effect January 1, 2007. Changes effective January 1, 2007, include:

- Developing goodwill is added as part of the definition of lobbying.
- The definition of "expenditure" for reporting purposes includes anything of value over $10.
- The lobbying laws are applied to certain persons in the Executive branch under a separate registration, fee and reporting.
- Legislative staff are included under lobbying regulations.
- The frequency of reporting lobbying expenditures is increased to monthly during regular session and quarterly in the interim; and quarterly reports for executive branch lobbying.
- Legislators and certain executive branch officials are prohibited from lobbying within 6 months of leaving office.
- Lobbyists are prohibited from serving as campaign treasurers for legislative races.

BILL ANALYSIS:

House Bill 1849 amends the current lobbying laws in the following ways (Effective when the bill becomes law):

- Prohibits a legislator or former legislator from being employed as a lobbyist within 1 year after the expiration of the term for which the legislator was elected or appointed to serve.
- Prohibits the Governor or Council of State member or head of a cabinet department from being employed as a lobbyist within one year after separation from employment or leaving office, whichever is later.
- Prohibits a lobbyist from serving as a campaign treasurer for a legislative or Council of State campaign.
- Prohibits a lobbyist from being appointed to any board, authority, commission, etc. that regulates the activities of a business, organization, person or agency that the lobbyist represented within 60 days of that representation.
- Prohibits a lobbyist from allowing a covered person or that person's immediate family member to use the lobbyist's cash or credit for the purpose of lobbying without the lobbyist being present at the time of the expenditure.
- Allows the Secretary of State's office to treat investigations of lobbying violations as criminal investigations, meaning the investigation information may not be released as a public record.

House Bill 1849 amends the lobbying laws scheduled to take effect January 1, 2007, in the following ways:

- Combines legislative and executive lobbying registrations and regulations into one.
- Changes the definition of covered person to mean legislators, executive branch officers, and legislative staff.
- Prohibits lobbyists and lobbyist's principals from giving gifts to covered persons. The following exceptions apply:
  - Gifts from lobbyists to their family members who are legislators or legislative employees.
  - Lawful campaign contributions.
  - Commercially available loans made in the normal course of business and not made for the purpose of lobbying.
  - Meals and beverages for immediate consumption in connection with public events.
  - Scholarships with terms not more favorable than scholarships available to the public.
  - Nonmonetary items, other than food or beverages, with a value not to exceed $10 by a lobbyist or principal in a single calendar day.
  - Informational materials related to the covered person's public duties.
  - Reasonable actual expenses when a covered person speaks at a meeting relating to the covered person's duties.
  - Items valued at less than $100 given to a covered person when the covered person is in another country as part of an overseas trade mission and the giving of gifts is customary protocol in the other country.
  - Gifts accepted on behalf of the State, anything generally available to the general public or all State employees,
  - Anything for which fair market value is paid.
- Expands the definition of executive branch officer to correlate those persons covered by the Executive Branch Ethics Act (House Bill 1844).
- Expenditures by liaison personnel and State agencies have to be reported the same as expenditures.
- The registration period for a lobbyist and lobbyist's principal is one year.
- Clarifies that the lobbyist must file a separate registration for each principal the lobbyist represents, and that either the lobbyist or the principal must pay a separate fee for each registration.
- Quarterly reporting of lobbying expenditures is required, with increased reporting to monthly of legislative lobbying while the General Assembly is in session.

- Increases the details of lobbying expenditure reports to include the fair market value or face value if shown, date, a description of the expenditure, name and address of the payee or beneficiary, name of any covered person benefiting from the expenditure (or legislative employee or those person's immediate family members) in each of the following categories:
    - Transportation and lodging
    - Entertainment, food, and beverages
    - Meetings and events
    - Gifts
    - Solicitation of others to lobby
    - Other expenditures

  The Secretary of State is granted rulemaking authority to facilitate disclosure of expenditures, including the format of the report and additional categories.
- The lobbyist's principal must also report, in addition to the expenditures reported by the lobbyist, the compensation paid or agreed to be paid to each lobbyist.
- Requires expenditures of $200 made for the purpose of lobbying from persons not required to register and report as lobbyists or lobbyist's principals or more to be reported. If the person giving the gift is in North Carolina, that person shall make the report. If the person giving the gift is outside North Carolina, the person accepting the gift shall make the report. Certain exceptions apply.
- Authorizes the Secretary of State to issue advisory opinions on issues arising under the lobbying law.
- Requires continuing lobbying education programs for legislators, legislative employees, executive branch officers, lobbyists and lobbyists' principals.
- Clarifies the no-gift registry for gifts from lobbyists.
- Bans campaign contributions by lobbyists to candidates or candidate's committees if the candidate has filed for office as a member of the General Assembly or a Constitutional officer of the State. ****This prohibition may have constitutional implications.

EFFECTIVE DATE: Except as noted above, the act becomes effective January 1, 2007.

BACKGROUND: In 2005, the North Carolina General Assembly passed S.L. 2005-456 (SB 612), which amended North Carolina's lobbying laws effective January 1, 2007. The bill is a recommendation of the House Select Committee on Ethics and Governmental Reform. That Committee's charge, as amended on February 20, 2006, directs the Committee to "Examine the provisions of the 2005 rewrite of the lobbying law, S.L. 2005-456 (Senate Bill 612) to determine if portions of that law could be implemented prior to its original effective date of January 1, 2007 and determine whether any additional areas of lobbying regulation should be clarified or strengthened, including prohibiting lobbyists from raising funds for or personally contributing to political campaigns, and from holding any position in a legislative or executive branch campaign."

* *Walker Reagan and Brad Krehely contributed substantially to the drafting of this summary.*

H1849e1-SMST

Attachment V

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H **D**

HOUSE BILL 1849
PROPOSED COMMITTEE SUBSTITUTE H1849-CSST-121 [v.1]

6/21/2006 7:32:23 PM

Short Title: Lobbying Reforms 2006. (Public)

Sponsors:

Referred to:

May 10, 2006

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LEGISLATIVE LOBBYING LAWS BY ESTABLISHING WAITING PERIODS BEFORE CERTAIN STATE OFFICERS MAY LOBBY; BY BARRING LOBBYISTS FROM CERTAIN APPOINTMENTS AND OTHER ACTIVITIES; BY BANNING CERTAIN GIFTS; BY ESTABLISHING QUARTERLY REPORTING OF EXPENDITURES WITH ADDITIONAL INTERIM REPORTING; BY EXPANDING THE COVERAGE OF THE LOBBYING LAWS TO INCLUDE EXECUTIVE BRANCH OFFICERS; BY LIMITING CAMPAIGN CONTRIBUTIONS BY REGISTERED LOBBYISTS; AND BY MAKING OTHER CONFORMING CHANGES, AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON ETHICS AND GOVERNMENTAL REFORM.

The General Assembly of North Carolina enacts:

SECTION 1. Article 9A of Chapter 120 of the General Statutes is amended to add a new section to read:

"**§ 120-47.7C. Prohibitions.**

(a) No member or former member of the General Assembly may be employed as a legislative lobbyist by a lobbyist's principal to lobby as defined in this Article within one year after the end of that member's service in the General Assembly.

(b) No person serving, or formerly having served, as Governor, a member of the Council of State, or a head of a principal State department listed in G.S. 143B-6 may be employed as a legislative lobbyist by a lobbyist's principal to lobby as defined in this Article within one year after separation from employment or leaving office.

(c) No individual registered as a legislative lobbyist shall serve as a campaign treasurer under Chapter 163 of the General Statutes as defined in G.S. 163-278.6(19) for a campaign for election as a member of the General Assembly, Governor, or Council of State.

(d) A legislative lobbyist shall not be eligible for appointment by a State official to any body created under the laws of this State that has regulatory authority over the activities of a person that the legislative lobbyist currently represents or has represented within 60 days after the expiration of the legislative lobbyist's registration representing that person. Nothing herein shall be construed to prohibit appointment by any unit of local government.

(e) No legislative lobbyist or another acting on the legislative lobbyist's behalf shall permit a covered person, legislative employee, or that person's immediate family member to use the cash or credit of the lobbyist for the purpose of lobbying unless the lobbyist is in attendance at the time of the expenditure."

SECTION 2. Article 9A of Chapter 120 of the General Statutes is amended to add a new section to read:

"**§ 120-47.7B. Powers and duties of the Secretary of State.**

(a) The Secretary of State shall perform systematic reviews of reports required to be filed under G.S. 120-47.6 and G.S. 120-47.7 on a regular basis to assure complete and timely disclosure of expenditures.

(b) The Secretary of State may petition the Superior Court of Wake County for the approval to issue subpoenas and subpoenas duces tecum as necessary to conduct investigations of violations of this Article. The court shall authorize subpoenas under this subsection when the court determines they are necessary for the enforcement of this Article. Subpoenas issued pursuant to this subsection shall be enforceable by the court through contempt powers. Venue shall be with the Superior Court of Wake County for any nonresident person, or that person's agent, who makes a reportable expenditure under this Article, and personal jurisdiction may be asserted under G.S. 1-75.4.

(c) Complaints of violations of this Article and all other records accumulated in conjunction with the investigation of these complaints shall be considered records of criminal investigations under G.S. 132-1.4."

SECTION 3. Article 9A of Chapter 120 of the General Statutes reads as rewritten:

"Article 9A.

"~~Legislative Branch~~ Lobbying.

"**§ 120-47.1. Definitions.**

~~The following definitions shall apply in this Article:~~As used in this Article, the following terms mean:

(1) ~~The term "covered person" means a legislator, the Governor, or the Lieutenant Governor.~~Covered person. – A legislator, legislative employee, or executive branch officer.

(1a) Advocacy day. – A day that any lobbyist's principal collectively assembles its membership or employees and advocates for legislative or executive action.

(1b) Constitutional officers of the State. – Officers whose offices are established in Article III of the Constitution.

(1c) Executive action. – Any decision, including administration, approval, disapproval, preparation, recommendation, the rendering of advice,

and investigation, made or contemplated in any proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, investigation, charge, or rule making.

(1d) Executive branch officer. – All of the following:

a. Constitutional officers of the State, persons elected or appointed as a Constitutional officer of the State prior to taking office, or a person having filed a notice of candidacy for such office under G.S. 163-106 or Article 11 of Chapter 163 of the General Statutes.

b. Employees of the Office of the Governor.

c. Heads of all principal State departments, as set forth in G.S. 143B-6, who are appointed by the Governor.

d. The chief deputy or chief administrative assistant of each person designated under sub-subdivisions a. and c. of this subdivision.

e. Confidential assistants and secretaries as defined in G.S. 126-5(c)(2), to persons designated under sub-subdivisions a., c., and d. of this subdivision.

f. Employees in exempt positions as defined in G.S. 126-5(b) and employees in exempt positions designated in accordance with G.S. 126-5(d)(1), (2), or (2a), and confidential secretaries to these individuals.

g. Any other employees or appointees in the principal State departments as may be designated by the Governor to the extent that the designation does not conflict with the State Personnel Act.

h. All voting members of boards, including ex officio members and members serving by executive, legislative, or judicial branch appointment.

i. For The University of North Carolina, the voting members of the Board of Governors of The University of North Carolina, the president, the vice-presidents, and the chancellors, the vice-chancellors, and voting members of the boards of trustees of the constituent institutions.

j. For the System of Community Colleges, the voting members of the State Board of Community Colleges, the President and chief financial officer of the System of Community Colleges, the president, chief financial officer and chief administrative officer of each community college, and voting members of the boards of trustees of each community college.

~~(1a)~~(1e) ~~The term "expenditure" means any~~ Expenditure. – Any advance, contribution, conveyance, deposit, distribution, payment, gift, retainer, fee, salary, honorarium, reimbursement, loan, pledge or thing of value greater than ten dollars ~~($10.00),~~($10.00) per single calendar day or a

contract, agreement, promise or other obligation whether or not legally enforceable, that directly or indirectly is made to, at the request of, for the benefit of, or on the behalf of a covered ~~person, legislative employee,~~ person or that person's immediate family member.

(1f) Extended family. – Spouse, descendant, ascendant, or sibling of the covered person or, descendant, ascendant, or sibling of the spouse of the covered person.

~~(1b) The term "executive lobbyist" means a lobbyist registered pursuant to Article 4C of Chapter 147 of the General Statutes.~~

(2),(3) Repealed by Session Laws 1991, c. 740, s. 1.1.

(2a) Gift. – Anything of value without valuable consideration.

(3a) ~~The term "immediate family member" means spouse, descendant, or ascendant.~~Immediate family member. – An unemancipated child of the covered person residing in the household, and the covered person's spouse, if not legally separated.

(4) ~~The term "legislative action" means the~~Legislative action. – The preparation, research, drafting, introduction, consideration, modification, amendment, approval, passage, enactment, tabling, postponement, defeat, or rejection of a bill, resolution, amendment, motion, report, nomination, appointment, or other matter, whether or not the matter is identified by an official title, general title, or other specific reference, by the legislature or by a member or employee of the legislature acting or purporting to act in an official capacity. It also includes the consideration of any bill by the Governor for the Governor's approval or veto under Article II, Section 22(1) of the Constitution or for the Governor to allow the bill to become law under Article II, Section 22(7) of the Constitution.

(4a) ~~The term "legislative employee" means employees~~Legislative employee. – Employees and officers of the General Assembly.

(4b) ~~The term "legislative liaison personnel" means any~~Liaison personnel. – Any State employee or officer whose principal duties, in practice or as set forth in that person's job description, include lobbying the General ~~Assembly.~~Assembly or executive branch officers.

~~(4c) The term "legislative lobbyist" means any lobbyist for or against legislative action.~~

(4d) ~~The term "legislator" means a~~Legislator. – A member or presiding officer of the General ~~Assembly or~~Assembly, a person elected or appointed a member or presiding officer of the General Assembly prior to taking ~~office~~office, or a person having filed a notice of candidacy for such office under G.S. 163-106 or Article 11 of Chapter 163 of the General Statutes.

(5) ~~The term "lobbying" means any~~Lobbying. – Any of the following:

a. Influencing or attempting to influence legislative or executive action, or both, through direct communication or activities with

a covered ~~person, legislative employee,~~person or that person's immediate family member.

b. Solicitation of others by ~~legislative~~ lobbyists or lobbyists' principals to influence legislative or executive ~~action.~~action, or both.

c. Developing goodwill through communications or activities, including the building of relationships, with a covered ~~person, legislative employee,~~ person or that person's immediate family member with the intention of influencing current or future legislative or executive action, but does not include communications or activities with a covered ~~person, legislative employee,~~person or that person's immediate family member in a business, civic, religious, fraternal, or commercial relationship which is not connected to legislative or executive ~~action.~~action, or both.

(6) ~~The term "lobbyist" means an~~Lobbyist. – An individual who meets any of the following criteria:

a. Is employed and receives compensation, or who contracts for economic consideration, for the purpose of lobbying.

b. Represents another person and receives compensation for the purpose of lobbying.

~~c. Is legislative liaison personnel.~~

The term "lobbyist" shall not include those individuals who are specifically exempted from this Article by G.S. 120-47.8. For the purpose of determining whether an individual is a lobbyist under this subdivision, reimbursement of actual travel and subsistence expenses shall not be considered compensation; provided, however, that reimbursement in the ordinary course of business of these expenses shall be considered compensation if a significant part of the individual's duties involve lobbying before the General ~~Assembly.~~Assembly or executive branch officers.

(7) ~~The terms "lobbyist's principal" and "principal" mean the~~Lobbyist principal and principal. – The person on whose behalf the ~~legislative~~ lobbyist lobbies. In the case where a lobbyist is compensated by a law firm, consulting firm, or other entity retained by a person for ~~legislative~~ lobbying, the principal is the person whose interests the lobbyist represents in lobbying. In the case of a lobbyist employed or retained by an association or other organization, the lobbyist's principal is the association or other organization, not the members of the association or other organization.

(7a) ~~The term "news medium" means mainstream~~News medium. – ~~media~~Media providers whose sole purpose is to report events and that does not involve research or advocacy.

(8) ~~The term "person" means any~~Person. – Any individual, firm, partnership, committee, association, corporation, business entity, or any other organization or group of persons which has an independent legal existence.

(8a) Public event. – Either of the following:

a. An organized gathering of individuals open to the general public or to which a legislator or legislative employee is invited along with the entire membership of the House, Senate, a committee, a subcommittee, a county legislative delegation, a joint committee or legislative caucus and to which at least 10 employees or members of the principal actually attend.

b. An organized gathering of individuals open to the general public or to which at least ten executive branch officers are invited to attend and at least 10 employees or members of the principal actually attend.

(9) ~~The General Assembly is in "regular session" from the~~ In regular session. – The date set by law or resolution that the General Assembly convenes until the General Assembly either:

a. Adjourns sine die; or

b. Recesses or adjourns for more than 10 days.

§ 120-47.2. Registration procedure.

(a) A ~~legislative~~ lobbyist shall file a registration statement with the Secretary of State in a manner prescribed by the Secretary before engaging in any lobbying. It shall be unlawful for a person to lobby without registering unless exempted by this Article. A lobbyist shall file a separate registration statement for each principal the lobbyist represents. ~~The registration shall indicate whether it is registration as a legislative lobbyist, executive lobbyist, or both, and a separate registration fee shall be paid for each separate type of registration.~~

(b) The form of the registration shall be prescribed by the Secretary of State and shall include the registrant's full name, firm, complete address and telephone number; the registrant's place of business; the full name, complete address and telephone number of each person by whom the registrant is employed or retained; and a general description of the matters on which the registrant expects to act as a ~~legislative~~ lobbyist. The Secretary of State shall make available as soon as practicable the registrations of the lobbyists and lobbyists' principals in an electronic, searchable format.

(c) Each ~~legislative~~ lobbyist shall file an amended registration form with the Secretary of State no later than 10 business days after any change in the information supplied in the ~~legislative~~ lobbyist's last registration under subsection (b). Each supplementary registration shall include a complete statement of the information that has changed.

(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~~ Assembly, Constitutional officers of the State, the head of each principal department of the Executive Branch, and the State Legislative Library a list of all persons who have

registered as ~~executive or legislative~~ lobbyists and whom they represent. ~~Within 20 days after the beginning of the term of a Governor, the Secretary of State shall furnish the Governor, each other member of the Council of State, the head of each principal department of the Executive Branch, and the State Legislative Library a list of all persons who have registered as executive or legislative lobbyists and whom they represent.~~ A supplemental list of ~~legislative~~ lobbyists shall be furnished periodically each 20 days ~~thereafter as the session progresses.~~ while the General Assembly is in session, and every 60 days thereafter. ~~A supplemental list of executive lobbyists shall be furnished periodically each 60 days thereafter.~~ For each special session of the General Assembly, a supplemental list of ~~legislative~~ lobbyists shall be furnished to the State Legislative Library. All lists required by this section may be furnished electronically.

(e) Each registration statement of a ~~legislative~~ lobbyist required under this Article shall be effective from the date of filing until January 1 of the following year. The ~~legislative~~ lobbyist shall file a new registration statement after that date, and the applicable fee shall be due and payable.

"§ 120-47.3. Registration fee.

A fee of one hundred dollars ($100.00) is due and payable to the Secretary of State by either the lobbyist or the lobbyist's principal at the time of each lobbyist registration. Fees so collected shall be deposited in the General Fund of the State. The Secretary of State shall allow fees required under this section to be paid electronically but may not require the fees to be paid electronically. The Secretary of State shall adopt rules providing for the waiver or reduction of the fees required by this section in cases of hardship.

"§ 120-47.4. Authorization from lobbyist's principal; fee from principal.

(a) Each ~~legislative~~ lobbyist or lobbyist's principal shall file with the Secretary of State within 10 business days after the ~~legislative~~ lobbyist's registration a written authorization signed by the lobbyist's principal authorizing the lobbyist to represent the principal.

(b) The form of the authorization shall be prescribed by the Secretary of State and shall include the lobbyist's principal's full name, complete address and telephone number, name and title of the official signing for the lobbyist's principal, and the name of each lobbyist registered to represent the lobbyist's principal. The Secretary of State shall make available as soon as practicable the authorization of the lobbyists' principals in an electronic, searchable format.

(c) An amended authorization shall be filed with the Secretary of State no later than 10 days after any change in the information supplied for the lobbyist's principal on the previous authorization. Each supplementary authorization shall include a complete statement of the information that has changed.

(d) Except as provided for in subsection (e) of this section, a fee of one hundred dollars ($100.00) is due and payable to the Secretary of State at the time the lobbyist's principal's first authorization statement is filed each calendar year for a ~~legislative~~ lobbyist. ~~The fee for the legislative lobbyist's authorization shall be seventy-five dollars ($75.00) if an authorization for the principal to be represented by an executive lobbyist~~

~~is filed at the same time. No additional fee is due for additional authorizations filed for legislative lobbyists.~~

(e) The Secretary of State shall adopt rules providing for the waiver or reduction of the fees required by ~~fee in~~ subsection (d) of this section. The rules shall provide that the fees be reduced to a total of twenty-five dollars ($25.00) if the lobbyist's principal had annual revenues in its most recent fiscal year of three hundred thousand dollars ($300,000) or less and is represented by no more than two different lobbyists. ~~This reduced fee covers authorizations filed for the principal's legislative and executive lobbyists.~~

"§ 120-47.5. Contingency lobbying fees and election influence prohibited.

(a) No person shall act as a ~~legislative~~ lobbyist for compensation that is dependent upon the result or outcome of any legislative action.

(b) No ~~legislative lobbyist or legislative lobbyist's principal~~ person shall attempt to influence the action of any covered person by the promise of financial support of the covered person's candidacy, or by threat of financial support in opposition to the covered person's candidacy in any future election.

"§ 120-47.5A. Certain gifts by lobbyists and lobbyist's principals prohibited; ~~Exemptions and inclusions for reporting purposes.~~exemptions.

(a) No lobbyist or lobbyist's principal may give a gift to a covered person.

~~(a)~~(a1) ~~For purposes of G.S. 120-47.6 and G.S. 120-47.7, the following expenditures need not be reported:~~Subsection (a) of this section shall not apply to:

~~(1) Gifts between an immediate family member or person who is the stepchild, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, or members of the household of the covered person or legislative employee~~

~~(2) Lawful campaign contributions.~~

~~(3) Commercially available loans made on terms not more favorable than generally available to the public in the normal course of business if not made for the purpose of lobbying.~~

~~(4) Contractual arrangements or business relationships or arrangements made in the normal course of business if not made for the purpose of lobbying.~~

~~(5) The cost of attendance or participation provided by the sponsoring entity of lodging, and of food and beverages consumed, at events sponsored by or in conjunction with a civic, charitable, community, or diplomatic event if the activity or event does not last longer than three hours.~~

~~(6) Academic scholarships made on terms not more favorable than scholarships generally available to the public.~~

(1) Meals and beverages for immediate consumption in connection with public events.

(2) Nonmonetary items, other than food or beverages, with a value not to exceed ten dollars ($10.00) provided by a single donor during a single calendar day.

(3) Informational materials relevant to the duties of the covered person.
(4) Reasonable actual expenses for food, registration, travel, and lodging of the covered person for a meeting at which the covered person participates in a panel or speaking engagement at the meeting related to the public servant's duties and when expenses are incurred on the actual day of participation in the engagement or incurred within a 24-hour time period before or after the engagement.
(5) Items or services received in connection with a state, national, or regional organization in which the covered person or the covered person's agency is a member.
(6) Items and services received relating to an educational conference or meeting.
(7) A plaque or similar nonmonetary memento recognizing individual services in a field or specialty or to a charitable cause.
(8) Gifts accepted on behalf of the State.
(9) Anything generally made available or distributed to the general public by the lobbyist or lobbyist's principal or all other State employees.
(10) Anything for which fair market value is paid.
(11) Commercially available loans made on terms not more favorable than generally available to the public in the normal course of business if not made for the purpose of lobbying.
(12) Contractual arrangements or business relationships or arrangements made in the normal course of business if not made for the purpose of lobbying.
(13) Academic scholarships made on terms not more favorable than scholarships generally available to the public.
(14) Political contributions properly received and reported as required under Article 22A of Chapter 163 of the General Statutes.
(15) Gifts from the covered person's extended family, or a member of the same household of the covered person, or gifts received in conjunction with a marriage, birth, adoption, or death.
(16) Things of monetary value given to a executive branch officer valued in excess of ten dollars ($10.00) where the thing of monetary value is entertainment or related expenses associated with the public business of industry recruitment, promotion of international trade, or the promotion of travel and tourism, and the executive branch officer is responsible for conducting the business on behalf of the State, provided all the following conditions apply:
a. The executive branch officer did not solicit the thing of value, and the executive branch officer did not accept the thing of value in the performance of the executive branch officer's official duties.
b. The executive branch officer reports electronically to the Commission within 30 days of receipt of the thing of value. The

report shall include a description and value of the thing of value and a description how the thing of value contributed to the public business of industry recruitment, promotion of international trade, or the promotion of travel and tourism. This report shall be posted to the Commission's public Web site.

c. A tangible thing of value in excess of ten dollars ($10.00), other than meals or beverages, shall be turned over as State property to the Department of Commerce within 30 days of receipt.

(17) Things of monetary value of personal property valued at less than one hundred dollars ($100.00) given to an executive branch officer in the commission of the executive branch officer's official duties if the gift is given to the executive branch officer as a personal gift in another country as part of an overseas trade mission, and the giving and receiving of such personal gifts is considered a customary protocol in the other country.

(b) For purposes of G.S. 120-47.6 and G.S. 120-47.7, all expenditures as defined in G.S. 120-47.1(1e) made for the purpose of lobbying shall be reported, including the following:

(1) Expenditures benefiting or made on behalf of a covered person, ~~a legislative employee,~~ or those persons' immediate family members, in the regular course of that person's ~~nonlegislative~~ employment.

(2) Contractual arrangements or direct business relationships between a ~~legislative~~ lobbyist or ~~legislative~~ lobbyist's principal and a covered person, ~~legislative employee,~~ or that person's immediate family member, in effect during the reporting period or the previous 12 months.

(3) Expenditures reimbursed to a ~~legislative~~ lobbyist in the ordinary course of business by the lobbyist's principal or other employer. Expenditures reimbursed by the lobbyist's principal or other employer are reported only by the lobbyist.

(4) Expenditures for items exempted by subsection (a1) of this section.

~~(c) For reporting purposes of G.S. 120-47.6 and G.S. 120-47.7, legislative lobbying with respect to only the legislative actions of the Governor and Lieutenant Governor shall be reported.~~

(d) The offering or giving of a gift in compliance with this Article without corrupt intent shall not constitute a violation of G.S. 14-217 or G.S. 14-218.

"**§ 120-47.6. Statements of ~~legislative~~ lobbyist's lobbying expenditures required.**

(a) Each ~~legislative~~ lobbyist shall file ~~monthly~~ quarterly expenditure reports under oath with the Secretary of State, in a manner prescribed by the Secretary of State, which may include electronic reports, with respect to each lobbyist's ~~principal, while the General Assembly is in regular session, and quarterly thereafter.~~ principal. The expenditure report shall include all expenditures during the reporting period and shall be due 10 business days after the end of the reporting period. The ~~legislative~~ lobbyist shall file ~~expense~~ expenditure reports whether or not expenditures are made.

(a1) In addition to the reports required by subsection (a) of this section, each lobbyist incurring expenditures with respect to lobbying legislators and legislative employees shall file a monthly expenditure report while the General Assembly is in regular session. The monthly expenditure report shall contain information required by this section with respect to all lobbying of legislators and legislative employees, and is due within 10 business days of the end of the month. The information on the monthly expenditure report shall also be included in each quarterly report required by subsection (a) of this section.

(b) Each expenditure report shall set forth the fair market ~~value,~~value or face value if shown, date, a description of the expenditure, name and address of the payee, or beneficiary, and name of any covered person, ~~legislative employee,~~ or that person's immediate family member benefiting from the expenditure. Such expenditures shall be reported using the following categories:

(1) Transportation and lodging.
(2) Entertainment, food, and beverages.
(3) Meetings and events.
(4) Gifts.
(5) Other expenditures.
(6) Solicitation of others to lobby, including if such expenditures are incurred in connection or in concert with other reportable expenditures.

~~In addition, expenses for the solicitation of others to lobby, whether or not a covered person, legislative employee, or family member is affected, shall be reportable if such expenses are incurred in connection, or in concert, with other expenditures reportable under this subsection.~~

(c) All reports shall be in the form prescribed by the Secretary of State and shall be open to public inspection upon filing. When more than 15 covered persons benefit from an expenditure, no names of individuals need be reported provided that the report identifies the approximate number of covered persons benefiting and, with particularity, the basis for their selection, including the name of the legislative body, committee, caucus, or other group whose membership list is a matter of public record in accordance with G.S. 132-1 or including a description of the group that clearly distinguishes its purpose or composition from the general membership of the General Assembly. The approximate number of ~~legislative employees and~~ immediate family members of covered persons ~~and legislative employees~~ who benefited from the expenditure shall be listed separately.

(d) When a ~~legislative~~ lobbyist fails to file an expenditure report as required in this section, the Secretary of State shall send a certified or registered letter advising the ~~legislative~~ lobbyist of the delinquency and the penalties provided by law. Within 20 days of the receipt of the letter, the ~~legislative~~ lobbyist shall deliver or post by United States mail to the Secretary of State the required report and an additional late filing fee in an amount equal to the late filing fee under G.S. 163-278.34(a)(2).

(e) Filing of the required report and payment of the additional fee within the time extended shall constitute compliance with this section. Failure to file an expenditure

report in one of the manners prescribed in this section shall result in revocation of any and all registrations of a legislative lobbyist under this Article. No ~~legislative~~ lobbyist may register or reregister under this Article until the ~~legislative~~ lobbyist has fully complied with this section.

(f) Appeal of a decision by the Secretary of State under this section shall be in accordance with Article 3 of Chapter 150B of the General Statutes.

(g) The Secretary of State may adopt rules to facilitate complete and timely disclosure of expenditures, including the format of reports and additional categories of information, and to protect the addresses of payees under protective order issued pursuant to Chapter 50B of the General Statutes or participating in the Address Confidentiality Program pursuant to Chapter 15C of the General Statutes. The Secretary of State shall not impose any penalties or late filing fees upon a ~~legislative~~ lobbyist for subsequent failures to comply with the requirements of this section if the Secretary of State failed to provide ~~to~~ the lobbyist with required notifications of the initial violation. This provision shall not apply to a failure by the lobbyist to file an expenditure report in a timely manner.

"**§ 120-47.7. Statements of ~~legislative~~ lobbyist's principal lobbying expenditures required.**

(a) Each ~~legislative~~ lobbyist's principal shall file ~~monthly~~ quarterly expenditure reports under oath with the Secretary of State, in a manner prescribed by the Secretary of State, which may include electronic ~~reports, while the General Assembly is in regular session, and quarterly thereafter.~~reports. The expenditure report shall include all expenditures during the reporting period and shall be due 10 business days after the end of the reporting period. The lobbyist's principal shall file the expenditure reports whether or not expenditures are made during a reporting period.

(a1) In addition to the reports required by subsection (a) of this section, each lobbyist's principal incurring expenditures with respect to lobbying legislators and legislative employees shall file a monthly expenditure report while the General Assembly is in regular session. The monthly expenditure report shall contain information required by this section with respect to all lobbying of legislators and legislative employees, and is due within 10 business days of the end of the month. The information on the monthly expenditure report shall also be included in each quarterly report required by subsection (a) of this section.

(b) Each expenditure report shall set forth the fair market ~~value,~~value or face value if shown, date, a description of the expenditure, name and address of the payee, or beneficiary, and name of any covered person, ~~legislative employee,~~ or that person's immediate family member affected by the expenditure. Such expenditures shall be reported using the following categories:

(1) Transportation and lodging.
(2) Entertainment, food, and beverages.
(3) Meetings and events.
(4) Gifts.
(5) Other expenditures.

(6) Solicitation of others to lobby, including if such expenditures are incurred in connection or in concert with other expenditures reportable under this Article.

(7) Compensation paid to all lobbyists during the reporting period. If a legislative lobbyist is a full-time employee of the lobbyist's principal, or is compensated by means of an annual fee or retainer, the lobbyist's principal shall estimate and report the portion of the salary, fee, or retainer that compensates for lobbying.

(8) Expenditures reimbursed or paid to lobbyists for lobbying that are not reported on the lobbyist's report, with an itemized description of those expenditures.

~~In addition, expenses for the solicitation of others to lobby, whether or not a covered person, legislative employee, or family member is affected, shall be reportable if such expenses are incurred in connection, or in concert, with other expenditures reportable under this subsection.~~

~~In addition, the compensation paid or agreed to be paid to all legislative lobbyists shall be reported, whether or not a covered person, legislative employee, or family member is affected. If a legislative lobbyist is a full-time employee of the lobbyist's principal, or is compensated by means of an annual fee or retainer, the lobbyist's principal shall estimate and report the portion of the salary, fee, or retainer that compensates for lobbying. The lobbyist's principal's expenditure report shall include an itemized description of all expenditures reimbursed or paid to legislative lobbyists for lobbying that are not reported on the legislative lobbyists' reports.~~

(c) All reports shall be in the form prescribed by the Secretary of State and open to public inspection upon filing. When more than 15 covered persons benefit from an expenditure, no names of individuals need be reported provided that the report identifies the approximate number of covered persons benefiting and, with particularity, the basis for their selection, including the name of the legislative body, committee, caucus, or other group whose membership list is a matter of public record in accordance with G.S. 132-1 or including a description of the group that clearly distinguishes its purpose or composition from the general membership of the General Assembly. The approximate number of ~~legislative employees and~~ immediate family members of covered persons ~~and legislative employees~~ who benefited from the expenditure shall be listed separately.

(d) When a lobbyist's principal fails to file an expenditure report as required in this section, the Secretary of State shall send a certified or registered letter advising the lobbyist's principal of the delinquency and the penalties provided by law. Within 20 days of the receipt of the letter, the lobbyist's principal shall deliver or post by United States mail to the Secretary of State the required report and a late filing fee in an amount equal to the late filing fee under G.S. 163-278.34(a)(2).

(e) Filing of the required report and payment of the late fee within the time extended shall constitute compliance with this section. Failure to file an expenditure report in one of the manners prescribed in this section shall result in revocation of any and all registrations of a lobbyist's principal under this Article. No lobbyist's principal

may register or reregister under this Article until the lobbyist's principal has fully complied with this section.

(f) Appeal of a decision by the Secretary of State under this section shall be in accordance with Article 3 of Chapter 150B of the General Statutes.

(g) The Secretary of State may adopt rules to facilitate complete and timely disclosure of expenditures, including the format of reports and additional categories of information, and to protect the addresses of payees under protective order issued pursuant to Chapter 50B of the General Statutes or participating in the Address Confidentiality Program pursuant to Chapter 15C of the General Statutes. The Secretary of State shall not impose any penalties or late filing fees upon a principal for subsequent failures to comply with the requirements of this section if the Secretary of State failed to provide to the lobbyist's principal with required notifications of the initial violation. This provision shall not apply to a failure by the principal to file an expenditure report in a timely manner.

"**§ 120-47.7A.** Reserved for future codification purposes.

"**§ 120-47.7B. Powers and duties of the Secretary of State.**

(a) The Secretary of State shall perform systematic reviews of reports required to be filed under G.S. 120-47.6 and G.S. 120-47.7 on a regular basis to assure complete and timely disclosure of allowable expenditures.

(b) The Secretary of State may petition the Superior Court of Wake County for the approval to issue subpoenas and subpoenas duces tecum as necessary to conduct investigations of violations of this Article. The court shall authorize subpoenas under this subsection when the court determines they are necessary for the enforcement of this Article. Subpoenas issued pursuant to this subsection shall be enforceable by the court through contempt powers. Venue shall be with the Superior Court of Wake County for any nonresident person, or that person's agent, who makes a reportable expenditure under this Article, and personal jurisdiction may be asserted under G.S. 1-75.4.

(c) Complaints of violations of this Article and all other records accumulated in conjunction with the investigation of these complaints shall be considered records of criminal investigations under G.S. 132-1.4.

"**§ 120-47.7C. Prohibitions.**

(a) No member or former member of the General Assembly may be employed as ~~an executive or legislative~~ a lobbyist by a lobbyist's principal to lobby as defined in this Article ~~or Article 4C of Chapter 147 of the General Statutes~~ within ~~six months~~one year after the end of that member's service in the General Assembly.

(b) No person serving as ~~Governor, as a member of the Council of State,~~a Constitutional officer of the State or as a head of a principal State department listed in G.S. 143B-6 may be employed as ~~an executive or legislative~~a lobbyist by a lobbyist's principal to lobby as defined in this Article ~~or Article 4C of Chapter 147 of the General Statutes~~ within ~~six months~~one year after separation from employment or leaving office.

(c) No individual registered as a ~~legislative~~ lobbyist shall serve as a campaign treasurer ~~under Chapter 163 of the General Statutes~~ as defined in G.S. 163-278.6(19) for a campaign for election as a member of the General ~~Assembly.~~Assembly or a Constitutional officer of the State.

(d) A ~~legislative or executive~~ lobbyist shall not be eligible for appointment by a State official to any body created under the laws of this State that has regulatory authority over the activities of a person that the lobbyist currently represents or has represented within 60 days after the expiration of the lobbyist's registration representing that person. Nothing herein shall be construed to prohibit appointment by any unit of local government.

(e) No ~~legislative or executive~~ lobbyist or another acting on the lobbyist's behalf shall permit a covered person ~~person, legislative employee, executive branch officer,~~ or that person's immediate family member, to use the cash or credit of the lobbyist for the purpose of lobbying unless the lobbyist is in attendance at the time of the expenditure.

"**§ 120-47.8. Persons exempted from provisions of Article.**

Except as otherwise provided in this Article, the provisions of this Article shall not be construed to apply to any of the ~~following:~~following lobbying activities:

(1) An individual solely engaged in expressing a personal opinion or stating facts or recommendations on legislative or executive matters to ~~members of the General Assembly~~a covered person and not acting as a ~~legislative~~ lobbyist.

(2) A person appearing before a ~~legislative committee~~ committee, commission, board, council, or other collective body whose membership includes one or more covered persons at the invitation or request of the committee or a member thereof and who engages in no further activities as a ~~legislative~~ lobbyist.

(3) a. A duly elected or appointed official or employee of the State, the United States, a county, municipality, school district or other governmental agency, when appearing solely in connection with matters pertaining to the office and public duties.

b. Notwithstanding the persons exempted in this Article, the ~~Governor, Council of State,~~ Constitutional officers of the State and all appointed heads of State departments, agencies and institutions, shall designate all authorized official ~~legislative~~ liaison personnel and shall file and maintain current lists of designated ~~legislative~~ liaison personnel with the Secretary of State.

(4) A person performing professional services in drafting ~~bills~~ bills, or in advising and rendering opinions to clients, or to covered persons on behalf of clients, as to the construction and effect of proposed or pending ~~legislation~~ legislative or executive action where the professional services are not otherwise connected with the legislative or executive action.

(5) A person who owns, publishes or is employed by any news medium while engaged in the acquisition or dissemination of news on behalf of the news medium.

(6) Repealed by Session Laws 1991, c. 740, s. 1.1.

(7) Covered ~~persons and legislative employees.~~persons while acting in their official capacity.

(8) A person responding to inquiries from a ~~member of the General Assembly or a legislative employee,~~covered person and who engages in no further activities as a ~~legislative~~ lobbyist in connection with that or any other legislative ~~matter.~~or executive action.

(9) An ~~employee who represents the employer's interests in action for no more than three hours in a quarter, provided that neither the employee nor the employer makes any expenditure as defined in G.S. 120-47.1.~~ individual while participating in an advocacy day.

(10) A person appearing before an executive branch agency or department on behalf of another person, on an individual application for a license or permit, or a disciplinary action on a license or permit.

(11) A person appearing before an executive branch officer on behalf of another person with respect to a proposed sale or lease of real property, goods or services to the State, or construction of property by the State.

(12) A person appearing before an executive branch agency or department or an executive branch officer on behalf of another person or entity in connection with an application for a grant, loan, determination or eligibility, or certification.

"§ 120-47.8A. Expenditures made by persons exempted or not covered by this Article.

(a) If a covered person ~~or a legislative employee~~ accepts an expenditure made for the purpose of lobbying valued over two hundred dollars ($200.00) from a person or group of persons acting together, exempted or not otherwise covered by this Article, the person, or group of persons, making the expenditure shall report the date, a description of the expenditure, the name and address of the person, or group of persons, making the expenditure, the name of the covered person ~~or legislative employee~~ accepting the expenditure, and the estimated fair market value of the expenditure.

(b) If the person making the expenditure in subsection (a) of this section is outside North Carolina, and the covered person ~~or legislative employee~~ accepting the expenditure is also outside North Carolina at the time the person accepts the expenditure, then the person accepting the expenditure shall be responsible for filing the report using available information.

(c) If a covered person ~~or a legislative employee~~ accepts a scholarship valued over two hundred dollars ($200.00) from a person, or group of persons, acting together, exempted or not covered by this Article, the person, or group of persons, granting the scholarship shall report the date of the scholarship, a description of the event involved, the name and address of the person, or group of persons, granting the scholarship, the name of the covered person ~~or legislative employee~~ accepting the scholarship, and the estimated fair market value.

(d) If the person granting the scholarship in subsection (c) of this section is outside North Carolina, the covered person ~~or legislative employee~~ accepting the scholarship shall be responsible for filing the report.

(e) This section shall not apply to any of the following:
(1) Lawful campaign ~~contributions.~~ contributions properly received and reported as required under Article 22A of Chapter 163 of the General Statutes.
(2) Any gift from ~~a~~ an extended family member to a covered person. ~~person or legislative employee.~~
(3) Gifts associated primarily with the covered ~~person's, legislative employee's,~~ person's or that person's immediate family member's ~~nonlegislative~~ employment.
(4) Gifts, other than food, beverages, travel, and lodging, which are received from a person who is a citizen of a country other than the United States or a state other than North Carolina and given during a ceremonial presentation or as a custom.
(5) A thing of value that is paid for by the State.

(f) Reports required by this section shall be filed within 10 business days after the end of the quarter in which the expenditure was made, with the Secretary of State in a manner prescribed by the Secretary of State, which may include electronic reports.

"**§ 120-47.8B. Advocacy Day.**

(a) No lobbyist's principal may conduct more than one advocacy day per calendar year.

(b) All advocacy days to lobby the General Assembly must be scheduled through the Legislative Services Office.

(c) All advocacy days to lobby executive branch officers must be scheduled through the Governor's Office.

(d) All lobbyists' principals conducting an advocacy day shall comply with this Article while conducting the advocacy day.

"**§ 120-47.9. Punishment for violation.**

(a) Whoever willfully violates any provision of this Article shall be guilty of a Class 1 misdemeanor. In addition, no ~~legislative~~ lobbyist who is convicted of a violation of the provisions of this Article shall in any way act as a ~~legislative or executive~~ lobbyist for a period of two years following conviction.

(b) In addition to the criminal penalties set forth in this section, the Secretary of State may levy civil fines for willful false or incomplete reporting up to five thousand dollars ($5,000) per violation.

"**§ 120-47.10. Enforcement of Article by Attorney General.**

(a) The Secretary of State may investigate complaints of violations of this Article, ~~The Secretary of State~~ and shall report apparent violations of this Article to the Attorney General. The Attorney General shall, upon complaint, make an appropriate investigation thereof, and the Attorney General shall forward a copy of the investigation to the district attorney of the prosecutorial district as defined in G.S. 7A-60 of which Wake County is a part, who shall prosecute any person who violates any provisions of this Article.

(b) Complaints of violations of this Article involving the Secretary of State or any member of the Department of the Secretary of State shall be referred to the

Attorney General for investigation in accordance with G.S. 120-47.7B. Any portion of the complaint not involving alleged violations of this Article by the Secretary of State or any member of the Department of the Secretary of State shall remain with the Secretary of State for investigation. The Attorney General shall, upon receipt of a complaint, make an appropriate investigation thereof, and the Attorney General shall forward a copy of the investigation to the District Attorney of the prosecutorial district as defined in G.S. 7A-60 of which Wake County is a part, who shall prosecute any person who violates any provisions of this Article.

(c) Complaints of improper lobbying involving the Attorney General or any member of the Department of Justice shall be investigated by the Secretary of State and any apparent violations reported to the District Attorney of that prosecutorial district as defined in G.S. 7A-60 of which Wake County is a part. The District Attorney of that prosecutorial district shall, upon receipt of the Secretary of State's report, prosecute any person who violates any provisions of this Article.

"**§ 120-47.11. Rules and forms.**

(a) The Secretary of State shall adopt any rules, orders, forms, and definitions as are necessary to carry out the provisions of this Article. The Secretary of State may appoint a council to advise the Secretary in adopting rules under this section.

(b) The Secretary of State shall adopt rules to protect from disclosure all confidential information under Chapter 132 related to economic development initiatives or to industrial or business recruitment activities. The information shall remain confidential until the State, a unit of local government or the business has announced a commitment by the business to expand or locate a specific project in this State or a final decision not to do so and the business has communicated that commitment or decision to the State or local government agency involved with the project.

"**§ 120-47.12. Limitations on agency ~~legislative~~ liaison personnel.**

(a) No State department may use State funds to contract with persons who are not employed by the State to lobby the General Assembly.

(b) No more than two persons in each State department and constituent institution of The University of North Carolina may be registered to lobby the General Assembly or designated as ~~legislative~~ liaison personnel pursuant to this Article.

(c) All persons designated as ~~legislative~~ liaison personnel pursuant to this Article and the State department or constituent institution of The University of North Carolina that employs the ~~legislative~~ liaison personnel shall report all expenditures made for lobbying purposes in the same manner as required for ~~legislative~~ lobbyists under G.S. 120-47.6 and lobbyists' principals under G.S. 120-47.7. The registration and authorization fees required under G.S. 120-47.3 and G.S. 120-47.4 shall not apply to ~~legislative~~ liaison personnel or the State department or constituent institution that employs the ~~legislative~~ liaison personnel."

"**§ 120-47.13. Advisory opinions.**

(a) At the request of any person affected by this Article, the Secretary of State shall render advisory opinions on specific questions involving the meaning and application of this Article and the covered person's compliance therewith. The request shall be in writing and relate prospectively to real or reasonably anticipated fact settings

or circumstances. The Secretary of State shall issue advisory opinions having prospective application only. Reliance upon a requested written advisory opinion on a specific matter shall immunize the covered person, on that matter, from both of the following:

(1) Investigation by the Secretary of State.

(2) Any adverse action by the employing entity.

(b) Staff to the Secretary of State may issue advisory opinions under rules adopted by the Secretary of State.

(c) The Secretary of State shall interpret the provisions of this Article by rules, and these interpretations shall be binding on all covered persons, lobbyists, and lobbyists' principal upon publication.

(d) The Secretary of State shall publish its advisory opinions at least once a year, edited as necessary to protect the identities of the individuals requesting opinions.

(e) Except as provided under subsection (d) of this section, requests for advisory opinions and advisory opinions issued pursuant to this section are confidential and not matters of public record.

"**§ 120A-14. Lobbying education program.**

(a) The Secretary of State shall develop and implement a lobbying education and awareness program designed to instill in all covered persons, lobbyists, and lobbyists' principals a keen and continuing awareness of their obligations and a sensitivity to situations that might result in real or potential violation of this Article or other related laws. The Secretary shall make basic lobbying education and awareness presentations to all covered persons upon their election, appointment or hiring and shall offer periodic refresher presentations as the Secretary deems appropriate. Every covered person shall participate in a lobbying presentation approved by the Secretary within six months of the person's election, appointment or hiring, and shall attend refresher ethics education presentations at least every two years thereafter in a manner the Secretary deems appropriate. Upon request, the Secretary shall assist each agency in developing in-house education programs and procedures necessary or desirable to meet the agency's particular needs for lobbying education.

(b) The Secretary shall publish a newsletter containing summaries of the Secretary's opinions, policies, procedures, and interpretive bulletins as issued from time to time. The newsletter shall be distributed to all covered persons, lobbyists, and lobbyists' principals. Publication under this subsection may be done electronically.

(c) The Secretary shall assemble and maintain a collection of relevant State laws, rules, and regulations that set forth lobbying standards applicable to covered persons. The collection of laws, rules and regulations shall be made available electronically as resource material to covered persons, lobbyists and lobbyists' principals, upon request.

"**§ 120-15. No gift registry.**

(a) The Secretary of State shall establish a "No Gifts" registry for persons subject to this Article. The "No Gifts" registry shall be published and updated with the list of lobbyists and lobbyists' principals required under G.S. 120-47.2.

(b) Except as provided in this subsection, lobbyists and lobbyists' principals shall not give unsolicited gifts allowed under G.S. 120-47.5A(a1)(2) to persons placing their

names on the registry, without the persons' expressed consent. Gifts of informational directories may be given to persons placing their names on the registry.

(c) The Secretary shall have the authority to adopt rules to implement this section in compliance with the following criteria:

(1) The registration is valid from the time the person registers until January 1 of the following year, unless the person requests in writing the removal of that person's name.

(2) The registration shall be in writing.

(d) Violations of this section shall not constitute a crime but shall be subject to civil fines of up to five hundred dollars ($500.00) as levied by the Secretary of State."

SECTION 4. Sections 2 and 3 of S.L. 2005-456 are repealed.

SECTION 5.1. G.S. 163-278.6 is amended by adding a new subsection to read:

"**§ 163-278.6. Definitions.**

When used in this Article:

...

(5a) The term 'Constitutional officers of the State' means officers whose offices are established in Article III of the Constitution.

..."

SECTION 5.2. Article 22A of Chapter 163 of the General Statutes is amended by adding a new section G.S. 163-278.19A to read:

"**§ 163-278.13C. Limitation on contributions by registered lobbyists.**

(a) No lobbyist registered under Article 9A of Chapter 120 shall do any of the following:

(1) Make or offer to make a contribution to a legislator, executive branch official, or candidate campaign committee.

(2) Make a contribution to any candidate, officeholder, or political committee, directing or requesting that the contribution be made in turn to a legislator, executive branch official, or candidate campaign committee.

(3) Transfer any amount of money or anything of value to any entity, directing or requesting that the entity use what was transferred to contribute to a legislator, executive branch officer, or candidate campaign committee.

(4) Solicit a contribution from any individual, political committee, or other entity on behalf of a legislator, executive branch official, or candidate campaign committee. This subdivision does not apply to a registered lobbyist soliciting a contribution on behalf of a political party executive committee if the solicitation is solely for a separate segregated fund kept by the political party limited to use for activities that are not candidate-specific, including generic voter registration and get-out-the-vote efforts, pollings, mailings, and other general activities and advertising that do not refer to a specific individual candidate.

(b) No legislator, executive branch official, or candidate campaign committee or the real or purported agent of that legislator, executive branch official, or candidate campaign committee shall do any of the following:

(1) Solicit a contribution from a lobbyist registered under Article 9A of Chapter 120 of the General Statutes.

(2) Solicit a third party, requesting or directing that the third party directly or indirectly solicit a contribution from a lobbyist registered under Article 9A of Chapter 120 of the General Statutes or relay to the lobbyist registered under Article 9A of Chapter 120 of the General Statutes the legislator's, executive branch official's, or candidate campaign committee's solicitation of a contribution.

(3) Accept a contribution from a lobbyist registered under Article 9A of Chapter 120 of the General Statutes.

(c) It shall not be deemed a violation of this section for a legislator or executive branch official to serve on a board or committee of an organization that makes a solicitation of a lobbyist registered under Article 9A of Chapter 120 of the General Statutes as long as that legislator or executive branch official does not directly participate in the solicitation and that legislator or executive branch official does not directly benefit from the solicitation.

(d) As used in this section, the following terms mean:

(1) Candidate campaign committee. – As defined in G.S. 163-278.38Z and that candidate has filed a notice of candidacy for office as a member of the General Assembly or a Constitutional officer of the State.

(2) Executive branch official. – As defined in G.S. 120-47.1(1d)(a).

(3) Legislator. – As defined in G.S. 120-47.1(4d).

(e) A violation of this section is a Class 2 misdemeanor.

SECTION 5.3. G.S. 163-278.13B(a)(1) reads as rewritten:

"(1) "Limited contributor" means a ~~lobbyist registered pursuant to Article 9A of Chapter 120 of the General Statutes, that lobbyist's agent, that~~ lobbyist's principal as defined in ~~G.S. 120-47.1(7),~~ G.S. 120-47 or a political committee that employs or contracts with or whose parent entity employs or contracts with a lobbyist registered pursuant to Article 9A of Chapter 120 of the General Statutes."

SECTION 5.5. If House Bill 1843, 2005 Regular Session, becomes law, G.S. 120-290(c)(9) as enacted by that law, reads as rewritten:

'(9) Anything generally available or distributed to the general public by the lobbyist or lobbyist's principal or generally available to all other State employees.'

SECTION 5.6. If House Bill 1844, 2005 regular Session, becomes law, G.S. 138A-7(d)(9) as enacted by that law, reads as rewritten:

'(9) Anything generally available or distributed to the general public by the lobbyist or lobbyist's principal or generally available to all other State employees.

SECTION 6. If any section or provision of this act is declared unconstitutional or invalid by the courts, it does not affect the validity of this act as a whole or any part other than the part so declared to be unconstitutional or invalid.

SECTION 7. Sections 1, 2, 6, and 7 of this act are effective when the act becomes law, and the new G.S. 120-47.7C(d) applies to appointments made on or after that date. The remainder of this act becomes effective January 1, 2007.

Attachment VI

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1849

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

H1849-AST-136 [v.2]

Date 6/22 ,2006

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

Representative Alexander

moves to amend the bill on page 16, lines 11-20 through by rewriting those lines to read:

"(10) A licensed professional communicating with or appearing before an executive branch officer on behalf of another person in connection with any of the following:

a. Any executive action relating to license, permit, certification, or authorization for that person.

b. A request for declaratory ruling or other means of seeking interpretation, application or meaning of any law, regulation, policy, or other guidance, standard or procedure promulgated, implemented, or governing the executive branch agency or relied upon by the executive branch agency in the conduct of its official business.

c. An investigation, notice, charge, request for information, or asserted violation within the executive branch agency's jurisdiction.

d. A hearing, official meeting, enforcement action, notice of violation, notice of regulatory requirements, or other action in response to an asserted violation of law, regulations, permit, or other applicable standard.

e. A proposed, present, or prior contract or lease between the person and the State, whether such contract or lease is for real property, goods, services, or a combination thereof, or construction of property by the State.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1849

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

H1849-AST-136 [v.2]

f. Any objection, question or dispute arising out of a contract or lease described in sub-subdivision a. of this subdivision.

g. An application by the person for a grant, loan, or determination of eligibility.

h. Any objection, question or dispute concerning the grant, loan, or eligibility.

i. An actual or reasonably anticipated charge against the person.

j. An actual or reasonably anticipated investigation of the person.

k. An actual or reasonably anticipated dispute between the executive branch agency and the person.

l. An agreement by or between the person ~~or entity~~ and the State.

(11) A licensed professional communicating with or appearing before an executive branch officer on behalf of another person in connection with any actual or reasonably anticipated judicial or quasi-judicial proceeding, administrative hearing, or rulemaking proceeding involving or affecting the person.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

Attachment VII

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1849

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

H1849-AST-111 [v.3]

Date 4/22 ,2006

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

Representative Alexander

moves to amend the bill on page 5, lines 24-25 by rewriting those lines to read:

" The term "lobbyist" shall not include any of the following:

a. ~~those~~ Those individuals who are specifically exempted from this Article by G.S. 120-47.8.

b. An employee, board member, or officer of a lobbyist's principal when the employee, board member or officer's lobbying activity for that lobbyist's principal is fewer than eight hours per calendar quarter.

c. Members of a lobbyist's principal or those allied in interest with a lobbyist's principal whose lobbying activity for that lobbyist's principal is fewer than eight hours per calendar quarter.";

and on page 2, lines 40-42 by deleting those lines;

and on page 16, lines 7-10 by removing the redlining on those lines and repealing G.S. 120-47.8(9);

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1849

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

H1849-AST-111 [v.3]

and on page 17, lines 18-26 by deleting those lines.

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

Attachment VIII

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1849

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

H1849-AST-134 [v.1]

Date June 22 ,2006

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

Representative Stam

moves to amend the bill on page 8, lines 11-12 by rewriting those lines to read:

"(a) No ~~person shall act as a legislative lobbyist for compensation that is dependent upon~~ agreement for the services of a lobbyist is lawful if the amount to be paid to the lobbyist is contingent on the result or outcome of any legislative action. Agreements for the services of a lobbyist for one or more time periods are not made unlawful by this subsection solely because the time period is different than contemplated at the time of the agreement. Bonuses, supplemental fees, refunds, and any other indirect method of making a contract for the services of a lobbyist contingent on the result or outcome of any legislative action are unlawful, and the fruits of contingent fees for lobbying services are contraband and are forfeited to the State.".

SIGNED Stam
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

Attachment IX

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1849

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

H1849-AST-133 [v.1]

Date _____,2006

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

Representative Stam

moves to amend the bill on page 20, line 12 through page 21, line 33 by rewriting those lines to read:

"**SECTION 5.** G.S. 163-278.13 is amended by adding a new subsection to read:

'(c1) Notwithstanding the provisions of subsections (a) and (b) of this section, it shall be unlawful for any lobbyist registered under Chapter 120 of the General Statutes to contribute a total of more than four thousand dollars ($4,000) in any election to one or more candidates or candidate campaign committees as defined in G.S. 163-278.38Z..'".

SIGNED Stam
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

Attachment X

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1849

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

H1849-AST-135 [v.3]

Date 6/22 ,2006

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

Representative Ross

moves to amend the bill on page 9, lines 2-7 by rewriting those lines to read:

"(4) Reasonable actual expenditures for food, registration, travel, and lodging of the covered person when the expenditures are incurred for participation in a conference or meeting and the conference or meeting is one of the following:

a. An educational conference or meeting.

b. A conference or meeting related to the covered person's duties and the covered person participates in a panel or speaking engagement at the conference or meeting.";

and on page 9, lines 11-12 by deleting those lines and renumbering the remaining subdivisions accordingly;

and on page 22, line 1 by inserting the following on that line:

"**SECTION 5.7.(a).** If House Bill 1843, 2005 Regular Session, becomes law, G.S. 120-290(c)(4) as enacted by that law, reads as rewritten:

(4) Reasonable actual expenses for food, registration, travel, and lodging of the legislator or legislative employee ~~for a meeting at which the legislator or legislative employee participates in a panel or speaking engagement at the meeting related to the legislator's or legislative employee's duties and~~ when expenses are incurred on the actual day of participation in ~~the engagement~~ a conference or meeting ~~or incurred within a 24-hour time period before or after the engagement.~~conference or meeting and the conference or meeting is one of the following:

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Principal Clerk)

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a. An educational conference or meeting.
b. A conference or meeting related to the covered person's duties and the covered person participates in a panel or speaking engagement at the conference or meeting.

SECTION 5.7(b). If House Bill 1843, 2005 Regular Session, becomes law, G.S. 120-290(c)(6) is repealed.

SECTION 5.8.(a). If House Bill 1844, 2005 Regular Session, becomes law, G.S. 138A-7(d)(4) as enacted by that law, reads as rewritten:

(4) Reasonable actual expenses for food, registration, travel, and lodging of the public servant ~~for a meeting at which the public servant participates in a panel or speaking engagement at the meeting related to the public servant's duties and~~ when expenses are incurred on the actual day of participation in ~~the engagement~~ a conference or ~~or incurred within a 24-hour time period before or after the engagement.~~ conference or meeting and the conference or meeting is one of the following:

a. An educational conference or meeting.
b. A conference or meeting related to the covered person's duties and the covered person participates in a panel or speaking engagement at the conference or meeting.

SECTION 5.8(b). If House Bill 1844, 2005 Regular Session, becomes law, G.S. 138A-7(d)(6) is repealed.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

House Judiciary I Committee

June 27, 2006
10:00 a.m.

Minutes

The House Judiciary I Committee met on Tuesday, June 27, 2006 at 4:15 p.m. in Room 1228 of the Legislative Building. Chairman Joe Hackney called the meeting to order and the following members were present: Representatives Alexander, Blust, Capps, Goodwin, Harrison, Insko, Ross, Stam, Stiller and West. A copy of the agenda and visitor registration is attached, (Attachments I and II).

Under consideration by the Committee was House Bill 1849, AN ACT TO AMEND THE LEGISLATIVE LOBBYING LAWS BY ESTABLISHING WAITING PERIODS BEFORE CERTAIN STATE OFFICERS MAY LOBBY; BY BARRING LOBBYISDTS FROM CERTAIN APPOINTMENTS AND OTHER ACTIVITIES; BY BANNING CERTAIN GIFTS; BY ESTABLISHING QUARTERLY REPORTING OF EXPENDITURES WITH ADDITIONAL INTERIM REPORTING; BY EXPANDING THE COVERAGE OF THE LOBBYING LAWS TO INCLUDE EXECUTIVE BRANCH OFFICERS; BY LIMITING CAMPAIGN CONTRIBUTIONS BY REGISTERED LOBBYISTS; AND BY MAKING OTHER CONFORMING CHANGRS, AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON ETHICS AND GOVERNMENTAL REFORM. The bill was previously discussed during the Judiciary I Committee meetings on May 18, May 25, May 30 and June 22, 2006.

A Proposed Committee Substitute, (Attachment III), was distributed that incorporated many of the amendments that were discussed at the previous meeting. Representative Stam moved its adoption for the purpose of discussion. The motion carried.

Chairman Hackney stated that he would not represent the Proposed Committee Substitute as a consensus document, but that it might be as close as the Committee will be able to get.

Ms. Erika Churchill, Committee Counsel, was recognized to explain the changes in the Proposed Committee Substitute. She noted changes regarding solicitation of others on page 5, lines 4-12, on page 11, line 29 and on page 13, line 19. Ms. Churchill discussed a change on page 8, lines 17-20 and on page 18, lines 41 and 42 regarding contingency fees. The next change was on page 9, lines 12-18 regarding the combining of the two gift ban exemptions for educational conferences and a conference where a covered person was actually speaking. The next changes were on pages 16 and 17 and addressed an amendment from the previous meeting regarding giving an exemption to a licensed professional communicating or appearing before an executive branch officer on behalf of another person in certain categories. The next change was found on page 17, lines 29-36 with the addition of two new exemptions to the definition of lobbyist. She

noted that all language reflecting "Advocacy Day" had been removed. She further noted a change on page 16, lines 36-39 to put back in place language that was added in Senate Bill 612 that would give an exemption to an employee representing the employer's interests. She said that the language had been changed to correlate for legislative or executive action for no more than five hours in a calendar quarter, provided that neither the employee nor the employer makes any expenditure. Chairman Hackney asked if the words "direct communication" need to be added. Ms. Churchill replied that the words "in direct communication with a covered person" should be added.

Chairman Hackney stated that the bill originally had "eight" hours, but that it was not clear whether it was face time, or sitting in the gallery. He stated that Mr. Bob Hall, Democracy North Carolina, had indicated that he felt it should be face time (direct communication with legislators) and fewer hours.

Representative Stam stated that five hours was a lot of time for direct communication.

Ms. Churchill pointed out the final change on page 21, lines 24-28 that provided for a new Section 5 of the bill and addressed campaign contributions by registered lobbyist.

Chairman Hackney pointed out that "an election" includes a primary, a second primary or a general election. He also added that the provision includes contributions to candidates for sheriff, county commissioner, town council, etc., but not federal campaigns. Representative Ross expressed concern about this provision saying why, by virtue of the fact that they are a lobbyist, can they be told that they cannot contribute money to someone that they do not lobby.

Representative Stam stated that "local candidates" could be removed and leave in all members of the General Assembly and the Executive Branch. Chairman Hackney directed the staff to prepare an amendment.

Representative Stam offered an amendment to amend the bill on page 17, lines 16-18, (Attachment IV). He moved adoption of the amendment. Upon vote of the Committee, the amendment was adopted.

Representative Ross offered an amendment, (Attachment V), to amend the bill on page 16, line 37, to insert the words "through direct communication" between the words "action" and "for" on that line. Upon vote of the Committee, the amendment was adopted.

Representative Stam requested that an amendment be drawn to change "face time" from 5 hours to 3 hours per quarter on page 17, line 31. Following discussion, he withdrew his request.

Representative Ross offered an amendment (Attachment VI), to amend the bill on page 21, line 28. The amendment would remove the provision of prohibiting lobbyist from making campaign contributions to candidates that those the lobbyist are not registered to lobby, such as local candidates. Following brief discussion, the amendment was adopted.

Brief discussion followed regarding the one-year "cooling off" period and the "no gifts" registry.

Representative Stam offered an amendment (Attachment VII) to amend the bill on page 21, line 10 and on page 21, line 11. The amendment would delete the word "unsolicited" on line 10 and the phrase "without the persons' expressed consent" on line 11. Representative Stam moved adoption of the amendment. The motion carried.

There was also discussion regarding lobbyists involving themselves in fundraising and the constitutional questions that could be raised by prohibiting such contributions.

Representative Pryor Gibson was recognized and stated that some states have such prohibitions, but that their laws appear to be unconstitutional.

Representative Ross moved that the adopted amendments be rolled into a new Committee Substitute, that the Committee Substitute be given a favorable report and the original bill an unfavorable report.

Ms. Christie Barbee, Carolina Asphalt Pavement Association, was recognized. She thanked the Committee for its work on the bill and the opportunity that was given for interested parties to offer input. She noted concerned regarding in the area of solicitation by others with regard to organizations that have large numbers of members who use third parties to communicate directly with their members.

Mr. Rob Thompson, North Carolina Public Interest Research Group, requested clarification regarding fundraising by lobbyist. He stated that the provision relating to fundraising by lobbyist weakened the bill substantially.

Mr. Butch Gunnells, North Carolina Beverage Association, expressed concern regarding the large number of people who will be required to register as lobbyist under the new language of the bill.

Mr. Bob Phillips, Common Cause and the NC Coalition for Lobbying Reform, stated that he felt the issue of lobbyist soliciting campaign funds should be included to provide a level playing field. He noted that the state of South Carolina has this provision and that it has not been challenged in the 15 years that it has been in place.

The motion for a favorable report for a Committee Substitute was before the Committee. The motion carried, (Attachment VIII). A copy of the new Committee Substitute is attached, (Attachment IX).

The meeting was adjourned at 5:15 p.m.

Representative Joe Hackney
Chair

Emily Reynolds Freeman
Committee Clerk

Attachment I

HOUSE COMMITTEE ON JUDICIARY I

June 27, 2006
4:15 p.m.

AGENDA

OPENING REMARKS

AGENDA ITEM

House Bill 1849 – Lobbying Reform 2006
Representatives Hackney, Howard, Gibson and Sherrill

ADJOURNMENT

Attachment II

VISITOR REGISTRATION SHEET

House Judiciary I — June 27, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Susan Valenti	Nationwide
Chris L Bell	CAPA
Ken Jones	Young Moore & Henderson P.A.
Ken Thompson	NCDPI
Butch Gamble	NC Beverage Assn.
Bob Phillips	Common Cause North Carolina
Louisa Warren	NCCLR
Paula A Wolf	ACLU-NC
Jon Geeslin	NMRS
Lee Hedgepeth	KCCH
Barry Ball	Fiscal Research

VISITOR REGISTRATION SHEET

House Judiciary I — June 27, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Michael Flowser	NCAE
David Hudson	PFFWC
Joal Broun	SOS
Haley Montgomery	SOS
Robert Wilson	SOS
Kathleen Edwards	unc-ch
[illegible]	NCATL
Rob Schofield	NCCNP
John Rust	NCFPC
Bob Hall	Democracy NC
Bill Rowe	NC Justice Center

VISITOR REGISTRATION SHEET

House Judiciary I — June 27, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Tony Adams	NCOAA
[illegible]	[illegible]
Chris Valauri	N.C. Boards Alliance
DAVID HUSKINS	GROVE PARK INN
John McKay	Cowarrig
[illegible]	EElectriCities
Vicki Ann Harris	CATA
Ken Melton	D.O.R.
Patrick Buffkin	Alley Associates, Inc.
John Herrera	Solo Help.
[illegible]	NCO

Attachment III

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 1849
PROPOSED COMMITTEE SUBSTITUTE H1849-CSST-121 [v.7]

6/27/2006 3:34:02 PM

Short Title: Lobbying Reforms 2006. (Public)

Sponsors:

Referred to:

May 10, 2006

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LEGISLATIVE LOBBYING LAWS BY ESTABLISHING WAITING PERIODS BEFORE CERTAIN STATE OFFICERS MAY LOBBY; BY BARRING LOBBYISTS FROM CERTAIN APPOINTMENTS AND OTHER ACTIVITIES; BY BANNING CERTAIN GIFTS; BY ESTABLISHING QUARTERLY REPORTING OF EXPENDITURES WITH ADDITIONAL INTERIM REPORTING; BY EXPANDING THE COVERAGE OF THE LOBBYING LAWS TO INCLUDE EXECUTIVE BRANCH OFFICERS; BY LIMITING CAMPAIGN CONTRIBUTIONS BY REGISTERED LOBBYISTS; AND BY MAKING OTHER CONFORMING CHANGES, AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON ETHICS AND GOVERNMENTAL REFORM.

The General Assembly of North Carolina enacts:

SECTION 1. Article 9A of Chapter 120 of the General Statutes is amended to add a new section to read:

"**§ 120-47.7C. Prohibitions.**

(a) No member or former member of the General Assembly may be employed as a legislative lobbyist by a lobbyist's principal to lobby as defined in this Article within one year after the end of that member's service in the General Assembly.

(b) No person serving, or formerly having served, as Governor, a member of the Council of State, or a head of a principal State department listed in G.S. 143B-6 may be employed as a legislative lobbyist by a lobbyist's principal to lobby as defined in this Article within one year after separation from employment or leaving office.

(c) No individual registered as a legislative lobbyist shall serve as a campaign treasurer under Chapter 163 of the General Statutes as defined in G.S. 163-278.6(19) for a campaign for election as a member of the General Assembly, Governor, or Council of State.

(d) A legislative lobbyist shall not be eligible for appointment by a State official to any body created under the laws of this State that has regulatory authority over the activities of a person that the legislative lobbyist currently represents or has represented within 60 days after the expiration of the legislative lobbyist's registration representing that person. Nothing herein shall be construed to prohibit appointment by any unit of local government.

(e) No legislative lobbyist or another acting on the legislative lobbyist's behalf shall permit a covered person, legislative employee, or that person's immediate family member to use the cash or credit of the lobbyist for the purpose of lobbying unless the lobbyist is in attendance at the time of the expenditure."

SECTION 2. Article 9A of Chapter 120 of the General Statutes is amended to add a new section to read:

"**§ 120-47.7B. Powers and duties of the Secretary of State.**

(a) The Secretary of State shall perform systematic reviews of reports required to be filed under G.S. 120-47.6 and G.S. 120-47.7 on a regular basis to assure complete and timely disclosure of expenditures.

(b) The Secretary of State may petition the Superior Court of Wake County for the approval to issue subpoenas and subpoenas duces tecum as necessary to conduct investigations of violations of this Article. The court shall authorize subpoenas under this subsection when the court determines they are necessary for the enforcement of this Article. Subpoenas issued pursuant to this subsection shall be enforceable by the court through contempt powers. Venue shall be with the Superior Court of Wake County for any nonresident person, or that person's agent, who makes a reportable expenditure under this Article, and personal jurisdiction may be asserted under G.S. 1-75.4.

(c) Complaints of violations of this Article and all other records accumulated in conjunction with the investigation of these complaints shall be considered records of criminal investigations under G.S. 132-1.4."

SECTION 3. Article 9A of Chapter 120 of the General Statutes reads as rewritten:

"Article 9A.

"~~Legislative Branch~~ Lobbying.

"**§ 120-47.1. Definitions.**

~~The following definitions shall apply in this Article:~~As used in this Article, the following terms mean:

(1) ~~The term "covered person" means a legislator, the Governor, or the Lieutenant Governor.~~Covered person. – A legislator, legislative employee, or executive branch officer.

(1b) Constitutional officers of the State. – Officers whose offices are established in Article III of the Constitution.

(1c) Executive action. – Any decision, including administration, approval, disapproval, preparation, recommendation, the rendering of advice, and investigation, made or contemplated in any proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, investigation, charge, or rule making.

(1d) Executive branch officer. – All of the following:

a. Constitutional officers of the State, persons elected or appointed as a Constitutional officer of the State prior to taking office, or a person having filed a notice of candidacy for such office under G.S. 163-106 or Article 11 of Chapter 163 of the General Statutes.

b. Employees of the Office of the Governor.

c. Heads of all principal State departments, as set forth in G.S. 143B-6, who are appointed by the Governor.

d. The chief deputy or chief administrative assistant of each person designated under sub-subdivisions a. and c. of this subdivision.

e. Confidential assistants and secretaries as defined in G.S. 126-5(c)(2), to persons designated under sub-subdivisions a., c., and d. of this subdivision.

f. Employees in exempt positions as defined in G.S. 126-5(b) and employees in exempt positions designated in accordance with G.S. 126-5(d)(1), (2), or (2a), and confidential secretaries to these individuals.

g. Any other employees or appointees in the principal State departments as may be designated by the Governor to the extent that the designation does not conflict with the State Personnel Act.

h. All voting members of boards, including ex officio members and members serving by executive, legislative, or judicial branch appointment.

i. For The University of North Carolina, the voting members of the Board of Governors of The University of North Carolina, the president, the vice-presidents, and the chancellors, the vice-chancellors, and voting members of the boards of trustees of the constituent institutions.

j. For the System of Community Colleges, the voting members of the State Board of Community Colleges, the President and chief financial officer of the System of Community Colleges, the president, chief financial officer and chief administrative officer of each community college, and voting members of the boards of trustees of each community college.

~~(1a)~~(1e) ~~The term "expenditure" means any~~ Expenditure. – Any advance, contribution, conveyance, deposit, distribution, payment, gift, retainer, fee, salary, honorarium, reimbursement, loan, pledge or thing of value greater than ten dollars ~~($10.00),~~($10.00) per single calendar day or a contract, agreement, promise or other obligation whether or not legally enforceable, that directly or indirectly is made to, at the request of, for

the benefit of, or on the behalf of a covered ~~person, legislative employee,~~ person or that person's immediate family member.

(1f) Extended family. – Spouse, descendant, ascendant, or sibling of the covered person or, descendant, ascendant, or sibling of the spouse of the covered person.

~~(1b) The term "executive lobbyist" means a lobbyist registered pursuant to Article 4C of Chapter 147 of the General Statutes.~~

(2),(3) Repealed by Session Laws 1991, c. 740, s. 1.1.

(2a) Gift. – Anything of value without valuable consideration.

(3a) ~~The term "immediate family member" means spouse, descendant, or ascendant.~~Immediate family member. – An unemancipated child of the covered person residing in the household, and the covered person's spouse, if not legally separated.

(4) ~~The term "legislative action" means the~~Legislative action. – The preparation, research, drafting, introduction, consideration, modification, amendment, approval, passage, enactment, tabling, postponement, defeat, or rejection of a bill, resolution, amendment, motion, report, nomination, appointment, or other matter, whether or not the matter is identified by an official title, general title, or other specific reference, by the legislature or by a member or employee of the legislature acting or purporting to act in an official capacity. It also includes the consideration of any bill by the Governor for the Governor's approval or veto under Article II, Section 22(1) of the Constitution or for the Governor to allow the bill to become law under Article II, Section 22(7) of the Constitution.

(4a) ~~The term "legislative employee" means employees~~Legislative employee. – Employees and officers of the General Assembly.

(4b) ~~The term "legislative liaison personnel" means any~~Liaison personnel. – Any State employee or officer whose principal duties, in practice or as set forth in that person's job description, include lobbying the General ~~Assembly.~~Assembly or executive branch officers.

~~(4c) The term "legislative lobbyist" means any lobbyist for or against legislative action.~~

(4d) ~~The term "legislator" means a~~Legislator. – A member or presiding officer of the General ~~Assembly or~~Assembly, a person elected or appointed a member or presiding officer of the General Assembly prior to taking ~~office~~office, or a person having filed a notice of candidacy for such office under G.S. 163-106 or Article 11 of Chapter 163 of the General Statutes.

(5) ~~The term "lobbying" means any~~Lobbying. – Any of the following:

a. Influencing or attempting to influence legislative or executive action, or both, through direct communication or activities with a covered ~~person, legislative employee,~~person or that person's immediate family member.

b. Solicitation of others by ~~legislative~~ lobbyists or lobbyists' principals to influence legislative or executive ~~action.~~action, or both, except any of the following:
1. Telephone contacts by volunteers or employees, where a third party is not employed for such purpose.
2. Electronic mail transmissions, by volunteers or employees, where a third party is not employed for such purpose.
3. Newsletters, sent on a regular basis to members, employees, or those allied in interest.
4. Maintenance of websites for information about legislative or executive action, or both.

c. Developing goodwill through communications or activities, including the building of relationships, with a covered ~~person, legislative employee,~~ person or that person's immediate family member with the intention of influencing current or future legislative or executive action, but does not include communications or activities with a covered ~~person, legislative employee,~~person or that person's immediate family member in a business, civic, religious, fraternal, or commercial relationship which is not connected to legislative or executive ~~action.~~action, or both.

(6) ~~The term "lobbyist" means an~~Lobbyist. – An individual who meets any of the following criteria:
a. Is employed and receives compensation, or who contracts for economic consideration, for the purpose of lobbying.
b. Represents another person and receives compensation for the purpose of lobbying.
~~c. Is legislative liaison personnel.~~

The term "lobbyist" shall not include individuals who are specifically exempted from this Article by G.S. 120-47.8. For the purpose of determining whether an individual is a lobbyist under this subdivision, reimbursement of actual travel and subsistence expenses shall not be considered compensation; provided, however, that reimbursement in the ordinary course of business of these expenses shall be considered compensation if a significant part of the individual's duties involve lobbying before the General ~~Assembly.~~Assembly or executive branch officers.

(7) ~~The terms "lobbyist's principal" and "principal" mean the~~Lobbyist principal and principal. – The person on whose behalf the ~~legislative~~ lobbyist lobbies. In the case where a lobbyist is compensated by a law firm, consulting firm, or other entity retained by a person for ~~legislative~~ lobbying, the principal is the person whose interests the lobbyist represents in lobbying. In the case of a lobbyist employed or

retained by an association or other organization, the lobbyist's principal is the association or other organization, not the members of the association or other organization.

(7a) ~~The term "news medium" means mainstream~~News medium. – ~~media~~Media providers whose sole purpose is to report events and that does not involve research or advocacy.

(8) ~~The term "person" means any~~Person. – Any individual, firm, partnership, committee, association, corporation, business entity, or any other organization or group of persons which has an independent legal existence.

(8a) Public event. – Either of the following:

a. An organized gathering of individuals open to the general public or to which a legislator or legislative employee is invited along with the entire membership of the House, Senate, a committee, a subcommittee, a county legislative delegation, a joint committee or legislative caucus and to which at least 10 employees or members of the principal actually attend.

b. An organized gathering of individuals open to the general public or to which at least ten executive branch officers are invited to attend and at least 10 employees or members of the principal actually attend.

(9) ~~The General Assembly is in "regular session" from the~~ In regular session. – The date set by law or resolution that the General Assembly convenes until the General Assembly either:

a. Adjourns sine die; or

b. Recesses or adjourns for more than 10 days.

§ 120-47.2. Registration procedure.

(a) A ~~legislative~~ lobbyist shall file a registration statement with the Secretary of State in a manner prescribed by the Secretary before engaging in any lobbying. It shall be unlawful for a person to lobby without registering unless exempted by this Article. A lobbyist shall file a separate registration statement for each principal the lobbyist represents. ~~The registration shall indicate whether it is registration as a legislative lobbyist, executive lobbyist, or both, and a separate registration fee shall be paid for each separate type of registration.~~

(b) The form of the registration shall be prescribed by the Secretary of State and shall include the registrant's full name, firm, complete address and telephone number; the registrant's place of business; the full name, complete address and telephone number of each person by whom the registrant is employed or retained; and a general description of the matters on which the registrant expects to act as a ~~legislative~~ lobbyist. The Secretary of State shall make available as soon as practicable the registrations of the lobbyists and lobbyists' principals in an electronic, searchable format.

(c) Each ~~legislative~~ lobbyist shall file an amended registration form with the Secretary of State no later than 10 business days after any change in the information supplied in the ~~legislative~~ lobbyist's last registration under subsection (b). Each

supplementary registration shall include a complete statement of the information that has changed.

(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~~ Assembly, Constitutional officers of the State, the head of each principal department of the Executive Branch, and the State Legislative Library a list of all persons who have registered as ~~executive or legislative~~ lobbyists and whom they represent. ~~Within 20 days after the beginning of the term of a Governor, the Secretary of State shall furnish the Governor, each other member of the Council of State, the head of each principal department of the Executive Branch, and the State Legislative Library a list of all persons who have registered as executive or legislative lobbyists and whom they represent.~~ A supplemental list of ~~legislative~~ lobbyists shall be furnished periodically each 20 days ~~thereafter as the session progresses.~~ while the General Assembly is in session, and every 60 days thereafter. ~~A supplemental list of executive lobbyists shall be furnished periodically each 60 days thereafter.~~ For each special session of the General Assembly, a supplemental list of ~~legislative~~ lobbyists shall be furnished to the State Legislative Library. All lists required by this section may be furnished electronically.

(e) Each registration statement of a ~~legislative~~ lobbyist required under this Article shall be effective from the date of filing until January 1 of the following year. The ~~legislative~~ lobbyist shall file a new registration statement after that date, and the applicable fee shall be due and payable.

"§ 120-47.3. Registration fee.

A fee of one hundred dollars ($100.00) is due and payable to the Secretary of State by either the lobbyist or the lobbyist's principal at the time of each lobbyist registration. Fees so collected shall be deposited in the General Fund of the State. The Secretary of State shall allow fees required under this section to be paid electronically but may not require the fees to be paid electronically. The Secretary of State shall adopt rules providing for the waiver or reduction of the fees required by this section in cases of hardship.

"§ 120-47.4. Authorization from lobbyist's principal; fee from principal.

(a) Each ~~legislative~~ lobbyist or lobbyist's principal shall file with the Secretary of State within 10 business days after the ~~legislative~~ lobbyist's registration a written authorization signed by the lobbyist's principal authorizing the lobbyist to represent the principal.

(b) The form of the authorization shall be prescribed by the Secretary of State and shall include the lobbyist's principal's full name, complete address and telephone number, name and title of the official signing for the lobbyist's principal, and the name of each lobbyist registered to represent the lobbyist's principal. The Secretary of State shall make available as soon as practicable the authorization of the lobbyists' principals in an electronic, searchable format.

(c) An amended authorization shall be filed with the Secretary of State no later than 10 days after any change in the information supplied for the lobbyist's principal on the previous authorization. Each supplementary authorization shall include a complete statement of the information that has changed.

(d) Except as provided for in subsection (e) of this section, a fee of one hundred dollars ($100.00) is due and payable to the Secretary of State at the time the lobbyist's principal's first authorization statement is filed each calendar year for a ~~legislative~~ lobbyist. ~~The fee for the legislative lobbyist's authorization shall be seventy-five dollars ($75.00) if an authorization for the principal to be represented by an executive lobbyist is filed at the same time. No additional fee is due for additional authorizations filed for legislative lobbyists.~~

(e) The Secretary of State shall adopt rules providing for the waiver or reduction of the fees required by ~~fee in~~ subsection (d) of this section. The rules shall provide that the fees be reduced to a total of twenty-five dollars ($25.00) if the lobbyist's principal had annual revenues in its most recent fiscal year of three hundred thousand dollars ($300,000) or less and is represented by no more than two different lobbyists. ~~This reduced fee covers authorizations filed for the principal's legislative and executive lobbyists.~~

"§ 120-47.5. Contingency lobbying fees and election influence prohibited.

(a) No person shall act as a ~~legislative~~ lobbyist for compensation that is dependent upon the result or outcome of any legislative or executive action. Any compensation paid to a lobbyist that is dependent upon the result or outcome of any legislative or executive action is subject to forfeiture and shall be paid into the Civil Penalty and Forfeiture Fund.

(b) No ~~legislative lobbyist or legislative lobbyist's principal~~ person shall attempt to influence the action of any covered person by the promise of financial support of the covered person's candidacy, or by threat of financial support in opposition to the covered person's candidacy in any future election.

"§ 120-47.5A. Certain gifts by lobbyists and lobbyist's principals prohibited; ~~Exemptions and inclusions for reporting purposes.~~exemptions.

(a) No lobbyist or lobbyist's principal may give a gift to a covered person.

~~(a)~~(a1) ~~For purposes of G.S. 120-47.6 and G.S. 120-47.7, the following expenditures need not be reported:~~Subsection (a) of this section shall not apply to:

~~(1)~~ ~~Gifts between an immediate family member or person who is the stepchild, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, or members of the household of the covered person or legislative employee~~

~~(2)~~ ~~Lawful campaign contributions.~~

~~(3)~~ ~~Commercially available loans made on terms not more favorable than generally available to the public in the normal course of business if not made for the purpose of lobbying.~~

~~(4)~~ ~~Contractual arrangements or business relationships or arrangements made in the normal course of business if not made for the purpose of lobbying.~~

~~(5)~~ ~~The cost of attendance or participation provided by the sponsoring entity of lodging, and of food and beverages consumed, at events sponsored by or in conjunction with a civic, charitable, community, or~~

~~diplomatic event if the activity or event does not last longer than three hours.~~

~~(6) Academic scholarships made on terms not more favorable than scholarships generally available to the public.~~

(1) Meals and beverages for immediate consumption in connection with public events.

(2) Nonmonetary items, other than food or beverages, with a value not to exceed ten dollars ($10.00) provided by a single donor during a single calendar day.

(3) Informational materials relevant to the duties of the covered person.

(4) Reasonable actual expenditures for food, registration, travel, and lodging of the covered person when the expenditures are incurred for participation in a conference or meeting and the conference or meeting is one of the following:

a. An educational conference or meeting.

b. A conference or meeting related to the covered person's duties and the covered person participates in a panel or speaking engagement at the conference or meeting

(5) Items or services received in connection with a state, national, or regional organization in which the covered person or the covered person's agency is a member.

(7) A plaque or similar nonmonetary memento recognizing individual services in a field or specialty or to a charitable cause.

(8) Gifts accepted on behalf of the State.

(9) Anything generally made available or distributed to the general public by the lobbyist or lobbyist's principal or all other State employees.

(10) Anything for which fair market value is paid.

(11) Commercially available loans made on terms not more favorable than generally available to the public in the normal course of business if not made for the purpose of lobbying.

(12) Contractual arrangements or business relationships or arrangements made in the normal course of business if not made for the purpose of lobbying.

(13) Academic scholarships made on terms not more favorable than scholarships generally available to the public.

(14) Political contributions properly received and reported as required under Article 22A of Chapter 163 of the General Statutes.

(15) Gifts from the covered person's extended family, or a member of the same household of the covered person, or gifts received in conjunction with a marriage, birth, adoption, or death.

(16) Things of monetary value given to a executive branch officer valued in excess of ten dollars ($10.00) where the thing of monetary value is entertainment or related expenses associated with the public business of industry recruitment, promotion of international trade, or the

promotion of travel and tourism, and the executive branch officer is responsible for conducting the business on behalf of the State, provided all the following conditions apply:

a. The executive branch officer did not solicit the thing of value, and the executive branch officer did not accept the thing of value in the performance of the executive branch officer's official duties.

b. The executive branch officer reports electronically to the Commission within 30 days of receipt of the thing of value. The report shall include a description and value of the thing of value and a description how the thing of value contributed to the public business of industry recruitment, promotion of international trade, or the promotion of travel and tourism. This report shall be posted to the Commission's public Web site.

c. A tangible thing of value in excess of ten dollars ($10.00), other than meals or beverages, shall be turned over as State property to the Department of Commerce within 30 days of receipt.

(17) Things of monetary value of personal property valued at less than one hundred dollars ($100.00) given to an executive branch officer in the commission of the executive branch officer's official duties if the gift is given to the executive branch officer as a personal gift in another country as part of an overseas trade mission, and the giving and receiving of such personal gifts is considered a customary protocol in the other country.

(b) For purposes of G.S. 120-47.6 and G.S. 120-47.7, all expenditures as defined in G.S. 120-47.1(1e) made for the purpose of lobbying shall be reported, including the following:

(1) Expenditures benefiting or made on behalf of a covered person, ~~a legislative employee,~~ or those persons' immediate family members, in the regular course of that person's ~~nonlegislative~~ employment.

(2) Contractual arrangements or direct business relationships between a ~~legislative~~ lobbyist or ~~legislative~~ lobbyist's principal and a covered person, ~~legislative employee,~~ or that person's immediate family member, in effect during the reporting period or the previous 12 months.

(3) Expenditures reimbursed to a ~~legislative~~ lobbyist in the ordinary course of business by the lobbyist's principal or other employer. Expenditures reimbursed by the lobbyist's principal or other employer are reported only by the lobbyist.

(4) Expenditures for items exempted by subsection (a1) of this section.

~~(c) For reporting purposes of G.S. 120-47.6 and G.S. 120-47.7, legislative lobbying with respect to only the legislative actions of the Governor and Lieutenant Governor shall be reported.~~

(d) The offering or giving of a gift in compliance with this Article without corrupt intent shall not constitute a violation of G.S. 14-217 or G.S. 14-218.

"**§ 120-47.6. Statements of ~~legislative~~ lobbyist's lobbying expenditures required.**

(a) Each ~~legislative~~ lobbyist shall file ~~monthly~~ quarterly expenditure reports under oath with the Secretary of State, in a manner prescribed by the Secretary of State, which may include electronic reports, with respect to each lobbyist's ~~principal, while the General Assembly is in regular session, and quarterly thereafter.~~ principal. The expenditure report shall include all expenditures during the reporting period and shall be due 10 business days after the end of the reporting period. The ~~legislative~~ lobbyist shall file ~~expense~~ expenditure reports whether or not expenditures are made.

(a1) In addition to the reports required by subsection (a) of this section, each lobbyist incurring expenditures with respect to lobbying legislators and legislative employees shall file a monthly expenditure report while the General Assembly is in regular session. The monthly expenditure report shall contain information required by this section with respect to all lobbying of legislators and legislative employees, and is due within 10 business days of the end of the month. The information on the monthly expenditure report shall also be included in each quarterly report required by subsection (a) of this section.

(b) Each expenditure report shall set forth the fair market ~~value,~~value or face value if shown, date, a description of the expenditure, name and address of the payee, or beneficiary, and name of any covered person, ~~legislative employee,~~ or that person's immediate family member benefiting from the expenditure. Such expenditures shall be reported using the following categories:

(1) Transportation and lodging.
(2) Entertainment, food, and beverages.
(3) Meetings and events.
(4) Gifts.
(5) Other expenditures.
(6) Solicitation of others to lobby, as defined in G.S. 120-47.1(5), as follows:
  a. Media expenditures, in excess of one thousand dollars ($1000) in a reporting period or if a third party is employed or contracted for such purpose.
  b. Mail expenditures, in excess of five hundred dollars ($500) in a reporting period or if a third party is employed or contracted for such purpose.
  c. Conferences or other similar events in excess five hundred ($500), or if a third party is employed or contracted for such purpose.

~~In addition, expenses for the solicitation of others to lobby, whether or not a covered person, legislative employee, or family member is affected, shall be reportable if such expenses are incurred in connection, or in concert, with other expenditures reportable under this subsection.~~

(c) All reports shall be in the form prescribed by the Secretary of State and shall be open to public inspection upon filing. When more than 15 covered persons benefit from an expenditure, no names of individuals need be reported provided that the report identifies the approximate number of covered persons benefiting and, with particularity, the basis for their selection, including the name of the legislative body, committee, caucus, or other group whose membership list is a matter of public record in accordance with G.S. 132-1 or including a description of the group that clearly distinguishes its purpose or composition from the general membership of the General Assembly. The approximate number of ~~legislative employees and~~ immediate family members of covered persons ~~and legislative employees~~ who benefited from the expenditure shall be listed separately.

(d) When a ~~legislative~~ lobbyist fails to file an expenditure report as required in this section, the Secretary of State shall send a certified or registered letter advising the ~~legislative~~ lobbyist of the delinquency and the penalties provided by law. Within 20 days of the receipt of the letter, the ~~legislative~~ lobbyist shall deliver or post by United States mail to the Secretary of State the required report and an additional late filing fee in an amount equal to the late filing fee under G.S. 163-278.34(a)(2).

(e) Filing of the required report and payment of the additional fee within the time extended shall constitute compliance with this section. Failure to file an expenditure report in one of the manners prescribed in this section shall result in revocation of any and all registrations of a legislative lobbyist under this Article. No ~~legislative~~ lobbyist may register or reregister under this Article until the ~~legislative~~ lobbyist has fully complied with this section.

(f) Appeal of a decision by the Secretary of State under this section shall be in accordance with Article 3 of Chapter 150B of the General Statutes.

(g) The Secretary of State may adopt rules to facilitate complete and timely disclosure of expenditures, including the format of reports and additional categories of information, and to protect the addresses of payees under protective order issued pursuant to Chapter 50B of the General Statutes or participating in the Address Confidentiality Program pursuant to Chapter 15C of the General Statutes. The Secretary of State shall not impose any penalties or late filing fees upon a ~~legislative~~ lobbyist for subsequent failures to comply with the requirements of this section if the Secretary of State failed to provide ~~to~~ the lobbyist with required notifications of the initial violation. This provision shall not apply to a failure by the lobbyist to file an expenditure report in a timely manner.

"§ 120-47.7. Statements of ~~legislative~~ lobbyist's principal lobbying expenditures required.

(a) Each ~~legislative~~ lobbyist's principal shall file ~~monthly~~ quarterly expenditure reports under oath with the Secretary of State, in a manner prescribed by the Secretary of State, which may include electronic ~~reports, while the General Assembly is in regular session, and quarterly thereafter.~~reports. The expenditure report shall include all expenditures during the reporting period and shall be due 10 business days after the end of the reporting period. The lobbyist's principal shall file the expenditure reports whether or not expenditures are made during a reporting period.

(a1) In addition to the reports required by subsection (a) of this section, each lobbyist's principal incurring expenditures with respect to lobbying legislators and legislative employees shall file a monthly expenditure report while the General Assembly is in regular session. The monthly expenditure report shall contain information required by this section with respect to all lobbying of legislators and legislative employees, and is due within 10 business days of the end of the month. The information on the monthly expenditure report shall also be included in each quarterly report required by subsection (a) of this section.

(b) Each expenditure report shall set forth the fair market ~~value,~~value or face value if shown, date, a description of the expenditure, name and address of the payee, or beneficiary, and name of any covered person, ~~legislative employee,~~ or that person's immediate family member affected by the expenditure. Such expenditures shall be reported using the following categories:

(1) Transportation and lodging.
(2) Entertainment, food, and beverages.
(3) Meetings and events.
(4) Gifts.
(5) Other expenditures.
(6) Solicitation of others to lobby as defined in G.S. 120-47.1(5), as follows:
  a. Media expenditures, in excess of one thousand dollars ($1000) in a reporting period or if a third party is employed or contracted for such purpose.
  b. Mail expenditures, in excess of five hundred dollars ($500) in a reporting period or if a third party is employed or contracted for such purpose.
  c. Conferences or other similar events in excess five hundred ($500), or if a third party is employed or contracted for such purpose.
(7) Compensation paid to all lobbyists during the reporting period. If a legislative lobbyist is a full-time employee of the lobbyist's principal, or is compensated by means of an annual fee or retainer, the lobbyist's principal shall estimate and report the portion of the salary, fee, or retainer that compensates for lobbying.
(8) Expenditures reimbursed or paid to lobbyists for lobbying that are not reported on the lobbyist's report, with an itemized description of those expenditures.

~~In addition, expenses for the solicitation of others to lobby, whether or not a covered person, legislative employee, or family member is affected, shall be reportable if such expenses are incurred in connection, or in concert, with other expenditures reportable under this subsection.~~

~~In addition, the compensation paid or agreed to be paid to all legislative lobbyists shall be reported, whether or not a covered person, legislative employee, or family member is affected. If a legislative lobbyist is a full-time employee of the lobbyist's~~

~~principal, or is compensated by means of an annual fee or retainer, the lobbyist's principal shall estimate and report the portion of the salary, fee, or retainer that compensates for lobbying. The lobbyist's principal's expenditure report shall include an itemized description of all expenditures reimbursed or paid to legislative lobbyists for lobbying that are not reported on the legislative lobbyists' reports.~~

(c) All reports shall be in the form prescribed by the Secretary of State and open to public inspection upon filing. When more than 15 covered persons benefit from an expenditure, no names of individuals need be reported provided that the report identifies the approximate number of covered persons benefiting and, with particularity, the basis for their selection, including the name of the legislative body, committee, caucus, or other group whose membership list is a matter of public record in accordance with G.S. 132-1 or including a description of the group that clearly distinguishes its purpose or composition from the general membership of the General Assembly. The approximate number of ~~legislative employees and~~ immediate family members of covered persons ~~and legislative employees~~ who benefited from the expenditure shall be listed separately.

(d) When a lobbyist's principal fails to file an expenditure report as required in this section, the Secretary of State shall send a certified or registered letter advising the lobbyist's principal of the delinquency and the penalties provided by law. Within 20 days of the receipt of the letter, the lobbyist's principal shall deliver or post by United States mail to the Secretary of State the required report and a late filing fee in an amount equal to the late filing fee under G.S. 163-278.34(a)(2).

(e) Filing of the required report and payment of the late fee within the time extended shall constitute compliance with this section. Failure to file an expenditure report in one of the manners prescribed in this section shall result in revocation of any and all registrations of a lobbyist's principal under this Article. No lobbyist's principal may register or reregister under this Article until the lobbyist's principal has fully complied with this section.

(f) Appeal of a decision by the Secretary of State under this section shall be in accordance with Article 3 of Chapter 150B of the General Statutes.

(g) The Secretary of State may adopt rules to facilitate complete and timely disclosure of expenditures, including the format of reports and additional categories of information, and to protect the addresses of payees under protective order issued pursuant to Chapter 50B of the General Statutes or participating in the Address Confidentiality Program pursuant to Chapter 15C of the General Statutes. The Secretary of State shall not impose any penalties or late filing fees upon a principal for subsequent failures to comply with the requirements of this section if the Secretary of State failed to provide to the lobbyist's principal with required notifications of the initial violation. This provision shall not apply to a failure by the principal to file an expenditure report in a timely manner.

"**§ 120-47.7A.** Reserved for future codification purposes.

"**§ 120-47.7B. Powers and duties of the Secretary of State.**

(a) The Secretary of State shall perform systematic reviews of reports required to be filed under G.S. 120-47.6 and G.S. 120-47.7 on a regular basis to assure complete and timely disclosure of allowable expenditures.

(b) The Secretary of State may petition the Superior Court of Wake County for the approval to issue subpoenas and subpoenas duces tecum as necessary to conduct investigations of violations of this Article. The court shall authorize subpoenas under this subsection when the court determines they are necessary for the enforcement of this Article. Subpoenas issued pursuant to this subsection shall be enforceable by the court through contempt powers. Venue shall be with the Superior Court of Wake County for any nonresident person, or that person's agent, who makes a reportable expenditure under this Article, and personal jurisdiction may be asserted under G.S. 1-75.4.

(c) Complaints of violations of this Article and all other records accumulated in conjunction with the investigation of these complaints shall be considered records of criminal investigations under G.S. 132-1.4.

"§ 120-47.7C. Prohibitions.

(a) No member or former member of the General Assembly may be employed as ~~an executive or legislative~~ a lobbyist by a lobbyist's principal to lobby as defined in this Article ~~or Article 4C of Chapter 147 of the General Statutes~~ within ~~six months~~one year after the end of that member's service in the General Assembly.

(b) No person serving as ~~Governor, as a member of the Council of State,~~a Constitutional officer of the State or as a head of a principal State department listed in G.S. 143B-6 may be employed as ~~an executive or legislative~~a lobbyist by a lobbyist's principal to lobby as defined in this Article ~~or Article 4C of Chapter 147 of the General Statutes~~ within ~~six months~~one year after separation from employment or leaving office.

(c) No individual registered as a ~~legislative~~ lobbyist shall serve as a campaign treasurer ~~under Chapter 163 of the General Statutes~~ as defined in G.S. 163-278.6(19) for a campaign for election as a member of the General ~~Assembly.~~Assembly or a Constitutional officer of the State.

(d) A ~~legislative or executive~~ lobbyist shall not be eligible for appointment by a State official to any body created under the laws of this State that has regulatory authority over the activities of a person that the lobbyist currently represents or has represented within 60 days after the expiration of the lobbyist's registration representing that person. Nothing herein shall be construed to prohibit appointment by any unit of local government.

(e) No ~~legislative or executive~~ lobbyist or another acting on the lobbyist's behalf shall permit a covered person ~~person, legislative employee, executive branch officer,~~ or that person's immediate family member, to use the cash or credit of the lobbyist for the purpose of lobbying unless the lobbyist is in attendance at the time of the expenditure.

"§ 120-47.8. Persons exempted from provisions of Article.

Except as otherwise provided in this Article, the provisions of this Article shall not be construed to apply to any of the ~~following:~~following lobbying activities:

(1) An individual solely engaged in expressing a personal opinion or stating facts or recommendations on legislative or executive matters to

~~members of the General Assembly~~a covered person and not acting as a ~~legislative~~ lobbyist.

(2) A person appearing before a ~~legislative committee~~ committee, commission, board, council, or other collective body whose membership includes one or more covered persons at the invitation or request of the committee or a member thereof and who engages in no further activities as a ~~legislative~~ lobbyist.

(3) a. A duly elected or appointed official or employee of the State, the United States, a county, municipality, school district or other governmental agency, when appearing solely in connection with matters pertaining to the office and public duties.

b. Notwithstanding the persons exempted in this Article, the ~~Governor, Council of State,~~ Constitutional officers of the State and all appointed heads of State departments, agencies and institutions, shall designate all authorized official ~~legislative~~ liaison personnel and shall file and maintain current lists of designated ~~legislative~~ liaison personnel with the Secretary of State.

(4) A person performing professional services in drafting ~~bills~~ bills, or in advising and rendering opinions to clients, or to covered persons on behalf of clients, as to the construction and effect of proposed or pending ~~legislation~~ legislative or executive action where the professional services are not otherwise connected with the legislative or executive action.

(5) A person who owns, publishes or is employed by any news medium while engaged in the acquisition or dissemination of news on behalf of the news medium.

(6) Repealed by Session Laws 1991, c. 740, s. 1.1.

(7) Covered ~~persons and legislative employees.~~persons while acting in their official capacity.

(8) A person responding to inquiries from a ~~member of the General Assembly or a legislative employee,~~covered person and who engages in no further activities as a ~~legislative~~ lobbyist in connection with that or any other legislative ~~matter.~~or executive action.

(9) An employee who represents the employer's interests in legislative or executive action for no more than ~~three~~five hours in a calendar quarter, provided that neither the employee nor the employer makes any expenditure as defined in G.S. 120-47.1.

(10) A licensed professional communicating with or appearing before an executive branch officer on behalf of another person in connection with any of the following:

a. Any executive action relating to a license, permit, certification, or authorization for that person.

b. A request for declaratory ruling or other means of seeking interpretation, application or meaning of any law, regulation, policy, or other guidance, standard or procedure as it affects or might be reasonably construed to affect that person.

c. An investigation, notice, charge, request for information, or asserted violation or other dispute within the executive branch agency's jurisdiction against that person, whether actual or reasonably anticipated.

d. A hearing, official meeting, enforcement action, notice of violation, notice of regulatory requirements, or other action in response to an asserted violation of law, regulations, policy, permit, or other applicable standard as it affects or might be reasonably construed to affect that person.

e. A proposed, present, or prior contract or lease between that person and the State, or any objection, question or dispute arising out of that contract or lease.

f. An application by that person for a grant, loan, or determination of eligibility, or any objection, question or dispute concerning that grant, loan, or eligibility.

g. An actual or proposed agreement by or between the person and the State.

(11) A licensed professional communicating with or appearing before an executive branch officer on behalf of another person in connection with any actual or reasonably anticipated judicial or quasi-judicial proceeding, administrative hearing, or rulemaking proceeding involving or affecting the person.

(12) An employee, board member, or officer of a lobbyist's principal when the employee, board member or officer's lobbying activity for that lobbyist's principal is fewer than five hours in direct communication with a covered person per calendar quarter.

(13) Members of a lobbyist's principal or those allied in interest with a lobbyist's principal whose lobbying activity for that lobbyist's principal is fewer than five hours in direct communication with a covered person per calendar quarter.

"**§ 120-47.8A. Expenditures made by persons exempted or not covered by this Article.**

(a) If a covered person ~~or a legislative employee~~ accepts an expenditure made for the purpose of lobbying valued over two hundred dollars ($200.00) from a person or group of persons acting together, exempted or not otherwise covered by this Article, the person, or group of persons, making the expenditure shall report the date, a description of the expenditure, the name and address of the person, or group of persons, making the

expenditure, the name of the covered person ~~or legislative employee~~ accepting the expenditure, and the estimated fair market value of the expenditure.

(b) If the person making the expenditure in subsection (a) of this section is outside North Carolina, and the covered person ~~or legislative employee~~ accepting the expenditure is also outside North Carolina at the time the person accepts the expenditure, then the person accepting the expenditure shall be responsible for filing the report using available information.

(c) If a covered person ~~or a legislative employee~~ accepts a scholarship valued over two hundred dollars ($200.00) from a person, or group of persons, acting together, exempted or not covered by this Article, the person, or group of persons, granting the scholarship shall report the date of the scholarship, a description of the event involved, the name and address of the person, or group of persons, granting the scholarship, the name of the covered person ~~or legislative employee~~ accepting the scholarship, and the estimated fair market value.

(d) If the person granting the scholarship in subsection (c) of this section is outside North Carolina, the covered person ~~or legislative employee~~ accepting the scholarship shall be responsible for filing the report.

(e) This section shall not apply to any of the following:

(1) Lawful campaign ~~contributions.~~ contributions properly received and reported as required under Article 22A of Chapter 163 of the General Statutes.

(2) Any gift from ~~a~~ an extended family member to a covered person. ~~person or legislative employee.~~

(3) Gifts associated primarily with the covered ~~person's, legislative employee's,~~ person's or that person's immediate family member's ~~nonlegislative~~ employment.

(4) Gifts, other than food, beverages, travel, and lodging, which are received from a person who is a citizen of a country other than the United States or a state other than North Carolina and given during a ceremonial presentation or as a custom.

(5) A thing of value that is paid for by the State.

(f) Reports required by this section shall be filed within 10 business days after the end of the quarter in which the expenditure was made, with the Secretary of State in a manner prescribed by the Secretary of State, which may include electronic reports.

"§ 120-47.9. Punishment for violation.

(a) Whoever willfully violates any provision of this Article shall be guilty of a Class 1 misdemeanor. In addition, no ~~legislative~~ lobbyist who is convicted of a violation of the provisions of this Article shall in any way act as a ~~legislative or executive~~ lobbyist for a period of two years following conviction.

(b) In addition to the criminal penalties set forth in this section, the Secretary of State may levy civil fines for ~~willful false or incomplete reporting~~ a violation of any provision of this Article up to five thousand dollars ($5,000) per violation.

"§ 120-47.10. Enforcement of Article by Attorney General.

(a) The Secretary of State may investigate complaints of violations of this Article, ~~The Secretary of State~~ and shall report apparent violations of this Article to the Attorney General. The Attorney General shall, upon complaint, make an appropriate investigation thereof, and the Attorney General shall forward a copy of the investigation to the district attorney of the prosecutorial district as defined in G.S. 7A-60 of which Wake County is a part, who shall prosecute any person who violates any provisions of this Article.

(b) Complaints of violations of this Article involving the Secretary of State or any member of the Department of the Secretary of State shall be referred to the Attorney General for investigation in accordance with G.S. 120-47.7B. Any portion of the complaint not involving alleged violations of this Article by the Secretary of State or any member of the Department of the Secretary of State shall remain with the Secretary of State for investigation. The Attorney General shall, upon receipt of a complaint, make an appropriate investigation thereof, and the Attorney General shall forward a copy of the investigation to the District Attorney of the prosecutorial district as defined in G.S. 7A-60 of which Wake County is a part, who shall prosecute any person who violates any provisions of this Article.

(c) Complaints of improper lobbying involving the Attorney General or any member of the Department of Justice shall be investigated by the Secretary of State and any apparent violations reported to the District Attorney of that prosecutorial district as defined in G.S. 7A-60 of which Wake County is a part. The District Attorney of that prosecutorial district shall, upon receipt of the Secretary of State's report, prosecute any person who violates any provisions of this Article.

"**§ 120-47.11. Rules and forms.**

(a) The Secretary of State shall adopt any rules, orders, forms, and definitions as are necessary to carry out the provisions of this Article. The Secretary of State may appoint a council to advise the Secretary in adopting rules under this section.

(b) The Secretary of State shall adopt rules to protect from disclosure all confidential information under Chapter 132 related to economic development initiatives or to industrial or business recruitment activities. The information shall remain confidential until the State, a unit of local government or the business has announced a commitment by the business to expand or locate a specific project in this State or a final decision not to do so and the business has communicated that commitment or decision to the State or local government agency involved with the project.

"**§ 120-47.12. Limitations on agency ~~legislative~~ liaison personnel.**

(a) No State department may use State funds to contract with persons who are not employed by the State to lobby the General Assembly.

(b) No more than two persons in each State department and constituent institution of The University of North Carolina may be registered to lobby the General Assembly or designated as ~~legislative~~ liaison personnel pursuant to this Article.

(c) All persons designated as ~~legislative~~ liaison personnel pursuant to this Article and the State department or constituent institution of The University of North Carolina that employs the ~~legislative~~ liaison personnel shall report all expenditures made for lobbying purposes in the same manner as required for ~~legislative~~ lobbyists under

G.S. 120-47.6 and lobbyists' principals under G.S. 120-47.7. The registration and authorization fees required under G.S. 120-47.3 and G.S. 120-47.4 shall not apply to ~~legislative~~ liaison personnel or the State department or constituent institution that employs the ~~legislative~~ liaison personnel."

"**§ 120-47.13. Advisory opinions.**

(a) At the request of any person affected by this Article, the Secretary of State shall render advisory opinions on specific questions involving the meaning and application of this Article and the covered person's compliance therewith. The request shall be in writing and relate prospectively to real or reasonably anticipated fact settings or circumstances. The Secretary of State shall issue advisory opinions having prospective application only. Reliance upon a requested written advisory opinion on a specific matter shall immunize the covered person, on that matter, from both of the following:

(1) Investigation by the Secretary of State.

(2) Any adverse action by the employing entity.

(b) Staff to the Secretary of State may issue advisory opinions under rules adopted by the Secretary of State.

(c) The Secretary of State shall interpret the provisions of this Article by rules, and these interpretations shall be binding on all covered persons, lobbyists, and lobbyists' principal upon publication.

(d) The Secretary of State shall publish its advisory opinions at least once a year, edited as necessary to protect the identities of the individuals requesting opinions.

(e) Except as provided under subsection (d) of this section, requests for advisory opinions and advisory opinions issued pursuant to this section are confidential and not matters of public record.

"**§ 120A-14. Lobbying education program.**

(a) The Secretary of State shall develop and implement a lobbying education and awareness program designed to instill in all covered persons, lobbyists, and lobbyists' principals a keen and continuing awareness of their obligations and a sensitivity to situations that might result in real or potential violation of this Article or other related laws. The Secretary shall make basic lobbying education and awareness presentations to all covered persons upon their election, appointment or hiring and shall offer periodic refresher presentations as the Secretary deems appropriate. Every covered person shall participate in a lobbying presentation approved by the Secretary within six months of the person's election, appointment or hiring, and shall attend refresher ethics education presentations at least every two years thereafter in a manner the Secretary deems appropriate. Upon request, the Secretary shall assist each agency in developing in-house education programs and procedures necessary or desirable to meet the agency's particular needs for lobbying education.

(b) The Secretary shall publish a newsletter containing summaries of the Secretary's opinions, policies, procedures, and interpretive bulletins as issued from time to time. The newsletter shall be distributed to all covered persons, lobbyists, and lobbyists' principals. Publication under this subsection may be done electronically.

(c) The Secretary shall assemble and maintain a collection of relevant State laws, rules, and regulations that set forth lobbying standards applicable to covered persons. The collection of laws, rules and regulations shall be made available electronically as resource material to covered persons, lobbyists and lobbyists' principals, upon request.

"**§ 120-15. No gift registry.**

(a) The Secretary of State shall establish a "No Gifts" registry for persons subject to this Article. The "No Gifts" registry shall be published and updated with the list of lobbyists and lobbyists' principals required under G.S. 120-47.2.

(b) Except as provided in this subsection, lobbyists and lobbyists' principals shall not give unsolicited gifts allowed under G.S. 120-47.5A(a1)(2) to persons placing their names on the registry, without the persons' expressed consent. Gifts of informational directories may be given to persons placing their names on the registry.

(c) The Secretary shall have the authority to adopt rules to implement this section in compliance with the following criteria:

(1) The registration is valid from the time the person registers until January 1 of the following year, unless the person requests in writing the removal of that person's name.

(2) The registration shall be in writing.

(d) Violations of this section shall not constitute a crime but shall be subject to civil fines of up to five hundred dollars ($500.00) as levied by the Secretary of State."

SECTION 4. Sections 2 and 3 of S.L. 2005-456 are repealed.

SECTION 5. G.S. 163-278.13 is amended by adding a new subsection to read:

"(c1) Notwithstanding the provisions of subsections (a) and (b) of this section, it shall be unlawful for any lobbyist registered under Chapter 120 of the General Statutes to contribute a total of more than four thousand dollars ($4,000) in any election to one or more candidates or candidate campaign committees as defined in G.S. 163-278.38Z."

SECTION 5.5. If House Bill 1843, 2005 Regular Session, becomes law, G.S. 120-290(c)(9) as enacted by that law, reads as rewritten:

'(9) Anything generally made available or distributed to the general public by the lobbyist or lobbyist's principal or generally available to all other State employees.'

SECTION 5.6. If House Bill 1844, 2005 regular Session, becomes law, G.S. 138A-7(d)(9) as enacted by that law, reads as rewritten:

'(9) Anything generally made available or distributed to the general public by the lobbyist or lobbyist's principal or generally available to all other State employees.

"**SECTION 5.7.(a).** If House Bill 1843, 2005 Regular Session, becomes law, G.S. 120-290(c)(4) as enacted by that law, reads as rewritten:

(4) Reasonable actual expenses for food, registration, travel, and lodging of the legislator or legislative employee ~~for a meeting at which the legislator or legislative employee participates in a panel or speaking engagement at the meeting related to the legislator's or legislative~~

~~employee's duties and~~ when expenses are incurred on the actual day of participation in ~~the engagement~~ a conference or meeting ~~or incurred within a 24-hour time period before or after the engagement.~~conference or meeting and the conference or meeting is one of the following:

a. An educational conference or meeting.

b. A conference or meeting related to the covered person's duties and the covered person participates in a panel or speaking engagement at the conference or meeting.

SECTION 5.7(b). If House Bill 1843, 2005 Regular Session, becomes law, G.S. 120-290(c)(6) is repealed.

SECTION 5.8.(a). If House Bill 1844, 2005 Regular Session, becomes law, G.S. 138A-7(d)(4) as enacted by that law, reads as rewritten:

(4) Reasonable actual expenses for food, registration, travel, and lodging of the public servant ~~for a meeting at which the public servant participates in a panel or speaking engagement at the meeting related to the public servant's duties and~~ when expenses are incurred on the actual day of participation in ~~the engagement~~ a conference or ~~or incurred within a 24-hour time period before or after the engagement.~~conference or meeting and the conference or meeting is one of the following:

a. An educational conference or meeting.

b. A conference or meeting related to the covered person's duties and the covered person participates in a panel or speaking engagement at the conference or meeting.

SECTION 5.8(b). If House Bill 1844, 2005 Regular Session, becomes law, G.S. 138A-7(d)(6) is repealed.

SECTION 6. If any section or provision of this act is declared unconstitutional or invalid by the courts, it does not affect the validity of this act as a whole or any part other than the part so declared to be unconstitutional or invalid.

SECTION 7. Sections 1, 2, 6, and 7 of this act are effective when the act becomes law, and the new G.S. 120-47.7C(d) applies to appointments made on or after that date. The remainder of this act becomes effective January 1, 2007.

Attachment IV

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1849

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

H1849-AST-140 [v.2]

Date _____,2006

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

Representative Stam

moves to amend the bill on page 17, lines 16-18 by deleting those lines;

and on page 17, lines 19-23 by rewriting those lines to read:

"e. An application by that person for a determination of eligibility for a grant, loan or other receipt of financial assistance generally available to persons similarly situated, or any objection, question or dispute arising out of that application.

f. An actual or proposed agreement by or between that person and the State when the underlying issues could result in litigation if not resolved.".

SIGNED Stam
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT Attachment V

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 1849 DATE June 27, 2006

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

COMMITTEE SUBSTITUTE PCS-H-1849-CSST-121 [v.7]

(Rep.) Ross
Sen.)

1 moves to amend the bill on page 16, line 37
2 ( ) WHICH CHANGES THE TITLE
3 by inserting between the words "action" and
4 "for" the words "through direct communication".
5
6
7
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11
12
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14
15
16
17
18
19

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT Attachment VI

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 1849 DATE _____

S. B. No. _____ Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE ✓

(Rep.) Ross
Sen.)

moves to amend the bill on page 21, line 28

( ) WHICH CHANGES THE TITLE

by _____

inserting at the end of that line:

"for a constitutional officer of the State as defined in G.S. 120-47.1(1d)a. or a legislator as defined in G.S. 120-47.1(4d)."

SIGNED _____

ADOPTED ✓ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT Attachment VII

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 1849 DATE June 27, 2006

S. B. No. _____ Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE ✓

Rep.)
)
Sen.) Stam

1 moves to amend the bill on page 21, line 10
2 ( ) WHICH CHANGES THE TITLE
3 by deleting the word "unsolicited"; and
4
5 on page 21, line 11
6
7 by deleting the phrase "without the persons'
8 expressed consent".
9
10
11
12
13
14
15
16
17
18
19

SIGNED Stam

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

Attachment VIII

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative Hackney (Chair) for the Committee on JUDICIARY I.

☐ Committee Substitute for
HB 1849 A BILL TO BE ENTITLED AN ACT TO AMEND THE LEGISLATIVE LOBBYING LAWS BY ESTABLISHING WAITING PERIODS BEFORE CERTAIN STATE OFFICERS MAY LOBBY; BY BARRING LOBBYISTS FROM CERTAIN APPOINTMENTS AND OTHER ACTIVITIES; BY BANNING CERTAIN GIFTS; BY ESTABLISHING QUARTERLY REPORTING OF EXPENDITURES WITH ADDITIONAL INTERIM REPORTING; BY EXPANDING THE COVERAGE OF THE LOBBYING LAWS TO INCLUDE EXECUTIVE BRANCH OFFICERS; BY LIMITING CAMPAIGN CONTRIBUTIONS BY REGISTERED LOBBYISTS; AND BY MAKING OTHER CONFORMING CHANGES, AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON ETHICS AND GOVERNMENTAL REFORM.

☒ With a favorable report as to the committee substitute bill, unfavorable as to the original bill.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

_____ Pursuant to Rule 36(b), the (House/Senate) committee substitute bill/(joint) resolution (No._____) is placed on the Calendar of _____. (The original bill resolution No._____) is placed on the Unfavorable Calendar.

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

Attachment IX

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 1849
PROPOSED COMMITTEE SUBSTITUTE H1849-PCS30611-ST-121

Short Title: Lobbying Reforms 2006. (Public)

Sponsors:

Referred to:

May 10, 2006

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LEGISLATIVE LOBBYING LAWS BY ESTABLISHING WAITING PERIODS BEFORE CERTAIN STATE OFFICERS MAY LOBBY; BY BARRING LOBBYISTS FROM CERTAIN APPOINTMENTS AND OTHER ACTIVITIES; BY BANNING CERTAIN GIFTS; BY ESTABLISHING QUARTERLY REPORTING OF EXPENDITURES WITH ADDITIONAL INTERIM REPORTING; BY EXPANDING THE COVERAGE OF THE LOBBYING LAWS TO INCLUDE EXECUTIVE BRANCH OFFICERS; BY LIMITING CAMPAIGN CONTRIBUTIONS BY REGISTERED LOBBYISTS; AND BY MAKING OTHER CONFORMING CHANGES, AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON ETHICS AND GOVERNMENTAL REFORM.

The General Assembly of North Carolina enacts:

SECTION 1. Article 9A of Chapter 120 of the General Statutes is amended to add a new section to read:

"**§ 120-47.7C. Prohibitions.**

(a) No member or former member of the General Assembly may be employed as a legislative lobbyist by a lobbyist's principal to lobby as defined in this Article within one year after the end of that member's service in the General Assembly.

(b) No person serving, or formerly having served, as Governor, a member of the Council of State, or a head of a principal State department listed in G.S. 143B-6 may be employed as a legislative lobbyist by a lobbyist's principal to lobby as defined in this Article within one year after separation from employment or leaving office.

(c) No individual registered as a legislative lobbyist shall serve as a campaign treasurer under Chapter 163 of the General Statutes as defined in G.S. 163-278.6(19) for a campaign for election as a member of the General Assembly, Governor, or Council of State.

(d) A legislative lobbyist shall not be eligible for appointment by a State official to any body created under the laws of this State that has regulatory authority over the activities of a person that the legislative lobbyist currently represents or has represented within 60 days after the expiration of the legislative lobbyist's registration representing that person. Nothing herein shall be construed to prohibit appointment by any unit of local government.

(e) No legislative lobbyist or another acting on the legislative lobbyist's behalf shall permit a covered person, legislative employee, or that person's immediate family member to use the cash or credit of the lobbyist for the purpose of lobbying unless the lobbyist is in attendance at the time of the expenditure."

SECTION 2. Article 9A of Chapter 120 of the General Statutes is amended to add a new section to read:

"**§ 120-47.7B. Powers and duties of the Secretary of State.**

(a) The Secretary of State shall perform systematic reviews of reports required to be filed under G.S. 120-47.6 and G.S. 120-47.7 on a regular basis to assure complete and timely disclosure of expenditures.

(b) The Secretary of State may petition the Superior Court of Wake County for the approval to issue subpoenas and subpoenas duces tecum as necessary to conduct investigations of violations of this Article. The court shall authorize subpoenas under this subsection when the court determines they are necessary for the enforcement of this Article. Subpoenas issued pursuant to this subsection shall be enforceable by the court through contempt powers. Venue shall be with the Superior Court of Wake County for any nonresident person, or that person's agent, who makes a reportable expenditure under this Article, and personal jurisdiction may be asserted under G.S. 1-75.4.

(c) Complaints of violations of this Article and all other records accumulated in conjunction with the investigation of these complaints shall be considered records of criminal investigations under G.S. 132-1.4."

SECTION 3. Article 9A of Chapter 120 of the General Statutes reads as rewritten:

"Article 9A.

"~~Legislative Branch~~ Lobbying.

"**§ 120-47.1. Definitions.**

~~The following definitions shall apply in this Article:~~As used in this Article, the following terms mean:

(1) ~~The term "covered person" means a legislator, the Governor, or the Lieutenant Governor.~~Covered person. – A legislator, legislative employee, or executive branch officer.

(1b) Constitutional officers of the State. – Officers whose offices are established in Article III of the Constitution.

(1c) Executive action. – Any decision, including administration, approval, disapproval, preparation, recommendation, the rendering of advice, and investigation made or contemplated in any proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, investigation, charge, or rule making.

(1d) Executive branch officer. – All of the following:

a. Constitutional officers of the State, persons elected or appointed as a Constitutional officer of the State prior to taking office, or a person having filed a notice of candidacy for such office under G.S. 163-106 or Article 11 of Chapter 163 of the General Statutes.

b. Employees of the Office of the Governor.

c. Heads of all principal State departments, as set forth in G.S. 143B-6, who are appointed by the Governor.

d. The chief deputy or chief administrative assistant of each person designated under sub-subdivisions a. and c. of this subdivision.

e. Confidential assistants and secretaries as defined in G.S. 126-5(c)(2), to persons designated under sub-subdivisions a., c., and d. of this subdivision.

f. Employees in exempt positions as defined in G.S. 126-5(b) and employees in exempt positions designated in accordance with G.S. 126-5(d)(1), (2), or (2a) and confidential secretaries to these individuals.

g. Any other employees or appointees in the principal State departments as may be designated by the Governor to the extent that the designation does not conflict with the State Personnel Act.

h. All voting members of boards, including ex officio members and members serving by executive, legislative, or judicial branch appointment.

i. For The University of North Carolina, the voting members of the Board of Governors of The University of North Carolina, the president, the vice presidents, the chancellors, the vice-chancellors, and voting members of the boards of trustees of the constituent institutions.

j. For the System of Community Colleges, the voting members of the State Board of Community Colleges, the President and chief financial officer of the System of Community Colleges, the president, chief financial officer and chief administrative officer of each community college, and voting members of the boards of trustees of each community college.

~~(1a)~~(1e) ~~The term "expenditure" means any~~ Expenditure. – Any advance, contribution, conveyance, deposit, distribution, payment, gift, retainer, fee, salary, honorarium, reimbursement, loan, pledge or thing of value greater than ten dollars ~~($10.00),~~($10.00) per single calendar day, or a contract, agreement, promise or other obligation whether or not legally enforceable, that directly or indirectly is made to, at the request of, for

the benefit of, or on the behalf of a covered ~~person, legislative employee,~~ person or that person's immediate family member.

(1f) Extended family. – Spouse, descendant, ascendant, or sibling of the covered person or descendant, ascendant, or sibling of the spouse of the covered person.

~~(1b) The term "executive lobbyist" means a lobbyist registered pursuant to Article 4C of Chapter 147 of the General Statutes.~~

(2), (3) Repealed by Session Laws 1991, c. 740, s. 1.1.

(2a) Gift. – Anything of value without valuable consideration.

(3a) ~~The term "immediate family member" means spouse, descendant, or ascendant.~~Immediate family member. – An unemancipated child of the covered person residing in the household and the covered person's spouse, if not legally separated.

(4) ~~The term "legislative action" means the~~Legislative action. – The preparation, research, drafting, introduction, consideration, modification, amendment, approval, passage, enactment, tabling, postponement, defeat, or rejection of a bill, resolution, amendment, motion, report, nomination, appointment, or other matter, whether or not the matter is identified by an official title, general title, or other specific reference, by the legislature or by a member or employee of the legislature acting or purporting to act in an official capacity. It also includes the consideration of any bill by the Governor for the Governor's approval or veto under Article II, Section 22(1) of the Constitution or for the Governor to allow the bill to become law under Article II, Section 22(7) of the Constitution.

(4a) ~~The term "legislative employee" means employees~~Legislative employee. – Employees and officers of the General Assembly.

(4b) ~~The term "legislative liaison personnel" means any~~Liaison personnel. – Any State employee or officer whose principal duties, in practice or as set forth in that person's job description, include lobbying the General ~~Assembly.~~Assembly or executive branch officers.

~~(4c) The term "legislative lobbyist" means any lobbyist for or against legislative action.~~

(4d) ~~The term "legislator" means a~~Legislator. – A member or presiding officer of the General ~~Assembly or~~Assembly, a person elected or appointed a member or presiding officer of the General Assembly prior to taking ~~office~~office, or a person having filed a notice of candidacy for such office under G.S. 163-106 or Article 11 of Chapter 163 of the General Statutes.

(5) ~~The term "lobbying" means any~~Lobbying. – Any of the following:

a. Influencing or attempting to influence legislative or executive action, or both, through direct communication or activities with a covered ~~person, legislative employee,~~person or that person's immediate family member.

b. Solicitation of others by ~~legislative~~ lobbyists or lobbyists' principals to influence legislative or executive ~~action.~~action, or both, except any of the following:
1. Telephone contacts by volunteers or employees where a third party is not employed for such purpose.
2. Electronic mail transmissions, by volunteers or employees, where a third party is not employed for such purpose.
3. Newsletters sent on a regular basis to members, employees, or those allied in interest.
4. Maintenance of Web sites for information about legislative or executive action, or both.

c. Developing goodwill through communications or activities, including the building of relationships, with a covered ~~person, legislative employee,~~ person or that person's immediate family member with the intention of influencing current or future legislative or executive action, but does not include communications or activities with a covered ~~person, legislative employee,~~person or that person's immediate family member in a business, civic, religious, fraternal, or commercial relationship which is not connected to legislative or executive ~~action.~~action, or both.

(6) ~~The term "lobbyist" means an~~Lobbyist. – An individual who meets any of the following criteria:
a. Is employed and receives compensation, or who contracts for economic consideration, for the purpose of lobbying.
b. Represents another person and receives compensation for the purpose of lobbying.
~~c. Is legislative liaison personnel.~~

The term "lobbyist" shall not include individuals who are specifically exempted from this Article by G.S. 120-47.8. For the purpose of determining whether an individual is a lobbyist under this subdivision, reimbursement of actual travel and subsistence expenses shall not be considered compensation; provided, however, that reimbursement in the ordinary course of business of these expenses shall be considered compensation if a significant part of the individual's duties involve lobbying before the General ~~Assembly.~~Assembly or executive branch officers.

(7) ~~The terms "lobbyist's principal" and "principal" mean the~~Lobbyist principal and principal. – The person on whose behalf the ~~legislative~~ lobbyist lobbies. In the case where a lobbyist is compensated by a law firm, consulting firm, or other entity retained by a person for ~~legislative~~ lobbying, the principal is the person whose interests the lobbyist represents in lobbying. In the case of a lobbyist employed or

retained by an association or other organization, the lobbyist's principal is the association or other organization, not the members of the association or other organization.

(7a) ~~The term "news medium" means mainstream~~News medium. – ~~media~~Media providers whose sole purpose is to report events and that does not involve research or advocacy.

(8) ~~The term "person" means any~~Person. – Any individual, firm, partnership, committee, association, corporation, business entity, or any other organization or group of persons which has an independent legal existence.

(8a) Public event. – Either of the following:

a. An organized gathering of individuals open to the general public or to which a legislator or legislative employee is invited along with the entire membership of the House, Senate, a committee, a subcommittee, a county legislative delegation, a joint committee, or legislative caucus and to which at least 10 employees or members of the principal actually attend.

b. An organized gathering of individuals open to the general public or to which at least 10 executive branch officers are invited to attend and at least 10 employees or members of the principal actually attend.

(9) ~~The General Assembly is in "regular session" from the~~In regular session. – The date set by law or resolution that the General Assembly convenes until the General Assembly either:

a. Adjourns sine die; or

b. Recesses or adjourns for more than 10 days.

"**§ 120-47.2. Registration procedure.**

(a) A ~~legislative~~ lobbyist shall file a registration statement with the Secretary of State in a manner prescribed by the Secretary before engaging in any lobbying. It shall be unlawful for a person to lobby without registering unless exempted by this Article. A lobbyist shall file a separate registration statement for each principal the lobbyist represents. ~~The registration shall indicate whether it is registration as a legislative lobbyist, executive lobbyist, or both, and a separate registration fee shall be paid for each separate type of registration.~~

(b) The form of the registration shall be prescribed by the Secretary of State and shall include the registrant's full name, firm, complete address and telephone number; the registrant's place of business; the full name, complete address and telephone number of each person by whom the registrant is employed or retained; and a general description of the matters on which the registrant expects to act as a ~~legislative~~ lobbyist. The Secretary of State shall make available as soon as practicable the registrations of the lobbyists and lobbyists' principals in an electronic, searchable format.

(c) Each ~~legislative~~ lobbyist shall file an amended registration form with the Secretary of State no later than 10 business days after any change in the information supplied in the ~~legislative~~ lobbyist's last registration under subsection (b). Each

supplementary registration shall include a complete statement of the information that has changed.

(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~~ Assembly, Constitutional officers of the State, the head of each principal department of the Executive Branch, and the State Legislative Library a list of all persons who have registered as ~~executive or legislative~~ lobbyists and whom they represent. ~~Within 20 days after the beginning of the term of a Governor, the Secretary of State shall furnish the Governor, each other member of the Council of State, the head of each principal department of the Executive Branch, and the State Legislative Library a list of all persons who have registered as executive or legislative lobbyists and whom they represent.~~ A supplemental list of ~~legislative~~ lobbyists shall be furnished periodically each 20 days ~~thereafter as the session progresses.~~ while the General Assembly is in session and every 60 days thereafter. ~~A supplemental list of executive lobbyists shall be furnished periodically each 60 days thereafter.~~ For each special session of the General Assembly, a supplemental list of ~~legislative~~ lobbyists shall be furnished to the State Legislative Library. All lists required by this section may be furnished electronically.

(e) Each registration statement of a ~~legislative~~ lobbyist required under this Article shall be effective from the date of filing until January 1 of the following year. The ~~legislative~~ lobbyist shall file a new registration statement after that date, and the applicable fee shall be due and payable.

"**§ 120-47.3. Registration fee.**

A fee of one hundred dollars ($100.00) is due and payable to the Secretary of State by either the lobbyist or the lobbyist's principal at the time of each lobbyist registration. Fees so collected shall be deposited in the General Fund of the State. The Secretary of State shall allow fees required under this section to be paid electronically but may not require the fees to be paid electronically. The Secretary of State shall adopt rules providing for the waiver or reduction of the fees required by this section in cases of hardship.

"**§ 120-47.4. Authorization from lobbyist's principal; fee from principal.**

(a) Each ~~legislative~~ lobbyist or lobbyist's principal shall file with the Secretary of State within 10 business days after the ~~legislative~~ lobbyist's registration a written authorization signed by the lobbyist's principal authorizing the lobbyist to represent the principal.

(b) The form of the authorization shall be prescribed by the Secretary of State and shall include the lobbyist's principal's full name, complete address and telephone number, name and title of the official signing for the lobbyist's principal, and the name of each lobbyist registered to represent the lobbyist's principal. The Secretary of State shall make available as soon as practicable the authorization of the lobbyists' principals in an electronic, searchable format.

(c) An amended authorization shall be filed with the Secretary of State no later than 10 days after any change in the information supplied for the lobbyist's principal on the previous authorization. Each supplementary authorization shall include a complete statement of the information that has changed.

(d) Except as provided for in subsection (e) of this section, a fee of one hundred dollars ($100.00) is due and payable to the Secretary of State at the time the lobbyist's principal's first authorization statement is filed each calendar year for a ~~legislative~~ lobbyist. ~~The fee for the legislative lobbyist's authorization shall be seventy-five dollars ($75.00) if an authorization for the principal to be represented by an executive lobbyist is filed at the same time. No additional fee is due for additional authorizations filed for legislative lobbyists.~~

(e) The Secretary of State shall adopt rules providing for the waiver or reduction of the fees required by ~~fee in~~ subsection (d) of this section. The rules shall provide that the fees be reduced to a total of twenty-five dollars ($25.00) if the lobbyist's principal had annual revenues in its most recent fiscal year of three hundred thousand dollars ($300,000) or less and is represented by no more than two different lobbyists. ~~This reduced fee covers authorizations filed for the principal's legislative and executive lobbyists.~~

"§ 120-47.5. Contingency lobbying fees and election influence prohibited.

(a) No person shall act as a ~~legislative~~ lobbyist for compensation that is dependent upon the result or outcome of any legislative or executive action. Any compensation paid to a lobbyist that is dependent upon the result or outcome of any legislative or executive action is subject to forfeiture and shall be paid into the Civil Penalty and Forfeiture Fund.

(b) No ~~legislative lobbyist or legislative lobbyist's principal~~ person shall attempt to influence the action of any covered person by the promise of financial support of the covered person's candidacy, or by threat of financial support in opposition to the covered person's candidacy in any future election.

"§ 120-47.5A. Certain gifts by lobbyists and lobbyist's principals prohibited; ~~Exemptions and inclusions for reporting purposes.~~exemptions.

(a) No lobbyist or lobbyist's principal may give a gift to a covered person.

~~(a)~~(a1) ~~For purposes of G.S. 120-47.6 and G.S. 120-47.7, the following expenditures need not be reported:~~Subsection (a) of this section shall not apply to:

~~(1) Gifts between an immediate family member or person who is the stepchild, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, or members of the household of the covered person or legislative employee.~~

~~(2) Lawful campaign contributions.~~

~~(3) Commercially available loans made on terms not more favorable than generally available to the public in the normal course of business if not made for the purpose of lobbying.~~

~~(4) Contractual arrangements or business relationships or arrangements made in the normal course of business if not made for the purpose of lobbying.~~

~~(5) The cost of attendance or participation provided by the sponsoring entity of lodging, and of food and beverages consumed, at events sponsored by or in conjunction with a civic, charitable, community, or~~

~~diplomatic event if the activity or event does not last longer than three hours.~~

~~(6) Academic scholarships made on terms not more favorable than scholarships generally available to the public.~~

(1) Meals and beverages for immediate consumption in connection with public events.

(2) Nonmonetary items, other than food or beverages, with a value not to exceed ten dollars ($10.00) provided by a single donor during a single calendar day.

(3) Informational materials relevant to the duties of the covered person.

(4) Reasonable actual expenditures for food, registration, travel, and lodging of the covered person when the expenditures are incurred for participation in a conference or meeting and the conference or meeting is one of the following:

a. An educational conference or meeting.

b. A conference or meeting related to the covered person's duties and the covered person participates in a panel or speaking engagement at the conference or meeting.

(5) Items or services received in connection with a state, national, or regional organization in which the covered person or the covered person's agency is a member.

(7) A plaque or similar nonmonetary memento recognizing individual services in a field or specialty or to a charitable cause.

(8) Gifts accepted on behalf of the State.

(9) Anything generally made available or distributed to the general public by the lobbyist or lobbyist's principal or all other State employees.

(10) Anything for which fair market value is paid.

(11) Commercially available loans made on terms not more favorable than generally available to the public in the normal course of business if not made for the purpose of lobbying.

(12) Contractual arrangements or business relationships or arrangements made in the normal course of business if not made for the purpose of lobbying.

(13) Academic scholarships made on terms not more favorable than scholarships generally available to the public.

(14) Political contributions properly received and reported as required under Article 22A of Chapter 163 of the General Statutes.

(15) Gifts from the covered person's extended family, or a member of the same household of the covered person, or gifts received in conjunction with a marriage, birth, adoption, or death.

(16) Things of monetary value given to an executive branch officer valued in excess of ten dollars ($10.00) where the thing of monetary value is entertainment or related expenses associated with the public business of industry recruitment, promotion of international trade, or the

promotion of travel and tourism, and the executive branch officer is responsible for conducting the business on behalf of the State, provided all the following conditions apply:

a. The executive branch officer did not solicit the thing of value, and the executive branch officer did not accept the thing of value in the performance of the executive branch officer's official duties.

b. The executive branch officer reports electronically to the Commission within 30 days of receipt of the thing of value. The report shall include a description and value of the thing of value and a description how the thing of value contributed to the public business of industry recruitment, promotion of international trade, or the promotion of travel and tourism. This report shall be posted to the Commission's public Web site.

c. A tangible thing of value in excess of ten dollars ($10.00), other than meals or beverages, shall be turned over as State property to the Department of Commerce within 30 days of receipt.

(17) Things of monetary value of personal property valued at less than one hundred dollars ($100.00) given to an executive branch officer in the commission of the executive branch officer's official duties if the gift is given to the executive branch officer as a personal gift in another country as part of an overseas trade mission, and the giving and receiving of such personal gifts is considered a customary protocol in the other country.

(b) For purposes of G.S. 120-47.6 and G.S. 120-47.7, all expenditures as defined in G.S. 120-47.1(1e) made for the purpose of lobbying shall be reported, including the following:

(1) Expenditures benefiting or made on behalf of a covered person, ~~a legislative employee,~~ or those persons' immediate family members, in the regular course of that person's ~~nonlegislative~~ employment.

(2) Contractual arrangements or direct business relationships between a ~~legislative~~ lobbyist or ~~legislative~~ lobbyist's principal and a covered person, ~~legislative employee,~~ or that person's immediate family member, in effect during the reporting period or the previous 12 months.

(3) Expenditures reimbursed to a ~~legislative~~ lobbyist in the ordinary course of business by the lobbyist's principal or other employer. Expenditures reimbursed by the lobbyist's principal or other employer are reported only by the lobbyist.

(4) Expenditures for items exempted by subsection (a1) of this section.

~~(c) For reporting purposes of G.S. 120-47.6 and G.S. 120-47.7, legislative lobbying with respect to only the legislative actions of the Governor and Lieutenant Governor shall be reported.~~

(d) The offering or giving of a gift in compliance with this Article without corrupt intent shall not constitute a violation of G.S. 14-217 or G.S. 14-218.

"§ 120-47.6. Statements of ~~legislative~~ lobbyist's lobbying expenditures required.

(a) Each ~~legislative~~ lobbyist shall file ~~monthly~~ quarterly expenditure reports under oath with the Secretary of State, in a manner prescribed by the Secretary of State, which may include electronic reports, with respect to each lobbyist's ~~principal, while the General Assembly is in regular session, and quarterly thereafter.~~ principal. The expenditure report shall include all expenditures during the reporting period and shall be due 10 business days after the end of the reporting period. The ~~legislative~~ lobbyist shall file ~~expense~~ expenditure reports whether or not expenditures are made.

(a1) In addition to the reports required by subsection (a) of this section, each lobbyist incurring expenditures with respect to lobbying legislators and legislative employees shall file a monthly expenditure report while the General Assembly is in regular session. The monthly expenditure report shall contain information required by this section with respect to all lobbying of legislators and legislative employees, and is due within 10 business days of the end of the month. The information on the monthly expenditure report shall also be included in each quarterly report required by subsection (a) of this section.

(b) Each expenditure report shall set forth the fair market ~~value,~~value or face value if shown, date, a description of the expenditure, name and address of the payee, or beneficiary, and name of any covered person, ~~legislative employee,~~ or that person's immediate family member benefiting from the expenditure. Such expenditures shall be reported using the following categories:

(1) Transportation and lodging.
(2) Entertainment, food, and beverages.
(3) Meetings and events.
(4) Gifts.
(5) Other expenditures.
(6) Solicitation of others to lobby, as defined in G.S. 120-47.1(5), as follows:
   a. Media expenditures in excess of one thousand dollars ($1,000) in a reporting period or if a third party is employed or contracted for such purpose.
   b. Mail expenditures in excess of five hundred dollars ($500.00) in a reporting period or if a third party is employed or contracted for such purpose.
   c. Conferences or other similar events in excess of five hundred dollars ($500.00), or if a third party is employed or contracted for such purpose.

~~In addition, expenses for the solicitation of others to lobby, whether or not a covered person, legislative employee, or family member is affected, shall be reportable if such expenses are incurred in connection, or in concert, with other expenditures reportable under this subsection.~~

(c) All reports shall be in the form prescribed by the Secretary of State and shall be open to public inspection upon filing. When more than 15 covered persons benefit from an expenditure, no names of individuals need be reported provided that the report identifies the approximate number of covered persons benefiting and, with particularity, the basis for their selection, including the name of the legislative body, committee, caucus, or other group whose membership list is a matter of public record in accordance with G.S. 132-1 or including a description of the group that clearly distinguishes its purpose or composition from the general membership of the General Assembly. The approximate number of ~~legislative employees and~~ immediate family members of covered persons ~~and legislative employees~~ who benefited from the expenditure shall be listed separately.

(d) When a ~~legislative~~ lobbyist fails to file an expenditure report as required in this section, the Secretary of State shall send a certified or registered letter advising the ~~legislative~~ lobbyist of the delinquency and the penalties provided by law. Within 20 days of the receipt of the letter, the ~~legislative~~ lobbyist shall deliver or post by United States mail to the Secretary of State the required report and an additional late filing fee in an amount equal to the late filing fee under G.S. 163-278.34(a)(2).

(e) Filing of the required report and payment of the additional fee within the time extended shall constitute compliance with this section. Failure to file an expenditure report in one of the manners prescribed in this section shall result in revocation of any and all registrations of a legislative lobbyist under this Article. No ~~legislative~~ lobbyist may register or reregister under this Article until the ~~legislative~~ lobbyist has fully complied with this section.

(f) Appeal of a decision by the Secretary of State under this section shall be in accordance with Article 3 of Chapter 150B of the General Statutes.

(g) The Secretary of State may adopt rules to facilitate complete and timely disclosure of expenditures, including the format of reports and additional categories of information, and to protect the addresses of payees under protective order issued pursuant to Chapter 50B of the General Statutes or participating in the Address Confidentiality Program pursuant to Chapter 15C of the General Statutes. The Secretary of State shall not impose any penalties or late filing fees upon a ~~legislative~~ lobbyist for subsequent failures to comply with the requirements of this section if the Secretary of State failed to provide ~~to~~ the lobbyist with required notifications of the initial violation. This provision shall not apply to a failure by the lobbyist to file an expenditure report in a timely manner.

"§ 120-47.7. Statements of ~~legislative~~ lobbyist's principal lobbying expenditures required.

(a) Each ~~legislative~~ lobbyist's principal shall file ~~monthly~~ quarterly expenditure reports under oath with the Secretary of State, in a manner prescribed by the Secretary of State, which may include electronic ~~reports, while the General Assembly is in regular session, and quarterly thereafter.~~ reports. The expenditure report shall include all expenditures during the reporting period and shall be due 10 business days after the end of the reporting period. The lobbyist's principal shall file the expenditure reports whether or not expenditures are made during a reporting period.

(a1) In addition to the reports required by subsection (a) of this section, each lobbyist's principal incurring expenditures with respect to lobbying legislators and legislative employees shall file a monthly expenditure report while the General Assembly is in regular session. The monthly expenditure report shall contain information required by this section with respect to all lobbying of legislators and legislative employees, and is due within 10 business days of the end of the month. The information on the monthly expenditure report shall also be included in each quarterly report required by subsection (a) of this section.

(b) Each expenditure report shall set forth the fair market ~~value,~~value or face value if shown, date, a description of the expenditure, name and address of the payee, or beneficiary, and name of any covered person, ~~legislative employee,~~ or that person's immediate family member affected by the expenditure. Such expenditures shall be reported using the following categories:

(1) Transportation and lodging.
(2) Entertainment, food, and beverages.
(3) Meetings and events.
(4) Gifts.
(5) Other expenditures.
(6) Solicitation of others to lobby as defined in G.S. 120-47.1(5), as follows:
  a. Media expenditures in excess of one thousand dollars ($1,000) in a reporting period or if a third party is employed or contracted for such purpose.
  b. Mail expenditures in excess of five hundred dollars ($500.00) in a reporting period or if a third party is employed or contracted for such purpose.
  c. Conferences or other similar events in excess of five hundred dollars ($500.00), or if a third party is employed or contracted for such purpose.
(7) Compensation paid to all lobbyists during the reporting period. If a legislative lobbyist is a full-time employee of the lobbyist's principal, or is compensated by means of an annual fee or retainer, the lobbyist's principal shall estimate and report the portion of the salary, fee, or retainer that compensates for lobbying.
(8) Expenditures reimbursed or paid to lobbyists for lobbying that are not reported on the lobbyist's report, with an itemized description of those expenditures.

~~In addition, expenses for the solicitation of others to lobby, whether or not a covered person, legislative employee, or family member is affected, shall be reportable if such expenses are incurred in connection, or in concert, with other expenditures reportable under this subsection.~~

~~In addition, the compensation paid or agreed to be paid to all legislative lobbyists shall be reported, whether or not a covered person, legislative employee, or family member is affected. If a legislative lobbyist is a full-time employee of the lobbyist's~~

~~principal, or is compensated by means of an annual fee or retainer, the lobbyist's principal shall estimate and report the portion of the salary, fee, or retainer that compensates for lobbying. The lobbyist's principal's expenditure report shall include an itemized description of all expenditures reimbursed or paid to legislative lobbyists for lobbying that are not reported on the legislative lobbyists' reports.~~

(c) All reports shall be in the form prescribed by the Secretary of State and open to public inspection upon filing. When more than 15 covered persons benefit from an expenditure, no names of individuals need be reported provided that the report identifies the approximate number of covered persons benefiting and, with particularity, the basis for their selection, including the name of the legislative body, committee, caucus, or other group whose membership list is a matter of public record in accordance with G.S. 132-1 or including a description of the group that clearly distinguishes its purpose or composition from the general membership of the General Assembly. The approximate number of ~~legislative employees and~~ immediate family members of covered persons ~~and legislative employees~~ who benefited from the expenditure shall be listed separately.

(d) When a lobbyist's principal fails to file an expenditure report as required in this section, the Secretary of State shall send a certified or registered letter advising the lobbyist's principal of the delinquency and the penalties provided by law. Within 20 days of the receipt of the letter, the lobbyist's principal shall deliver or post by United States mail to the Secretary of State the required report and a late filing fee in an amount equal to the late filing fee under G.S. 163-278.34(a)(2).

(e) Filing of the required report and payment of the late fee within the time extended shall constitute compliance with this section. Failure to file an expenditure report in one of the manners prescribed in this section shall result in revocation of any and all registrations of a lobbyist's principal under this Article. No lobbyist's principal may register or reregister under this Article until the lobbyist's principal has fully complied with this section.

(f) Appeal of a decision by the Secretary of State under this section shall be in accordance with Article 3 of Chapter 150B of the General Statutes.

(g) The Secretary of State may adopt rules to facilitate complete and timely disclosure of expenditures, including the format of reports and additional categories of information, and to protect the addresses of payees under protective order issued pursuant to Chapter 50B of the General Statutes or participating in the Address Confidentiality Program pursuant to Chapter 15C of the General Statutes. The Secretary of State shall not impose any penalties or late filing fees upon a principal for subsequent failures to comply with the requirements of this section if the Secretary of State failed to provide to the lobbyist's principal with required notifications of the initial violation. This provision shall not apply to a failure by the principal to file an expenditure report in a timely manner.

"**§ 120-47.7A.** Reserved for future codification purposes.

"**§ 120-47.7B. Powers and duties of the Secretary of State.**

(a) The Secretary of State shall perform systematic reviews of reports required to be filed under G.S. 120-47.6 and G.S. 120-47.7 on a regular basis to assure complete and timely disclosure of allowable expenditures.

(b) The Secretary of State may petition the Superior Court of Wake County for the approval to issue subpoenas and subpoenas duces tecum as necessary to conduct investigations of violations of this Article. The court shall authorize subpoenas under this subsection when the court determines they are necessary for the enforcement of this Article. Subpoenas issued pursuant to this subsection shall be enforceable by the court through contempt powers. Venue shall be with the Superior Court of Wake County for any nonresident person, or that person's agent, who makes a reportable expenditure under this Article, and personal jurisdiction may be asserted under G.S. 1-75.4.

(c) Complaints of violations of this Article and all other records accumulated in conjunction with the investigation of these complaints shall be considered records of criminal investigations under G.S. 132-1.4.

"§ 120-47.7C. Prohibitions.

(a) No member or former member of the General Assembly may be employed as ~~an executive or legislative~~ a lobbyist by a lobbyist's principal to lobby as defined in this Article ~~or Article 4C of Chapter 147 of the General Statutes~~ within ~~six months~~one year after the end of that member's service in the General Assembly.

(b) No person serving as ~~Governor, as a member of the Council of State,~~a Constitutional officer of the State or as a head of a principal State department listed in G.S. 143B-6 may be employed as ~~an executive or legislative~~a lobbyist by a lobbyist's principal to lobby as defined in this Article ~~or Article 4C of Chapter 147 of the General Statutes~~ within ~~six months~~one year after separation from employment or leaving office.

(c) No individual registered as a ~~legislative~~ lobbyist shall serve as a campaign treasurer ~~under Chapter 163 of the General Statutes~~ as defined in G.S. 163-278.6(19) for a campaign for election as a member of the General ~~Assembly.~~Assembly or a Constitutional officer of the State.

(d) A ~~legislative or executive~~ lobbyist shall not be eligible for appointment by a State official to any body created under the laws of this State that has regulatory authority over the activities of a person that the lobbyist currently represents or has represented within 60 days after the expiration of the lobbyist's registration representing that person. Nothing herein shall be construed to prohibit appointment by any unit of local government.

(e) No ~~legislative or executive~~ lobbyist or another acting on the lobbyist's behalf shall permit a covered person, ~~legislative employee, executive branch officer,~~ or that person's immediate family member, to use the cash or credit of the lobbyist for the purpose of lobbying unless the lobbyist is in attendance at the time of the expenditure.

"§ 120-47.8. Persons exempted from provisions of Article.

Except as otherwise provided in this Article, the provisions of this Article shall not be construed to apply to any of the ~~following:~~following lobbying activities:

(1) An individual solely engaged in expressing a personal opinion or stating facts or recommendations on legislative or executive matters to

~~members of the General Assembly~~a covered person and not acting as a ~~legislative~~ lobbyist.

(2) A person appearing before a ~~legislative committee~~ committee, commission, board, council, or other collective body whose membership includes one or more covered persons at the invitation or request of the committee or a member thereof and who engages in no further activities as a ~~legislative~~ lobbyist.

(3) a. A duly elected or appointed official or employee of the State, the United States, a county, municipality, school district or other governmental agency, when appearing solely in connection with matters pertaining to the office and public duties.

b. Notwithstanding the persons exempted in this Article, the ~~Governor, Council of State,~~ Constitutional officers of the State and all appointed heads of State departments, agencies and institutions, shall designate all authorized official ~~legislative~~ liaison personnel and shall file and maintain current lists of designated ~~legislative~~ liaison personnel with the Secretary of State.

(4) A person performing professional services in drafting ~~bills~~ bills, or in advising and rendering opinions to clients, or to covered persons on behalf of clients, as to the construction and effect of proposed or pending ~~legislation~~ legislative or executive action where the professional services are not otherwise connected with the legislative or executive action.

(5) A person who owns, publishes or is employed by any news medium while engaged in the acquisition or dissemination of news on behalf of the news medium.

(6) Repealed by Session Laws 1991, c. 740, s. 1.1.

(7) Covered ~~persons and legislative employees.~~persons while acting in their official capacity.

(8) A person responding to inquiries from a ~~member of the General Assembly or a legislative employee,~~covered person and who engages in no further activities as a ~~legislative~~ lobbyist in connection with that or any other legislative ~~matter.~~or executive action.

(9) An employee who represents the employer's interests in legislative or executive action for no more than ~~three~~five hours in a calendar quarter, provided that neither the employee nor the employer makes any expenditure as defined in G.S. 120-47.1.

(10) A licensed professional communicating with or appearing before an executive branch officer on behalf of another person in connection with any of the following:

a. Any executive action relating to a license, permit, certification, or authorization for that person.

b. A request for declaratory ruling or other means of seeking interpretation, application or meaning of any law, regulation, policy, or other guidance, standard, or procedure as it affects or might be reasonably construed to affect that person.

c. An investigation, notice, charge, request for information, or asserted violation or other dispute within the executive branch agency's jurisdiction against that person, whether actual or reasonably anticipated.

d. A hearing, official meeting, enforcement action, notice of violation, notice of regulatory requirements, or other action in response to an asserted violation of law, regulations, policy, permit, or other applicable standard as it affects or might be reasonably construed to affect that person.

e. An application by that person for a determination of eligibility for a grant, loan, or other receipt of financial assistance generally available to persons similarly situated, or any objection, question, or dispute arising out of that application.

f. An actual or proposed agreement by or between that person and the State when the underlying issues could result in litigation if not resolved.

(11) A licensed professional communicating with or appearing before an executive branch officer on behalf of another person in connection with any actual or reasonably anticipated judicial or quasi-judicial proceeding, administrative hearing, or rule-making proceeding involving or affecting the person.

(12) An employee, board member, or officer of a lobbyist's principal when the employee, board member, or officer's lobbying activity for that lobbyist's principal is fewer than five hours in direct communication with a covered person per calendar quarter.

(13) Members of a lobbyist's principal, or those allied in interest with a lobbyist's principal, whose lobbying activity for that lobbyist's principal is fewer than five hours in direct communication with a covered person per calendar quarter.

"**§ 120-47.8A. Expenditures made by persons exempted or not covered by this Article.**

(a) If a covered person ~~or a legislative employee~~ accepts an expenditure made for the purpose of lobbying valued over two hundred dollars ($200.00) from a person or group of persons acting together, exempted or not otherwise covered by this Article, the person, or group of persons, making the expenditure shall report the date, a description of the expenditure, the name and address of the person, or group of persons, making the expenditure, the name of the covered person ~~or legislative employee~~ accepting the expenditure, and the estimated fair market value of the expenditure.

(b) If the person making the expenditure in subsection (a) of this section is outside North Carolina, and the covered person ~~or legislative employee~~ accepting the

expenditure is also outside North Carolina at the time the person accepts the expenditure, then the person accepting the expenditure shall be responsible for filing the report using available information.

(c) If a covered person ~~or a legislative employee~~ accepts a scholarship valued over two hundred dollars ($200.00) from a person, or group of persons, acting together, exempted or not covered by this Article, the person, or group of persons, granting the scholarship shall report the date of the scholarship, a description of the event involved, the name and address of the person, or group of persons, granting the scholarship, the name of the covered person ~~or legislative employee~~ accepting the scholarship, and the estimated fair market value.

(d) If the person granting the scholarship in subsection (c) of this section is outside North Carolina, the covered person ~~or legislative employee~~ accepting the scholarship shall be responsible for filing the report.

(e) This section shall not apply to any of the following:

(1) Lawful campaign ~~contributions.~~ contributions properly received and reported as required under Article 22A of Chapter 163 of the General Statutes.

(2) Any gift from ~~a~~ an extended family member to a covered person. ~~person or legislative employee.~~

(3) Gifts associated primarily with the covered ~~person's, legislative employee's,~~ person's or that person's immediate family member's ~~nonlegislative~~ employment.

(4) Gifts, other than food, beverages, travel, and lodging, which are received from a person who is a citizen of a country other than the United States or a state other than North Carolina and given during a ceremonial presentation or as a custom.

(5) A thing of value that is paid for by the State.

(f) Reports required by this section shall be filed within 10 business days after the end of the quarter in which the expenditure was made, with the Secretary of State in a manner prescribed by the Secretary of State, which may include electronic reports.

"§ 120-47.9. Punishment for violation.

(a) Whoever willfully violates any provision of this Article shall be guilty of a Class 1 misdemeanor. In addition, no ~~legislative~~ lobbyist who is convicted of a violation of the provisions of this Article shall in any way act as a ~~legislative or executive~~ lobbyist for a period of two years following conviction.

(b) In addition to the criminal penalties set forth in this section, the Secretary of State may levy civil fines for ~~willful false or incomplete reporting~~ a violation of any provision of this Article up to five thousand dollars ($5,000) per violation.

"§ 120-47.10. Enforcement of Article by Attorney General.

(a) The Secretary of State may investigate complaints of violations of this Article ~~The Secretary of State~~ and shall report apparent violations of this Article to the Attorney General. The Attorney General shall, upon complaint, make an appropriate investigation thereof, and the Attorney General shall forward a copy of the investigation to the district

attorney of the prosecutorial district as defined in G.S. 7A-60 of which Wake County is a part, who shall prosecute any person who violates any provisions of this Article.

(b) Complaints of violations of this Article involving the Secretary of State or any member of the Department of the Secretary of State shall be referred to the Attorney General for investigation in accordance with G.S. 120-47.7B. Any portion of the complaint not involving alleged violations of this Article by the Secretary of State or any member of the Department of the Secretary of State shall remain with the Secretary of State for investigation. The Attorney General shall, upon receipt of a complaint, make an appropriate investigation thereof, and the Attorney General shall forward a copy of the investigation to the District Attorney of the prosecutorial district as defined in G.S. 7A-60 of which Wake County is a part, who shall prosecute any person who violates any provisions of this Article.

(c) Complaints of improper lobbying involving the Attorney General or any member of the Department of Justice shall be investigated by the Secretary of State and any apparent violations reported to the District Attorney of that prosecutorial district as defined in G.S. 7A-60 of which Wake County is a part. The District Attorney of that prosecutorial district shall, upon receipt of the Secretary of State's report, prosecute any person who violates any provisions of this Article.

"**§ 120-47.11. Rules and forms.**

(a) The Secretary of State shall adopt any rules, orders, forms, and definitions as are necessary to carry out the provisions of this Article. The Secretary of State may appoint a council to advise the Secretary in adopting rules under this section.

(b) The Secretary of State shall adopt rules to protect from disclosure all confidential information under Chapter 132 related to economic development initiatives or to industrial or business recruitment activities. The information shall remain confidential until the State, a unit of local government or the business has announced a commitment by the business to expand or locate a specific project in this State or a final decision not to do so and the business has communicated that commitment or decision to the State or local government agency involved with the project.

"**§ 120-47.12. Limitations on agency ~~legislative~~ liaison personnel.**

(a) No State department may use State funds to contract with persons who are not employed by the State to lobby the General Assembly.

(b) No more than two persons in each State department and constituent institution of The University of North Carolina may be registered to lobby the General Assembly or designated as ~~legislative~~ liaison personnel pursuant to this Article.

(c) All persons designated as ~~legislative~~ liaison personnel pursuant to this Article and the State department or constituent institution of The University of North Carolina that employs the ~~legislative~~ liaison personnel shall report all expenditures made for lobbying purposes in the same manner as required for ~~legislative~~ lobbyists under G.S. 120-47.6 and lobbyists' principals under G.S. 120-47.7. The registration and authorization fees required under G.S. 120-47.3 and G.S. 120-47.4 shall not apply to ~~legislative~~ liaison personnel or the State department or constituent institution that employs the ~~legislative~~ liaison personnel.

"**§ 120-47.13. Advisory opinions.**

(a) At the request of any person affected by this Article, the Secretary of State shall render advisory opinions on specific questions involving the meaning and application of this Article and the covered person's compliance therewith. The request shall be in writing and relate prospectively to real or reasonably anticipated fact settings or circumstances. The Secretary of State shall issue advisory opinions having prospective application only. Reliance upon a requested written advisory opinion on a specific matter shall immunize the covered person, on that matter, from both of the following:

(1) Investigation by the Secretary of State.

(2) Any adverse action by the employing entity.

(b) Staff to the Secretary of State may issue advisory opinions under rules adopted by the Secretary of State.

(c) The Secretary of State shall interpret the provisions of this Article by rules, and these interpretations shall be binding on all covered persons, lobbyists, and lobbyists' principals upon publication.

(d) The Secretary of State shall publish its advisory opinions at least once a year, edited as necessary to protect the identities of the individuals requesting opinions.

(e) Except as provided under subsection (d) of this section, requests for advisory opinions and advisory opinions issued pursuant to this section are confidential and not matters of public record.

"**§ 120-47.14. Lobbying education program.**

(a) The Secretary of State shall develop and implement a lobbying education and awareness program designed to instill in all covered persons, lobbyists, and lobbyists' principals a keen and continuing awareness of their obligations and a sensitivity to situations that might result in real or potential violation of this Article or other related laws. The Secretary of State shall make basic lobbying education and awareness presentations to all covered persons upon their election, appointment, or hiring and shall offer periodic refresher presentations as the Secretary of State deems appropriate. Every covered person shall participate in a lobbying presentation approved by the Secretary of State within six months of the person's election, appointment, or hiring and shall attend refresher ethics education presentations at least every two years thereafter in a manner the Secretary of State deems appropriate. Upon request, the Secretary of State shall assist each agency in developing in-house education programs and procedures necessary or desirable to meet the agency's particular needs for lobbying education.

(b) The Secretary of State shall publish a newsletter containing summaries of the Secretary's opinions, policies, procedures, and interpretive bulletins as issued from time to time. The newsletter shall be distributed to all covered persons, lobbyists, and lobbyists' principals. Publication under this subsection may be done electronically.

(c) The Secretary of State shall assemble and maintain a collection of relevant State laws, rules, and regulations that set forth lobbying standards applicable to covered persons. The collection of laws, rules, and regulations shall be made available electronically as resource material to covered persons, lobbyists, and lobbyists' principals, upon request.

"**§ 120-47.15. No gift registry.**

(a) The Secretary of State shall establish a "No Gifts" registry for persons subject to this Article. The "No Gifts" registry shall be published and updated with the list of lobbyists and lobbyists' principals required under G.S. 120-47.2.

(b) Except as provided in this subsection, lobbyists and lobbyists' principals shall not give gifts allowed under G.S. 120-47.5A(a1)(2) to persons placing their names on the registry. Gifts of informational directories may be given to persons placing their names on the registry.

(c) The Secretary of State shall have the authority to adopt rules to implement this section in compliance with the following criteria:

(1) The registration is valid from the time the person registers until January 1 of the following year, unless the person requests in writing the removal of that person's name.

(2) The registration shall be in writing.

(d) Violations of this section shall not constitute a crime but shall be subject to civil fines of up to five hundred dollars ($500.00) as levied by the Secretary of State."

SECTION 4. Sections 2 and 3 of S.L. 2005-456 are repealed.

SECTION 5. G.S. 163-278.13 is amended by adding a new subsection to read:

"(c1) Notwithstanding the provisions of subsections (a) and (b) of this section, it shall be unlawful for any lobbyist registered under Chapter 120 of the General Statutes to contribute a total of more than four thousand dollars ($4,000) in any election to one or more candidates, or candidate campaign committees as defined in G.S. 163-278.38Z for a constitutional officer of the State as defined in G.S. 120-47.1(1d)a. or a legislator as defined in G.S. 120-47.1(4d)."

SECTION 6. If House Bill 1843, 2005 Regular Session, becomes law, G.S. 120-290(c)(9), as enacted by that law, reads as rewritten:

"(9) Anything generally made available or distributed to the general public by the lobbyist or lobbyist's principal or generally available to all other State employees."

SECTION 7. If House Bill 1844, 2005 Regular Session, becomes law, G.S. 138A-7(d)(9) as enacted by that law, reads as rewritten:

"(9) Anything generally made available or distributed to the general public by the lobbyist or lobbyist's principal or generally available to all other State employees."

SECTION 8. If House Bill 1843, 2005 Regular Session, becomes law, G.S. 120-290(c)(4) as enacted by that law, reads as rewritten:

"(4) Reasonable actual expenses for food, registration, travel, and lodging of the legislator or legislative employee ~~for a meeting at which the legislator or legislative employee participates in a panel or speaking engagement at the meeting related to the legislator's or legislative employee's duties and~~ when expenses are incurred on the actual day of participation in ~~the engagement~~ a conference or meeting ~~or incurred within a 24-hour time period before or after the engagement.~~ and the conference or meeting is one of the following:

a. An educational conference or meeting.
b. A conference or meeting related to the covered person's duties and the covered person participates in a panel or speaking engagement at the conference or meeting."

SECTION 9. If House Bill 1843, 2005 Regular Session, becomes law, G.S. 120-290(c)(6) is repealed.

SECTION 10. If House Bill 1844, 2005 Regular Session, becomes law, G.S. 138A-7(d)(4) as enacted by that law, reads as rewritten:

"(4) Reasonable actual expenses for food, registration, travel, and lodging of the public servant ~~for a meeting at which the public servant participates in a panel or speaking engagement at the meeting related to the public servant's duties and~~ when expenses are incurred on the actual day of participation in ~~the engagement~~ a conference or ~~or incurred within a 24-hour time period before or after the engagement.~~conference or meeting and the conference or meeting is one of the following:

a. An educational conference or meeting.
b. A conference or meeting related to the covered person's duties and the covered person participates in a panel or speaking engagement at the conference or meeting."

SECTION 11. If House Bill 1844, 2005 Regular Session, becomes law, G.S. 138A-7(d)(6) is repealed.

SECTION 12. If any section or provision of this act is declared unconstitutional or invalid by the courts, it does not affect the validity of this act as a whole or any part other than the part so declared to be unconstitutional or invalid.

SECTION 13. Sections 1, 2, 12, and 13 of this act are effective when the act becomes law, and the new G.S. 120-47.7C(d) applies to appointments made on or after that date. The remainder of this act becomes effective January 1, 2007.

House Judiciary I Committee

June 29, 2006
9:00 a.m.

Minutes

The House Judiciary I Committee met on Thursday, June 29, 2006 at 9:00 a.m. in Room 1228 of the Legislative Building. Chairman Joe Hackney called the meeting to order and the following members were present: Representatives Alexander, Blust, Capps, Goodwin, Harrison, Insko, Ross, Stam, Stiller and West. A copy of the agenda and the visitor registration is attached, (Attachment I and II).

Following the introduction of the pages, Representative Ross was recognized for an explanation of House Bill 1851, AN ACT TO ESTABLISH A PILOT PROGRAM TO PROVIDE CANDIDATES FOR FOUR LEGISLATIVE SEATS WITH THE OPTION OF FINANCING THEIR CAMPAIGNS FROM A VOLUNTARY TAXPAYER-DESIGNATED FUND, PROVIDED THAT THEY GAIN AUTHORIZATION TO DO SO FROM REGISTERED VOTERS AND THAT THEY ABIDE BY STRICT FUND-RAISING AND SPENDING LIMITS; TO PROVIDE CANDIDATES IN THE PILOT PROGRAM WITH "RESCUE" FUNDS TO OFFSET HIGH LEVELS OF SPENDING BY OPPOSING CANDIDATRS AND ELECTIONEERING COMMUNICATIONS; AND TO MAKE CHANGES TO THE DEFINITION OF "POLITICAL COMMITTEE" AND THE STANDARD FOR PROVING THAT A COMMUNICATION SUPPORTS OR OPPOSES THE ELECTION OR DEFEAT OF A CLEARLY IDENTIFIED CANDIDATE, (Attachment III). She stated that the bill would establish a pilot program for public financing of legislative races. She said that the bill did not have general fund appropriations and does not go into effect for the upcoming legislative race.

Representative Ross offered a Proposed Committee Substitute, (Attachment IV), and moved that it be adopted for the purpose of discussion. The motion carried.

Mr. Bill Gilkeson, Committee Counsel, was recognized for an explanation of the bill. He said that the pilot program would begin in 2008 in four legislative districts. Those districts would be chosen by the State Board of Elections by August 15 o the year before the election in which they would be used. Once selected, the program would basically follow the pattern of the Judicial Campaign Fund. Mr. Gilkeson discussed the qualifying requirements, fund raising and spending limits, grants from the fund, rescue funds and limits on nonparticipating candidates. Mr. Gilkeson said that the funding for the program would be designations by the taxpayers to finance the election campaigns of certified candidates. Details of the bill can be found in a bill analysis prepared by Mr. Gilkeson, (Attachment V).

Vice Chair Stiller assumed the Chair.

Discussion followed regarding the selection of districts for pilot programs.

Representative Blust expressed concern regarding the use of the terms "minority leader" and "majority leader" in the bill, noting past protests of the use of those terms because they are not statutory provisions.

Mr. Gilkeson replied that another term could be used, and Vice Chair Stiller noted that this should be flagged as something to work on. Representative Ross added that the idea was to have someone who had the support if their caucus and political party in a broader sense to be the person who made the decision to give fairness to the members who are sitting.

Discussion followed regarding rescue funds,

Representative Capps expressed concern for the bill saying that it appeared to narrow elections down to incumbent and party-controlled elections.

Representative Stam expressed concerns including appearance of corruption, use of taxpayer funds that might otherwise go into the General Fund and rescue funds.

Representative Ross responded to Representative Stam's concern regarding the appearance of corruption by saying the bill is about creating opportunity for people who desire to run who do not have access to large sums of money in order to be able to compete with incumbents, or who do not wish to take money from special interests or more private sources. With regard to the use of funds from the General Fund, Representative Ross said that the amount would be relatively small and probably under a half million dollars. She stated that she had conflicting feelings about rescue funds and how they work based on free speech issues and noted that if Representative Stam was interested in amending the bill to make it more respectful of people's free speech, she would work with him. She added that rescue funds have been upheld in cases and there is now a more solid body of case law allowing rescue funds.

Discussion followed with regard to the removal of the "purpose" section of the bill. Mr. Bob Hall, Democracy North Carolina was recognized to comment on the reason for the "purpose" section of the bill. He said that the purpose statement came the Judicial Public Financing Program and is there to help in the event of litigation to show that there is a compelling state interest in putting the program into place.

Mr. Daren Bakst, John Locke Foundation, was recognized and offered brief comments on the bill.

The meeting was adjourned at 9:55 a.m.

Representative Joe Hackney
Chair

Emily Reynolds Freeman
Committee Clerk

Attachment I

HOUSE COMMITTEE ON JUDICIARY I

June 29, 2006
9:00 a.m.

AGENDA

OPENING REMARKS

AGENDA ITEM

House Bill 1851 – Legislative Campaigns Pilot
Representatives Hackney, Howard and Ross

ADJOURNMENT

Attachment II

VISITOR REGISTRATION SHEET

House Judiciary I — **Name of Committee**

June 29, 2006 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
OPMeed	NCATL
Chare Foster	NC Voters for Clean Elections
R. Paul Wilms	NCHBA
Kathleen Edwards	UNC-CH Daily Bulletin
Jami Fitzgerald	NCFPC
Rob Schofield	NC Ctr. Nonprofits
Doug Heeron	NC BAR Assoc.
Chris Heagarty	NC Center for Voter Education
Bob Phillips	Common Cause
Michael Hauser	NCAE
David Gartner	NC BAR Assoc.

VISITOR REGISTRATION SHEET

House Judiciary I — June 29, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Dailey Dargis Montgomery	SOS
Doug Hemm	NC Bar Association
Charlene Carey	NC Right to Life
Chase Fosk	NCVCE
Cameron Contizano	Daily Bulletin
Greg Mad	NCAGC
John Phelps	NCLM
Bob Hall	Democracy NC
[illegible]	SOS
[illegible]	KCLH
[illegible]	NCATU

VISITOR REGISTRATION SHEET

House Judiciary I — June 29, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Holly Bowman	NCATL
Kevin Leonard	DCSR
Floyd M. Lewis	General Statutes Commission
P. Sky Hall	do
Chris Heagarty	NC Ctr. for Voter Education
Chip Kelly	Raleigh
Rob Schofield	NCCNP
Sara Schmidt	NC Justice Center
John McMillan	MFAS
Butch Gunnells	NCBA

VISITOR REGISTRATION SHEET

House Judiciary I — June 29, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
[signature]	SGS
Dana Bars	John Locke Foundation
Rebekah Gorncau	ACLU-NC
[signature]	Agriculture Retailers of N.C.

Attachment III

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 1

HOUSE BILL 1851

Short Title:	Legislative Campaigns Pilot.	(Public)
Sponsors:	Representatives Hackney, Howard, Ross (Primary Sponsors); Barnhart, Bell, Brubaker, Coates, Earle, Fisher, Harrison, Justice, Lucas, Martin, McLawhorn, Nye, Sauls, Sherrill, Steen, Alexander, Dickson, Glazier, Insko, Jeffus, Luebke, McGee, Underhill, and Weiss.	
Referred to:	Judiciary I.	

May 10, 2006

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH A PILOT PROGRAM TO PROVIDE CANDIDATES FOR SELECTED LEGISLATIVE SEATS WITH THE OPTION OF FINANCING THEIR CAMPAIGNS FROM A PUBLICLY SUPPORTED FUND, PROVIDED THAT THEY GAIN AUTHORIZATION TO DO SO FROM REGISTERED VOTERS AND THAT THEY ABIDE BY STRICT FUND-RAISING AND SPENDING LIMITS; AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON ETHICS AND GOVERNMENTAL REFORM.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 163 of the General Statutes is amended by adding a new Article to read:

"Article 22G.

"The North Carolina Legislative Campaigns Pilot Program.

"**§ 163-278.95. Purpose and establishment of North Carolina Legislative Campaigns Pilot Program.**

The purpose of this Article is to explore methods to ensure the vitality and fairness of democratic elections in North Carolina, to the end that any eligible citizen of this State can realistically choose to seek and run for public office. It is also the purpose of this Article to explore methods to protect the constitutional rights of voters and candidates from the detrimental effects of increasingly large amounts of money being raised and spent in North Carolina to influence the outcome of elections. It is essential to the public interest that the potential for corruption or the appearance of corruption is minimized and that the equal and meaningful participation of all citizens in the democratic process is ensured. Accordingly, this Article establishes the North Carolina Legislative Campaigns Pilot Fund as an alternative source of campaign financing for candidates for the General Assembly who obtain a sufficient number of qualifying

contributions from registered voters and who voluntarily accept strict fund-raising and spending limits. This Article is available to candidates for two seats in the House of Representatives and two seats in the Senate, as selected in G.S. 163-278.97A, in elections to be held in 2008 and thereafter.

"**§ 163-278.96. Definitions.**

The following definitions apply in this Article:

(1) Advisory Council. – The Advisory Counsel established in G.S. 163-278.68.

(2) Board. – The State Board of Elections.

(3) Campaign-related expenditure. – An expenditure that benefits the candidate's current campaign in accordance with guidelines established by the Board.

(4) Candidate. – An individual who becomes a candidate as described in G.S. 163-278.6(4). The term includes a political committee authorized by the candidate for that candidate's election.

(5) Certified candidate. – A candidate for office who chooses to receive campaign funds from the Fund and who is certified under G.S. 163-278.98(c).

(6) Contested primary and contested general election. – An election in which there are more candidates than the number to be elected.

(7) Contribution. – Defined in G.S. 163-278.6. A distribution from the Fund pursuant to this Article is not a 'contribution' and is not subject to the limitations of G.S. 163-278.13 or the prohibitions of G.S. 163-278.15 or G.S. 163-278.19.

(8) Expenditure. – Defined in G.S. 163-278.6.

(9) Fund. – The North Carolina Legislative Campaigns Pilot Fund established in G.S. 163-278.97.

(10) Independent expenditure. – Defined in G.S. 163-278.6.

(11) Nonparticipating candidate. – A candidate for office who is not seeking to be certified under G.S. 163-278.98(c).

(12) Office. – The two Senate seats and two House of Representatives seats designated pursuant to G.S. 163-278.97A.

(13) Participating candidate. – A candidate for office who has filed a declaration of intent to participate under G.S. 163-278.98(a).

(14) Political committee. – Defined in G.S. 163-278.6.

(15) Qualifying contribution. – A contribution of not less than ten dollars ($10.00) and not more than one hundred dollars ($100.00) in the form of a check or money order to the candidate or the candidate's committee that meets both of the following conditions:

a. Made by any registered voter who resides in the district in which the candidate seeks office.

b. Made only during the qualifying period and obtained with the approval of the candidate or candidate's committee.

c. Acknowledged by a written receipt, on a multicopy form approved by the Board, which identifies the complete name, residence address, and county of residence of the contributor and the amount and date of the contribution made; states that the contributor is a registered voter; states that the contributor authorizes the candidate to use the contribution to qualify to receive funds from the Fund; and is signed by the candidate or the candidate's representative.

(16) Qualifying period. – The period beginning September 1 of the day before the election and ending on the day of the primary.

(17) Trigger for rescue funds. – The dollar amount at which rescue funds are released for certified candidates. In the case of a primary, the trigger equals the maximum amount a participating candidate is permitted by G.S. 163-278.98(b) to raise in qualifying contributions. In the case of a general election, the trigger equals the funding available under G.S. 163-278.99(b)(4).

"**§ 163-278.97. Legislative Campaigns Pilot Fund established; sources of funding.**

(a) Establishment of Fund. – The North Carolina Legislative Campaigns Pilot Fund is established to finance the election campaigns of certified candidates for office and to pay administrative and enforcement costs of the Board related to this Article. The Fund is a special, dedicated, nonlapsing, nonreverting fund. Any interest generated by the Fund is credited to the Fund. The Board shall administer the Fund.

(b) Sources of Funding. – Money received from all the following sources must be deposited in the Fund:

(1) Unspent 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.

(2) Voluntary donations made directly to the Fund.

(3) Appropriations by the General Asssembly.

(c) Determination of Fund Amount. – By April 1, 2007, and every two years thereafter, the Board, in conjunction with the Advisory Council, shall prepare and provide to the Joint Legislative Commission on Governmental Operations of the General Assembly a report documenting, evaluating, and making recommendations relating to the administration, implementation, and enforcement of this Article. In its report, the Board shall set out the funds received to date and the expected needs of the Fund during the next election cycle.

"**§ 163-278.97A. Selection of districts for pilot program.**

Four districts shall be selected for the pilot program every two years as follows:

(1) The majority and minority leaders of the Senate shall each select a different district in the Senate from a list of districts in which the candidates have volunteered to participate.

(2) The majority and minority leaders of the House of Representatives shall each select a different district in the House from a list of districts in which the candidates have volunteered to participate.

Those leaders report their selections to the Executive Director of the State Board of Elections no later than August 1 of the year before the election. If any one of the leaders fails to report a selection by August 1, the State Board of Elections by August 10 shall make the selection that leader was authorized to make.

"**§ 163-278.98. Requirements for participation.**

(a) Declaration of Intent to Participate. – Any individual choosing to receive campaign funds from the Fund shall first file with the Board a declaration of intent to participate in the act as a candidate for a stated office. The declaration of intent shall be filed before or during the qualifying period and before collecting any qualifying contributions. In the declaration, the candidate shall swear or affirm that only one political committee, identified with its treasurer, shall handle all contributions, campaign-related expenditures, and obligations for the participating candidate and that the candidate will comply with the contribution and expenditure limits set forth in subsection (e) of this section and all other requirements set forth in this Article or adopted by the Board. Failure to comply is a violation of this Article.

(b) Demonstration of Support of Candidacy. – Participating candidates who seek certification to receive campaign funds from the Fund shall first, during the qualifying period, obtain qualifying contributions from at least 300 registered voters in the case of a Senate candidate and at least 150 registered voters in the case of a House candidate in an aggregate sum that at least equals six thousand dollars ($6,000) in the case of a Senate candidate and three thousand dollars ($3,000) in the case of a House candidate, but that does not exceed forty thousand dollars ($40,000) in the case of a Senate candidate and twenty-five thousand dollars ($25,000) in the case of a House candidate.

(c) Certification of Candidates. – Upon receipt of a submittal of the record of demonstrated support by a participating candidate, the Board shall determine whether or not the candidate has complied with all the following requirements:

(1) Signed and filed a declaration of intent to participate in this Article.

(2) Submitted a report itemizing the appropriate number of qualifying contributions received from registered voters, which the Board shall verify through a random sample or other means it adopts. The report shall include the county of residence of each registered voter listed.

(3) Filed a valid notice of candidacy pursuant to this Chapter.

(4) Otherwise met the requirements for participation in this Article.

The Board shall certify candidates complying with the requirements of this section as soon as possible and no later than five business days after receipt of a satisfactory record of demonstrated support.

(d) Final Report for Qualifying Contributions. – No later than five business days after the end of the qualifying period, all participating candidates shall submit a report to the Board of all previously unreported qualifying contributions, together with copies of the contribution forms described in G.S. 163-278.96(15), in accordance with procedures developed by the Board. Within seven business days after submittal of the final report, the Board shall determine, through a random audit or other means it adopts, whether the contributions abide by the definition of qualifying contributions, whether they must be returned to the donor, and whether they exceed the maximum amount of

qualifying contributions.

(e) Restrictions on Contributions and Expenditures for Participating and Certified Candidates. – The following restrictions shall apply to contributions and expenditures with respect to participating and certified candidates:

(1) Beginning January 1 of the year before the election and before the filing of a declaration of intent, a candidate for office may accept in contributions up to five thousand dollars ($5,000) from sources and in amounts permitted by Article 22A of this Chapter and may expend up to five thousand dollars ($5,000) for any campaign purpose related to the upcoming election. A candidate who exceeds either of these limits shall be ineligible to file a declaration of intent or receive funds from the Public Campaign Fund.

(2) From the filing of a declaration of intent through the end of the qualifying period, a candidate may accept only qualifying contributions, contributions under ten dollars ($10.00) from voters residing in the candidate's district, and personal and family contributions permitted under subdivision (4) of this subsection. The total contributions the candidate may accept during this period shall not exceed the maximum qualifying contributions for that candidate. In addition to these contributions, the candidate may only expend during this period the remaining money raised pursuant to subdivision (1) of this subsection and possible rescue funds received pursuant to G.S. 163-278.101.

(3) After the qualifying period and through the date of the general election, the candidate shall expend only the funds the candidate receives from the Fund pursuant to G.S. 163-278.99(b)(4) plus any funds remaining from the qualifying period and possible rescue funds. In addition, during that period a candidate may accept in-kind contributions from political party executive committees, up to an aggregate value of ten percent (10%) of the amount the candidate is entitled to receive under G.S. 163-278.99(b)(4).

(4) During the qualifying period, the candidate may contribute up to one thousand dollars ($1,000) of that candidate's own money to the campaign. Debt incurred by the candidate for a campaign expenditure shall count toward that limit. During the qualifying period, the candidate may accept in contributions up to one thousand dollars ($1,000) from each member of that candidate's family consisting of spouse, parent, child, brother, and sister, as long as the candidate accepts no more than two thousand dollars ($2,000) from all those family members combined.

(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 related to the upcoming election. 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.

(6) Any contribution received by a participating or certified candidate that falls outside that permitted by this subsection shall be returned to the donor as soon as practicable. Contributions intentionally made, solicited, or accepted in violation of this Article are subject to civil penalties as specified in G.S. 163-278.70. The funds involved shall be forfeited to the Civil Penalty and Forfeiture Fund.

(7) A candidate shall return to the Fund any amount distributed for an election that is unspent and uncommitted at the date of the election, or at the time the individual ceases to be a certified candidate, whichever occurs first. For accounting purposes, all qualifying, personal, and family contributions shall be considered spent before revenue from the Fund is spent or committed.

(f) Revocation. – A candidate may revoke, in writing to the Board, a decision to participate in the Fund at anytime. After a revocation, that candidate may accept and expend outside the limits of this Article without violating this Article. Within 10 days after revocation, a candidate shall return to the Board all money received from the Fund.

"**§ 163-278.99. Distribution from the Fund.**

(a) Timing of Fund Distribution. – The Board shall distribute to a certified candidate revenue from the Fund in an amount determined under subdivision (b)(4) of this section within five business days after the certified candidate's name is approved to appear on the ballot in a contested general election, but no earlier than five business days after the primary.

(b) Amount of Fund Distribution. – By August 1, 2007, and no less frequently than every two years thereafter, the Board shall determine the amount of funds, rounded to the nearest one hundred dollars ($100.00), to be distributed to certified candidates as follows:

(1) Uncontested primaries. – No funds shall be distributed.

(2) Contested primaries. – No funds shall be distributed except as provided in G.S. 163-278.101.

(3) Uncontested general elections. – No funds shall be distributed.

(4) Contested general elections. – Funds shall be distributed to a certified candidate for the Senate in an amount equal to the median amount of campaign-related expenditures made by all major party candidates who reported campaign expenditures for contested general election races for the Senate for the immediately preceding two general elections, but not less than seventy-five thousand dollars ($75,000). Funds shall be distributed to a certified candidate for the House in an

amount equal to the median amount of campaign-related expenditures made by all major party candidates who reported campaign expenditures for contested general election races for the House for the immediately preceding two general elections, but not less than fifty thousand dollars ($50,000).

(c) Method of Fund Distribution. – The Board, in consultation with the State Treasurer and the State Controller, shall develop a rapid, reliable method of conveying funds to certified candidates. In all cases, the Board shall distribute funds to certified candidates in a manner that is expeditious, ensures accountability, and safeguards the integrity of the Fund. If the money in the Fund is insufficient to fully fund all certified candidates, then the available money shall be distributed proportionally, according to each candidate's eligible funding, and the candidate may raise additional money in the same manner as a noncertified candidate for the same office up to the unfunded amount of the candidate's eligible funding.

"**§ 163-278.100. Reporting requirements.**

(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. 163-278.96(17). Any entity making independent expenditures in support of or opposition to a certified candidate or in support of a candidate opposing a certified candidate, or paying for electioneering communications, as defined in G.S. 163-278.80 or G.S. 163-278.90, that refer to one of those candidates, shall report the total funds received, spent, or obligated for those expenditures or electioneering communications 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 or electioneering communications, exceeds three thousand dollars ($3,000). After this 24-hour filing, the noncertified candidate or independent expenditure or electioneering communications 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.

(b) Reporting by Participating and Certified Candidates. – Notwithstanding other provisions of law, participating and certified candidates shall report any money received, including all previously unreported qualifying contributions, all campaign expenditures, obligations, and related activities to the Board according to procedures developed by the Board. A certified candidate who ceases to be certified or ceases to be a candidate or who loses an election shall file a final report with the Board and return any unspent revenues received from the Fund. In developing these procedures, the Board shall utilize existing campaign reporting procedures whenever practical.

(c) Timely Access to Reports. – The Board shall ensure prompt public access to the reports received in accordance with this Article. The Board may utilize electronic means of reporting and storing information.

"**§ 163-278.101. Rescue funds.**

(a) When Rescue Funds Become Available. – When any report or group of reports shows that 'funds in opposition to a certified candidate or in support of an opponent to that candidate' as described in this section, exceed the trigger for rescue funds as defined in G.S. 163-278.96(17), the Board shall issue immediately to that certified candidate an additional amount equal to the reported excess within the limits set forth in this section. 'Funds in opposition to a certified candidate or in support of an opponent to that candidate' shall be equal to the sum of the following:

(1) Campaign expenditures or obligations made, or funds raised or borrowed, whichever is greater, reported by any one uncertified opponent of a certified candidate. Where a certified candidate has more than one uncertified opponent, the measure shall be taken from the uncertified candidate showing the highest relevant dollar amount.

(2) The sum of all expenditures and electioneering communications reported in accordance with G.S. 163-278.100(a) of entities making independent expenditures in opposition to the certified candidate or in support of any opponent of that certified candidate.

(b) Limit on Rescue Funds in Contested Primary. – Total rescue funds to a certified candidate in a contested primary shall be limited to an amount equal to two times the maximum qualifying contributions.

(c) Limit on Rescue Funds in Contested General Election. – Total rescue funds to a certified candidate in a contested general election shall be limited to an amount equal to two times the amount described in G.S. 163-278.99(b)(4).

"**§ 163-278.102. Unaffiliated and new-party candidates.**

Unaffiliated candidates certified pursuant to G.S. 163-122 and new-party candidates certified pursuant to G.S. 163-98 shall be eligible for revenues from the Fund in the same amounts and at the same time as specified in G.S. 163-278.99. For unaffiliated candidates and new-party candidates not certified to appear on the ballot by noon on the last business day in February, the deadline for seeking certification to receive revenue from the Fund is noon on the first business day of July of the election year.

"**§ 163-278.103. Enforcement by the Board; civil penalty.**

The Board, with the advice of the Advisory Council, shall administer the provisions of this Article in the same manner as described in Article 22D of this Chapter. In addition to any other penalties that may be applicable, any individual, political committee, or other entity that violates any provision of this Article is subject to a civil penalty in the same manner as described in Article 22D of this Chapter."

SECTION 2. G.S. 163-278.13(e) reads as rewritten:

"(e) ~~This~~ Except as provided in subsections (e2) and (e3) of this section, this section shall not apply to any national, State, district or county executive committee of any political party. For the purposes of this section only, the term "political party" means only those political parties officially recognized under G.S. 163-96."

SECTION 3. G.S. 163-278.13 is amended by adding a new subsection to read:

"(e3) In order to make meaningful the provisions of the North Carolina Legislative Campaigns Pilot Program, as set forth in Article 22G of this Chapter, no candidate for any office that is in that current election subject to the provisions of Article 22G of this Chapter shall accept, and no contributor shall make to that candidate, a contribution during the period beginning 21 days before the day of the general election and ending the day after the general election if that contribution causes the candidate to exceed the "trigger for rescue funds" defined in G.S. 163-278.96(17). The prohibitions in this subsection shall also apply to a political committee the principal purpose of which is to support a candidate for those offices. Nothing in this subsection shall prohibit a candidate from making a contribution or loan secured entirely by that candidate's assets to that candidate's own campaign or to a political committee the principal purpose of which is to support that candidate's campaign. This subsection applies with respect to a candidate only if both of the following statements are true regarding that candidate:

(1) That candidate is opposed in the general election by a certified candidate as defined in Article 22G of this Chapter.

(2) That certified candidate has not received the maximum rescue funds available under G.S. 163-278.101(c).

The recipient of a contribution that apparently violates this subsection has three days to return the contribution or file a detailed statement with the State Board of Elections explaining why the contribution does not violate this subsection."

SECTION 4. 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 this act that can be given effect without the invalid provision.

SECTION 5. This act applies to elections for the seats representing two districts in the House of Representatives and two districts in the Senate selected in accordance with G.S. 163-278.97A, as enacted by Section 1 of this act in, 2008 and thereafter. Section 5 of this act becomes effective July 1, 2006. The remainder of this act is effective when it becomes law.

Attachment IV

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 1851
PROPOSED COMMITTEE SUBSTITUTE H1851-CSRR-73 [v.1]

6/28/2006 7:31:12 PM

Short Title: Legislative Campaigns Pilot. (Public)

Sponsors:

Referred to:

May 10, 2006

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH A PILOT PROGRAM TO PROVIDE CANDIDATES FOR FOUR LEGISLATIVE SEATS WITH THE OPTION OF FINANCING THEIR CAMPAIGNS FROM A VOLUNTARY TAXPAYER-DESIGNATED FUND, PROVIDED THAT THEY GAIN AUTHORIZATION TO DO SO FROM REGISTERED VOTERS AND THAT THEY ABIDE BY STRICT FUND-RAISING AND SPENDING LIMITS; TO PROVIDE CANDIDATES IN THE PILOT PROGRAM WITH "RESCUE" FUNDS TO OFFSET HIGH LEVELS OF SPENDING BY OPPOSING CANDIDATES AND ELECTIONEERING COMMUNICATIONS; AND TO MAKE CHANGES TO THE DEFINITION OF "POLITICAL COMMITTEE" AND THE STANDARD FOR PROVING THAT A COMMUNICATION SUPPORTS OR OPPOSES THE ELECTION OR DEFEAT OF A CLEARLY IDENTIFIED CANDIDATE.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 163 of the General Statutes is amended by adding a new Article to read:

"Article 22G.

"The North Carolina Legislative Campaigns Pilot Program.

"**§ 163-278.95. Purpose and establishment of North Carolina Legislative Campaigns Pilot Program.**

The purpose of this Article is to explore methods to ensure the vitality and fairness of democratic elections in North Carolina, to the end that any eligible citizen of this State can realistically choose to seek and run for public office. It is also the purpose of this Article to explore methods to protect the constitutional rights of voters and candidates from the detrimental effects of increasingly large amounts of money being raised and spent in North Carolina to influence the outcome of elections. It is essential to the public interest that the potential for corruption or the appearance of corruption is minimized and that the equal and meaningful participation of all citizens in the

democratic process is ensured. Accordingly, this Article establishes the North Carolina Legislative Campaigns Pilot Fund as an alternative source of campaign financing for candidates for the General Assembly who obtain a sufficient number of qualifying contributions from registered voters and who voluntarily accept strict fund-raising and spending limits. This Article is available to candidates for two seats in the House of Representatives and two seats in the Senate, as selected in G.S. 163-278.97A, in elections to be held in 2008 and thereafter.

"**§ 163-278.96. Definitions.**

The following definitions apply in this Article:

(1) Advisory Council. – The Advisory Counsel established in G.S. 163-278.68.

(2) Board. – The State Board of Elections.

(3) Campaign-related expenditure. – An expenditure that benefits the candidate's current campaign in accordance with guidelines established by the Board.

(4) Candidate. – An individual who becomes a candidate as described in G.S. 163-278.6(4). The term includes a political committee authorized by the candidate for that candidate's election.

(5) Certified candidate. – A candidate for office who chooses to receive campaign funds from the Fund and who is certified under G.S. 163-278.98(c).

(6) Contested primary and contested general election. – An election in which there are more candidates than the number to be elected.

(7) Contribution. – Defined in G.S. 163-278.6. A distribution from the Fund pursuant to this Article is not a 'contribution' and is not subject to the limitations of G.S. 163-278.13 or the prohibitions of G.S. 163-278.15 or G.S. 163-278.19.

(8) Expenditure. – Defined in G.S. 163-278.6.

(9) Fund. – The North Carolina Legislative Campaigns Pilot Fund established in G.S. 163-278.97.

(10) Independent expenditure. – Defined in G.S. 163-278.6.

(11) Nonparticipating candidate. – A candidate for office who is not seeking to be certified under G.S. 163-278.98(c).

(12) Office. – The two Senate seats and two House of Representatives seats designated pursuant to G.S. 163-278.97A.

(13) Participating candidate. – A candidate for office who has filed a declaration of intent to participate under G.S. 163-278.98(a).

(14) Political committee. – Defined in G.S. 163-278.6.

(15) Qualifying contribution. – A contribution of not less than ten dollars ($10.00) and not more than one hundred dollars ($100.00) in the form of a check or money order to the candidate or the candidate's committee that meets both of the following conditions:

a. Made by any registered voter who resides in the district in which the candidate seeks office.

b. Made only during the qualifying period and obtained with the approval of the candidate or candidate's committee.

c. Acknowledged by a written receipt, on a multicopy form approved by the Board, which identifies the complete name, residence address, and county of residence of the contributor and the amount and date of the contribution made; states that the contributor is a registered voter; states that the contributor authorizes the candidate to use the contribution to qualify to receive funds from the Fund; and is signed by the candidate or the candidate's representative.

(16) Qualifying period. – The period beginning October 1 of the year before the election and ending on the day of the primary.

(17) Trigger for rescue funds. – The dollar amount at which rescue funds are released for certified candidates. In the case of a primary, the trigger equals the maximum amount a participating candidate is permitted by G.S. 163-278.98(b) to raise in qualifying contributions. In the case of a general election, the trigger equals the funding available under G.S. 163-278.99(b)(4).

"**§ 163-278.97. Legislative Campaigns Pilot Fund established; sources of funding.**

(a) Establishment of Fund. – The North Carolina Legislative Campaigns Pilot Fund is established to finance the election campaigns of certified candidates for office and to pay administrative and enforcement costs of the Board related to this Article. The Fund is a special, dedicated, nonlapsing, nonreverting fund. Any interest generated by the Fund is credited to the Fund. The Board shall administer the Fund. No appropriation from the General Fund shall be made to finance the election campaigns of certified candidates, except for designations voluntarily made by taxpayers for that purpose.

(b) Sources of Funding. – Money received from all the following sources must be deposited in the Fund:

(1) Unspent 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.

(2) Voluntary donations made directly to the Fund.

(3) Designations by taxpayers to finance the election of campaigns of certified candidates.

(c) Determination of Fund Amount. – By April 1, 2007, and every two years thereafter, the Board, in conjunction with the Advisory Council, shall prepare and provide to the Joint Legislative Commission on Governmental Operations of the General Assembly a report documenting, evaluating, and making recommendations relating to the administration, implementation, and enforcement of this Article. In its report, the Board shall set out the funds received to date and the expected needs of the Fund during the next election cycle.

"**§ 163-278.97A. Selection of districts for pilot program.**

Four districts shall be selected for the pilot program every two years. In order to provide a useful test of the provisions in this Article, the pilot program shall occur in

districts (i) that are relatively competitive, based on the ratio of party affiliation of registered voters in the district compared to the statewide ratio, and (ii) where there is a demonstrated interest to use the pilot program. The districts shall be selected in the following manner:

(1) By July 1 of the year before the election, the Executive Director of the Board shall prepare a list of the legislative districts that meet the following two criteria:

a. The ratio in the district of registered voters affiliated with the State's majority party to voters affiliated with the minority party is greater than seventy-five percent (75%) and less than one hundred twenty-five percent (125%) of the ratio between those parties statewide for voters registered for the legislative primary election before the July 1 deadline.

b. At least one legislative candidate in the district has volunteered to participate in the pilot program in a written statement provided to the Executive Director.

(2) From the list of eligible districts prepared by the Executive Director, the majority and minority leaders of the Senate shall each select up to three districts in the Senate and the majority and minority leaders of the House of Representatives shall each select up to three districts in the House. Those leaders shall report their recommended selections to the Executive Director of the Board no later than ~~July~~ Aug. 31 of the year before the election.

(3) The State Board of Elections by August 15 shall consider the recommendations provided by the legislative leaders in subdivision (2) of this section and shall make a final selection of two districts in the Senate and two districts in the House of Representative that meet the criteria described in subdivision (1) of this section.

"**§ 163-278.98. Requirements for participation.**

(a) Declaration of Intent to Participate. – Any individual choosing to receive campaign funds from the Fund shall first file with the Board a declaration of intent to participate in the act as a candidate for a stated office. The declaration of intent shall be filed before or during the qualifying period and before collecting any qualifying contributions. In the declaration, the candidate shall swear or affirm that only one political committee, identified with its treasurer, shall handle all contributions, campaign-related expenditures, and obligations for the participating candidate and that the candidate will comply with the contribution and expenditure limits set forth in subsection (e) of this section and all other requirements set forth in this Article or adopted by the Board. Failure to comply is a violation of this Article.

(b) Demonstration of Support of Candidacy. – Participating candidates who seek certification to receive campaign funds from the Fund shall first, during the qualifying period, obtain qualifying contributions from at least 300 registered voters in the case of a Senate candidate and at least 150 registered voters in the case of a House candidate in an aggregate sum that at least equals six thousand dollars ($6,000) in the case of a

Senate candidate and three thousand dollars ($3,000) in the case of a House candidate, but that does not exceed forty thousand dollars ($40,000) in the case of a Senate candidate and twenty-five thousand dollars ($25,000) in the case of a House candidate.

(c) Certification of Candidates. – Upon receipt of a submittal of the record of demonstrated support by a participating candidate, the Board shall determine whether or not the candidate has complied with all the following requirements:

(1) Signed and filed a declaration of intent to participate in this Article.

(2) Submitted a report itemizing the appropriate number of qualifying contributions received from registered voters, which the Board shall verify through a random sample or other means it adopts. The report shall include the county of residence of each registered voter listed.

(3) Filed a valid notice of candidacy pursuant to this Chapter.

(4) Otherwise met the requirements for participation in this Article.

The Board shall certify candidates complying with the requirements of this section as soon as possible and no later than five business days after receipt of a satisfactory record of demonstrated support.

(d) Final Report for Qualifying Contributions. – No later than five business days after the end of the qualifying period, all participating candidates shall submit a report to the Board of all previously unreported qualifying contributions, together with copies of the contribution forms described in G.S. 163-278.96(15), in accordance with procedures developed by the Board. Within seven business days after submittal of the final report, the Board shall determine, through a random audit or other means it adopts, whether the contributions abide by the definition of qualifying contributions, whether they must be returned to the donor, and whether they exceed the maximum amount of qualifying contributions.

(e) Restrictions on Contributions and Expenditures for Participating and Certified Candidates. – The following restrictions shall apply to contributions and expenditures with respect to participating and certified candidates:

(1) Beginning January 1 of the year before the election and before the filing of a declaration of intent, a candidate for office may accept in contributions up to five thousand dollars ($5,000) from sources and in amounts permitted by Article 22A of this Chapter and may expend up to five thousand dollars ($5,000) for any campaign purpose related to the upcoming election. A candidate who exceeds either of these limits shall be ineligible to file a declaration of intent or receive funds from the Public Campaign Fund.

(2) From the filing of a declaration of intent through the end of the qualifying period, a candidate may accept only qualifying contributions, contributions under ten dollars ($10.00) from voters residing in the candidate's district, and personal and family contributions permitted under subdivision (4) of this subsection. The total contributions the candidate may accept during this period shall not exceed the maximum qualifying contributions for that candidate. In addition to these contributions, the candidate may only expend

during this period the remaining money raised pursuant to subdivision (1) of this subsection and possible rescue funds received pursuant to G.S. 163-278.101.

(3) After the qualifying period and through the date of the general election, the candidate shall expend only the funds the candidate receives from the Fund pursuant to G.S. 163-278.99(b)(4) plus any funds remaining from the qualifying period and possible rescue funds. In addition, during that period a candidate may accept in-kind contributions from political party executive committees, up to an aggregate value of ten percent (10%) of the amount the candidate is entitled to receive under G.S. 163-278.99(b)(4).

(4) During the qualifying period, the candidate may contribute up to one thousand dollars ($1,000) of that candidate's own money to the campaign. Debt incurred by the candidate for a campaign expenditure shall count toward that limit. During the qualifying period, the candidate may accept in contributions up to one thousand dollars ($1,000) from each member of that candidate's family consisting of spouse, parent, child, brother, and sister, as long as the candidate accepts no more than two thousand dollars ($2,000) from all those family members combined.

(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 related to the upcoming election. 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.

(6) Any contribution received by a participating or certified candidate that falls outside that permitted by this subsection shall be returned to the donor as soon as practicable. Contributions intentionally made, solicited, or accepted in violation of this Article are subject to civil penalties as specified in G.S. 163-278.70. The funds involved shall be forfeited to the Civil Penalty and Forfeiture Fund.

(7) A candidate shall return to the Fund any amount distributed for an election that is unspent and uncommitted at the date of the election, or at the time the individual ceases to be a certified candidate, whichever occurs first. For accounting purposes, all qualifying, personal, and family contributions shall be considered spent before revenue from the Fund is spent or committed.

(f) Revocation. – A candidate may revoke, in writing to the Board, a decision to

participate in the Fund at anytime. After a revocation, that candidate may accept and expend outside the limits of this Article without violating this Article. Within 10 days after revocation, a candidate shall return to the Board all money received from the Fund.

"**§ 163-278.99. Distribution from the Fund.**

(a) Timing of Fund Distribution. – The Board shall distribute to a certified candidate revenue from the Fund in an amount determined under subdivision (b)(4) of this section within five business days after the certified candidate's name is approved to appear on the ballot in a contested general election, but no earlier than five business days after the primary.

(b) Amount of Fund Distribution. – By August 1, 2007, and no less frequently than every two years thereafter, the Board shall determine the amount of funds, rounded to the nearest one hundred dollars ($100.00), to be distributed to certified candidates as follows:

(1) Uncontested primaries. – No funds shall be distributed.

(2) Contested primaries. – No funds shall be distributed except as provided in G.S. 163-278.101.

(3) Uncontested general elections. – No funds shall be distributed.

(4) Contested general elections. – Funds shall be distributed to a certified candidate for the Senate in an amount equal to the median amount of campaign-related expenditures made by all major party candidates who reported campaign expenditures for contested general election races for the Senate for the immediately preceding two general elections, but not less than seventy-five thousand dollars ($75,000). Funds shall be distributed to a certified candidate for the House in an amount equal to the median amount of campaign-related expenditures made by all major party candidates who reported campaign expenditures for contested general election races for the House for the immediately preceding two general elections, but not less than fifty thousand dollars ($50,000).

(c) Method of Fund Distribution. – The Board, in consultation with the State Treasurer and the State Controller, shall develop a rapid, reliable method of conveying funds to certified candidates. In all cases, the Board shall distribute funds to certified candidates in a manner that is expeditious, ensures accountability, and safeguards the integrity of the Fund. If the money in the Fund is insufficient to fully fund all certified candidates, then the available money shall be distributed proportionally, according to each candidate's eligible funding, and the candidate may raise additional money in the same manner as a noncertified candidate for the same office up to the unfunded amount of the candidate's eligible funding.

"**§ 163-278.100. Reporting requirements.**

(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. 163-278.96(17). Any entity making independent expenditures in support of or opposition to a certified candidate or in support of a candidate opposing a certified candidate, or paying for electioneering communications, as defined in G.S. 163-278.80 or G.S. 163-278.90, that refer to one of those candidates, shall report the total funds received, spent, or obligated for those expenditures or electioneering communications 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 or electioneering communications, exceeds three thousand dollars ($3,000). After this 24-hour filing, the noncertified candidate or independent expenditure or electioneering communications 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.

(b) Reporting by Participating and Certified Candidates. – Notwithstanding other provisions of law, participating and certified candidates shall report any money received, including all previously unreported qualifying contributions, all campaign expenditures, obligations, and related activities to the Board according to procedures developed by the Board. A certified candidate who ceases to be certified or ceases to be a candidate or who loses an election shall file a final report with the Board and return any unspent revenues received from the Fund. In developing these procedures, the Board shall utilize existing campaign reporting procedures whenever practical.

(c) Timely Access to Reports. – The Board shall ensure prompt public access to the reports received in accordance with this Article. The Board may utilize electronic means of reporting and storing information.

"**§ 163-278.101. Rescue funds.**

(a) When Rescue Funds Become Available. – When any report or group of reports shows that 'funds in opposition to a certified candidate or in support of an opponent to that candidate' as described in this section, exceed the trigger for rescue funds as defined in G.S. 163-278.96(17), the Board shall issue immediately to that certified candidate an additional amount equal to the reported excess within the limits set forth in this section. 'Funds in opposition to a certified candidate or in support of an opponent to that candidate' shall be equal to the sum of the following:

(1) Campaign expenditures or obligations made, or funds raised or borrowed, whichever is greater, reported by any one uncertified opponent of a certified candidate. Where a certified candidate has more than one uncertified opponent, the measure shall be taken from the uncertified candidate showing the highest relevant dollar amount.

(2) The sum of all expenditures and electioneering communications reported in accordance with G.S. 163-278.100(a) of entities making independent expenditures in opposition to the certified candidate or in support of any opponent of that certified candidate.

(b) Limit on Rescue Funds in Contested Primary. – Total rescue funds to a certified candidate in a contested primary shall be limited to an amount equal to two times the maximum qualifying contributions.

(c) Limit on Rescue Funds in Contested General Election. – Total rescue funds to a certified candidate in a contested general election shall be limited to an amount equal to two times the amount described in G.S. 163-278.99(b)(4).

"**§ 163-278.102. Unaffiliated and new-party candidates.**

Unaffiliated candidates certified pursuant to G.S. 163-122 and new-party candidates certified pursuant to G.S. 163-98 shall be eligible for revenues from the Fund in the same amounts and at the same time as specified in G.S. 163-278.99. For unaffiliated candidates and new-party candidates not certified to appear on the ballot by noon on the last business day in February, the deadline for seeking certification to receive revenue from the Fund is noon on the first business day of July of the election year.

"**§ 163-278.103. Enforcement by the Board; civil penalty.**

The Board, with the advice of the Advisory Council, shall administer the provisions of this Article in the same manner as described in Article 22D of this Chapter. In addition to any other penalties that may be applicable, any individual, political committee, or other entity that violates any provision of this Article is subject to a civil penalty in the same manner as described in Article 22D of this Chapter."

SECTION 2. G.S. 163-278.13(e) reads as rewritten:

"(e) ~~This~~ Except as provided in subsections (e2) and (e3) of this section, this section shall not apply to any national, State, district or county executive committee of any political party. For the purposes of this section only, the term "political party" means only those political parties officially recognized under G.S. 163-96."

SECTION 3. G.S. 163-278.13 is amended by adding a new subsection to read:

"(e3) In order to make meaningful the provisions of the North Carolina Legislative Campaigns Pilot Program, as set forth in Article 22G of this Chapter, no candidate for any office that is in that current election subject to the provisions of Article 22G of this Chapter shall accept, and no contributor shall make to that candidate, a contribution during the period beginning 21 days before the day of the general election and ending the day after the general election if that contribution causes the candidate to exceed the "trigger for rescue funds" defined in G.S. 163-278.96(17). The prohibitions in this subsection shall also apply to a political committee the principal purpose of which is to support a candidate for those offices. Nothing in this subsection shall prohibit a candidate from making a contribution or loan secured entirely by that candidate's assets to that candidate's own campaign or to a political committee the principal purpose of which is to support that candidate's campaign. This subsection applies with respect to a candidate only if both of the following statements are true regarding that candidate:

(1) That candidate is opposed in the general election by a certified candidate as defined in Article 22G of this Chapter.

(2) That certified candidate has not received the maximum rescue funds available under G.S. 163-278.101(c).

The recipient of a contribution that apparently violates this subsection has three days

to return the contribution or file a detailed statement with the State Board of Elections explaining why the contribution does not violate this subsection."

SECTION 3.1. G.S. 163-278.6(14) reads as rewritten:

"(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.

e. States in its application for classification with the Internal Revenue Service that it is created primarily to support or oppose the nomination or election of one or more candidates for public office.

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."

SECTION 3.2. G.S. 163-278.14A reads as rewritten:

"**§ 163-278.14A. Evidence that communications are "to support or oppose the nomination or election of one or more clearly identified candidates."**

(a) Either of the following shall be means, but not necessarily the exclusive or conclusive means, of proving that an individual or other entity acted "to support or oppose the nomination or election of one or more clearly identified candidates":

(1) Evidence of financial sponsorship of communications to the general public that use phrases such as "vote for", "reelect", "support", "cast your ballot for", "(name of candidate) for (name of office)", "(name of candidate) in (year)", "vote against", "defeat", "reject", "vote pro-(policy position)" or "vote anti-(policy position)" accompanied by a list of candidates clearly labeled "pro-(policy position)" or "anti-(policy position)", or communications of campaign words or slogans, such as posters, bumper stickers, advertisements, etc., which say "(name of candidate)'s the One", "(name of candidate) '98", "(name of candidate)!", or the names of two candidates joined by a hyphen or slash. The use of "phrases such as" means this subsection includes communications with unambiguous synonyms of the sample phrases listed, for example, "throw out" for "reject" and unambiguous antonyms of the sample phrases listed, for example, "(name of candidate) is not the one for us!" for "(name of candidate)'s the One."

(2) Evidence of financial sponsorship of communications whose essential nature expresses electoral advocacy to the general public and goes beyond a mere discussion of public issues in that they direct voters to take some action to nominate, elect, or defeat a candidate in an election. If the course of action is unclear, contextual factors such as the language of the communication as a whole, the timing of the communication in relation to events of the day, the distribution of the communication to a significant number of registered voters for that candidate's election, and the cost of the communication may be considered in determining whether the action urged could only be interpreted by a reasonable person as advocating the nomination, election, or defeat of that candidate in that election.

(b) Notwithstanding the provisions of subsection (a) of this section, a communication shall not be subject to regulation as a contribution or expenditure under this Article if it:

(1) Appears in a news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, or magazine, unless those facilities are owned or controlled by any political party, or political committee;

(2) Is distributed by a corporation solely to its stockholders and employees; or

(3) Is distributed by any organization, association, or labor union solely to its members or to subscribers or recipients of its regular publications,

or is made available to individuals in response to their request, including through the Internet. "

SECTION 4. 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 this act that can be given effect without the invalid provision.

SECTION 5. This act is effective when it becomes law. Sections 1 through 3 of this act apply to elections for the seats representing two districts in the House of Representatives and two districts in the Senate selected in accordance with G.S. 163-278.97A, as enacted by Section 1 of this act, in 2008 and thereafter.

Attachment V

HOUSE BILL 1851: Legislative Campaigns Pilot

BILL ANALYSIS

Committee:	House Judiciary I	**Date:**	June 28, 2006
Introduced by:	Reps. Hackney, Howard, Ross	**Summary by:**	William R. Gilkeson Committee Counsel
Version:	PCS to First Edition H1851-CSRR-73		

SUMMARY: ***This Proposed Committee Substitute for House Bill 1851 would establish a pilot program for public financing of campaigns for seats in the General Assembly. The pilot would begin in 2008 and would apply to two Senate seats and two House seats. The State Board of Elections would select those districts, considering the recommendations of the four party caucus leaders of Senate and House. The structure of the public funding pilot would be similar to that of the existing Public Campaign Fund, which applies to races for Supreme Court and Court of Appeals. The major source of funding would be designations by taxpayers. The PCS would also add to the definition of "political committee" an organization that states in its filing for tax status with the IRS that its principal purpose is to support or oppose the nomination or election of candidates. And it would add explanatory language to the "magic words" portion of the section about what it means to support or oppose the nomination or election of candidates.***

CURRENT LAW: In 2002 the General Assembly established the Public Campaign Fund for public financing of campaigns of those candidates for Supreme Court and Court of Appeals who voluntarily accepted contribution and expenditure limits that are not applied to all candidates. The Public Campaign Fund is an adaptation of the full-funding model of public campaign funding that was pioneered by Maine and Arizona rather than the older partial-funding models used by other states. Candidates qualify for the program by pledging to abide by the limits and by raising a certain amount in "qualifying contributions," small amounts given by individual voters. The basic public grants from the Fund do not come until after the primary, and with some exceptions the candidates are limited in their spending to the amount of those grants. If a participating candidate is faced with an opponent who spends more than he/she can match, or independent expenditures targeted at him/her beyond what they can spend, the Public Campaign Fund is supposed to come through with "rescue funds" with which to defend themselves. The Public Campaign is being used in judicial elections this year for the second time.

BILL ANALYSIS:

Secs. 1-3. Legislative Public Campaign Pilot. Section 1 of the bill would establish a pilot program that attempts to adapt the Public Campaign Fund model to public financing of campaigns in four legislative districts.

- Selection of Districts. The pilot program would begin in the 2008 election. It would be conducted in 4 districts, two in the House and two in the Senate. The districts would be selected by the State Board of Elections by August 15 of the year before the election. First, the Executive Director would prepare a list of districts meeting criteria designed to identify districts that are competitive but not too competitive, and where some candidate was willing to participate. Next, the majority and minority leaders of the House and Senate would each be given an opportunity to recommend three districts from the list. Finally, the State Board of Elections would choose districts from the list, considering the caucus leaders' recommendations. *Section 1 of bill. GS 163-278.97A.*

- Opting in and Qualifying. The requirements for participation follow essentially the same pattern as the Judicial Fund. Candidates could decide whether to opt in during the qualifying period,

which would run from October 1 of the year before through the day of the primary. Before opting in, they may raise and spend up to $5,000 toward their campaign the same way other candidates can without foreclosing their eligibility to opt in. Opting in would consist of making a declaration of intent in which they pledge to run their campaign out of one account and to abide by the contribution and expenditure limits in the act. They would then qualify by raising, by primary day, qualifying contributions in individual contributions from voters in their district of between $10 and $100. A Senate candidate would have to get at least 300 such contributions, amounting to at least $6,000 but no more than $40,000. A House candidate would have to get at least 150 qualifying contributions, amounting to at least $3,000 but not more than $25,000. (These amounts are lower than the equivalents for Supreme Court and Court of Appeals, which are of course statewide races.) *Section 1 of the bill, 163-278.98(b).*

- Raising and Spending While Qualifying. During the qualifying period after opting in, a candidate can accept only qualifying contributions, contributions under $10 from voters in the district, contributions from the candidate him/herself up to $1,000, and contributions from certain close family members up to $1,000 each subject to a cap of $2,000 from all family members together. All of that may not exceed the candidate's maximum for qualifying contributions. During the qualifying period after opting in, the candidate may spend all that, plus any leftover money raised before opting in. They may also qualify for rescue funds during this period due to the level of opposition spending. *Section 1 of the bill, 163-278.98(e).*

- Grants from the Fund. No basic grant money would be distributed in a primary -- only in a general election. The distribution for the Senate would be the median amount spent for contested seats in the Senate in the past two general elections, with a floor of $75,000. The distribution for the House would be the median amount spent for contested seats in the House in the past two general elections, with a floor of $50,000. *Section 1 of the bill, 163-278.99.*

- Spending Limits in General Election. In a general election a candidate would be limited to spending the money received from the Fund, plus any remaining funds from the qualifying period and any rescue funds. In addition, the candidate's party could give in-kind contributions up to 10% of the amount of the candidate's Fund grant. *Section 1 of the bill, 163-278.98(e).*

- Rescue Funds. Rescue funds would be available in a primary if a non-participating opponent outspent a participating candidate. This is the same as the judicial Fund -- no basic grant money for a primary, only rescue funds. Rescue funds would be triggered in a primary by opposition spending that exceeded the maximum amount a participating candidate could raise in qualifying contributions. Rescue funds would be triggered in the general election by opposition spending that exceeded the participating candidate's basic grant entitlement from the Fund. The opposition spending would be subject to special expedited reporting so the rescue fund provision could be administered. Rescue funds would be available in amounts matching the opposition spending, up to twice the trigger amount. In this bill, unlike in the judicial program, the reporting for rescue funds and the trigger for rescue funds would include not just spending by opposition candidates and independent expenditures, but also spending for electioneering communications. *Section 1 of the bill, 163-278.101.*

- Limit on Nonparticipating Candidates. As in the judicial Fund, a nonparticipating candidate with a participating opponent may not receive a contribution within 21 days before the general election if that contribution would cause the candidate to exceed the trigger for rescue funds. *Section 2 of the bill.*

- Source of Funding. The funding for the pilot program would be designations by taxpayers. The bill does not now contain a specific mechanism for them to do that.

Sec. 3.1. Change to Definition of "Political Committee" – Section 3.1 of the bill amends the definition of "political committee." It provides that one of the ways to meet the definition is to state in its application for classification with the IRS that it is created primarily to support or oppose the nomination or election of one or more clearly identified candidates.

Sec. 3.2. Added Explanation of "Support or Oppose." Currently the campaign finance law has a section, 163-278.14A, explaining what constitutes supporting or opposing the nomination or election of clearly identified candidates. This is North Carolina's version of "express advocacy," which the court's have said may be regulated fully under the campaign finance laws. The first part of that explanation is known as the "Magic Words" test. It lists certain common phrases used in campaign ads and says phrases "such as" those constitute express advocacy. The phrases include "vote for," "vote against" and some others. This section adds that "such as" means the provision covers unambiguous synonyms and unambiguous antonyms of the phrases listed, and gives examples.

BACKGROUND: New Jersey has conducted a similar pilot program for seats in its equivalent of NC's House. The Subcommittee on Campaign Finance of the House Select Committee on Ethics and Governmental Reform heard a report about that program, and recommended that North Carolina adopt a similar pilot. The full House Select Committee recommended the original version of House Bill 1851.

H1851e1-SMRR-CSRR-73

House Judiciary I Committee

June 29, 2006
10:45 a.m.

Minutes

The House Judiciary I Committee met on Thursday, June 29, 2006 at 10:45 a.m. in Room 1228 of the Legislative Building. Vice Chair Deborah Ross called the meeting to order and the following members were present: Representatives Alexander, Blust, Capps, Goodwin, Harrison, Stam, Stiller and West.

Vice Chair Ross stated that House Bill 1432, AN ACT TO MAKE CORRECTIONS AND OTHER AMENDMENTS TO THE NOTARY PUBLIC ACT, AND TO MAKE OTHER CONFORMING CHANGES, (Attachment I), was before the Committee for concurrence. The original bill went over to the Senate as a Register of Deeds bill. The provisions of that bill were put into another bill and House Bill 1432 became a vehicle for the notary public corrections. Vice Chair Ross reminded that Committee that because this was a substantive change, the bill was before the Committee for concurrence.

Senator Hartsell was recognized to explain the bill. He said that the bill makes technical and conforming changes to the new Notary Public Act that was adopted in 2005. A section-by-section explanation is found in the bill analysis prepared by Ms. Kory Goldsmith, Staff Attorney, (Attachment II).

Ms. Hailey Montgomery, Office of the Secretary of State, was recognized and commented briefly on the bill.

Representative Stam moved that the Committee recommend that the House do concur. Upon vote of the Committee, the motion carried, (Attachment III).

Senator Hartsell was recognized for an explanation of Senate Bill 1555, AN ACT TO ENACT REVISED ARTICLE 1 OF THE UNIFORM COMMERCIAL CODE CONTAINING GENERAL PROVISIONS APPLICABLE TO THE ENTIRE CODE, TO MAKE CONFORMING AMENDMENTS TO OTHER ARTICLES OF THE UNIFORM COMMERCIAL CODE AND OTHER SECTIONS OF THE GENERAL STATUTES, TO ENACT REVISED ARTICLE 7 OF THE UNIFORM COMMERCIAL CODE RELATING TO WAREHOUSE RECEIPTS AND BILLS OF LADING, TO MAKE CONFORMING AMENDMENTS TO OTHER ARTICLES OF THE UNIFORM COMMERCIAL CODE AND OTHER SECTIONS OF THE GENERAL STATUTES, AND TO REPEAL OBSOLETE CRIMINAL PROVISIONS OF THE FORMER UNIFORM WEAREHOUSE RECEIPTS ACT, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION, (Attachment IV). He said that the bill updates statutes with regard to the Uniform Commercial Code. A memorandum provided

by the General Statutes Commission, that explains the bill, is attached to the minutes, (Attachment V).

Representative Stam moved a favorable report for the bill. The motion carried, (Attachment VI).

Senator Hartsell was recognized for an explanation of Senate Bill 1378, AN ACT TO AMEND THE LAW RELATING TO THE FORFEITURE OF PROPERTY RIGHTS BY SLAYERS, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION, (Attachment VII). He provided background information saying that the slayer statute establishes that one cannot profit from his own intentional wrongdoings. He said that the bill is an attempt to adopt that principle consistently in the statute. He said that currently, our statute does not provide necessarily for an action that determines whether one is in back of a slayer where the alleged slayer has been acquitted in a criminal proceeding. He reminded the Committee that a criminal proceeding has a standard of review that is beyond a reasonable doubt. A memorandum offering further explanation was provided by the General Statutes Commission is attached, (Attachment VIII).

Considerable discussion followed regarding the terms "willful" and "lawful," and Mr. Lloyd Lewis, General Statutes Commission responded to questions.

Representative Alexander moved a favorable report. The motion carried, (Attachment IX).

The next bill to be considered by the Committee was Senate Bill 1485, AN ACT TO REQUIRE OCCUPATIONAL LICENSING BOARDS TO ANNUALLY REPORT CERTAIN INFORMATION TO THE JOINT LEGISLATIVE ADMINISTRATIVE PROCEDURE OVERSIGHT COMMITTEE, AS RECOMMENDED BY THE JOINT LEGISLATIVE ADMINISTRATIVE PROCEDURE OVERSIGHT COMMITTEE, (Attachment X). Representative Goodwin was recognized to explain the bill. The bill would require each occupational licensing board to file an annual report including a financial report with the Joint Legislative Administrative Procedure Commission. Representative Goodwin said that the bill resulted from a decision by the Dental Board to increase the cost of fees for dental hygienist assistants. The bill will give the General Assembly a heads-up if licensing boards want to change a rule that would be a part of the Administrative Procedures Act. Additional explanation is provided in a bill analysis prepared by Ms. Karen Cochrane-Brown, Staff Attorney, (Attachment XI). Ms. Brown added that the requirement to report to the APO is in addition to the current requirement to report to the Secretary of State and Office of Attorney General.

Representative Stiller spoke in support of the bill and moved that it be given a favorable report. The motion carried, (Attachment XII).

Vice-Chair Stiller assumed the chair for the discussion of Senate Bill 1479, AN ACT TO ENACT THE UNIFORM UNINCORPORATED NONPROFIT

ASSOCIATION ACT, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION, (Attachment XIII).

Representative Ross was recognized to explain the bill. She said that the bill sets up the rules for unincorporated nonprofit associations such loosely formed groups as garden clubs and other smaller types of groups that transact business but do not always have a place that they can sue or be sued. She said that eleven states have adopted uniform unincorporated non-profit association legislation to set up the rules for such things as suing, being sued and disposal of property. She said that the act does not apply to incorporated non-profit associations that have their own article under our general statutes and does not apply to LLC's. A memorandum prepared by the General Statutes Commission is attached to the minutes, (Attachment XIV).

Discussion followed, but no action was taken on the bill and the meeting was adjourned at 12:00 noon.

Representative Deborah Ross
Vice Chair

Emily Reynolds Freeman
Committee Clerk

Attachment I
Recom. that House do concur

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 4

HOUSE BILL 1432

Committee Substitute Favorable 5/11/05
Senate Judiciary II Committee Substitute Adopted 6/14/06
Fourth Edition Engrossed 6/20/06

Short Title: Notary Public Corrections. (Public)

Sponsors:

Referred to:

April 21, 2005

A BILL TO BE ENTITLED

AN ACT TO MAKE CORRECTIONS AND OTHER AMENDMENTS TO THE NOTARY PUBLIC ACT, AND TO MAKE OTHER CONFORMING CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 10B-3 reads as rewritten:

"**§ 10B-3. Definitions.**

The following definitions apply in this Chapter:

(1) ~~"Acknowledgment" means a~~ Acknowledgment. – A notarial act in which ~~an individual,~~ a notary certifies that at a single time and ~~place:~~place all of the following occurred:

a. ~~Appears~~ An individual appeared in person before the notary and ~~presents a record; and~~ presented a record.

b. ~~Is~~ The individual was personally known to the notary or identified by the notary through satisfactory ~~evidence and~~ evidence.

c. The individual did either of the following:

i. ~~indicates~~ Indicated to the notary that the signature on the record was the individual's signature.~~was voluntarily affixed by the individual for the purposes stated within the record.~~

ii. Signed the record while in the physical presence of the notary and while being personally observed signing the record by the notary.

(2) ~~"Affirmation" means a~~ Affirmation. – A notarial ~~act, or part thereof,~~ act which is legally equivalent to an oath and in which a notary certifies that ~~an individual~~ at a single time and ~~place:~~place all of the following occurred:

a. ~~Appears~~ An individual appeared in person before the ~~notary;~~notary.

b. ~~Is~~ The individual was personally known to the notary or identified by the notary through satisfactory ~~evidence; and~~evidence.

c. ~~Makes~~ The individual made a vow of truthfulness on penalty of perjury, based on personal honor and without invoking a deity or using any form of the word "swear".

(3) ~~"Attest" or "attestation" means the~~ Attest or attestation. – The ~~act of completing the written evidence of a notarial act, to wit:~~ completion of a certificate by a notary who has performed a notarial ~~act by witnessing a signature or administering an oath or affirmation.~~act.

(4) ~~"Commission" means the~~ Commission. – The empowerment to perform notarial acts and the written evidence of authority to perform those acts.

(5) ~~"Credible witness" means an honest, reliable, and impartial person~~ Credible witness. – An individual who is personally known to the notary and ~~takes an oath or affirmation from~~the notary ~~to confirm a signer's identity.~~to whom all of the following also apply:

a. The notary believes the individual to be honest and reliable for the purpose of confirming to the notary the identity of another individual.

b. The notary believes the individual is not a party to or beneficiary of the transaction.

(6) ~~"Department" means the~~ Department. – The North Carolina Department of the Secretary of State.

(7) ~~"Director" means the~~ Director. – The Division Director for the North Carolina Department of the Secretary of State Notary Public Section.

(8) ~~"Jurat" means a~~ Jurat. – A notary's certificate evidencing the administration of an oath or affirmation. ~~certification added to an affidavit or deposition that states when and before what authority an affidavit or deposition was made, to wit, "Subscribed and sworn to before me this the ____ day of _____ 20__." The notary's signature and seal shall be affixed below the sworn or affirmed statement and signature of the affiant. In so doing, the notary shall certify the following:~~

~~a. That the person signing the affidavit or deposition did so in the notary's presence and indicates the county in which the notarial act took place;~~

~~b. That the signer appeared before the notary on the date indicated;~~

~~c. That the notary administered an oath or affirmation to the signer, who swore to or affirmed the contents of the document.~~

(9) ~~"Moral turpitude" means conduct~~ Moral turpitude. – Conduct contrary to expected standards of honesty, morality, or integrity.

(10) ~~"Nickname" means a~~ Nickname. – A descriptive, familiar, or shortened form of a proper name.

(11) ~~"Notarial act," "notary act," and "notarization" mean the~~ Notarial act, notary act, and notarization. – The act of taking an acknowledgment, taking a verification or proof or administering an oath or affirmation that a notary is empowered to perform under ~~this Chapter. as authorized by G.S. 10B-31.~~G.S. 10B-20(a).

(12) ~~"Notarial certificate" and "certificate" mean the~~ Notarial certificate and certificate. – The portion of a notarized record that is completed by the notary, bears the notary's signature and seal, and states the facts attested by the notary in a particular notarization.

(13) ~~"Notary public" and "notary" mean a~~ Notary public and notary. – A person commissioned to perform notarial acts under this Chapter. A notary is a public officer of the State of North Carolina and shall act in full and strict compliance with this act.

(14) ~~"Oath" means a~~ Oath. – A notarial ~~act, or part thereof,~~ act which is legally equivalent to an affirmation and in which a notary certifies that ~~an individual~~ at a single time and ~~place:~~place all of the following occurred:

a. ~~Appears~~ An individual appeared in person before ~~a notary;~~the notary.

b. ~~Is~~ The individual was personally known to the notary or identified by the notary through satisfactory ~~evidence: and~~evidence.

c. ~~Makes~~ The individual made a vow of truthfulness on penalty of perjury while invoking a deity or using any form of the word "swear".

(15) ~~"Official misconduct" means either~~ Official misconduct. – Either of the following:

a. A notary's performance of a prohibited act or failure to perform a mandated act set forth in this Chapter or any other law in connection with notarization.

b. A notary's performance of a notarial act in a manner found by the Secretary to be negligent or against the public interest.

(16) ~~"Personal appearance" and "appear in person before a notary" mean an~~ Personal appearance and appear in person before a notary. – An individual and a notary are in close physical proximity to one another so that they may freely see and communicate with one another and exchange records back and forth during the notarization process.

(17) ~~"Personal knowledge of identity" means familiarity~~ Personal knowledge or personally know. – Familiarity with an individual resulting from interactions with that individual over a period of time

sufficient to eliminate every reasonable doubt that the individual has the identity claimed.

(18) ~~"Principal" means an~~ Principal. – One of the following:

a. In the case of an acknowledgment, the individual whose ~~signature is notarized; or an~~ identity and due execution of a record is being certified by the notary.

b. In the case of a verification or proof, the individual other than a ~~credible~~ subscribing witness, ~~taking an oath or affirmation from the notary.~~ whose:

i. Identity and due execution of the record is being proven; or

ii. Signature is being identified as genuine.

c. In the case of an oath or affirmation, the individual who makes a vow of truthfulness on penalty of perjury.

(19) ~~"Record" means information~~ Record. – Information that is inscribed on a tangible medium and called a traditional or paper record.

(20) ~~"Regular place of work or business" means a~~ Regular place of work or business. – A location, office or other workspace, where an individual regularly spends all or part of the individual's work time.

(21) ~~"Revocation" means the~~ Revocation. – The cancellation of the notary's commission stated in the order of revocation.

(22) ~~"Satisfactory evidence of a signer's identity" means identification~~ Satisfactory evidence. – Identification of an individual based on either of the following:

a. At least one current document issued by a federal, state, or federal or state-recognized tribal government agency bearing the photographic image of the individual's face and either the signature or a physical description of the individual.

b. The oath or affirmation of one credible witness ~~unaffected by the record or transaction who is personally known to the notary and~~ who personally knows the individual seeking to be identified.

(23) ~~"Seal" and "stamp" mean a~~ Seal or stamp. – A device for affixing on a paper record an image containing a notary's name, the words "notary public," and other information as required in G.S. 10B-37.

(24) ~~"Secretary" means the~~ Secretary. – The North Carolina Secretary of State or the Secretary's designee.

(25) ~~"Signature" means the act of personally signing one's name in ink by hand.~~

(26) ~~"Subscribing witness" means a~~ Subscribing witness. – A person who ~~either watches another individual sign a record or takes that individual's acknowledgment of an already signed record and appears before the notary on behalf of the principal. The subscribing witness must sign the document in addition to the principal, must be personally~~

~~known by the notary or prove identity to the notary by satisfactory evidence, and must take an oath or affirmation stating that he or she witnessed the principal sign.~~signs a record for the purpose of being a witness to the principal's execution of the record or to the principal's acknowledgment of his or her execution of the record. A subscribing witness may give proof of the execution of the record as provided in subdivision (28) of this section.

(27) ~~"Suspension" and "restriction" means the~~ Suspension and restriction. – The termination of a notary's commission for a period of time stated in an order of restriction or suspension. The terms "restriction" or "suspension" or a combination of both terms shall be used synonymously.

(28) ~~"Verification" or "proof" means a~~ Verification or proof. – A notarial act in which a notary certifies that all of the following occurred:

a. An individual appeared in person before the notary.

b. The individual was personally known to the notary or identified by the notary through satisfactory evidence.

c. The individual was not a party to or beneficiary of the transaction.

d. ~~where a person certifies under oath or affirmation that the person witnessed the principal either execute, record, or acknowledge the principal's signature on an already executed record.~~ The individual took an oath or gave an affirmation and testified to one of the following:

i. The individual is a subscribing witness and the principal who signed the record did so while being personally observed by the subscribing witness.

ii. The individual is a subscribing witness and the principal who signed the record acknowledged his or her signature to the subscribing witness.

iii. The individual recognized either the signature on the record of the principal or the signature on the record of the subscribing witness and the signature was genuine."

SECTION 2. G.S. 10B-5(b) reads as rewritten:

"(b) A person qualified for a notarial commission shall meet all of the following requirements:

(1) Be at least 18 years of age or legally emancipated as defined in Article 35 of Chapter 7B of the General Statutes.

(2) Reside or have a regular place of work or business in this State.

(3) Reside legally in the United States.

(4) Speak, read, and write the English language.

(5) Possess a high school diploma or equivalent.

(6) Pass the course of instruction described in this Article, unless the person is a licensed member of the North Carolina State Bar.

(7) Purchase and keep as a reference the most recent manual approved by the Secretary that describes the duties and authority of notaries public.

(8) Submit an application containing no significant misstatement or omission of fact. The application form shall be provided by the Secretary and be available at the register of deeds office in each county. Every application shall include the signature of the applicant written with pen and ink, and the signature shall be acknowledged by the applicant before a person authorized to administer oaths.

(9) Obtain the recommendation of one publicly elected official in North Carolina and submit the recommendation with the application. ~~Except for~~ The requirement of this subdivision shall not apply to any applicant who seeks to receive the oath of office from the register of deeds of a county where more than 15,000 active notaries public are on record on January 1 of the year when the application is ~~filed, the applicant shall also obtain the recommendation of one publicly elected official in North Carolina whose recommendation shall be contained on the application.~~ filed."

SECTION 3. G.S. 10B-7(b) reads as rewritten:

"(b) The information ~~contained~~ provided in an application that relates to subdivisions (2), (3), (6), and (7) of subsection (a) of this section ~~under this section is a public record as defined in G.S. 132-1. The information contained in subdivisions (2), (3), (6) and (7) of subsection (a) of this section~~ shall be considered confidential information and shall not be subject to disclosure ~~except as provided in~~ under Chapter 132 of the General Statutes."

SECTION 4. G.S. 10B-10(c) reads as rewritten:

"(c) ~~The~~ After the appointee qualifies by taking the oath of office required under subsection (b) of this section, the register of deeds shall ~~then~~ place the notary record in a book designated for that purpose, or the notary record may be recorded in the Consolidated Document Book and indexed in the Consolidated Real Property Index under the notary's name in the grantor index. The notary record may be kept in electronic format so long as the signature of the notary public may be viewed and printed. The notary record shall contain the name and the signature of the notary as commissioned, the effective date and expiration date of the commission, the date the oath was administered, and the date of any restriction, suspension, revocation, or resignation. The record shall constitute the official record of the qualification of notaries public."

SECTION 5. G.S. 10B-11(b) reads as rewritten:

"(b) A notary whose commission has not expired must comply with the following requirements to be recommissioned:

(1) Submit a new application ~~under G.S. 10B-6.~~ meeting the requirements of G.S. 10B-6, except for G.S. 10B-6(2).

(2) Meet all the requirements of ~~G.S. 10B-5(b)~~ G.S. 10B-5(b), except for G.S. 10B-5(b)(5), (6), and (9).

(3) ~~Pass~~ Achieve a passing score on the written examination required under ~~G.S. 10B-8, unless~~ G.S. 10B-8(b). This requirement does not apply if the notary is a licensed member of the North Carolina State ~~Bar.~~ Bar, or if the notary has been continuously commissioned in North Carolina since July 10, 1991, and has never been disciplined by the Secretary."

SECTION 6. G.S. 10B-20(a) reads as rewritten:

"**§ 10B-20. Powers and limitations.**

(a) A notary may perform any of the following notarial acts:

(1) Acknowledgments.

(2) Oaths and affirmations.

~~(3) Execute jurats.~~

(4) Verifications or proofs."

SECTION 7. G.S. 10B-20(b) reads as rewritten:

"(b) A notarial act shall be attested by all of the following:

(1) The signature of the notary, exactly as shown on the notary's commission.

(2) The ~~readable~~ legible appearance of the notary's ~~name,~~ name exactly as shown on the notary's commission. The legible appearance of the name may be ascertained from the notary's typed or printed name near the ~~signature.~~notary's signature or from elsewhere in the notarial certificate or from the notary's seal if the name is legible.

(3) The clear and legible appearance of the notary's stamp or seal.

(4) A statement of the date the notary's commission expires. The statement of the date that the notary's commission expires may appear in the notary's stamp or seal or elsewhere in the notarial certificate."

SECTION 8. G.S. 10B-20(c) reads as rewritten:

"(c) A notary ~~is disqualified from performing~~shall not perform a notarial act if any of the following apply:

(1) The principal or subscribing witness is not in the notary's presence at the time the notarial act is ~~to be performed; however,~~ performed. However, nothing in this Chapter shall require a notary to complete the notarial certificate attesting to the notarial act in the presence of the principal or subscribing witness.

(2) The principal or subscribing witness is not personally known to the notary or identified by the notary through satisfactory evidence.

(2a) The credible witness is not personally known to the notary.

~~(3) The principal or subscribing witness shows a demeanor that causes the notary to have a compelling doubt about whether the principal knows the consequences of the transaction requiring a notarial act.~~

~~(4) The principal or subscribing witness, in the notary's judgment, is not acting of the principal's or the subscribing witness's own free will.~~

(5) The notary is a signer ~~of or is named, other than as a trustee in a deed of trust, in the document~~ of, party to, or beneficiary of the record, that

is to be notarized. However, a disqualification under this subdivision shall not apply to a notary who is named in a record solely as the trustee in a deed of trust, the drafter of the record, the person to whom a registered document should be mailed or sent after recording, or the attorney for a party to the record, so long as the notary is not also a party to the record individually or in some other representative or fiduciary capacity.

(6) The notary will receive directly from a transaction connected with the notarial act any commission, fee, advantage, right, title, interest, cash, property, or other consideration exceeding in value the fees specified in G.S. 10B-31, other than fees or other consideration paid for services rendered by a licensed attorney, a licensed real estate broker or salesperson, a motor vehicle dealer, or a banker."

SECTION 9. G.S. 10B-20(g) reads as rewritten:

"(g) ~~Commissioned officers on active duty in the United States armed forces who are authorized to perform notarial acts and other persons~~Persons authorized by federal law or regulation to perform notarial acts may perform the acts for persons serving in or with the United States armed forces, their spouses, and their dependents."

SECTION 10. G.S. 10B-20(l) reads as rewritten:

"(l) A notary public required to comply with the provisions of subsection ~~(g)~~(i) of this section shall prominently post at the notary public's place of business a schedule of fees established by law, which a notary public may charge. The fee schedule shall be written in English and in the non-English language in which the notary services were solicited and shall contain the notice required in subsection (i) of this section, unless the notice is otherwise prominently posted at the notary public's place of business."

SECTION 11. G.S. 10B-20(m) reads as rewritten:

"(m) If notarial certificate wording is not provided or indicated for a record, a ~~nonattorney~~ notary who is not also a licensed attorney shall not determine the type of notarial act or certificate to be used. This does not prohibit a notary from offering the selection of certificate forms recognized in this Chapter or as otherwise authorized by law."

SECTION 12. G.S. 10B-20(o) reads as rewritten:

"(o) Before signing a notarial certificate and except as provided in this subsection, a notary shall cross out or mark through all blank lines or spaces in the certificate. However:

(1) Notwithstanding the provisions of this ~~section or G.S. 10B-35(b),~~ section, a notary shall not be required to complete, cross out, or mark through blank lines or spaces in the notary certificate form provided for in G.S. 47-43 indicating when and where a power of attorney is recorded if that recording information is not known to the notary at the time the notary completes and signs the certificate;

(2) A notary's failure to cross out or mark through blank lines or spaces in a notarial certificate shall not affect the sufficiency, validity, or enforceability of the certificate or the related record; and

(3) A notary's failure to cross out or mark through blank lines or spaces in a notarial certificate shall not be grounds for a register of deeds to refuse to accept a record for registration."

SECTION 13. G.S. 10B-23 reads as rewritten:

"**§ 10B-23. Improper records.**

(a) A notary shall not notarize a signature on a record without a notarial certificate indicating what type of notarial act was performed. However, a notary may administer an oath or affirmation without completing a jurat.

(b) A notary shall neither certify, notarize, nor authenticate a photograph. A notary may notarize an affidavit regarding and attached to a photograph."

SECTION 14. G.S. 10B-31 reads as rewritten:

"**§ 10B-31. Fees for notarial acts.**

The maximum fees that may be charged by a notary for notarial acts are as follows:

(1) For acknowledgments, jurats, verifications or proofs, five dollars ($5.00) per principal signature.

(2) For oaths or affirmations without a signature, five dollars ($5.00) per person, except for an oath or affirmation administered to a credible witness to vouch for ~~a principal's identity.~~ the identity of a principal or subscribing witness."

SECTION 15. G.S. 10B-22 as enacted in Section 4 of S.L. 2005-391 and as codified as G.S. 10B-35 reads as rewritten:

~~"§ 10B-22. Official signature.~~

~~(a) A notary shall keep an official seal or stamp (herein "seal") that is the exclusive property of the notary. The notary shall keep the seal in a secure location that is accessible only to the notary. A notary shall not allow another person to use or possess the seal, and shall not surrender the seal to the notary's employer upon termination of employment.~~

~~(b) The seal shall be affixed only after the notarial act is performed. The notary shall place the image or impression of the seal near the notary's signature on every paper record notarized. The seal and the signature shall appear on the same page.~~

~~(c) A notary shall do the following within 10 days of discovering that the notary's seal has been stolen, lost, damaged, or otherwise rendered incapable of affixing a legible image:~~

~~(1) Inform the appropriate law enforcement agency in the case of theft or vandalism.~~

~~(2) Notify the appropriate register of deeds and the Secretary in writing and signed in the official name in which he or she was commissioned.~~

~~(d) As soon as is reasonably practicable after resignation, revocation, or expiration of a notary commission, or death of the notary, the seal shall be delivered to the Secretary for disposal.~~

"**§ 10B-35. Official signature.**

When notarizing a paper record, a notary shall sign by hand in ink on the notarial certificate. The notary shall comply with the requirements of G.S. 10B-20(b)(1) and (b)(2). The notary shall affix the official signature only after the notarial act is

performed. The notary shall not sign a paper record using the facsimile stamp or an electronic or other printing method."

SECTION 16. G.S. 10B-36 reads as rewritten:

"**§ 10B-36. Official seal.**

(a) A notary shall keep an official seal or stamp ~~(herein "seal")~~ that is the exclusive property of the notary. The notary shall keep the seal in a secure ~~location that is accessible only to the notary.~~ location. A notary shall not allow another person to use or possess the seal, and shall not surrender the seal to the notary's employer upon termination of employment.

(b) The seal shall be affixed only after the notarial act is performed. The notary shall place the image or impression of the seal near the notary's signature on every paper record notarized. The seal and the notary's signature shall appear on the same ~~page.~~ page of a record as the text of the notarial certificate.

(c) A notary shall do the following within 10 days of discovering that the notary's seal has been ~~stolen, lost, damaged, or otherwise rendered incapable of affixing a legible image~~:lost or stolen:

(1) Inform the appropriate law enforcement agency in the case of theft or vandalism.

(2) Notify the appropriate register of deeds and the Secretary in writing and signed in the official name in which he or she was commissioned.

(d) As soon as is reasonably practicable after resignation, revocation, or expiration of a notary commission, or death of the notary, the seal shall be delivered to the Secretary for disposal."

SECTION 17. G.S. 10B-37 reads as rewritten:

"**§ 10B-37. Seal image.**

(a) ~~Near~~ A notary shall affix the notary's official seal near the notary's official signature on the notarial certificate of a ~~paper record, the notary shall place a sharp, legible, permanent, and photographically reproducible image of the official seal.~~record.

(b) A notary's official seal shall include ~~only~~ all of the following elements:

(1) The notary's name exactly as ~~commissioned;~~commissioned.

(2) The words ~~"Notary Public";~~"Notary Public".

(3) The county of commissioning, including the word "County" or the abbreviation ~~"Co."; and~~"Co.".

(4) The words "North Carolina" or the abbreviation "NC".

(c) The notary seal may be either circular or rectangular in shape. Upon receiving a commission or a recommission on or after October 1, 2006, a notary shall not use a ~~The~~ circular seal ~~shall not be~~ that is less than 1 ½ inches, nor more than 2 inches in diameter. The rectangular seal shall not be over 1 inch high and 2 ½ inches long. The perimeter of the seal shall contain a border that is visible when impressed.

(c1) Alterations to any information contained within the seal as embossed or stamped on the record are prohibited.

(d) A notarial ~~seal may contain the notary's commission expiration date; however, a notarial act shall be invalid if the expiration date contained on the seal is incorrect at that time that the notarial act is performed.~~seal, as it appears on a record,

may contain the permanently imprinted, handwritten, or typed date the notary's commission expires.

(e) Any reference in the General Statutes to the seal of a notary shall include the stamp of a notary, and any reference to the stamp of a notary shall include the seal of the notary.

(f) The failure of a notarial seal to comply with the requirements of this section shall not affect the sufficiency, validity, or enforceability of the notarial certificate, but shall constitute a violation of the notary's duties."

SECTION 18. G.S. 10B-40 reads as rewritten:

"**§ 10B-40. Notarial certificates in general.**

(a) A notary shall not make or give a notarial certificate unless the notary has either ~~(i)~~ personal knowledge or satisfactory evidence of the identity of the principal or, if applicable, the subscribing ~~witness, or (ii) satisfactory evidence of a signer's identity.~~witness.

(a1) By making or giving a notarial certificate, whether or not stated in the certificate, a notary certifies as follows:

(1) As to an acknowledgment, all those things described in G.S. 10B-3(1).

(2) As to an affirmation, all those things described in G.S. 10B-3(2).

(3) As to an oath, all those things described in G.S. 10B-3(14).

(4) As to a verification or proof, all those things described in G.S. 10B-3(28).

(a2) In addition to the certifications under subsection (a1) of this section, by making or giving a notarial certificate, whether or not stated in the certificate, a notary certifies to all of the following:

(1) At the time the notarial act was performed and the notarial certificate was signed by the notary, the notary was lawfully commissioned, the notary's commission had neither expired nor been suspended, the notarial act was performed within the geographic limits of the notary's commission, and the notarial act was performed in accordance with the provision of this Chapter.

(2) If the notarial certificate is for an acknowledgment or the administration of an oath or affirmation, the person whose signature was notarized did not appear in the judgment of the notary to be incompetent, lacking in understanding of the nature and consequences of the transaction requiring the notarial act, or acting involuntarily, under duress, or undue influence.

(3) The notary was not prohibited from acting under G.S. 10-20(c).

(a3) The inclusion of additional information in a notarial certificate, including the representative or fiduciary capacity in which a person signed or the means a notary used to identify a principal, shall not invalidate an otherwise sufficient notarial certificate.

(b) A notarial certificate for the acknowledgment taken by a notary of a principal who is an individual acting in his or her own right or who is an individual acting in a representative or fiduciary capacity ~~taken by a notary~~ is sufficient and shall be accepted in this State if it is substantially in the form set forth in G.S. 10B-41, if it is substantially

in a form otherwise prescribed by the ~~law~~ laws of this State, or if ~~it:~~it includes all of the following:

(1) Identifies the state and county in which the acknowledgment ~~occurred;~~occurred.

(2) Names the principal who appeared in person before the ~~notary;~~notary.

~~(3) States that the notary has either (i) personal knowledge of the identity of the principal or (ii) satisfactory evidence of the principal's identity, indicating the nature of that satisfactory evidence;~~

(4) Indicates that the principal ~~who~~ appeared in person before the notary and the principal acknowledged that ~~the signature on the record presented is his or her signature, that the principal voluntarily signed the record for the purpose stated therein;~~he or she signed the record.

(5) States the date of the ~~acknowledgment;~~acknowledgment.

(6) Contains the signature and seal or stamp of the notary who took the ~~acknowledgment; and~~ acknowledgment.

(7) States the notary's commission expiration date.

(c) A notarial certificate for the verification or proof of the signature of a principal by a subscribing witness taken by a notary is sufficient and shall be accepted in this State if it is substantially in the form set forth in G.S. 10B-42, if it is substantially in a form otherwise prescribed by the ~~law~~ laws of this State, or if ~~it:~~it includes all of the following:

(1) Identifies the state and county in which the verification or proof ~~occurred;~~occurred.

(2) Names the subscribing witness who appeared in person before the ~~notary;~~notary.

~~(3) States that the notary has either (i) personal knowledge of the identity of the subscribing witness or (ii) satisfactory evidence of the subscribing witness's identity, indicating the nature of that satisfactory evidence;~~

(4) Names the principal whose signature on the record is to be verified or ~~proven;~~proven.

(5) Indicates that the subscribing witness certified to the notary under oath or by affirmation that the subscribing witness is not a party to or beneficiary of the transaction, ~~named party to the record in question, has no interest in the transaction,~~ signed the record as a subscribing witness, and either (i) witnessed the principal sign the record, or (ii) witnessed the principal acknowledge the principal's signature on the ~~already-signed record;~~record.

(6) States the date of the verification or ~~proof;~~proof.

(7) Contains the signature and seal or stamp of the notary who took the verification or ~~proof; and~~proof.

(8) States the notary's commission expiration date.

(c1) A notarial certificate for the verification or proof of the signature of a principal or a subscribing witness by a nonsubscribing witness taken by a notary is

sufficient and shall be accepted in this State if it is substantially in the form set forth in G.S. 10B-42.1, if it is substantially in a form otherwise prescribed by the laws of this State, or if it includes all of the following:

(1) Identifies the state and county in which the verification or proof occurred.

(2) Names the nonsubscribing witness who appeared in person before the notary.

(3) Names the principal or subscribing witness whose signature on the record is to be verified or proven.

(4) Indicates that the nonsubscribing witness certified to the notary under oath or by affirmation that the nonsubscribing witness is not a party to or beneficiary of the transaction and that the nonsubscribing witness recognizes the signature of either the principal or the subscribing witness and that the signature is genuine.

(5) States the date of the verification or proof.

(6) Contains the signature and seal or stamp of the notary who took the verification or proof.

(7) States the notary's commission expiration date.

(d) A notarial certificate for an oath or affirmation taken by a notary is sufficient and shall be accepted in this State if it is substantially in the form set forth in G.S. 10B-43, if it is substantially in a form otherwise prescribed by the ~~law~~ laws of this State, or if ~~it:~~it includes all of the following:

~~(1) Identifies the state and county in which the oath or affirmation occurred;~~

(2) Names the principal who appeared in person before the ~~notary;~~notary unless the name of the principal otherwise is clear from the record itself.

~~(3) States that the notary has either (i) personal knowledge of the identity of the principal or (ii) satisfactory evidence of the principal's identity, indicating the nature of that satisfactory evidence;~~

(4) Indicates that the principal who appeared in person before the notary signed the record in question and certified to the notary under oath or by affirmation as to the truth of the matters stated in the ~~record;~~record.

(5) States the date of the oath or ~~affirmation;~~affirmation.

(6) Contains the signature and seal or stamp of the notary who took the oath or ~~affirmation; and~~affirmation.

(7) States the notary's commission expiration date.

(e) Any notarial certificate made in another jurisdiction shall be sufficient in this State if it is made in accordance with federal law or the laws of the jurisdiction where the notarial certificate is made.

(f) On records to be filed, registered, recorded, or delivered in another state or jurisdiction of the United States, a North Carolina notary may complete any notarial certificate that may be required in that other state or jurisdiction.

(g) Nothing in this Chapter shall be deemed to authorize the use of a notarial certificate authorized by this Part in place of or as an alternative to a notarial certificate required by any other provision of the General Statutes outside of Chapter 47 of the General Statutes that prescribes the specific form or content for a notarial certificate ~~(including, but not limited to,~~ including G.S. 31-11.6, Chapter 32A of the General Statutes, and ~~G.S. 90-321).~~ G.S. 90-321. However, any statute that permits or requires the use of a notarial certificate contained within Chapter 47 of the General Statutes may also be satisfied by the use of a notarial certificate permitted by this Part. Any form of acknowledgment or probate authorized under Chapter 47 of the General Statutes shall be conclusively deemed in compliance with the requirements of this section.

(h) If an individual signs a record and purports to be acting in a representative or fiduciary capacity, that individual is also deemed to represent to the notary that he or she is signing the record with proper authority to do so and also is signing the record on behalf of the person or entity represented and identified therein or in the fiduciary capacity indicated therein. In performing a notarial act in relation to an individual described under this subsection, a notary is under no duty to verify whether the individual acted in a representative or fiduciary capacity or, if so, whether the individual was duly authorized so to do. A notarial certificate may include any of the following:

(1) A statement that an individual signed a record in a particular representative or fiduciary capacity.

(2) A statement that the individual who signed the record in a representative or fiduciary capacity had due authority so to do.

(3) A statement identifying the represented person or entity or the fiduciary capacity."

SECTION 19. G.S. 10B-41 reads as rewritten:

"**§ 10B-41. Notarial certificate for an acknowledgment.**

(a) When properly completed by a notary, a notarial certificate ~~in~~ that substantially complies with the following form may be used and shall be sufficient under the law of this State to satisfy the requirements for a notarial certificate for the acknowledgment of a principal who is an individual acting in his or her own right or who is an individual acting in a representative or fiduciary capacity. The authorization of the form in this section does not preclude the use of other forms.

_____ County, North Carolina

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she ~~voluntarily~~ signed the foregoing ~~document for the purpose stated therein and in the capacity indicated:~~ document: name(s) of principal(s).

Date: _____ Official Signature of Notary

Notary's printed or typed name, Notary Public

(Official Seal) My commission expires: _____

~~(b) By signing a notarial certificate for the acknowledgment of a principal who is an individual acting in his or her own right or in a representative capacity substantially in the form set forth in subsection (a) of this section, the notary thereby certifies:~~

~~(1) That the principal acknowledging his or her signature appeared in person before the notary on the date indicated;~~

~~(2) That the principal stated to the notary that he or she voluntarily signed the record for the purpose stated therein;~~

~~(3) That, if the principal signed the record in a representative capacity, the principal stated that he or she signed the record in the particular representative capacity; and~~

~~(4) That the notary has either (i) personal knowledge of the identity of the principal or (ii) satisfactory evidence of the principal's identity.~~

(c) The notary's printed or typed name as shown in the form provided in subsection (a) of this section is not required if the legible appearance of the notary's name may be ascertained from the notary's typed or printed name near the notary's signature or from elsewhere in the notarial certificate or from the notary's seal if the name is legible."

SECTION 20. G.S. 10B-42 reads as rewritten:

"**§ 10B-42. Notarial certificate for a verification or ~~proof.~~ of subscribing witness.**

(a) When properly completed by a notary, a notarial certificate in substantially the following form may be used and shall be sufficient under the law of this State to satisfy the requirements for a notarial certificate for the verification or proof of the signature of a principal by a subscribing witness. The authorization of the form in this section does not preclude the use of other forms.

_____ County, North Carolina

I certify that ~~name~~ (name of subscribing ~~witness~~ witness) personally appeared before me this day and certified to me under oath or by affirmation that he or she is not a ~~named party to the foregoing document, has no interest in the transaction,~~ grantee or beneficiary of the transaction, signed the foregoing document as a subscribing witness, and either (i) witnessed ~~name~~ (name of ~~principal (the~~ principal) sign the foregoing document or (ii) witnessed (name of ~~the principal~~ principal) acknowledge ~~the principal's~~ his or her signature on the already-signed document.

Date: _____ Official Signature of Notary

Notary's printed or typed name, Notary Public

(Official Seal) My commission expires: _____

~~(b) By signing a notarial certificate for the verification or proof of the signature of a principal by a subscribing witness substantially in the form set forth in subsection (a) of this section, the notary thereby certifies:~~

~~(1) That the subscribing witness appeared in person before the notary on the date indicated;~~

~~(2) That the subscribing witness certified to the notary under oath or by affirmation that the subscribing witness is not a named party to the record in question, has no interest in the transaction, signed the record as a subscribing witness, and either (i) witnessed the named principal sign the record, or (ii) witnessed the named principal acknowledge the principal's signature on the already-signed record; and~~

~~(3) That the notary has either (i) personal knowledge of the identity of the subscribing witness or (ii) satisfactory evidence of the subscribing witness's identity.~~

(c) The notary's printed or typed name as shown in the form provided in subsection (a) of this section is not required if the legible appearance of the notary's name may be ascertained from the notary's typed or printed name near the notary's signature or from elsewhere in the notarial certificate or from the notary's seal if the name is legible."

SECTION 21. Article 1 of Chapter 10B is amended by adding a new section to read:

"**§ 10B-42.1. Notarial certificate for a verification of nonsubscribing witness.**

(a) When properly completed by a notary, a notarial certificate in substantially the following form may be used and shall be sufficient under the law of this State to satisfy the requirements for a notarial certificate for the verification or proof of the signature of a principal or subscribing witness by a nonsubscribing witness. The authorization of the form in this section does not preclude the use of other forms.

_____ County, North Carolina

I certify (name of nonsubscribing witness) personally appeared before me this day and certified to me under oath or by affirmation that he or she is not a grantee or beneficiary of the transaction, that (name of nonsubscribing witness) recognizes the signature of (name of the principal or the subscribing witness) and that the signature is genuine.

Date: _____ Official Signature of Notary

Notary's printed or typed name, Notary Public

(Official Seal) My commission expires: _____

(b) The notary's printed or typed name as shown in the form provided in subsection (a) of this section is not required if the legible appearance of the notary's name may be ascertained from the notary's typed or printed name near the notary's signature or from elsewhere in the notarial certificate or from the notary's seal if the name is legible."

SECTION 22. G.S. 10B-43 reads as rewritten:

"**§ 10B-43. Notarial certificate for an oath or affirmation.**

(a) When properly completed by a notary, a notarial certificate ~~in~~ that substantially complies with either of the following forms may be used and shall be sufficient under the law of this State to satisfy the requirements for a notarial certificate for an oath or affirmation. The authorization of the forms in this section does not preclude the use of other forms.

_____ County, North Carolina

Signed and sworn to ~~(or affirmed)~~ before me this day by ~~name of principal.~~(name of principal).

Date: _____ Official Signature of Notary

Notary's printed or typed name, Notary Public

(Official Seal) My commission expires: _____

-OR-

_____ County, North Carolina

Sworn to ~~(or affirmed)~~ and ~~ascribed~~ subscribed before me this day by ~~name of principal.~~(name of principal).

Date: _____ Official Signature of Notary

Notary's printed or typed name, Notary Public

(Official Seal) My commission expires: _____

~~(b) By signing a notarial certificate for an oath or affirmation substantially in the form set forth in subsection (a) of this section, the notary thereby certifies:~~

~~(1) That the principal appeared in person before the notary on the date indicated;~~

~~(2) That either (i) the notary witnessed the principal sign the record or (ii) the principal stated to the notary that he or she voluntarily signed the record for the purpose stated therein;~~

~~(3) That the principal certified to the notary under oath or by affirmation as to the truth of the matters stated in the record; andrecord.~~

~~(4) That the notary has either (i) personal knowledge of the identity of the principal or (ii) satisfactory evidence of the principal's identity.~~

(c) The notary's printed or typed name as shown in the form provided in subsection (a) of this section is not required if the legible appearance of the notary's name may be ascertained from the notary's typed or printed name near the notary's signature or from elsewhere in the notarial certificate or from the notary's seal if the name is legible.

(d) In either of the forms provided under subsection (a) of this section all of the following shall apply:

(1) The name of the principal may be omitted if the name of the principal is located near the jurat, and the principal who so appeared before the notary is clear from the record itself.

(2) The words "affirmed" or "sworn to or affirmed" may be substituted for the words "sworn to"."

SECTION 23. G.S. 10B-60 reads as rewritten:

"**§ 10B-60. Enforcement and penalties.**

(a) The Secretary may ~~warn,~~ issue a warning to a notary or restrict, suspend, or revoke a notarial commission for a violation of this Chapter and on any ground for which an application for a commission may be denied under this Chapter. Any period of restriction, suspension, or revocation shall not extend the expiration date of a commission.

(b) Except as otherwise permitted by law, a person who commits any of the following acts is guilty of a Class 1 misdemeanor:

(1) Holding one's self out to the public as a notary if the person does not have a commission.

(2) Performing a notarial act if the person's commission has expired or been ~~suspended.~~suspended or restricted.

(3) Performing a notarial act before the person had taken the oath of office.

(c) A notary shall be guilty of a Class 1 misdemeanor if the notary does any of the following:

(1) Takes an ~~acknowledgment, performs~~ acknowledgment or administers an ~~oath, affirmation, or jurat~~ oath or affirmation without the principal ~~personally~~ appearing in person before the ~~notary;~~notary.

(2) Takes a verification or proof ~~of a~~ without the subscribing witness ~~without personal knowledge of the subscribing witness's identity, or without satisfactory evidence of the subscribing witness's identity;~~appearing in person before the notary.

(3) Takes an acknowledgment or administers an oath or affirmation without personal knowledge or satisfactory evidence of the identity of the principal.

(4) Takes a verification or proof without personal knowledge or satisfactory evidence of the identity of the subscribing witness.

(d) A notary shall be guilty of a Class I felony if the notary does any of the following:

(1) Takes an ~~acknowledgment, verification, proof, or jurat,~~acknowledgment or a verification or a proof, or ~~performs~~ administers an oath or affirmation if the notary knows it is false or fraudulent.

(2) Takes an ~~acknowledgment, or jurat~~ acknowledgment or administers an oath or affirmation without the principal appearing in person before the notary if the notary does so with the intent to commit fraud.

(3) Takes a verification or proof without the subscribing witness appearing in person before the notary if the notary does so with the intent to commit fraud.

(e) It is a Class I felony for any person to perform notarial acts in this State with the knowledge that the person is not commissioned under this Chapter.

(f) Any person who without authority obtains, uses, conceals, defaces, or destroys the seal or notarial records of a notary is guilty of a Class I felony.

(g) For purposes of enforcing this Chapter and Article 34 of Chapter 66 of the General Statutes, the law enforcement agents of the Department of the Secretary of State have statewide jurisdiction and have all of the powers and authority of law enforcement officers. The agents have the authority to assist local law enforcement agencies in their investigations and to initiate and carry out, on their own or in coordination with local law enforcement agencies, investigations of violations.

(h) Resignation or expiration of a notarial commission does not terminate or preclude an investigation into a notary's conduct by the Secretary, who may pursue the investigation to a conclusion, whereupon it may be a matter of public record whether or not the finding would have been grounds for disciplinary action.

(i) The Secretary may seek injunctive relief against any person who violates the provisions of this Chapter. Nothing in this Chapter diminishes the authority of the North Carolina State Bar.

(j) Any person who knowingly solicits, coerces, or in any material way influences a notary to commit official misconduct, is guilty as an aider and abettor and is subject to the same level of punishment as the notary.

(k) The sanctions and remedies of this Chapter supplement other sanctions and remedies provided by law, including, but not limited to, forgery and aiding and abetting."

SECTION 24. Part 9 of Article 1 of Chapter 10B of the General Statutes is amended by adding the following new sections to read:

"**§ 10B-67. Erroneous commission expiration date cured.**

An erroneous statement of the date that the notary's commission expires shall not affect the sufficiency, validity, or enforceability of the notarial certificate or the related record if the notary is, in fact, lawfully commissioned at the time of the notarial act.

"**§ 10B-68. Technical defects cured.**

(a) Technical defects, errors, or omissions in a notarial certificate shall not affect the sufficiency, validity, or enforceability of the notarial certificate or the related instrument or document.

(b) As used in this section, a technical defect includes those cured under G.S. 10B-37(f) and G.S. 10B-67. Other technical defects include the absence of the legible appearance of the notary's name exactly as shown on the notary's commission as required in G.S. 10B-20(b) and defects in the commissioning or recommissioning of the notary that were approved by the Department under this Chapter.

"**§ 10B-69. Official forms cured.**

(a) The notarial certificate contained in a form issued by a State agency prior to October 1, 2006, is deemed to be a valid certificate provided the certificate complied with the law at the time the form was issued.

(b) The notarization using a certificate under subsection (a) of this section shall be deemed valid if executed in compliance with the law at the time the form was issued.

"**§ 10B-99. Presumption of regularity.**

(a) In the absence of evidence of fraud on the part of the notary, or evidence of a knowing and deliberate violation of this Article by the notary, the courts shall grant a presumption of regularity to notarial acts so that those acts may be upheld, provided there has been substantial compliance with the law. Nothing in this Chapter modifies or repeals the common law doctrine of substantial compliance in effect on November 30, 2005.

(b) A notarial act performed before October 1, 2006, shall be deemed valid if it complies with the law as it existed on or before December 1, 2005."

SECTION 25. G.S. 10B-106(d) reads as rewritten:

"(d) An electronic form shall be used by an electronic notary in registering with the Secretary and it shall include, at least all of the following:

(1) The applicant's full legal name and the name to be used for commissioning, excluding nicknames.

(2) The state and county of commissioning of the registrant.
(3) The expiration date of the registrant's notary commission.
(4) Proof of successful completion of the course of instruction on electronic notarization as required by this Article.
(5) A description of the technology the registrant will use to create an electronic signature in performing official acts.
(6) If the device used to create the registrant's electronic signature was issued or registered through a licensed certification authority, the name of that authority, the source of the license, the starting and expiration dates of the device's term of registration, and any revocations, annulments, or other premature terminations of any registered device of the registrant that was due to misuse or compromise of the device, with the date, cause, and nature of each termination explained in detail.
(7) The e-mail address of the registrant.

The information ~~contained~~ provided in a registration that relates to subdivision (7) of this section ~~under this section is a public record as defined in G.S. 132-1, except for information contained in subsection (7), which~~ shall be considered confidential information and shall not be subject to disclosure ~~except as provided in~~ under Chapter 132 of the General ~~Statutes or~~ Statutes, except as provided by rule."

SECTION 26. G.S. 47-14 is amended by adding a new subsection to read:

"(f) The acceptance of a record for registration by the register of deeds shall give rise to a presumption that, at the time the record was presented for registration, a clear and legible image of the notary's official seal was affixed or embossed on the record near the notary's official signature. This presumption shall apply regardless of whether the image is legible or photographically reproduced in the records maintained by the register of deeds. A register of deeds may not refuse to accept a record for registration because a notarial seal does not satisfy the requirements of G.S. 10B-37. "

SECTION 27. G.S. 47-37.1 reads as rewritten:

"**§ 47-37.1. Other forms of proof.**

(a) The proof and acknowledgment forms set forth in this Article are not exclusive. Without regard to whether an instrument presented for registration was signed by an individual acting in his or her own right or by an individual acting in a representative or fiduciary capacity, a notarial certificate that complies with the provisions of Part 6 of Article 1 of Chapter 10B ~~(G.S. 10B-25 et. seq.)~~ shall be deemed a sufficient form of probate or acknowledgment for purposes of this Chapter. Use of a notarial certificate that satisfies the requirements of Part 6 of Article 1 of Chapter 10B shall not be grounds for a register of deeds to refuse to accept a record for registration.

(b) When an instrument presented for registration purports to be signed by an individual in a representative or fiduciary capacity, the acknowledgment or proof of that individual's signature ~~may, but is not required to:~~ may:

(1) State that the individual signed the instrument in a representative or fiduciary capacity.
(2) State that the individual who signed the instrument in a representative or fiduciary capacity had due authority to do so.

(3) Identify the represented person or ~~entity.~~ the fiduciary capacity.

(c) This section relates only to the form of proof or acknowledgment. The capacity and authority of the individual who signs an instrument presented for registration are governed by other provisions of law.

(d) This section applies to proofs and acknowledgments made before, on, or after December 1, 2005."

SECTION 28. G.S. 47-38 reads as rewritten:

"**§ 47-38. Acknowledgment by grantor.**

~~Where the instrument is acknowledged by the grantor or maker, the form of acknowledgment shall be in substance as follows:~~

When properly completed, a certificate in substantially the following form may be used and shall be sufficient under the law of this State to satisfy the requirements for a notarial certificate for one or more individuals, acting in his, her, or their own right or, whether or not so stated in the notarial certificate, in a representative or fiduciary capacity, including one or more individuals acting on behalf of an unincorporated association, as an officer or director of a corporation, as a partner of a general or limited partnership, as a manager or member of a limited liability company, as the trustee of a trust, as the personal representative of a decedent's estate, as an agent or attorney in fact for another, as the guardian of a minor or an incompetent, or as a public official. The authorization of the form in this section does not preclude the use of other forms. This section applies to notarial certificates made before, on, and after December 1, 2005.

North Carolina, _____County.

I (here give the name of the official and his official title), do hereby certify that (here give the name of the ~~grantor or maker)~~ individual whose acknowledgment is being taken) personally appeared before me this day and acknowledged the due execution of the foregoing instrument. Witness my hand and (where an official seal is required by law) official seal this the _____ day of_____ (year).

(Official seal.)

_____

(Signature of officer.)

(Title)"

SECTION 29. G.S. 47-41.01 is amended by adding a new subsection to read:

"(e) The forms of probate set forth in this section may be modified and adopted for use in the probate of deeds and other conveyances and instruments executed by entities other than corporations, including general and limited partnerships, limited liability companies, trusts, and unincorporated associations. This subsection applies to notarial certificates and forms of probate made before, on, or after December 1, 2005."

SECTION 30. G.S. 47-41.02 is amended by adding a new subsection to read:

"(h) The forms of probate set forth in this section may be modified and adopted for use in the probate of deeds and other conveyances and instruments executed by entities other than corporations, including general and limited partnership, limited

liability companies, trusts, and unincorporated associations. This subsection applies to notarial certificates and forms of probate made before, on, or after December 1, 2005."

SECTION 31. Chapter 47 of the General Statutes is amended by adding a new section to read:

"**§ 47-41.2. Technical defects.**

(a) Technical defects, including technical defects under G.S. 10B-68, and errors or omissions in a form of probate or other notarial certificate, shall not affect the sufficiency, validity, or enforceability of the form of probate or the notarial certificate or the related instrument or document. A register of deeds may not refuse to accept an instrument or document for registration because of technical defects, errors, or omissions in a form of probate or other notarial certificate.

(b) This section does not apply to the requirements for registration contained in G.S. 47-14(a) and a register of deeds shall not accept for registration an instrument that does not comply with the requirements of G.S. 47-14(a)."

SECTION 32. The General Statutes Commission shall study the need for additional changes to laws relating to notaries public, the notarization of documents, and the registration of instruments notarized in other jurisdictions. The Commission shall determine whether there is a need for additional conforming changes in the law that arise from changes made by this act and recommend to the General Assembly any legislation to address the needs identified by this study. The General Statutes Commission shall report the results of its study to either the 2007 or 2009 General Assembly.

SECTION 33. G.S. 10B-11(b)(3) as amended in Section 5 of this act becomes effective July 1, 2006. The remainder of this act becomes effective October 1, 2006, and except as otherwise set forth in this act, applies to notarial acts performed on or after that date.

Attachment II

HOUSE BILL 1432:
Notary Public Corrections

BILL ANALYSIS

Committee:		**Date:**	June 20, 2006
Introduced by:	Reps. Stam, Ross	**Summary by:**	Kory Goldsmith
Version:	Fourth Edition		Staff Attorney

SUMMARY: The 4th[rd] Edition of House Bill 1432 completely rewrites the version that passed the House. The 4[rd] Edition makes technical, conforming, and other changes to the new Notary Public Act adopted in 2005, and makes conforming changes to other related laws.

CURRENT LAW: The current law was enacted in 2005, effective December 1, 2005, as part of Senate Bill 671. The 2005 act recodified the existing notary law and made extensive changes governing notary commissioning, notarial acts, powers and limitations, fees, signatures and seals, and certification forms.

BACKGROUND: As a result of difficulties and questions that arose regarding the implementation and compliance with the new law from the legal community representing various affected parties including real estate closing attorneys, lending institutions, title insurance companies, registers of deeds, clerks of court, the Division of Motor Vehicles, wills and estate administrators and other people who deal with and rely on a reliable, dependable notary system, the General Assembly was encouraged to reexamine the new law to provide additional clarity.

One of the goals of the new law was to add additional details to the notary statutes to improve the integrity of the notary system and to give the Secretary of State's Office, as the administrator of the law, the necessary tools to insure compliance. But a result of strengthening the notarization requirements, questions arose concerning the validity of the execution and recording of documents where notarizations did not technically comply with all the requirements of the new law.

As a result of our analysis of the various issues and concerns raised by all the parties, fundamental goals were identified that lead to the changes proposed in the proposed committee substitute. One goal was to clarify and protect the integrity of the notary system and strengthen the authority of the Secretary of State in insure compliance by notaries. The other goal was to protect the rights of parties who relied on documents which on their face appeared to be properly notarized.

As a result of these two goals, the proposed committee substitute was drafted to separate out these two purposes so that the Secretary of State could enforce strict compliance with notary standards designed to prevent fraud and insure the integrity of notarized documents, while not causing the underlying documents that were signed by the person whose name appeared on the document to be declared invalid because of a technical notary defect.

The primary effect of the bill is to uncouple the technical notary requirements from the validity and enforceability of documents on which it appears that the person who executed the document actually appeared before the notary, established his or her identity, and voluntarily executed the document in the notary's presence.

BILL ANALYSIS:

Section 1 makes technical and clarifying changes and corrections to the definitions used throughout the act.

Section 2 is a technical change to the notary qualifications statute.

Section 3 clarifies the exemption from the public records of certain personal identity information on the statement of personal qualification including the applicant's date of birth, residence address and telephone number, last four digits of the social security number, and personal and business email address.

Section 4 clarifies that the notary's commission is recorded by the register of deeds only after the oath of office is administered.

Section 5 clarifies the notary recommission requirements to eliminate the requirement that the notary retake the notary course, have a high school diploma, or obtain another recommendation from a public official. Effective July 1, 2006, a notary who has been continuously commissioned since July 10, 1991 with no disciplinary actions by the Secretary will not be required to pass a test in order to be recommissioned.

Sections 6 - 12 amend the notary's power and limitation statute in the following ways:

- Expands the ways the notary's name can be legibly shown in a notarial certificate and permits the statement of the expiration of the commission to be in the notary stamp or seal.
- Prohibits the notary from acting when the credible witness is not personally known to the notary and clarifies when a notary named on the document being notarized is not disqualified.
- Permits both commissioned and non-commissioned members of the Armed Forces to notarize documents as permitted under federal law.
- Makes other technical and conforming changes.

Section 13 allows the notary to administer an oath or affirmation without completing a certification.

Section 14 makes a conforming change to the permissible notary fee statute.

Section 15 repeals a redundant section and substitutes language originally intended to be included last year to specify the requirements for the notary's official signature, including the requirement to only sign after the principal signs and prohibiting notary signatures other than by hand.

Section 16 relaxes the requirements for storing a notary's seal to only be a secured location and limits the circumstances when law enforcement and/or the Secretary of State need to be notified about the condition of a seal to when the seal is lost or stolen.

Section 17 allows a notary to continue to use his or her old notary seal obtained prior to October 1, 2006, that does not comply with the new law, until the notary is recommissioned. This section also prohibits the notary from altering the appearance of the notary seal once the seal is placed on the record. This section clarifies that the failure of a notary seal to comply with the technical requirements for a seal does not invalidate a notarial certificate.

Section 18 creates a legal presumption that by executing a notary certificate the notary certifies that all the requirements for the type of notarial act performed have been complied with, that at the time the notary was lawfully commissioned, the notary's commission had not expired, the notarial act was performed within the State and performed in compliance with the law. The notary also is deemed to certify that the person whose signature is notarized did not appear to be incompetent, lacking in understanding of the nature and consequences of the transaction, or acting involuntarily, under duress or undue influence. This section also clarifies that a person who purports to be acting in a representative capacity when signing has the authority to do so.

Sections 19, 20 and 22 make technical changes to the statutory forms of notary certificates for acknowledgements, verifications or proofs, and oaths or affirmations.

Section 21 creates a statutory certificate form for the verification or proof of a non-subscribing witness.

Section 23 restores in the law a Class 1 misdemeanor offense for a notary who performs a notarial act without verification or proof of the identity of the person signing.

Section 24 adds the following new sections to the Notary Public Act:

- **G.S. 10B-67** cures erroneous commission expiration dates when the notary was lawfully commissioned at that time of the notarial act.
- **G.S. 10B-68** cures technical defects in notarial certificates including use of a noncompliant notary seal, an erroneous commission expiration date, a notary's name inconsistent with the name shown of the notary commission, and defects in the notary's commissioning or recommissioning.
- **G.S. 10B-68** cures the use of an outdated notarial certificate form on a State issued document, such as a DMV title, when the execution of the certificate conformed to the law at the time the document was issued.
- **G.S. 10B-99** preserves the common law doctrine of substantial compliance for notarial acts and validates notarial acts performed prior to October 1, 2006 that conformed to either the law as it existed prior to the 2005 changes or after the 2005 changes.

Section 25 makes a conforming change to the electronic notarization statute restricting the disclosure of the registrant's email address.

Sections 26 creates a legal presumption under the registration statutes that at the time a document was accepted by the register of deeds for recording, the notary seal was clear and legible.

Section 27 clarifies and cures forms for proofs and acknowledgements on recorded documents.

Section 28 cures and clarifies that the acknowledgement for a grantor can be used generically for multiple persons or persons acting in a representative capacity, including for any form of business entity.

Sections 29 and 30 cure and clarify that the statutory corporate conveyance notary forms can also be modified and adopted for use by other business entities.

Section 31 adds a conforming change to the probate and registration law curing technical defects in notarial certifications.

Section 32 directs the General Statutes Commission to study the need for additional changes to laws relating to notaries public, the notarization of documents, and the registration of documents notarized in other jurisdictions. The Commission shall report its findings and recommendations to the 2007 or the 2009 General Assembly.

EFFECTIVE DATE: Except for the testing provision in Section 5 of the bill (which becomes effective July 1, 2006), it becomes effective October 1, 2006, and except as otherwise provided, applies to notarial acts performed on or after that date.

H1432e4-SMRC

O. Walker Reagan, staff attorney, contributed substantially to this summary.

Attachment III

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative Hackney (Chair) for the Committee on JUDICIARY I.

☒Senate Committee Substitute for
HB 1432 A BILL TO BE ENTITLED AN ACT TO MAKE CORRECTIONS AND OTHER AMENDMENTS TO THE NOTARY PUBLIC ACT, AND TO MAKE OTHER CONFORMING CHANGES.

☒ With recommendation that the House concur.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

_____ Pursuant to Rule 36(b), the bill/resolution is placed on the Calendar of _____.

Se

Attachment IV

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 2

SENATE BILL 1555*
Judiciary II Committee Substitute Adopted 6/6/06

Short Title: Revise Articles 1 and 7 of the UCC. (Public)

Sponsors:

Referred to:

May 18, 2006

A BILL TO BE ENTITLED

AN ACT TO ENACT REVISED ARTICLE 1 OF THE UNIFORM COMMERCIAL CODE CONTAINING GENERAL PROVISIONS APPLICABLE TO THE ENTIRE CODE, TO MAKE CONFORMING AMENDMENTS TO OTHER ARTICLES OF THE UNIFORM COMMERCIAL CODE AND OTHER SECTIONS OF THE GENERAL STATUTES, TO ENACT REVISED ARTICLE 7 OF THE UNIFORM COMMERCIAL CODE RELATING TO WAREHOUSE RECEIPTS AND BILLS OF LADING, TO MAKE CONFORMING AMENDMENTS TO OTHER ARTICLES OF THE UNIFORM COMMERCIAL CODE AND OTHER SECTIONS OF THE GENERAL STATUTES, AND TO REPEAL OBSOLETE CRIMINAL PROVISIONS OF THE FORMER UNIFORM WAREHOUSE RECEIPTS ACT, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

PART I. REVISED ARTICLE 1 OF THE UNIFORM COMMERCIAL CODE AND CONFORMING AMENDMENTS TO THE GENERAL STATUTES.

SUBPART A. REVISED ARTICLE 1 OF THE UNIFORM COMMERCIAL CODE.

SECTION 1. Article 1 of Chapter 25 of the General Statutes is rewritten to read:

"Article 1.

"General Provisions.

"PART 1.

"GENERAL PROVISIONS.

"**§ 25-1-101. Short titles.**

(a) This Chapter may be cited as the Uniform Commercial Code.

(b) This Article may be cited as Uniform Commercial Code – General Provisions.

"**§ 25-1-102. Scope of Article.**

Except as provided in G.S. 25-1-301, this Article applies to a transaction to the extent that it is governed by another Article of this Chapter.

"**§ 25-1-103. Construction of this Chapter to promote its purposes and policies; applicability of supplemental principles of law.**

(a) This Chapter shall be liberally construed and applied to promote its underlying purposes and policies, which are:

(1) To simplify, clarify, and modernize the law governing commercial transactions;

(2) To permit the continued expansion of commercial practices through custom, usage, and agreement of the parties; and

(3) To make uniform the law among the various jurisdictions.

(b) Unless displaced by the particular provisions of this Chapter, the principles of law and equity, including the law merchant and the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, and other validating or invalidating cause supplement its provisions.

"**§ 25-1-104. Construction against implied repeal.**

This Chapter being a general act intended as a unified coverage of its subject matter, no part of it shall be deemed to be impliedly repealed by subsequent legislation if such construction can reasonably be avoided.

"**§ 25-1-105. Severability.**

If any provision or clause of this Chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Chapter that can be given effect without the invalid provision or application, and to this end the provisions of this Chapter are severable.

"**§ 25-1-106. Use of singular and plural; gender.**

In this Chapter, unless the statutory context otherwise requires:

(1) Words in the singular number include the plural, and those in the plural include the singular; and

(2) Words of any gender also refer to any other gender.

"**§ 25-1-107. Section captions.**

Section captions are part of this Chapter. The subsection headings in Article 9 of this Chapter are not parts of this Chapter.

"**§ 25-1-108. Relation to Electronic Signatures in Global and National Commerce Act.**

This Article modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. § 7001, et seq., except that nothing in this Article modifies, limits, or supersedes Section 7001(c) of that Act or authorizes electronic delivery of any of the notices described in Section 7003(b) of that Act.

"PART 2.

"GENERAL DEFINITIONS AND PRINCIPLES OF INTERPRETATION.

"**§ 25-1-201. General definitions.**

(a) Unless the context otherwise requires, words or phrases defined in this section, or in the additional definitions contained in other Articles of this Chapter that apply to particular Articles or Parts thereof, have the meanings stated.

(b) Subject to definitions contained in other articles of this Chapter that apply to particular Articles or Parts thereof:

(1) "Action," in the sense of a judicial proceeding, includes recoupment, counterclaim, setoff, suit in equity, and any other proceeding in which rights are determined.

(2) "Aggrieved party" means a party entitled to pursue a remedy.

(3) "Agreement," as distinguished from "contract," means the bargain of the parties in fact, as found in their language or inferred from other circumstances, including course of performance, course of dealing, or usage of trade as provided in G.S. 25-1-303.

(4) "Bank" means a person engaged in the business of banking and includes a savings bank, savings and loan association, credit union, and trust company.

(5) "Bearer" means a person in possession of a negotiable instrument, document of title, or certificated security that is payable to bearer or indorsed in blank.

(6) "Bill of lading" means a document evidencing the receipt of goods for shipment issued by a person engaged in the business of transporting or forwarding goods.

(7) "Branch" includes a separately incorporated foreign branch of a bank.

(8) "Burden of establishing" a fact means the burden of persuading the trier of fact that the existence of the fact is more probable than its nonexistence.

(9) "Buyer in ordinary course of business" means a person that buys goods in good faith, without knowledge that the sale violates the rights of another person in the goods, and in the ordinary course from a person, other than a pawnbroker, in the business of selling goods of that kind. A person buys goods in the ordinary course if the sale to the person comports with the usual or customary practices in the kind of business in which the seller is engaged or with the seller's own usual or customary practices. A person that sells oil, gas, or other minerals at the wellhead or minehead is a person in the business of selling goods of that kind. A buyer in ordinary course of business may buy for cash, by exchange of other property, or on secured or unsecured credit, and may acquire goods or documents of title under a preexisting contract for sale. Only a buyer that takes possession of the goods or has a right to recover the goods from the seller under Article 2 of this Chapter may be a buyer in ordinary course of business. "Buyer in ordinary course of business" does not include a person that acquires goods in a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(10) "Conspicuous," with reference to a term, means so written, displayed, or presented that a reasonable person against which it is to operate ought to have noticed it. Whether a term is "conspicuous" or not is a decision for the court. Conspicuous terms include the following:
a. A heading in capitals equal to or greater in size than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same or lesser size; and
b. Language in the body of a record or display in larger type than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same size, or set off from surrounding text of the same size by symbols or other marks that call attention to the language.

(11) "Consumer" means an individual who enters into a transaction primarily for personal, family, or household purposes.

(12) "Contract," as distinguished from "agreement," means the total legal obligation that results from the parties' agreement as determined by this Chapter as supplemented by any other applicable laws.

(13) "Creditor" includes a general creditor, a secured creditor, a lien creditor, and any representative of creditors, including an assignee for the benefit of creditors, a trustee in bankruptcy, a receiver in equity, and an executor or administrator of an insolvent debtor's or assignor's estate.

(14) "Defendant" includes a person in the position of defendant in a counterclaim, cross-claim, or third-party claim.

(15) "Delivery," with respect to an instrument, document of title, or chattel paper, means voluntary transfer of possession.

(16) "Document of title" includes bill of lading, dock warrant, dock receipt, warehouse receipt or order for the delivery of goods, and also any other document which in the regular course of business or financing is treated as adequately evidencing that the person in possession of it is entitled to receive, hold, and dispose of the document and the goods it covers. To be a document of title, a document must purport to be issued by or addressed to a bailee and purport to cover goods in the bailee's possession which are either identified or are fungible portions of an identified mass.

(17) "Fault" means a default, breach, or wrongful act or omission.

(18) "Fungible goods" means:
a. Goods of which any unit, by nature or usage of trade, are the equivalent of any other like unit; or
b. Goods that by agreement are treated as equivalent.

(19) "Genuine" means free of forgery or counterfeiting.

(20) "Good faith," except as otherwise provided in Article 5 of this Chapter, means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(21) "Holder" means:
  a. The person in possession of a negotiable instrument that is payable either to bearer or to an identified person that is the person in possession; or
  b. The person in possession of a document of title if the goods are deliverable either to bearer or to the order of the person in possession.

(22) "Insolvency proceeding" includes an assignment for the benefit of creditors or other proceeding intended to liquidate or rehabilitate the estate of the person involved.

(23) "Insolvent" means:
  a. Having generally ceased to pay debts in the ordinary course of business other than as a result of bona fide dispute;
  b. Being unable to pay debts as they become due; or
  c. Being insolvent within the meaning of federal bankruptcy law.

(24) "Money" means a medium of exchange currently authorized or adopted by a domestic or foreign government. The term includes a monetary unit of account established by an intergovernmental organization or by agreement between two or more countries.

(25) "Organization" means a person other than an individual.

(26) "Party," as distinguished from "third party," means a person that has engaged in a transaction or made an agreement subject to this Chapter.

(27) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, public corporation, or any other legal or commercial entity.

(28) "Present value" means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain by use of either an interest rate specified by the parties if that rate is not manifestly unreasonable at the time the transaction is entered into or, if an interest rate is not so specified, a commercially reasonable rate that takes into account the facts and circumstances at the time the transaction is entered into.

(29) "Purchase" means taking by sale, lease, discount, negotiation, mortgage, pledge, lien, security interest, issue or reissue, gift, or any other voluntary transaction creating an interest in property.

(30) "Purchaser" means a person that takes by purchase.

(31) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(32) "Remedy" means any remedial right to which an aggrieved party is entitled with or without resort to a tribunal.

(33) "Representative" means a person empowered to act for another, including an agent, an officer of a corporation or association, and a trustee, executor, or administrator of an estate.

(34) "Right" includes remedy.

(35) "Security interest" means an interest in personal property or fixtures which secures payment or performance of an obligation. "Security interest" includes any interest of a consignor and a buyer of accounts, chattel paper, a payment intangible, or a promissory note in a transaction that is subject to Article 9 of this Chapter. "Security interest" does not include the special property interest of a buyer of goods on identification of those goods to a contract for sale under G.S. 25-2-401, but a buyer may also acquire a "security interest" by complying with Article 9 of this Chapter. Except as otherwise provided in G.S. 25-2-505, the right of a seller or lessor of goods under Article 2 or 2A of this Chapter to retain or acquire possession of the goods is not a "security interest," but a seller or lessor may also acquire a "security interest" by complying with Article 9 of this Chapter. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer under G.S. 25-2-401 is limited in effect to a reservation of a "security interest." Whether a transaction in the form of a lease creates a "security interest" is determined pursuant to G.S. 25-1-203.

(36) "Send" in connection with a writing, record, or notice means:

a. To deposit in the mail or deliver for transmission by any other usual means of communication with postage or cost of transmission provided for and properly addressed and, in the case of an instrument, to an address specified thereon or otherwise agreed, or if there be none to any address reasonable under the circumstances; or

b. In any other way to cause to be received any record or notice within the time it would have arrived if properly sent.

(37) "Signed" includes using any symbol executed or adopted with present intention to adopt or accept a writing.

(38) "State" means a State of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(39) "Surety" includes a guarantor or other secondary obligor.

(40) "Term" means a portion of an agreement that relates to a particular matter.

(41) "Unauthorized signature" means a signature made without actual, implied, or apparent authority. The term includes a forgery.

(42) "Warehouse receipt" means a receipt issued by a person engaged in the business of storing goods for hire.

(43) "Writing" includes printing, typewriting, or any other intentional reduction to tangible form. "Written" has a corresponding meaning.

"**§ 25-1-202. Notice; knowledge.**

(a) Subject to subsection (f) of this section, a person has "notice" of a fact if the person:

(1) Has actual knowledge of it;

(2) Has received a notice or notification of it; or

(3) From all the facts and circumstances known to the person at the time in question, has reason to know that it exists.

(b) "Knowledge" means actual knowledge. "Knows" has a corresponding meaning.

(c) "Discover," "learn," or words of similar import refer to knowledge rather than to reason to know.

(d) A person "notifies" or "gives" a notice or notification to another person by taking such steps as may be reasonably required to inform the other person in ordinary course, whether or not the other person actually comes to know of it.

(e) Subject to subsection (f) of this section, a person "receives" a notice or notification when:

(1) It comes to that person's attention; or

(2) It is duly delivered in a form reasonable under the circumstances at the place of business through which the contract was made or at another location held out by that person as the place for receipt of such communications.

(f) Notice, knowledge, or a notice or notification received by an organization is effective for a particular transaction from the time it is brought to the attention of the individual conducting that transaction and, in any event, from the time it would have been brought to the individual's attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless the communication is part of the individual's regular duties or the individual has reason to know of the transaction and that the transaction would be materially affected by the information.

"**§ 25-1-203. Lease distinguished from security interest.**

(a) Whether a transaction in the form of a lease creates a lease or security interest is determined by the facts of each case.

(b) A transaction in the form of a lease creates a security interest if the consideration that the lessee is to pay the lessor for the right to possession and use of the goods is an obligation for the term of the lease and is not subject to termination by the lessee, and:

(1) The original term of the lease is equal to or greater than the remaining economic life of the goods;

(2) The lessee is bound to renew the lease for the remaining economic life of the goods or is bound to become the owner of the goods;
(3) The lessee has an option to renew the lease for the remaining economic life of the goods for no additional consideration or for nominal additional consideration upon compliance with the lease agreement; or
(4) The lessee has an option to become the owner of the goods for no additional consideration or for nominal additional consideration upon compliance with the lease agreement.

(c) A transaction in the form of a lease does not create a security interest merely because:
(1) The present value of the consideration the lessee is obligated to pay the lessor for the right to possession and use of the goods is substantially equal to or is greater than the fair market value of the goods at the time the lease is entered into;
(2) The lessee assumes risk of loss of the goods;
(3) The lessee agrees to pay, with respect to the goods, taxes, insurance, filing, recording, or registration fees, or service or maintenance costs;
(4) The lessee has an option to renew the lease or to become the owner of the goods;
(5) The lessee has an option to renew the lease for a fixed rent that is equal to or greater than the reasonably predictable fair market rent for the use of the goods for the term of the renewal at the time the option is to be performed; or
(6) The lessee has an option to become the owner of the goods for a fixed price that is equal to or greater than the reasonably predictable fair market value of the goods at the time the option is to be performed.

(d) Additional consideration is nominal if it is less than the lessee's reasonably predictable cost of performing under the lease agreement if the option is not exercised. Additional consideration is not nominal if:
(1) When the option to renew the lease is granted to the lessee, the rent is stated to be the fair market rent for the use of the goods for the term of the renewal determined at the time the option is to be performed; or
(2) When the option to become the owner of the goods is granted to the lessee, the price is stated to be the fair market value of the goods determined at the time the option is to be performed.

(e) The "remaining economic life of the goods" and "reasonably predictable" fair market rent, fair market value, or cost of performing under the lease agreement must be determined with reference to the facts and circumstances at the time the transaction is entered into.

"**§ 25-1-204. Value.**

Except as otherwise provided in Articles 3, 4, and 5 of this Chapter, a person gives value for rights if the person acquires them:

(1) In return for a binding commitment to extend credit or for the extension of immediately available credit, whether or not drawn upon and whether or not a charge-back is provided for in the event of difficulties in collection;
(2) As security for, or in total or partial satisfaction of, a preexisting claim;
(3) By accepting delivery under a preexisting contract for purchase; or
(4) In return for any consideration sufficient to support a simple contract.

"**§ 25-1-205. Reasonable time; seasonableness.**

(a) Whether a time for taking an action required by this Chapter is reasonable depends on the nature, purpose, and circumstances of the action.

(b) An action is taken seasonably if it is taken at or within the time agreed or, if no time is agreed, at or within a reasonable time.

"**§ 25-1-206. Presumptions.**

Whenever this Chapter creates a "presumption" with respect to a fact, or provides that a fact is "presumed," the trier of fact must find the existence of the fact unless and until evidence is introduced that supports a finding of its nonexistence.

"PART 3.

"TERRITORIAL APPLICABILITY AND GENERAL RULES.

"**§ 25-1-301. Territorial applicability; parties' power to choose applicable law.**

(a) Except as otherwise provided in this section, when a transaction bears a reasonable relation to this State and also to another state or nation the parties may agree that the law either of this State or of such other state or nation shall govern their rights and duties.

(b) In the absence of an agreement effective under subsection (a) of this section, and except as provided in subsection (c) of this section, this Chapter applies to transactions bearing an appropriate relation to this State.

(c) If one of the following provisions of this Chapter specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law so specified:

(1) G.S. 25-2-402;
(2) G.S. 25-2A-105 and G.S. 25-2A-106;
(3) G.S. 25-4-102;
(4) G.S. 25-4A-507;
(5) G.S. 25-5-116;
(6) G.S. 25-8-110;
(7) G.S. 25-9-301 through G.S. 25-9-307.

"**§ 25-1-302. Variation by agreement.**

(a) Except as otherwise provided in subsection (b) of this section or elsewhere in this Chapter, the effect of provisions of this Chapter may be varied by agreement.

(b) The obligations of good faith, diligence, reasonableness, and care prescribed by this Chapter may not be disclaimed by agreement. The parties, by agreement, may determine the standards by which the performance of those obligations is to be measured if those standards are not manifestly unreasonable. Whenever this Chapter

requires an action to be taken within a reasonable time, a time that is not manifestly unreasonable may be fixed by agreement.

(c) The presence in certain provisions of this Chapter of the phrase "unless otherwise agreed," or words of similar import, does not imply that the effect of other provisions may not be varied by agreement under this section.

"§ 25-1-303. Course of performance, course of dealing, and usage of trade.

(a) A "course of performance" is a sequence of conduct between the parties to a particular transaction that exists if:

(1) The agreement of the parties with respect to the transaction involves repeated occasions for performance by a party; and

(2) The other party, with knowledge of the nature of the performance and opportunity for objection to it, accepts the performance or acquiesces in it without objection.

(b) A "course of dealing" is a sequence of conduct concerning previous transactions between the parties to a particular transaction that is fairly to be regarded as establishing a common basis of understanding for interpreting their expressions and other conduct.

(c) A "usage of trade" is any practice or method of dealing having such regularity of observance in a place, vocation, or trade as to justify an expectation that it will be observed with respect to the transaction in question. The existence and scope of such a usage must be proved as facts. If it is established that such a usage is embodied in a trade code or similar record, the interpretation of the record is a question of law.

(d) A course of performance or course of dealing between the parties or usage of trade in the vocation or trade in which they are engaged or of which they are or should be aware is relevant in ascertaining the meaning of the parties' agreement, may give particular meaning to specific terms of the agreement, and may supplement or qualify the terms of the agreement. A usage of trade applicable in the place in which part of the performance under the agreement is to occur may be so utilized as to that part of the performance.

(e) Except as otherwise provided in subsection (f) of this section, the express terms of an agreement and any applicable course of performance, course of dealing, or usage of trade must be construed whenever reasonable as consistent with each other. If such a construction is unreasonable:

(1) Express terms prevail over course of performance, course of dealing, and usage of trade;

(2) Course of performance prevails over course of dealing and usage of trade; and

(3) Course of dealing prevails over usage of trade.

(f) Subject to G.S. 25-2-209, a course of performance is relevant to show a waiver or modification of any term inconsistent with the course of performance.

(g) Evidence of a relevant usage of trade offered by one party is not admissible unless that party has given the other party notice that the court finds sufficient to prevent unfair surprise to the other party.

"§ 25-1-304. Obligation of good faith.

Every contract or duty within this Chapter imposes an obligation of good faith in its performance and enforcement.

"**§ 25-1-305. Remedies to be liberally administered.**

(a) The remedies provided by this Chapter shall be liberally administered to the end that the aggrieved party may be put in as good a position as if the other party had fully performed, but neither consequential or special damages nor penal damages may be had except as specifically provided in this Chapter or by other rule of law.

(b) Any right or obligation declared by this Chapter is enforceable by action unless the provision declaring it specifies a different and limited effect.

"**§ 25-1-306. Waiver or renunciation of claim or right after breach.**

A claim or right arising out of an alleged breach may be discharged in whole or in part without consideration by agreement of the aggrieved party in an authenticated record.

"**§ 25-1-307. Prima facie evidence by third-party documents.**

A document in due form purporting to be a bill of lading, policy or certificate of insurance, official weigher's or inspector's certificate, consular invoice, or any other document authorized or required by the contract to be issued by a third party is prima facie evidence of its own authenticity and genuineness and of the facts stated in the document by the third party.

"**§ 25-1-308. Performance or acceptance under reservation of rights.**

(a) A party that with explicit reservation of rights performs or promises performance or assents to performance in a manner demanded or offered by the other party does not thereby prejudice the rights reserved. Such words as "without prejudice," "under protest," or the like are sufficient.

(b) Subsection (a) of this section does not apply to an accord and satisfaction.

"**§ 25-1-309. Option to accelerate at will.**

A term providing that one party or that party's successor in interest may accelerate payment or performance or require collateral or additional collateral "at will" or when the party "deems itself insecure," or words of similar import, means that the party has power to do so only if that party in good faith believes that the prospect of payment or performance is impaired. The burden of establishing lack of good faith is on the party against which the power has been exercised.

"**§ 25-1-310. Subordinated obligations.**

An obligation may be issued as subordinated to performance of another obligation of the person obligated, or a creditor may subordinate its right to performance of an obligation by agreement with either the person obligated or another creditor of the person obligated. Subordination does not create a security interest as against either the common debtor or a subordinated creditor."

SUBPART B. CONFORMING AMENDMENTS TO OTHER ARTICLES OF THE UNIFORM COMMERCIAL CODE.

SECTION 2. G.S. 25-2-103(1) reads as rewritten:

"(1) In this article unless the context otherwise requires

(a) "Buyer" means a person who buys or contracts to buy goods.

(b) ~~"Good faith" in the case of a merchant means honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade.~~

(c) "Receipt" of goods means taking physical possession of them.

(d) "Seller" means a person who sells or contracts to sell goods. Any manufacturer of self-propelled motor vehicles, as defined in G.S. 20-4.01, is also a "seller" with respect to buyers of its product to whom it makes an express warranty, notwithstanding any lack of privity between them, for purposes of all rights and remedies available to buyers under this Article."

SECTION 3. G.S. 25-2-202 reads as rewritten:

"**§ 25-2-202. Final written expression; parol or extrinsic evidence.**

Terms with respect to which the confirmatory memoranda of the parties agree or which are otherwise set forth in a writing intended by the parties as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement but may be explained or supplemented

(a) by course of performance, course of ~~dealing~~ dealing, or usage of trade ~~(G.S. 25-1-205) or by course of performance (G.S. 25-2-208);~~ (G.S. 25-1-303); and

(b) by evidence of consistent additional terms unless the court finds the writing to have been intended also as a complete and exclusive statement of the terms of the agreement."

SECTION 4. G.S. 25-2-208 is repealed.

SECTION 5. G.S. 25-2A-103(3) reads as rewritten:

"(3) The following definitions in other Articles apply to this Article:

~~"Account". G.S. 25-9-102(a)(2).~~
~~"Between merchants". G.S. 25-2-104(3).~~
~~"Buyer". G.S. 25-2-103(1)(a).~~
~~"Chattel paper". G.S. 25-9-102(a)(11).~~
~~"Consumer goods". G.S. 25-9-102(a)(23).~~
~~"Document". G.S. 25-9-102(a)(30).~~
~~"Entrusting". G.S. 25-2-403(3).~~
~~"General intangible". G.S. 25-9-102(a)(42).~~
~~"Good faith". G.S. 25-2-103(1)(b).~~
~~"Instrument". G.S. 25-9-102(a)(47).~~
~~"Merchant". G.S. 25-2-104(1).~~
~~"Mortgage". G.S. 25-9-102(a)(55).~~
~~"Pursuant to commitment". G.S. 25-9-102(a)(68).~~
~~"Receipt". G.S. 25-2-103(1)(c).~~
~~"Sale". G.S. 25-2-106(1).~~
~~"Sale on approval". G.S. 25-2-326.~~
~~"Sale or return". G.S. 25-2-326.~~
~~"Seller". G.S. 25-2-103(1)(d).~~

"Account"	G.S. 25-9-102(a)(2).
"Between merchants"	G.S. 25-2-104(3).
"Buyer"	G.S. 25-2-103(1)(a).
"Chattel paper"	G.S. 25-9-102(a)(11).
"Consumer goods"	G.S. 25-9-102(a)(23).
"Document"	G.S. 25-9-102(a)(30).
"Entrusting"	G.S. 25-2-403(3).
"General intangible"	G.S. 25-9-102(a)(42).
"Instrument"	G.S. 25-9-102(a)(47).
"Merchant"	G.S. 25-2-104(1).
"Mortgage"	G.S. 25-9-102(a)(55).
"Pursuant to commitment"	G.S. 25-9-102(a)(68).
"Receipt"	G.S. 25-2-103(1)(c).
"Sale"	G.S. 25-2-106(1).
"Sale on approval"	G.S. 25-2-326.
"Sale or return"	G.S. 25-2-326.
"Seller"	G.S. 25-2-103(1)(d)."

SECTION 6. G.S. 25-2A-207 is repealed.

SECTION 7. G.S. 25-2A-501(4) reads as rewritten:

"(4) Except as otherwise provided in ~~G.S. 25-1-106(1)~~ G.S. 25-1-305(a) or this Article or the lease agreement, the rights and remedies referred to in subsections (2) and (3) of this section are cumulative."

SECTION 8. G.S. 25-2A-518(2) reads as rewritten:

"(2) Except as otherwise provided with respect to damages liquidated in the lease agreement (G.S. 25-2A-504) or otherwise determined pursuant to agreement of the parties (~~G.S. 25-1-102(3)~~ G.S. 25-1-302 and G.S. 25-2A-503), if a lessee's cover is by a lease agreement substantially similar to the original lease agreement and the new lease agreement is made in good faith and in a commercially reasonable manner, the lessee may recover from the lessor as damages (i) the present value, as of the date of the commencement of the term of the new lease agreement, of the rent under the new lease agreement applicable to that period of the new lease term which is comparable to the then remaining term of the original lease agreement minus the present value as of the same date of the total rent for the then remaining lease term of the original lease agreement, and (ii) any incidental or consequential damages, less expenses saved in consequence of the lessor's default."

SECTION 9. G.S. 25-2A-519(1) reads as rewritten:

"(1) Except as otherwise provided with respect to damages liquidated in the lease agreement (G.S. 25-2A-504) or otherwise determined pursuant to agreement of the parties (~~G.S. 25-1-102(3)~~ G.S. 25-1-302 and G.S. 25-2A-503), if a lessee elects not to cover or a lessee elects to cover and the cover is by lease agreement that for any reason does not qualify for treatment under G.S. 25-2A–518(2), or is by purchase or otherwise, the measure of damages for nondelivery or repudiation by the lessor or for rejection or revocation of acceptance by the lessee is the present value, as of the date of the default, of the then market rent minus the present value as of the same date of the original rent,

computed for the remaining lease term of the original lease agreement, together with incidental and consequential damages, less expenses saved in consequence of the lessor's default."

SECTION 10. G.S. 25-2A-527(2) reads as rewritten:

"(2) Except as otherwise provided with respect to damages liquidated in the lease agreement (G.S. 25-2A-504) or otherwise determined pursuant to agreement of the parties (~~G.S. 25-1-102(3)~~ G.S. 25-1-302 and G.S. 25-2A-503), if the disposition is by lease agreement substantially similar to the original lease agreement and the new lease agreement is made in good faith and in a commercially reasonable manner, the lessor may recover from the lessee as damages (i) accrued and unpaid rent as of the date of the commencement of the term of the new lease agreement, (ii) the present value, as of the same date, of the total rent for the then remaining lease term of the original lease agreement minus the present value, as of the same date, of the rent under the new lease agreement applicable to that period of the new lease term which is comparable to the then remaining term of the original lease agreement, and (iii) any incidental damages allowed under G.S. 25-2A-530, less expenses saved in consequence of the lessee's default."

SECTION 11. G.S. 25-2A-528(1) reads as rewritten:

"(1) Except as otherwise provided with respect to damages liquidated in the lease agreement (G.S. 25-2A-504) or otherwise determined pursuant to agreement of the parties (~~G.S. 25-1-102(3)~~ G.S. 25-1-302 and G.S. 25-2A-503), if a lessor elects to retain the goods or a lessor elects to dispose of the goods and the disposition is by lease agreement that for any reason does not qualify for treatment under G.S. 25-2A-527(2), or is by sale or otherwise, the lessor may recover from the lessee as damages for a default of the type described in G.S. 25-2A-523(1) or G.S. 25-2A-523(3)(a), or if agreed, for other default of the lessee, (i) accrued and unpaid rent as of the date of default if the lessee has never taken possession of the goods, or, if the lessee has taken possession of the goods, as of the date the lessor repossesses the goods or an earlier date on which the lessee makes a tender of the goods to the lessor, (ii) the present value as of the date determined under clause (i) of the total rent for the then remaining lease term of the original lease agreement minus the present value as of the same date of the market rent at the place where the goods are located computed for the same lease term, and (iii) any incidental damages allowed under ~~2A-530.~~G.S. 25-2A-530, less expenses saved in consequence of the lessee's default."

SECTION 12. G.S. 25-3-103(a)(4) is repealed.

SECTION 13. G.S. 25-3-103(a)(10) reads as rewritten:

"(10) "Prove" with respect to a fact means to meet the burden of establishing the fact ~~(G.S. 25-1-201(8)).~~ (G.S. 25-1-201(b)(8))."

SECTION 14. G.S. 25-4-104(c) reads as rewritten:

"(c) The following definitions in other Articles apply to this Article:

"Acceptance"	G.S. 25-3-409.
"Alteration"	G.S. 25-3-407.
"Cashier's check"	G.S. 25-3-104.
"Certificate of deposit"	G.S. 25-3-104.

"Certified check"	G.S. 25-3-409.
"Check"	G.S. 25-3-104.
~~"Good faith"~~	~~G.S. 25-3-103.~~
"Draft"	G.S. 25-3-104.
"Holder in due course"	G.S. 25-3-302.
"Instrument"	G.S. 25-3-104.
"Notice of dishonor"	G.S. 25-3-503.
"Order"	G.S. 25-3-103.
"Ordinary care"	G.S. 25-3-103.
"Person entitled to enforce"	G.S. 25-3-301.
"Presentment"	G.S. 25-3-501.
"Promise"	G.S. 25-3-103.
"Prove"	G.S. 25-3-103.
"Teller's check"	G.S. 25-3-104.
"Unauthorized signature"	G.S. 25-3-403."

SECTION 15. G.S. 25-4A-105(a)(6) is repealed.

SECTION 16. G.S. 25-4A-105(a)(7) reads as rewritten:

"(7) "Prove" with respect to a fact means to meet the burden of establishing the fact ~~(G.S. 25-1-201(8)).~~ (G.S. 25-1-201(b)(8)).".

SECTION 17. G.S. 25-4A-106(a) reads as rewritten:

"(a) The time of receipt of a payment order or communication cancelling or amending a payment order is determined by the rules applicable to receipt of a notice stated in ~~G.S. 25-1-201(27).~~ G.S. 25-1-202. A receiving bank may fix a cutoff time or times on a funds-transfer business day for the receipt and processing of payment orders and communications cancelling or amending payment orders. Different cutoff times may apply to payment orders, cancellations, or amendments, or to different categories of payment orders, cancellations, or amendments. A cutoff time may apply to senders generally or different cutoff times may apply to different senders or categories of payment orders. If a payment order or communication cancelling or amending a payment order is received after the close of a funds-transfer business day or after the appropriate cutoff time on a funds-transfer business day, the receiving bank may treat the payment order or communication as received at the opening of the next funds-transfer business day."

SECTION 18. G.S. 25-4A-204(b) reads as rewritten:

"(b) Reasonable time under subsection (a) of this section may be fixed by agreement as stated in ~~G.S. 25-1-204(1),~~ G.S. 25-1-302(b), but the obligation of a receiving bank to refund payment as stated in subsection (a) of this section may not otherwise be varied by agreement."

SECTION 19. G.S. 25-5-103(c) reads as rewritten:

"(c) With the exception of this subsection, subsections (a) and (d) of this section, G.S. 25-5-102(a)(9) and (10), 25-5-106(d), and 25-5-114(d), and except to the extent prohibited in ~~G.S. 25-1-102(3)~~ G.S. 25-1-302 and G.S. 25-5-117(d), the effect of this Article may be varied by agreement or by a provision stated or incorporated by reference in an undertaking. A term in an agreement or undertaking generally excusing

liability or generally limiting remedies for failure to perform obligations is not sufficient to vary obligations prescribed by this Article."

SECTION 20. G.S. 25-8-102(a)(10) is repealed.

SECTION 21. G.S. 25-9-102(a)(43) is repealed.

SUBPART C. CONFORMING AMENDMENTS TO OTHER SECTIONS OF THE GENERAL STATUTES.

SECTION 22. G.S. 66-181 reads as rewritten:

"**§ 66-181. Usage of trade.**

The terms "utility" and "industrial," when used to refer to equipment, implements, machinery, attachments, or repair parts, shall have the meaning commonly used and understood among dealers and suppliers of farm equipment as a usage of trade in accordance with ~~G.S. 25-1-205(2).~~ G.S. 25-1-303(c)."

SECTION 23. G.S. 66-313(b) reads as rewritten:

"(b) This Article does not apply to a transaction to the extent it is governed by:

(1) A law governing the creation and execution of wills, codicils, or testamentary trusts.

(2) Chapter 25 of the General Statutes other than ~~G.S. 25-1-107~~ G.S. 25-1-306, ~~and G.S. 25-1-206,~~ Article 2, and Article 2A.

(3) Article 11A of Chapter 66 of the General Statutes."

SECTION 24. G.S. 66-326(d) reads as rewritten:

"(d) Except as otherwise agreed, a person having control of a transferable record is the holder, as defined in ~~G.S. 25-1-201(20),~~ G.S. 25-1-201(21), of the transferable record and has the same rights and defenses as a holder of an equivalent record or writing under Chapter 25 of the General Statutes, including, if the applicable statutory requirements under G.S. 25-3-302(a), 25-7-501, or 25-9-330 are satisfied, the rights and defenses of a holder in due course, a holder to which a negotiable document of title has been duly negotiated, or a purchaser, respectively. Delivery, possession, and endorsement are not required to obtain or exercise any of the rights under this subsection."

PART II. REVISED ARTICLE 7 OF THE UNIFORM COMMERCIAL CODE AND CONFORMING AMENDMENTS TO THE GENERAL STATUTES.

SUBPART A. REVISED ARTICLE 7 OF THE UNIFORM COMMERCIAL CODE.

SECTION 25. Article 7 of Chapter 25 of the General Statutes is rewritten to read:

"Article 7.

"Documents of Title.

"PART 1.

"GENERAL.

"**§ 25-7-101. Short title.**

This Article may be cited as Uniform Commercial Code – Documents of Title.

"**§ 25-7-102. Definitions and index of definitions.**

(a) In this Article, unless the context otherwise requires:

(1) "Bailee" means a person that by a warehouse receipt, bill of lading, or other document of title acknowledges possession of goods and contracts to deliver them.
(2) "Carrier" means a person that issues a bill of lading.
(3) "Consignee" means a person named in a bill of lading to whom or to whose order the bill promises delivery.
(4) "Consignor" means a person named in a bill of lading as the person from whom the goods have been received for shipment.
(5) "Delivery order" means a record that contains an order to deliver goods directed to a warehouse, carrier, or other person that in the ordinary course of business issues warehouse receipts or bills of lading.
(6) Reserved for future codification purposes.
(7) "Goods" means all things that are treated as movable for the purposes of a contract for storage or transportation.
(8) "Issuer" means a bailee that issues a document of title or, in the case of an unaccepted delivery order, the person that orders the possessor of goods to deliver. The term includes a person for whom an agent or employee purports to act in issuing a document if the agent or employee has real or apparent authority to issue documents, even if the issuer did not receive any goods, the goods were misdescribed, or in any other respect the agent or employee violated the issuer's instructions.
(9) "Person entitled under the document" means the holder, in the case of a negotiable document of title, or the person to whom delivery of the goods is to be made by the terms of, or pursuant to instructions in a record under, a nonnegotiable document of title.
(10) Reserved for future codification purposes.
(11) "Sign" means, with present intent to authenticate or adopt a record:
a. To execute or adopt a tangible symbol; or
b. To attach to or logically associate with the record an electronic sound, symbol, or process.
(12) "Shipper" means a person that enters into a contract of transportation with a carrier.
(13) "Warehouse" means a person engaged in the business of storing goods for hire.

(b) Definitions in other Articles applying to this Article and the sections in which they appear are:
(1) "Contract for sale," G.S. 25-2-106.
(2) "Lessee in the ordinary course of business," G.S. 25-2A-103.
(3) "Receipt" of goods, G.S. 25-2-103.

(c) In addition, Article 1 of this Chapter contains general definitions and principles of construction and interpretation applicable throughout this Article.

"§ 25-7-103. Relation of Article to treaty or statute.

(a) This Article is subject to any treaty or statute of the United States or regulatory statute of this State to the extent the treaty, statute, or regulatory statute is applicable.

(b) This Article does not modify or repeal any law prescribing the form or content of a document of title or the services or facilities to be afforded by a bailee or otherwise regulating a bailee's business in respects not specifically treated in this Article. However, violation of such a law does not affect the status of a document of title that otherwise is within the definition of a document of title.

(c) This Article modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act (15 U.S.C. § 7001, et seq.) but does not modify, limit, or supersede section 101(c) of that Act (15 U.S.C. § 7001(c)) or authorize electronic delivery of any of the notices described in section 103(b) of that Act (15 U.S.C. § 7003(b)).

(d) To the extent there is a conflict between Article 40 of Chapter 66 of the General Statutes (the Uniform Electronic Transactions Act) and this Article, this Article governs.

"§ 25-7-104. Negotiable and nonnegotiable document of title.

(a) Except as otherwise provided in subsection (c) of this section, a document of title is negotiable if by its terms the goods are to be delivered to bearer or to the order of a named person.

(b) A document of title other than one described in subsection (a) of this section is nonnegotiable. A bill of lading that states that the goods are consigned to a named person is not made negotiable by a provision that the goods are to be delivered only against an order in a record signed by the same or another named person.

(c) A document of title is nonnegotiable if, at the time it is issued, the document has a conspicuous legend, however expressed, that it is nonnegotiable.

"§ 25-7-105. Reissuance in alternative medium.

(a) Upon request of a person entitled under an electronic document of title, the issuer of the electronic document may issue a tangible document of title as a substitute for the electronic document if:

(1) The person entitled under the electronic document surrenders control of the document to the issuer; and

(2) The tangible document when issued contains a statement that it is issued in substitution for the electronic document.

(b) Upon issuance of a tangible document of title in substitution for an electronic document of title in accordance with subsection (a) of this section:

(1) The electronic document ceases to have any effect or validity; and

(2) The person that procured issuance of the tangible document warrants to all subsequent persons entitled under the tangible document that the warrantor was a person entitled under the electronic document when the warrantor surrendered control of the electronic document to the issuer.

(c) Upon request of a person entitled under a tangible document of title, the issuer of the tangible document may issue an electronic document of title as a substitute for the tangible document if:

(1) The person entitled under the tangible document surrenders possession of the document to the issuer; and

(2) The electronic document when issued contains a statement that it is issued in substitution for the tangible document.

(d) Upon issuance of an electronic document of title in substitution for a tangible document of title in accordance with subsection (c) of this section:

(1) The tangible document ceases to have any effect or validity; and

(2) The person that procured issuance of the electronic document warrants to all subsequent persons entitled under the electronic document that the warrantor was a person entitled under the tangible document when the warrantor surrendered possession of the tangible document to the issuer.

"§ 25-7-106. Control of electronic document of title.

(a) A person has control of an electronic document of title if a system employed for evidencing the transfer of interests in the electronic document reliably establishes that person as the person to which the electronic document was issued or transferred.

(b) A system satisfies subsection (a) of this section, and a person is deemed to have control of an electronic document of title, if the document is created, stored, and assigned in such a manner that:

(1) A single authoritative copy of the document exists which is unique, identifiable, and, except as otherwise provided in subdivisions (4), (5), and (6) of this subsection, unalterable;

(2) The authoritative copy identifies the person asserting control as:

a. The person to whom the document was issued; or

b. If the authoritative copy indicates that the document has been transferred, the person to whom the document was most recently transferred;

(3) The authoritative copy is communicated to and maintained by the person asserting control or its designated custodian;

(4) Copies or amendments that add or change an identified assignee of the authoritative copy can be made only with the consent of the person asserting control;

(5) Each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and

(6) Any amendment of the authoritative copy is readily identifiable as authorized or unauthorized.

"PART 2.

"WAREHOUSE RECEIPTS: SPECIAL PROVISIONS.

"§ 25-7-201. Person that may issue a warehouse receipt; storage under bond.

(a) A warehouse receipt may be issued by any warehouse.

(b) If goods, including distilled spirits and agricultural commodities, are stored under a statute requiring a bond against withdrawal or a license for the issuance of receipts in the nature of warehouse receipts, a receipt issued for the goods is deemed to be a warehouse receipt even if issued by a person that is the owner of the goods and is not a warehouse.

"**§ 25-7-202. Form of warehouse receipt; effect of omission.**

(a) A warehouse receipt need not be in any particular form.

(b) Unless a warehouse receipt provides for each of the following, the warehouse is liable for damages caused to a person injured by its omission:

(1) A statement of the location of the warehouse facility where the goods are stored;

(2) The date of issue of the receipt;

(3) The unique identification code of the receipt;

(4) A statement whether the goods received will be delivered to the bearer, to a named person, or to a named person or its order;

(5) The rate of storage and handling charges, unless goods are stored under a field warehousing arrangement, in which case a statement of that fact is sufficient on a nonnegotiable receipt;

(6) A description of the goods or the packages containing them;

(7) The signature of the warehouse or its agent;

(8) If the receipt is issued for goods that the warehouse owns, either solely, jointly, or in common with others, a statement of the fact of that ownership; and

(9) A statement of the amount of advances made and of liabilities incurred for which the warehouse claims a lien or security interest, unless the precise amount of advances made or liabilities incurred, at the time of the issue of the receipt, is unknown to the warehouse or to its agent that issued the receipt, in which case a statement of the fact that advances have been made or liabilities incurred and the purpose of the advances or liabilities is sufficient.

(c) A warehouse may insert in its receipt any terms that are not contrary to this Chapter and do not impair its obligation of delivery under G.S. 25-7-403 or its duty of care under G.S. 25-7-204. Any contrary provision is ineffective.

"**§ 25-7-203. Liability for nonreceipt or misdescription.**

A party to or purchaser for value in good faith of a document of title, other than a bill of lading, that relies upon the description of the goods in the document may recover from the issuer damages caused by the nonreceipt or misdescription of the goods, except to the extent that:

(1) The document conspicuously indicates that the issuer does not know whether all or part of the goods in fact were received or conform to the description, such as a case in which the description is in terms of marks or labels or kind, quantity, or condition, or the receipt or description is qualified by "contents, condition, and quality unknown,"

"said to contain," or words of similar import, if the indication is true; or

(2) The party or purchaser otherwise has notice of the nonreceipt or misdescription.

"§ 25-7-204. Duty of care; contractual limitation of warehouse's liability.

(a) A warehouse is liable for damages for loss of or injury to the goods caused by its failure to exercise care with regard to the goods that a reasonably careful person would exercise under similar circumstances. Unless otherwise agreed, the warehouse is not liable for damages that could not have been avoided by the exercise of that care.

(b) Damages may be limited by a term in the warehouse receipt or storage agreement limiting the amount of liability in case of loss or damage beyond which the warehouse is not liable. Such a limitation is not effective with respect to the warehouse's liability for conversion to its own use. On request of the bailor in a record at the time of signing the storage agreement or within a reasonable time after receipt of the warehouse receipt, the warehouse's liability may be increased on part or all of the goods covered by the storage agreement or the warehouse receipt. In this event, increased rates may be charged based on an increased valuation of the goods.

(c) Reasonable provisions as to the time and manner of presenting claims and commencing actions based on the bailment may be included in the warehouse receipt or storage agreement.

(d) This section does not modify or repeal any statute that imposes a higher responsibility upon the warehouse or invalidates a contractual limitation that would be permissible under this Article.

"§ 25-7-205. Title under warehouse receipt defeated in certain cases.

A buyer in ordinary course of business of fungible goods sold and delivered by a warehouse that is also in the business of buying and selling such goods takes the goods free of any claim under a warehouse receipt even if the receipt is negotiable and has been duly negotiated.

"§ 25-7-206. Termination of storage at warehouse's option.

(a) A warehouse, by giving notice to the person on whose account the goods are held and any other person known to claim an interest in the goods, may require payment of any charges and removal of the goods from the warehouse at the termination of the period of storage fixed by the document of title or, if a period is not fixed, within a stated period not less than 30 days after the warehouse gives notice. If the goods are not removed before the date specified in the notice, the warehouse may sell them pursuant to G.S. 25-7-210.

(b) If a warehouse in good faith believes that goods are about to deteriorate or decline in value to less than the amount of its lien within the time provided in subsection (a) of this section and G.S. 25-7-210, the warehouse may specify in the notice given under subsection (a) of this section any reasonable shorter time for removal of the goods and, if the goods are not removed, may sell them at public sale held not less than one week after a single advertisement or posting.

(c) If, as a result of a quality or condition of the goods of which the warehouse did not have notice at the time of deposit, the goods are a hazard to other property, the

warehouse facilities, or other persons, the warehouse may sell the goods at public or private sale without advertisement or posting on reasonable notification to all persons known to claim an interest in the goods. If the warehouse, after a reasonable effort, is unable to sell the goods, it may dispose of them in any lawful manner and does not incur liability by reason of that disposition.

(d) A warehouse shall deliver the goods to any person entitled to them under this Article upon due demand made at any time before sale or other disposition under this section.

(e) A warehouse may satisfy its lien from the proceeds of any sale or disposition under this section but shall hold the balance for delivery on the demand of any person to whom the warehouse would have been bound to deliver the goods.

"§ 25-7-207. Goods must be kept separate; fungible goods.

(a) Unless the warehouse receipt provides otherwise, a warehouse shall keep separate the goods covered by each receipt so as to permit at all times identification and delivery of those goods. However, different lots of fungible goods may be commingled.

(b) If different lots of fungible goods are commingled, the goods are owned in common by the persons entitled thereto and the warehouse is severally liable to each owner for that owner's share. If, because of overissue, a mass of fungible goods is insufficient to meet all the receipts the warehouse has issued against it, the persons entitled include all holders to whom overissued receipts have been duly negotiated.

"§ 25-7-208. Altered warehouse receipts.

If a blank in a negotiable tangible warehouse receipt has been filled in without authority, a good-faith purchaser for value and without notice of the lack of authority may treat the insertion as authorized. Any other unauthorized alteration leaves any tangible or electronic warehouse receipt enforceable against the issuer according to its original tenor.

"§ 25-7-209. Lien of warehouse.

(a) A warehouse has a lien against the bailor on the goods covered by a warehouse receipt or storage agreement or on the proceeds thereof in its possession for charges for storage or transportation, including demurrage and terminal charges, insurance, labor, or other charges, present or future, in relation to the goods, and for expenses necessary for preservation of the goods or reasonably incurred in their sale pursuant to law. If the person on whose account the goods are held is liable for similar charges or expenses in relation to other goods whenever deposited and it is stated in the warehouse receipt or storage agreement that a lien is claimed for charges and expenses in relation to other goods, the warehouse also has a lien against the goods covered by the warehouse receipt or storage agreement or on the proceeds thereof in its possession for those charges and expenses, whether or not the other goods have been delivered by the warehouse. However, as against a person to which a negotiable warehouse receipt is duly negotiated, a warehouse's lien is limited to charges in an amount or at a rate specified in the warehouse receipt or, if no charges are so specified, to a reasonable charge for storage of the specific goods covered by the receipt subsequent to the date of the receipt.

(b) A warehouse may also reserve a security interest against the bailor for the maximum amount specified on the receipt for charges other than those specified in subsection (a) of this section, such as for money advanced and interest. The security interest is governed by Article 9 of this Chapter.

(c) A warehouse's lien for charges and expenses under subsection (a) of this section or a security interest under subsection (b) of this section is also effective against any person that so entrusted the bailor with possession of the goods that a pledge of them by the bailor to a good-faith purchaser for value would have been valid. However, the lien or security interest is not effective against a person that before issuance of a document of title had a legal interest or a perfected security interest in the goods and that did not:

(1) Deliver or entrust the goods or any document of title covering the goods to the bailor or the bailor's nominee with:
   a. Actual or apparent authority to ship, store, or sell;
   b. Power to obtain delivery under G.S. 25-7-403; or
   c. Power of disposition under G.S. 25-2-403, 25-2A-304(2), 25-2A-305(2), 25-9-320, or 25-9-321(c) or other statute or rule of law; or

(2) Acquiesce in the procurement by the bailor or its nominee of any document.

(d) A warehouse's lien on household goods for charges and expenses in relation to the goods under subsection (a) of this section is also effective against all persons if the depositor was the legal possessor of the goods at the time of deposit. In this subsection, "household goods" means furniture, furnishings, or personal effects used by the depositor in a dwelling.

(e) A warehouse loses its lien on any goods that it voluntarily delivers or unjustifiably refuses to deliver.

"§ 25-7-210. Enforcement of warehouse's lien.

(a) Except as otherwise provided in subsection (b) of this section, a warehouse's lien may be enforced by public or private sale of the goods, in bulk or in packages, at any time or place and on any terms that are commercially reasonable, after notifying all persons known to claim an interest in the goods. The notification must include a statement of the amount due, the nature of the proposed sale, and the time and place of any public sale. The fact that a better price could have been obtained by a sale at a different time or in a method different from that selected by the warehouse is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. The warehouse sells in a commercially reasonable manner if the warehouse sells the goods in the usual manner in any recognized market therefore, sells at the price current in that market at the time of the sale, or otherwise sells in conformity with commercially reasonable practices among dealers in the type of goods sold. A sale of more goods than apparently necessary to be offered to ensure satisfaction of the obligation is not commercially reasonable, except in cases covered by the preceding sentence.

(b) A warehouse may enforce its lien on goods, other than goods stored by a merchant in the course of its business, only if the following requirements are satisfied:

(1) All persons known to claim an interest in the goods must be notified.

(2) The notification must include an itemized statement of the claim, a description of the goods subject to the lien, a demand for payment within a specified time not less than 10 days after receipt of the notification, and a conspicuous statement that unless the claim is paid within that time the goods will be advertised for sale and sold by auction at a specified time and place.

(3) The sale must conform to the terms of the notification.

(4) The sale must be held at the nearest suitable place to where the goods are held or stored.

(5) After the expiration of the time given in the notification, an advertisement of the sale must be published once a week for two weeks consecutively in a newspaper of general circulation where the sale is to be held. The advertisement must include a description of the goods, the name of the person on whose account the goods are being held, and the time and place of the sale. The sale must take place at least 15 days after the first publication. If there is no newspaper of general circulation where the sale is to be held, the advertisement must be posted at least 10 days before the sale in not fewer than six conspicuous places in the neighborhood of the proposed sale.

(c) Before any sale pursuant to this section, any person claiming a right in the goods may pay the amount necessary to satisfy the lien and the reasonable expenses incurred in complying with this section. In that event, the goods may not be sold but must be retained by the warehouse subject to the terms of the receipt and this Article.

(d) A warehouse may buy at any public sale held pursuant to this section.

(e) A purchaser in good faith of goods sold to enforce a warehouse's lien takes the goods free of any rights of persons against whom the lien was valid, despite the warehouse's noncompliance with this section.

(f) A warehouse may satisfy its lien from the proceeds of any sale pursuant to this section but shall hold the balance, if any, for delivery on demand to any person to whom the warehouse would have been bound to deliver the goods.

(g) The rights provided by this section are in addition to all other rights allowed by law to a creditor against a debtor.

(h) If a lien is on goods stored by a merchant in the course of its business, the lien may be enforced in accordance with subsection (a) or (b) of this section.

(i) A warehouse is liable for damages caused by failure to comply with the requirements for sale under this section and, in case of willful violation, is liable for conversion.

"PART 3.

"BILLS OF LADING: SPECIAL PROVISIONS.

"§ 25-7-301. Liability for nonreceipt or misdescription; "said to contain"; "shipper's weight, load, and count"; improper handling.

(a) A consignee of a nonnegotiable bill of lading which has given value in good faith, or a holder to which a negotiable bill has been duly negotiated, relying upon the description of the goods in the bill or upon the date shown in the bill, may recover from the issuer damages caused by the misdating of the bill or the nonreceipt or misdescription of the goods, except to the extent that the bill indicates that the issuer does not know whether any part or all of the goods in fact were received or conform to the description, such as in a case in which the description is in terms of marks or labels or kind, quantity, or condition or the receipt or description is qualified by "contents or condition of contents of packages unknown," "said to contain," "shipper's weight, load, and count," or words of similar import, if that indication is true.

(b) If goods are loaded by the issuer of a bill of lading;

(1) The issuer shall count the packages of goods if shipped in packages and ascertain the kind and quantity if shipped in bulk; and

(2) Words such as "shipper's weight, load, and count," or words of similar import indicating that the description was made by the shipper are ineffective except as to goods concealed in packages.

(c) If bulk goods are loaded by a shipper that makes available to the issuer of a bill of lading adequate facilities for weighing those goods, the issuer shall ascertain the kind and quantity within a reasonable time after receiving the shipper's request in a record to do so. In that case, "shipper's weight" or words of similar import are ineffective.

(d) The issuer of a bill of lading, by including in the bill the words "shipper's weight, load, and count," or words of similar import, may indicate that the goods were loaded by the shipper, and, if that statement is true, the issuer is not liable for damages caused by the improper loading. However, omission of such words does not imply liability for damages caused by improper loading.

(e) A shipper guarantees to an issuer the accuracy at the time of shipment of the description, marks, labels, number, kind, quantity, condition, and weight, as furnished by the shipper, and the shipper shall indemnify the issuer against damage caused by inaccuracies in those particulars. This right of indemnity does not limit the issuer's responsibility or liability under the contract of carriage to any person other than the shipper.

"§ 25-7-302. Through bills of lading and similar documents of title.

(a) The issuer of a through bill of lading, or other document of title embodying an undertaking to be performed in part by a person acting as its agent or by a performing carrier, is liable to any person entitled to recover on the bill or other document for any breach by the other person or the performing carrier of its obligation under the bill or other document. However, to the extent that the bill or other document covers an undertaking to be performed overseas or in territory not contiguous to the continental United States or an undertaking including matters other than transportation, this liability for breach by the other person or the performing carrier may be varied by agreement of the parties.

(b) If goods covered by a through bill of lading or other document of title embodying an undertaking to be performed in part by a person other than the issuer are

received by that person, the person is subject, with respect to its own performance while the goods are in its possession, to the obligation of the issuer. The person's obligation is discharged by delivery of the goods to another person pursuant to the bill or other document and does not include liability for breach by any other person or by the issuer.

(c) The issuer of a through bill of lading or other document of title described in subsection (a) of this section is entitled to recover from the performing carrier, or other person in possession of the goods when the breach of the obligation under the bill or other document occurred:

(1) The amount it may be required to pay to any person entitled to recover on the bill or other document for the breach, as may be evidenced by any receipt, judgment, or transcript of judgment; and

(2) The amount of any expense reasonably incurred by the issuer in defending any action commenced by any person entitled to recover on the bill or other document for the breach.

"**§ 25-7-303. Diversion; reconsignment; change of instructions.**

(a) Unless the bill of lading otherwise provides, a carrier may deliver the goods to a person or destination other than that stated in the bill or may otherwise dispose of the goods, without liability for misdelivery, on instructions from:

(1) The holder of a negotiable bill;

(2) The consignor on a nonnegotiable bill, even if the consignee has given contrary instructions;

(3) The consignee on a nonnegotiable bill in the absence of contrary instructions from the consignor, if the goods have arrived at the billed destination or if the consignee is in possession of the tangible bill or in control of the electronic bill; or

(4) The consignee on a nonnegotiable bill, if the consignee is entitled as against the consignor to dispose of the goods.

(b) Unless instructions described in subsection (a) of this section are included in a negotiable bill of lading, a person to whom the bill is duly negotiated may hold the bailee according to the original terms.

"**§ 25-7-304. Tangible bills of lading in a set.**

(a) Except as customary in international transportation, a tangible bill of lading may not be issued in a set of parts. The issuer is liable for damages caused by violation of this subsection.

(b) If a tangible bill of lading is lawfully issued in a set of parts, each of which contains an identification code and is expressed to be valid only if the goods have not been delivered against any other part, the whole of the parts constitutes one bill.

(c) If a tangible negotiable bill of lading is lawfully issued in a set of parts and different parts are negotiated to different persons, the title of the holder to which the first due negotiation is made prevails as to both the document of title and the goods even if any later holder may have received the goods from the carrier in good faith and discharged the carrier's obligation by surrendering its part.

(d) A person that negotiates or transfers a single part of a tangible bill of lading issued in a set is liable to holders of that part as if it were the whole set.

(e) The bailee shall deliver in accordance with Part 4 of this Article against the first presented part of a tangible bill of lading lawfully issued in a set. Delivery in this manner discharges the bailee's obligation on the whole bill.

"§ 25-7-305. Destination bills.

(a) Instead of issuing a bill of lading to the consignor at the place of shipment, a carrier, at the request of the consignor, may procure the bill to be issued at destination or at any other place designated in the request.

(b) Upon request of any person entitled as against a carrier to control the goods while in transit and on surrender of possession or control of any outstanding bill of lading or other receipt covering the goods, the issuer, subject to G.S. 25-7-105, may procure a substitute bill to be issued at any place designated in the request.

"§ 25-7-306. Altered bills of lading.

An unauthorized alteration or filling in of a blank in a bill of lading leaves the bill enforceable according to its original tenor.

"§ 25-7-307. Lien of carrier.

(a) A carrier has a lien on the goods covered by a bill of lading or on the proceeds thereof in its possession for charges after the date of the carrier's receipt of the goods for storage or transportation, including demurrage and terminal charges, and for expenses necessary for preservation of the goods incident to their transportation or reasonably incurred in their sale pursuant to law. However, against a purchaser for value of a negotiable bill of lading, a carrier's lien is limited to charges stated in the bill or the applicable tariffs or, if no charges are stated, a reasonable charge.

(b) A lien for charges and expenses under subsection (a) of this section on goods that the carrier was required by law to receive for transportation is effective against the consignor or any person entitled to the goods unless the carrier had notice that the consignor lacked authority to subject the goods to those charges and expenses. Any other lien under subsection (a) of this section is effective against the consignor and any person that permitted the bailor to have control or possession of the goods unless the carrier had notice that the bailor lacked authority.

(c) A carrier loses its lien on any goods that it voluntarily delivers or unjustifiably refuses to deliver.

"§ 25-7-308. Enforcement of carrier's lien.

(a) A carrier's lien on goods may be enforced by public or private sale of the goods, in bulk or in packages, at any time or place and on any terms that are commercially reasonable, after notifying all persons known to claim an interest in the goods. The notification must include a statement of the amount due, the nature of the proposed sale, and the time and place of any public sale. The fact that a better price could have been obtained by a sale at a different time or in a method different from that selected by the carrier is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. The carrier sells goods in a commercially reasonable manner if the carrier sells the goods in the usual manner in any recognized market therefor, sells at the price current in that market at the time of the sale, or otherwise sells in conformity with commercially reasonable practices among dealers in the type of goods sold. A sale of more goods than apparently necessary to be offered to

ensure satisfaction of the obligation is not commercially reasonable, except in cases covered by the preceding sentence.

(b) Before any sale pursuant to this section, any person claiming a right in the goods may pay the amount necessary to satisfy the lien and the reasonable expenses incurred in complying with this section. In that event, the goods may not be sold but shall be retained by the carrier, subject to the terms of the bill of lading and this Article.

(c) A carrier may buy at any public sale pursuant to this section.

(d) A purchaser in good faith of goods sold to enforce a carrier's lien takes the goods free of any rights of persons against which the lien was valid, despite the carrier's noncompliance with this section.

(e) A carrier may satisfy its lien from the proceeds of any sale pursuant to this section but shall hold the balance, if any, for delivery on demand to any person to whom the carrier would have been bound to deliver the goods.

(f) The rights provided by this section are in addition to all other rights allowed by law to a creditor against a debtor.

(g) A carrier's lien may be enforced pursuant to either subsection (a) of this section or the procedure set forth in G.S. 25-7-210(b).

(h) A carrier is liable for damages caused by failure to comply with the requirements for sale under this section and, in case of willful violation, is liable for conversion.

"**§ 25-7-309. Duty of care; contractual limitation of carrier's liability.**

(a) A carrier that issues a bill of lading, whether negotiable or nonnegotiable, shall exercise the degree of care in relation to the goods which a reasonably careful person would exercise under similar circumstances. This subsection does not affect any statute, regulation, or rule of law that imposes liability upon a common carrier for damages not caused by its negligence.

(b) Damages may be limited by a term in the bill of lading or in a transportation agreement that the carrier's liability may not exceed a value stated in the bill or transportation agreement if the carrier's rates are dependent upon value and the consignor is afforded an opportunity to declare a higher value and the consignor is advised of the opportunity. However, such a limitation is not effective with respect to the carrier's liability for conversion to its own use.

(c) Reasonable provisions as to the time and manner of presenting claims and commencing actions based on the shipment may be included in a bill of lading or a transportation agreement.

"PART 4.

"WAREHOUSE RECEIPTS AND BILLS OF LADING: GENERAL OBLIGATIONS.

"**§ 25-7-401. Irregularities in issue of receipt or bill or conduct of issuer.**

The obligations imposed by this Article on an issuer apply to a document of title even if:

(1) The document does not comply with the requirements of this Article or of any other statute, rule, or regulation regarding its issuance, form, or content;

(2) The issuer violated laws regulating the conduct of its business;

(3) The goods covered by the document were owned by the bailee when the document was issued; or

(4) The person issuing the document is not a warehouse but the document purports to be a warehouse receipt.

"§ 25-7-402. Duplicate document of title; overissue.

A duplicate or any other document of title purporting to cover goods already represented by an outstanding document of the same issuer does not confer any right in the goods, except as provided in the case of tangible bills of lading in a set of parts, overissue of documents for fungible goods, substitutes for lost, stolen, or destroyed documents, or substitute documents issued pursuant to G.S. 25-7-105. The issuer is liable for damages caused by its overissue or failure to identify a duplicate document by a conspicuous notation.

"§ 25-7-403. Obligation of bailee to deliver; excuse.

(a) A bailee shall deliver the goods to a person entitled under a document of title if the person complies with subsections (b) and (c) of this section, unless and to the extent that the bailee establishes any of the following:

(1) Delivery of the goods to a person whose receipt was rightful as against the claimant;

(2) Damage to or delay, loss, or destruction of the goods for which the bailee is not liable;

(3) Previous sale or other disposition of the goods in lawful enforcement of a lien or on a warehouse's lawful termination of storage;

(4) The exercise by a seller of its right to stop delivery pursuant to G.S. 25-2-705 or by a lessor of its right to stop delivery pursuant to G.S. 25-2A-526;

(5) A diversion, reconsignment, or other disposition pursuant to G.S. 25-7-303;

(6) Release, satisfaction, or any other personal defense against the claimant; or

(7) Any other lawful excuse.

(b) A person claiming goods covered by a document of title shall satisfy the bailee's lien if the bailee so requests or if the bailee is prohibited by law from delivering the goods until the charges are paid.

(c) Unless a person claiming the goods is a person against whom the document of title does not confer a right under G.S. 25-7-503(a):

(1) The person claiming under a document shall surrender possession or control of any outstanding negotiable document covering the goods for cancellation or indication of partial deliveries; and

(2) The bailee shall cancel the document or conspicuously indicate in the document the partial delivery or the bailee is liable to any person to whom the document is duly negotiated.

"§ 25-7-404. No liability for good-faith delivery pursuant to document of title.

A bailee that in good faith has received goods and delivered or otherwise disposed of the goods according to the terms of a document of title or pursuant to this Article is not liable for the goods even if:

(1) The person from whom the bailee received the goods did not have authority to procure the document or to dispose of the goods; or

(2) The person to whom the bailee delivered the goods did not have authority to receive the goods.

"PART 5.

"WAREHOUSE RECEIPTS AND BILLS OF LADING: NEGOTIATION AND TRANSFER.

"§ 25-7-501. Form of negotiation and requirements of due negotiation.

(a) The following rules apply to a negotiable tangible document of title:

(1) If the document's original terms run to the order of a named person, the document is negotiated by the named person's indorsement and delivery. After the named person's indorsement in blank or to bearer, any person may negotiate the document by delivery alone.

(2) If the document's original terms run to bearer, it is negotiated by delivery alone.

(3) If the document's original terms run to the order of a named person and it is delivered to the named person, the effect is the same as if the document had been negotiated.

(4) Negotiation of the document after it has been indorsed to a named person requires indorsement by the named person and delivery.

(5) A document is duly negotiated if it is negotiated in the manner stated in this subsection to a holder that purchases it in good faith, without notice of any defense against or claim to it on the part of any person, and for value, unless it is established that the negotiation is not in the regular course of business or financing or involves receiving the document in settlement or payment of a monetary obligation.

(b) The following rules apply to a negotiable electronic document of title:

(1) If the document's original terms run to the order of a named person or to bearer, the document is negotiated by delivery of the document to another person. Indorsement by the named person is not required to negotiate the document.

(2) If the document's original terms run to the order of a named person and the named person has control of the document, the effect is the same as if the document had been negotiated.

(3) A document is duly negotiated if it is negotiated in the manner stated in this subsection to a holder that purchases it in good faith, without notice of any defense against or claim to it on the part of any person, and for value, unless it is established that the negotiation is not in the regular course of business or financing or involves taking delivery of the document in settlement or payment of a monetary obligation.

(c) Indorsement of a nonnegotiable document of title neither makes it negotiable nor adds to the transferee's rights.

(d) The naming in a negotiable bill of lading of a person to be notified of the arrival of the goods does not limit the negotiability of the bill or constitute notice to a purchaser of the bill of any interest of that person in the goods.

"**§ 25-7-502. Rights acquired by due negotiation.**

(a) Subject to G.S. 25-7-205 and G.S. 25-7-503, a holder to which a negotiable document of title has been duly negotiated acquires thereby:

(1) Title to the document;

(2) Title to the goods;

(3) All rights accruing under the law of agency or estoppel, including rights to goods delivered to the bailee after the document was issued; and

(4) The direct obligation of the issuer to hold or deliver the goods according to the terms of the document free of any defense or claim by the issuer except those arising under the terms of the document or under this Article, but in the case of a delivery order, the bailee's obligation accrues only upon the bailee's acceptance of the delivery order, and the obligation acquired by the holder is that the issuer and any indorser will procure the acceptance of the bailee.

(b) Subject to G.S. 25-7-503, title and rights acquired by due negotiation are not defeated by any stoppage of the goods represented by the document of title or by surrender of the goods by the bailee and are not impaired even if:

(1) The due negotiation or any prior due negotiation constituted a breach of duty;

(2) Any person has been deprived of possession of a negotiable tangible document or control of a negotiable electronic document by misrepresentation, fraud, accident, mistake, duress, loss, theft, or conversion; or

(3) A previous sale or other transfer of the goods or document has been made to a third person.

"**§ 25-7-503. Document of title to goods defeated in certain cases.**

(a) A document of title confers no right in goods against a person that before issuance of the document had a legal interest or a perfected security interest in the goods and that did not:

(1) Deliver or entrust the goods or any document of title covering the goods to the bailor or the bailor's nominee with:

a. Actual or apparent authority to ship, store, or sell;

b. Power to obtain delivery under G.S. 25-7-403; or

c. Power of disposition under G.S. 25-2-403, 25-2A-304(2), 25-2A-305(2), 25-9-320, or 25-9-321(c) or other statute or rule of law; or

(2) Acquiesce in the procurement by the bailor or its nominee of any document.

(b) Title to goods based upon an unaccepted delivery order is subject to the rights of any person to whom a negotiable warehouse receipt or bill of lading covering the goods has been duly negotiated. That title may be defeated under G.S. 25-7-504 to the same extent as the rights of the issuer or a transferee from the issuer.

(c) Title to goods based upon a bill of lading issued to a freight forwarder is subject to the rights of any person to which a bill issued by the freight forwarder is duly negotiated. However, delivery by the carrier in accordance with Part 4 of this Article pursuant to its own bill of lading discharges the carrier's obligation to deliver.

"**§ 25-7-504. Rights acquired in absence of due negotiation; effect of diversion; stoppage of delivery.**

(a) A transferee of a document of title, whether negotiable or nonnegotiable, to which the document has been delivered but not duly negotiated, acquires the title and rights that its transferor had or had actual authority to convey.

(b) In the case of a transfer of a nonnegotiable document of title, until but not after the bailee receives notice of the transfer, the rights of the transferee may be defeated:

(1) By those creditors of the transferor which could treat the transfer as void under G.S. 25-2-402 or G.S. 25-2A-308;

(2) By a buyer from the transferor in ordinary course of business if the bailee has delivered the goods to the buyer or received notification of the buyer's rights;

(3) By a lessee from the transferor in ordinary course of business if the bailee has delivered the goods to the lessee or received notification of the lessee's rights; or

(4) As against the bailee, by good-faith dealings of the bailee with the transferor.

(c) A diversion or other change of shipping instructions by the consignor in a nonnegotiable bill of lading which causes the bailee not to deliver the goods to the consignee defeats the consignee's title to the goods if the goods have been delivered to a buyer in ordinary course of business or a lessee in ordinary course of business and, in any event, defeats the consignee's rights against the bailee.

(d) Delivery of the goods pursuant to a nonnegotiable document of title may be stopped by a seller under G.S. 25-2-705 or a lessor under G.S. 25-2A-526, subject to the requirements of due notification in those sections. A bailee that honors the seller's or lessor's instructions is entitled to be indemnified by the seller or lessor against any resulting loss or expense.

"**§ 25-7-505. Indorser not guarantor for other parties.**

The indorsement of a tangible document of title issued by a bailee does not make the indorser liable for any default by the bailee or previous indorsers.

"**§ 25-7-506. Delivery without indorsement; right to compel indorsement.**

The transferee of a negotiable tangible document of title has a specifically enforceable right to have its transferor supply any necessary indorsement, but the transfer becomes a negotiation only as of the time the indorsement is supplied.

"**§ 25-7-507. Warranties on negotiation or delivery of document of title.**

If a person negotiates or delivers a document of title for value, otherwise than as a mere intermediary under G.S. 25-7-508, unless otherwise agreed, the transferor, in addition to any warranty made in selling or leasing the goods, warrants to its immediate purchaser only that:

(1) The document is genuine;

(2) The transferor does not have knowledge of any fact that would impair the document's validity or worth; and

(3) The negotiation or delivery is rightful and fully effective with respect to the title to the document and the goods it represents.

"§ 25-7-508. Warranties of collecting bank as to documents of title.

A collecting bank or other intermediary known to be entrusted with documents of title on behalf of another or with collection of a draft or other claim against delivery of documents warrants by the delivery of the documents only its own good faith and authority even if the collecting bank or other intermediary has purchased or made advances against the claim or draft to be collected.

"§ 25-7-509. Adequate compliance with commercial contract.

Whether a document of title is adequate to fulfill the obligations of a contract for sale, a contract for lease, or the conditions of a letter of credit is determined by Article 2, 2A, or 5 of this Chapter.

"PART 6.
"WAREHOUSE RECEIPTS AND BILLS OF LADING: MISCELLANEOUS PROVISIONS.

"§ 25-7-601. Lost, stolen, or destroyed documents of title.

(a) If a document of title is lost, stolen, or destroyed, a court may order delivery of the goods or issuance of a substitute document, and the bailee may without liability to any person comply with the order. If the document was negotiable, a court may not order delivery of the goods or issuance of a substitute document without the claimant's posting security unless it finds that any person that may suffer loss as a result of nonsurrender of possession or control of the document is adequately protected against the loss. If the document was nonnegotiable, the court may require security. The court may also order payment of the bailee's reasonable costs and attorneys' fees in any action under this subsection.

(b) A bailee that, without a court order, delivers goods to a person claiming under a missing negotiable document of title is liable to any person injured thereby. If the delivery is not in good faith, the bailee is liable for conversion. Delivery in good faith is not conversion if the claimant posts security with the bailee in an amount at least double the value of the goods at the time of posting to indemnify any person injured by the delivery that files a notice of claim within one year after the delivery.

"§ 25-7-602. Judicial process against goods covered by negotiable document of title.

Unless a document of title was originally issued upon delivery of the goods by a person that did not have power to dispose of them, a lien does not attach by virtue of any judicial process to goods in the possession of a bailee for which a negotiable document of title is outstanding unless possession or control of the document is first

surrendered to the bailee or the document's negotiation is enjoined. The bailee may not be compelled to deliver the goods pursuant to process until possession or control of the document is surrendered to the bailee or to the court. A purchaser of the document for value without notice of the process or injunction takes free of the lien imposed by judicial process.

"**§ 25-7-603. Conflicting claims; interpleader.**

If more than one person claims title to or possession of the goods, the bailee is excused from delivery until the bailee has a reasonable time to ascertain the validity of the adverse claims or to commence an action for interpleader. The bailee may assert an interpleader either in defending an action for nondelivery of the goods or by original action."

SUBPART B. CONFORMING AMENDMENTS TO OTHER ARTICLES OF THE UNIFORM COMMERCIAL CODE.

SECTION 26. G.S. 25-1-201(b), as enacted by Part I of this act, reads as rewritten:

"(b) Subject to definitions contained in other articles of this Chapter that apply to particular articles or parts thereof:

...

(5) "Bearer" means a person in control of a negotiable electronic document of title or a person in possession of a negotiable instrument, negotiable tangible document of title, or certificated security that is payable to bearer or indorsed in blank.

(6) "Bill of lading" means a document of title evidencing the receipt of goods for shipment issued by a person engaged in the business of directly or indirectly transporting or forwarding goods. The term does not include a warehouse receipt.

...

(15) "Delivery", with respect to an electronic document of title means voluntary transfer of control and with respect to an instrument, a tangible document of title, or chattel paper, means voluntary transfer of possession.

(16) "Document of title" ~~includes bill of lading, dock warrant, dock receipt, warehouse receipt or order for the delivery of goods, and also any other document which~~ means a record (i) that in the regular course of business or financing is treated as adequately evidencing that the person in possession or control of ~~it~~ the record is entitled to receive, control, hold, and dispose of the record ~~document~~ and the goods ~~it covers.~~ the record covers and (ii) that purports to be issued by or addressed to a bailee and to cover goods in the bailee's possession which are either identified or are fungible portions of an identified mass. The term includes a bill of lading, transport document, dock warrant, dock receipt, warehouse receipt, and order for delivery of goods. ~~To be a document of title, a document must purport to be issued by or addressed to a bailee and purport to cover goods in the bailee's~~

~~possession which are either identified or are fungible portions of an identified mass.~~ An electronic document of title means a document of title evidenced by a record consisting of information stored in an electronic medium. A tangible document of title means a document of title evidenced by a record consisting of information that is inscribed on a tangible medium.

...

(21) "Holder" means:

a. The person in possession of a negotiable instrument that is payable either to bearer or to an identified person that is the person in possession; ~~or~~

b. The person in possession of a negotiable tangible document of title if the goods are deliverable either to bearer or to the order of the person in ~~possession.~~ possession; or

c. The person in control of a negotiable electronic document of title.

...

(42) "Warehouse receipt" means a ~~receipt~~ document of title issued by a person engaged in the business of storing goods for hire."

SECTION 27. G.S. 25-2-103(3) reads as rewritten:

"(3) "Control" as provided in G.S. 25-7-106 and the ~~The~~ following definitions in other Articles apply to this ~~article:~~ Article:

~~"Check." G.S. 25-3-104.~~
~~"Consignee." G.S. 25-7-102.~~
~~"Consignor." G.S. 25-7-102.~~
~~"Consumer Goods." G.S. 25-9-102.~~
~~"Dishonor." G.S. 25-3-502.~~
~~"Draft." G.S. 25-3-104.~~

"Check"	G.S. 25-3-104.
"Consignee"	G.S. 25-7-102.
"Consignor"	G.S. 25-7-102.
"Consumer Goods"	G.S. 25-9-102.
"Dishonor"	G.S. 25-3-502.
"Draft"	G.S. 25-3-104."

SECTION 28. G.S. 25-2-104(2) reads as rewritten:

"(2) "Financing agency" means a bank, finance company or other person who in the ordinary course of business makes advances against goods or documents of title or who by arrangement with either the seller or the buyer intervenes in ordinary course to make or collect payment due or claimed under the contract for sale, as by purchasing or paying the seller's draft or making advances against it or by merely taking it for collection whether or not documents of title accompany or are associated with the draft. "Financing agency" includes also a bank or other person who similarly intervenes between persons who are in the position of seller and buyer in respect to the goods (G.S. 25-2-707)."

SECTION 29. G.S. 25-2-310 reads as rewritten:

"**§ 25-2-310. Open time for payment or running of credit; authority to ship under reservation.**

Unless otherwise agreed

(a) payment is due at the time and place at which the buyer is to receive the goods even though the place of shipment is the place of delivery; and

(b) if the seller is authorized to send the goods he may ship them under reservation, and may tender the documents of title, but the buyer may inspect the goods after their arrival before payment is due unless such inspection is inconsistent with the terms of the contract (G.S. 25-2-513); and

(c) if delivery is authorized and made by way of documents of title otherwise than by subsection (b) then payment is due regardless of where the goods are to be received (i) at the time and place at which the buyer is to receive delivery of the tangible documents or (ii) at the time the buyer is to receive delivery of the electronic documents and at the seller's place of business or if none, the seller's residence; ~~regardless of where the goods are to be received;~~ and

(d) where the seller is required or authorized to ship the goods on credit the credit period runs from the time of shipment but postdating the invoice or delaying its dispatch will correspondingly delay the starting of the credit period."

SECTION 30. G.S. 25-2-323(2) reads as rewritten:

"(2) Where in a case within subsection (1) of this section a tangible bill of lading has been issued in a set of parts, unless otherwise agreed if the documents are not to be sent from abroad the buyer may demand tender of the full set; otherwise only one part of the bill of lading need be tendered. Even if the agreement expressly requires a full set

(a) due tender of a single part is acceptable within the provisions of this ~~article~~ Article on cure of improper delivery (subsection (1) of G.S.25-2-508); and

(b) even though the full set is demanded, if the documents are sent from abroad the person tendering an incomplete set may nevertheless require payment upon furnishing an indemnity which the buyer in good faith deems adequate."

SECTION 31. G.S. 25-2-401(3) reads as rewritten:

"(3) Unless otherwise explicitly agreed where delivery is to be made without moving the goods,

(a) if the seller is to deliver a tangible document of title, title passes at the time when and the place where he delivers such ~~documents;~~ documents and if the seller is to deliver an electronic document of title, title passes when the seller delivers the document; or

(b) if the goods are at the time of contracting already identified and no documents of title are to be delivered, title passes at the time and place of contracting."

SECTION 32. G.S. 25-2-503(4) and (5) read as rewritten:

"(4) Where goods are in the possession of a bailee and are to be delivered without being moved

(a) tender requires that the seller either tender a negotiable document of title covering such goods or procure acknowledgment by the bailee of the buyer's right to possession of the goods; but

(b) tender to the buyer of a non-negotiable document of title or of a ~~written direction to~~ record directing the bailee to deliver is sufficient tender unless the buyer seasonably objects, ~~and~~ and, except as otherwise provided in Article 9 of this Chapter, receipt by the bailee of notification of the buyer's rights fixes those rights as against the bailee and all third persons; but risk of loss of the goods and of any failure by the bailee to honor the nonnegotiable document of title or to obey the direction remains on the seller until the buyer has had a reasonable time to present the document or direction, and a refusal by the bailee to honor the document or to obey the direction defeats the tender.

(5) Where the contract requires the seller to deliver documents

(a) he must tender all such documents in correct form, except as provided in this article with respect to bills of lading in a set (subsection (2) of G.S. 25-2-323); and

(b) tender through customary banking channels is sufficient and dishonor of a draft accompanying or associated with the documents constitutes non-acceptance or rejection."

SECTION 33. G.S. 25-2-505 reads as rewritten:

"**§ 25-2-505. Seller's shipment under reservation.**

(1) Where the seller has identified goods to the contract by or before shipment:

(a) his procurement of a negotiable bill of lading to his own order or otherwise reserves in him a security interest in the goods. His procurement of the bill to the order of a financing agency or of the buyer indicates in addition only the seller's expectation of transferring that interest to the person named.

(b) a nonnegotiable bill of lading to himself or his nominee reserves possession of the goods as security but except in a case of conditional delivery (subsection (2) of G.S. 25-2-507) a nonnegotiable bill of lading naming the buyer as consignee reserves no security interest even though the seller retains possession or control of the bill of lading.

(2) When shipment by the seller with reservation of a security interest is in violation of the contract for sale it constitutes an improper contract for transportation within ~~the preceding section~~ G.S. 25-2-504 but impairs neither the rights given to the buyer by shipment and identification of the goods to the contract nor the seller's powers as a holder of a negotiable ~~document.~~ document of title."

SECTION 34. G.S. 25-2-506(2) reads as rewritten:

"(2) The right to reimbursement of a financing agency which has in good faith honored or purchased the draft under commitment to or authority from the buyer is not impaired by subsequent discovery of defects with reference to any relevant document which was apparently ~~regular on its face.~~ regular."

SECTION 35. G.S. 25-2-509(2) reads as rewritten:

"(2) Where the goods are held by a bailee to be delivered without being moved, the risk of loss passes to the buyer

(a) on his receipt of possession or control of a negotiable document of title covering the goods; or

(b) on acknowledgment by the bailee of the buyer's right to possession of the goods; or

(c) after his receipt of possession or control of a nonnegotiable document of title or other ~~written~~ direction to ~~deliver,~~ deliver in a record, as provided in subsection (4)(b) of G.S. 25-2-503."

SECTION 36. G.S. 25-2-605(2) reads as rewritten:

"(2) Payment against documents made without reservation of rights precludes recovery of the payment for defects apparent ~~on the face of~~ in the documents."

SECTION 37. G.S. 25-2-705(2) and (3) read as rewritten:

"(2) As against such buyer the seller may stop delivery until

(a) receipt of the goods by the buyer; or

(b) acknowledgment to the buyer by any bailee of the goods except a carrier that the bailee holds the goods for the buyer; or

(c) such acknowledgment to the buyer by a carrier by reshipment or as ~~warehouseman;~~ a warehouse; or

(d) negotiation to the buyer of any negotiable document of title covering the goods.

(3) (a) To stop delivery the seller must so notify as to enable the bailee by reasonable diligence to prevent delivery of the goods.

(b) After such notification the bailee must hold and deliver the goods according to the directions of the seller but the seller is liable to the bailee for any ensuing charges or damages.

(c) If a negotiable document of title has been issued for goods the bailee is not obliged to obey a notification to stop until surrender of possession or control of the document.

(d) A carrier who has issued a nonnegotiable bill of lading is not obliged to obey a notification to stop received from a person other than the consignor."

SECTION 38. G.S. 25-2A-103 reads as rewritten:

"**§ 25-2A-103. Definitions and index of definitions.**

(1) In this Article unless the context otherwise requires:

(a) "Buyer in ordinary course of ~~[business",]~~ business" means a person ~~who~~ who, in good faith and without knowledge that the sale to him is in violation of the ownership rights or security interest or leasehold interest of a third party in the ~~[goods,]~~ goods, buys in ordinary course from a person in the business of selling goods of that kind but does not include a pawnbroker. "Buying" may be for cash or by exchange of other property or on secured or unsecured credit and includes ~~receiving~~ acquiring goods or documents of title under a preexisting contract for

sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

...

(o) "Lessee in ordinary course of business" means a person ~~who~~ who, in good faith and without knowledge that the lease to him is in violation of the ownership rights or security interest or leasehold interest of a third party in the ~~[goods,]~~ goods, leases in ordinary course from a person in the business of selling or leasing goods of that kind but does not include a pawnbroker. "Leasing" may be for cash or by exchange of other property or on secured or unsecured credit and includes ~~receiving~~ acquiring goods or documents of title under a preexisting lease contract but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

..."

SECTION 39. G.S. 25-2A-514(2) reads as rewritten:

"(2) A lessee's failure to reserve rights when paying rent or other consideration against documents precludes recovery of the payment for defects apparent ~~on the face of~~ in the documents."

SECTION 40. G.S. 25-2A-526(2) reads as rewritten:

"(2) In pursuing its remedies under subsection (1) of this section, the lessor may stop delivery until

(a) receipt of the goods by the lessee;

(b) acknowledgment to the lessee by any bailee of the goods, except a carrier, that the bailee holds the goods for the lessee; or

(c) such an acknowledgment to the lessee by a carrier via reshipment or as ~~warehouseman.~~ a warehouse."

SECTION 41. G.S. 25-4-104(c), as amended by Section 14 of this act, reads as rewritten:

"(c) "Control" as provided in G.S. 25-7-106 and the ~~The~~ following definitions in other Articles apply to this Article:

"Acceptance"	G.S. 25-3-409.
"Alteration"	G.S. 25-3-407.
"Cashier's check"	G.S. 25-3-104.
"Certificate of deposit"	G.S. 25-3-104.
"Certified check"	G.S. 25-3-409.
"Check"	G.S. 25-3-104.
"Draft"	G.S. 25-3-104.
"Holder in due course"	G.S. 25-3-302.
"Instrument"	G.S. 25-3-104.
"Notice of dishonor"	G.S. 25-3-503.
"Order"	G.S. 25-3-103.
"Ordinary care"	G.S. 25-3-103
"Person entitled to enforce"	G.S. 25-3-301.
"Presentment"	G.S. 25-3-501.

"Promise"	G.S. 25-3-103.
"Prove"	G.S. 25-3-103.
"Teller's check"	G.S. 25-3-104.
"Unauthorized signature"	G.S. 25-3-403."

SECTION 42. G.S. 25-4-208(c) reads as rewritten:

"(c) Receipt by a collecting bank of a final settlement for an item is a realization on its security interest in the item, accompanying documents, and proceeds. So long as the bank does not receive final settlement for the item or give up possession of the item or possession or control of the accompanying documents for purposes other than collection, the security interest continues to that extent and is subject to Article 9, but:

(1) No security agreement is necessary to make the security interest enforceable (G.S. 25-9-203(b)(3)a.);

(2) No filing is required to perfect the security interest; and

(3) The security interest has priority over conflicting perfected security interests in the item, accompanying ~~documents~~ documents, or proceeds."

SECTION 43. G.S. 25-8-103 reads as rewritten:

"**§ 25-8-103. Rules for determining whether certain obligations and interests are securities or financial assets.**

(a) A share or similar equity interest issued by a corporation, business trust, joint stock company, or similar entity is a security.

...

(f) A commodity contract, as defined in G.S. 25-9-102(a)(15), is not a security or financial asset.

(g) A document of title is not a financial asset unless G.S. 25-8-102(a)(9)(iii) applies."

SECTION 44. G.S. 25-9-102 reads as rewritten:

"**§ 25-9-102. Definitions and index of definitions.**

(a) Article 9 definitions. – In this Article:

...

(30) "Document" means a document of title or a receipt of the type described in ~~G.S. 25-7-201(2).~~ G.S. 25-7-201(b).

...

(b) Definitions in other articles. –"Control" as provided in G.S. 25-7-106 and the ~~The~~ following definitions in other Articles of this Chapter apply to this Article:

"Applicant"	G.S. 25-5-102.
"Beneficiary"	G.S. 25-5-102.
"Broker"	G.S. 25-8-102.
"Certificated security"	G.S. 25-8-102.
"Check"	G.S. 25-3-104.
"Clearing corporation"	G.S. 25-8-102.
"Contract for sale"	G.S. 25-2-106.
"Customer"	G.S. 25-4-104.
"Entitlement holder"	G.S. 25-8-102.

"Financial asset"	G.S. 25-8-102.
"Holder in due course"	G.S. 25-3-302.
"Issuer" (with respect to a letter of credit or letter-of-credit right)	G.S. 25-5-102.
"Issuer" (with respect to a security)	G.S. 25-8-201.
"Issuer" (with respect to documents of title)	G.S. 25-7-102.
"Lease"	G.S. 25-2A-103.
"Lease agreement"	G.S. 25-2A-103.
"Lease contract"	G.S. 25-2A-103.
"Leasehold interest"	G.S. 25-2A-103.
"Lessee"	G.S. 25-2A-103.
"Lessee in ordinary course of business"	G.S. 25-2A-103.
"Lessor"	G.S. 25-2A-103.
"Lessor's residual interest"	G.S. 25-2A-103.
"Letter of credit"	G.S. 25-5-102.
"Merchant"	G.S. 25-2-104.
"Negotiable instrument"	G.S. 25-3-104.
"Nominated person"	G.S. 25-5-102.
"Note"	G.S. 25-3-104.
"Proceeds of a letter of credit"	G.S. 25-5-114.
"Prove"	G.S. 25-3-103.
"Sale"	G.S. 25-2-106.
"Securities account"	G.S. 25-8-501.
"Securities intermediary"	G.S. 25-8-102.
"Security"	G.S. 25-8-102.
"Security certificate"	G.S. 25-8-102.
"Security entitlement"	G.S. 25-8-102.
"Uncertificated security"	G.S. 25-8-102."

SECTION 45. G.S. 25-9-203 (b) reads as rewritten:

"(b) Enforceability. – Except as otherwise provided in subsections (c) through (i) of this section, a security interest is enforceable against the debtor and third parties with respect to the collateral only if:

(1) Value has been given;

(2) The debtor has rights in the collateral or the power to transfer rights in the collateral to a secured party; and

(3) One of the following conditions is met:

a. The debtor has authenticated a security agreement that provides a description of the collateral and, if the security interest covers timber to be cut, a description of the land concerned;

b. The collateral is not a certificated security and is in the possession of the secured party under G.S. 25-9-313 pursuant to the debtor's security agreement;

c. The collateral is a certificated security in registered form and the security certificate has been delivered to the secured party

under G.S. 25-8-301 pursuant to the debtor's security agreement; or

d. The collateral is deposit accounts, electronic chattel paper, investment property, ~~or~~ letter-of-credit rights, or electronic documents, and the secured party has control under G.S. 25-7-106, 25-9-104, 25-9-105, 25-9-106, or 25-9-107 pursuant to the debtor's security agreement."

SECTION 46. G.S. 25-9-207(c) reads as rewritten:

"(c) Rights and duties when secured party in possession or control. – Except as otherwise provided in subsection (d) of this section, a secured party having possession of collateral or control of collateral under G.S. 25-7-106, 25-9-104, 25-9-105, 25-9-106, or 25-9-107:

(1) May hold as additional security any proceeds, except money or funds, received from the collateral;

(2) Shall apply money or funds received from the collateral to reduce the secured obligation, unless remitted to the debtor; and

(3) May create a security interest in the collateral."

SECTION 47. G.S. 25-9-208(b) reads as rewritten:

"(b) Duties of secured party after receiving demand from debtor. – Within 10 days after receiving an authenticated demand by the debtor:

(1) A secured party having control of a deposit account under 25-9-104(a)(2) shall send to the bank with which the deposit account is maintained an authenticated statement that releases the bank from any further obligation to comply with instructions originated by the secured party;

(2) A secured party having control of a deposit account under G.S. 25-9-104(a)(3) shall:

a. Pay the debtor the balance on deposit in the deposit account; or

b. Transfer the balance on deposit into a deposit account in the debtor's name;

(3) A secured party, other than a buyer, having control of electronic chattel paper under G.S. 25-9-105 shall:

a. Communicate the authoritative copy of the electronic chattel paper to the debtor or its designated custodian;

b. If the debtor designates a custodian that is the designated custodian with which the authoritative copy of the electronic chattel paper is maintained for the secured party, communicate to the custodian an authenticated record releasing the designated custodian from any further obligation to comply with instructions originated by the secured party and instructing the custodian to comply with instructions originated by the debtor; and

c. Take appropriate action to enable the debtor or its designated custodian to make copies of or revisions to the authoritative

copy which add or change an identified assignee of the authoritative copy without the consent of the secured party;

(4) A secured party having control of investment property under G.S. 25-8-106(d)(2) or G.S. 25-9-106(b) shall send to the securities intermediary or commodity intermediary with which the security entitlement or commodity contract is maintained an authenticated record that releases the securities intermediary or commodity intermediary from any further obligation to comply with entitlement orders or directions originated by the secured party; ~~and~~

(5) A secured party having control of a letter-of-credit right under G.S. 25-9-107 shall send to each person having an unfulfilled obligation to pay or deliver proceeds of the letter of credit to the secured party an authenticated release from any further obligation to pay or deliver proceeds of the letter of credit to the secured ~~party.~~ party; and

(6) A secured party having control of an electronic document shall:

a. Give control of the electronic document to the debtor or its designated custodian;

b. If the debtor designates a custodian that is the designated custodian with which the authoritative copy of the electronic document is maintained for the secured party, communicate to the custodian an authenticated record releasing the designated custodian from any further obligation to comply with instructions originated by the secured party and instructing the custodian to comply with instructions originated by the debtor; and

c. Take appropriate action to enable the debtor or its designated custodian to make copies of or revisions to the authoritative copy which add or change an identified assignee of the authoritative copy without the consent of the secured party."

SECTION 48. G.S. 25-9-301(3) reads as rewritten:

"(3) Except as otherwise provided in paragraph (4) of this section, while tangible negotiable documents, goods, instruments, money, or tangible chattel paper is located in a jurisdiction, the local law of that jurisdiction governs:

a. Perfection of a security interest in the goods by filing a fixture filing;

b. Perfection of a security interest in timber to be cut; and

c. The effect of perfection or nonperfection and the priority of a nonpossessory security interest in the collateral."

SECTION 49. G.S. 25-9-310(b) reads as rewritten:

"(b) Exceptions: filing not necessary. – The filing of a financing statement is not necessary to perfect a security interest:

(1) That is perfected under G.S. 25-9-308(d), (e), (f), or (g);

(2) That is perfected under G.S. 25-9-309 when it attaches;
(3) In property subject to a statute, regulation, or treaty described in G.S. 25-9-311(a);
(4) In goods in possession of a bailee which is perfected under G.S. 25-9-312(d)(1) or (2);
(5) In certificated securities, documents, goods, or instruments which is perfected without ~~filing~~ filing, control, or possession under G.S. 25-9-312(e), (f), or (g);
(6) In collateral in the secured party's possession under G.S. 25-9-313;
(7) In a certificated security which is perfected by delivery of the security certificate to the secured party under G.S. 25-9-313;
(8) In deposit accounts, electronic chattel paper, electronic documents, investment property, or letter-of-credit rights which is perfected by control under G.S. 25-9-314;
(9) In proceeds which is perfected under G.S. 25-9-315; or
(10) That is perfected under G.S. 25-9-316."

SECTION 50. G.S. 25-9-312(e) reads as rewritten:

"(e) Temporary perfection: new value. – A security interest in certificated securities, negotiable documents, or instruments is perfected without filing or the taking of possession or control for a period of 20 days from the time it attaches to the extent that it arises for new value given under an authenticated security agreement."

SECTION 51. G.S. 25-9-313(a) reads as rewritten:

"(a) Perfection by possession or delivery. – Except as otherwise provided in subsection (b) of this section, a secured party may perfect a security interest in tangible negotiable documents, goods, instruments, money, or tangible chattel paper by taking possession of the collateral. A secured party may perfect a security interest in certificated securities by taking delivery of the certificated securities under G.S. 25-8-301."

SECTION 52. G.S. 25-9-314(a) and (b) read as rewritten:

"(a) Perfection by control. – A security interest in investment property, deposit accounts, letter-of-credit rights, ~~or~~ electronic chattel paper, or electronic documents may be perfected by control of the collateral under G.S. 25-7-106, 25-9-104, 25-9-105, 25-9-106, or 25-9-107.

(b) Specified collateral: time of perfection by control; continuation of perfection. – A security interest in deposit accounts, electronic chattel paper, ~~or~~ letter-of-credit ~~rights~~ rights, or electronic documents is perfected by control under G.S. 25-7-106, 25-9-104, 25-9-105, or 25-9-107 when the secured party obtains control and remains perfected by control only while the secured party retains control."

SECTION 53. G.S. 25-9-317(b) and (d) read as rewritten:

"(b) Buyers that receive delivery. – Except as otherwise provided in subsection (e) of this section, a buyer, other than a secured party, of tangible chattel paper, tangible documents, goods, instruments, or a security certificate takes free of a security interest or agricultural lien if the buyer gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

...

(d) Licensees and buyers of certain collateral. – A licensee of a general intangible or a buyer, other than a secured party, of accounts, electronic chattel paper, electronic documents, general intangibles, or investment property other than a certificated security takes free of a security interest if the licensee or buyer gives value without knowledge of the security interest and before it is perfected."

SECTION 54. G.S. 25-9-338 reads as rewritten:

"**§ 25-9-338. Priority of security interest or agricultural lien perfected by filed financing statement providing certain incorrect information.**

If a security interest or agricultural lien is perfected by a filed financing statement providing information described in G.S. 25-9-516(b)(5) which is incorrect at the time the financing statement is filed:

(1) The security interest or agricultural lien is subordinate to a conflicting perfected security interest in the collateral to the extent that the holder of the conflicting security interest gives value in reasonable reliance upon the incorrect information; and

(2) A purchaser, other than a secured party, of the collateral takes free of the security interest or agricultural lien to the extent that, in reasonable reliance upon the incorrect information, the purchaser gives value and, in the case of tangible chattel paper, tangible documents, goods, instruments, or a security certificate, receives delivery of the collateral."

SECTION 55. G.S. 25-9-601(b) reads as rewritten:

"(b) Rights and duties of secured party in possession or control. – A secured party in possession of collateral or control of collateral under G.S. 25-7-106, 25-9-104, 25-9-105, 25-9-106, or 25-9-107 has the rights and duties provided in G.S. 25-9-207."

SECTION 56. G.S. 25-10-104 is repealed.

SUBPART C. OTHER CONFORMING AMENDMENTS AND REPEALS.

SECTION 57. G.S. 106-451.19 reads as rewritten:

"**§ 106-451.19. Contents of receipts.**

Every receipt issued for cotton stored in a warehouse licensed under this Article shall contain the information required under the United States Warehouse Act, 7 U.S.C. § 214, et seq., and the regulations promulgated thereunder. ~~embody within its written or printed terms:~~

~~(1) The location of the warehouse in which the cotton is stored;~~

~~(2) The date of issue of the receipt;~~

~~(3) The consecutive number of the receipt;~~

~~(4) A statement whether the cotton received will be delivered to the bearer, to a specified person, or to a specified person or his order;~~

~~(5) The rate of storage charges;~~

~~(6) A description of the cotton received, showing the quantity thereof and a description of each bale by mark, number, or other means of identification and the weight of each bale;~~

~~(7) The grade or other classification of the cotton received and the standard or description in accordance with which such classification has been made;~~

~~(8) A statement that the receipt is issued subject to this Article and the rules and regulations prescribed hereunder;~~

~~(9) If the receipt be issued for cotton of which the warehouseman is owner, either solely or jointly or in common with others, the fact of such ownership;~~

~~(10) A statement of the amount of advances made and of liabilities incurred for which the warehouseman claims a lien; and~~

~~(11) Signature of the warehouseman, which may be made by his authorized agent.~~"

SECTION 58.(a) Article 5 of Chapter 27 of the General Statutes is repealed.

SECTION 58.(b) 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.

PART III. MISCELLANEOUS PROVISIONS, DIRECTIONS, AND EFFECTIVE DATE.

SECTION 59. Subparts A and B of Part II of this act apply to a document of title that is issued or a bailment that arises on or after the effective date of this act. Subparts A and B of Part II of this act do not apply to a document of title that is issued or a bailment that arises before the effective date of this act even if the document of title or bailment would be subject to this act if the document of title had been issued or bailment had arisen on or after the effective date of this act. Subparts A and B of Part II of this act do not apply to a right of action that has accrued before the effective date of this act.

SECTION 60. A document of title issued or a bailment that arises before the effective date of this act and the rights, obligations, and interests flowing from that document or bailment are governed by any statute amended or repealed by this act as if amendment or repeal had not occurred and may be terminated, completed, consummated, or enforced under that statute.

SECTION 61. The Revisor of Statutes shall cause to be printed along with this act all relevant portions of the official comments to Uniform Commercial Code Revised Article 1 and Uniform Commercial Code Revised Article 7 and all explanatory comments of the drafters of this act as the Revisor deems appropriate.

SECTION 62. This act becomes effective October 1, 2006.

Attachment V

State of North Carolina
General Statutes
Commission

9001 Mail Service Center
RALEIGH, NORTH CAROLINA
27699-9001

MEMORANDUM
June 14, 2006

TO: House Judiciary I Committee
FROM: General Statutes Commission
RE: **Senate Bill 1555 (Revise Articles 1 and 7 of the UCC)**

General Comments

This bill:

(1) Replaces current Article 1 of Chapter 25 of the General Statutes (Uniform Commercial Code) with Revised Article 1 of the Uniform Commercial Code. Article 1 contains provisions (for example, definitions) that apply throughout the UCC. The revised article reflects the substantial revisions made to other UCC articles over the last 20 years; updates the style; eliminates obsolete provisions; reorganizes in part; and makes clarifying and substantive changes as described below.

(2) Replaces current Article 7 of Chapter 25 with Revised Article 7 of the UCC. Article 7 covers bills of lading and warehouse receipts. The revision primarily reflects changes necessary to accommodate electronic documents.

(3) Makes conforming amendments to other articles in Chapter 25 and to other sections in the General Statutes.

(4) Repeals the obsolete criminal provisions in Article 5 of Chapter 27 of the General Statutes, the former Uniform Warehouse Receipts Act.

Specific Comments

Part I of this bill contains the provisions relating to Revised Article 1.

Subpart A contains Revised Article 1. In addition to the modernizing and stylistic changes noted above, Revised Article 1 contains the following:

Proposed § 25-1-102 expressly limits the scope of Revised Article 1 to transactions that are governed by Chapter 25. This section is intended to prevent the substantive provisions in Article 1 from being improperly applied to a transaction outside the scope of the UCC. The General Statutes Commission added the introductory phrase ("Except as provided in G.S. 25-1-301") to make proposed § 25-1-301's choice of law rules clearly applicable to a transaction that is not subject to Chapter 25 but is governed by the Uniform Commercial Code as enacted in one or more other states with contacts to the transaction, as to which North Carolina law would not apply.

Proposed § 25-1-201(b)(20), the definition of "good faith," has been changed to include the observance of reasonable commercial standards of fair dealing. This definition of "good faith," originally found only in Article 2 (Sales), now already applies in every other article of Chapter 25 except Article 5, which is expressly excluded from the definition in Revised Article 1.

Current G.S. 25-1-206 is not included in Revised Article 1. This section provides a statute of frauds (requirement of a writing) for contracts for the sale of personal property for more than $5,000. Effectively, it only applies to transactions that are outside the scope of Chapter 25.

Proposed § 25-1-303, which is derived from current G.S. 25-1-205, has been expanded to allow evidence of "course of performance" to be used to interpret a contract along with course of dealing and usage of trade. The course of performance provisions are derived from those in Articles 2 and 2A.

Proposed § 25-1-306 is derived from current G.S. 25-1-107, which allows a right or claim arising out of a breach of contract to be discharged without consideration if the aggrieved party agrees in writing. In addition to changes to allow for electronic documents, the revisions to this section clarify the distinction between the act of agreeing and the document or record that memorializes the act.

In addition to the change in proposed § 25-1-102 already noted, the General Statutes Commission made two changes to Revised Article 1:

First, in proposed § 25-1-107, which is equivalent to current G.S. 25-1-109, the Commission brought forward the second sentence of the current section, which provides that subsection catchlines in Article 9 are not part of the law. This sentence was added to current G.S. 25-1-109 in 2000, when Revised Article 9 was enacted in this State. This State's version of Revised Article 9 includes optional subsection catchlines that the National Conference of Commissioners on Uniform State Laws (NCCUSL) provided but did not include in its "official" Revised Article 9. The inclusion of the optional subsection catchlines necessitated the 2000 amendment to G.S. 25-1-109, and bringing the sentence forward preserves this amendment.

Second, in proposed § 25-1-301, the General Statutes Commission decided to recommend retention of current Article 1's choice of law provision (current G.S. 25-1-105) rather than enactment of Revised Article 1's choice of law provision. The new choice of law provision has been widely opposed nationally. In this State, the North Carolina Bankers Association has expressed opposition. No state that has enacted Revised Article 1 has included the new choice of law provision; rather, states are retaining the former provision. Because of (i) the desirability of uniformity with other states and (ii) expressed opposition to the new provision, the Commission concluded that retaining the current law was the better choice at this time.

Subparts B and C contain conforming amendments to other articles of Chapter 25 and to other sections in the General Statutes, respectively, needed as a result of Revised Article 1.

Part II of this bill contains the provisions relating to Revised Article 7.

Subpart A contains Revised Article 7. The revision includes updating style, organization, and terminology and eliminating obsolete provisions, for example, those relating to certain tariffs and classifications that date back to the time the transportation industry was heavily regulated and no longer apply. Changes made by Revised Article 7 also include:

Proposed § 25-7-102, the definitions section, includes some new definitions ("carrier," "record," "sign," and "shipper") and revises other definitions to take electronic documents into account (for example, in the definition of "delivery order," the reference to "written order" is changed to "record") and to update the style (for example, "warehouseman" is changed to the more gender neutral "warehouse").

Proposed § 25-7-103 contains an express provision in subsection (d) that Revised Article 7 governs if there is a conflict between it and Article 40 of Chapter 66 of the General Statutes (Uniform Electronic Transactions Act).

Proposed § 25-7-104 has been revised to make it clearer when a bill of lading or warehouse receipt is negotiable and when it is nonnegotiable.

Current G.S. 25-7-105, on interpreting Article 7, was omitted as no longer needed, because the revision of Article 7 has clarified when provisions apply to warehouse receipts but not bills of lading and vice versa. Proposed § 25-7-105 contains provisions allowing a bill of lading or a warehouse receipt to be issued in one medium and reissued in another, for example, initially issued as a paper document and reissued as an electronic document.

Proposed § 25-7-106 is new. For electronic bills of lading and warehouse receipts, Revised Article 7 substitutes the concept of control of an electronic document in place of the concept of indorsement and possession that applies with respect to a written document of title. Where a person with a written document of title delivers the document by voluntarily transferring possession, a person with an electronic document of title delivers the document by voluntarily transferring control. This section defines "control" in a way that is derived from the Uniform Electronic Transactions Act's provisions on transferrable records. A person has control of an electronic document if the system used to transfer the electronic document establishes that person as the only person who has the interests referenced in the document, for example, the system identifies this person as the person to whom the document was issued, permits only one authoritative copy to exist at a time, will permit only proper changes to be made to the document, (e.g., an assignment), and will not allow anyone else to make these changes.

Proposed § 25-7-204 deals with a warehouse's statutory duty of care and its ability to limit its damages. In Revised Article 7, this section is changed so that a limit on damages in a warehouse receipt no longer has to be set out per item. Subsection (d) brings forward current G.S. 25-7-204(4) specifying that the section does not invalidate any statute that places a greater responsibility on a warehouse than this section.

Proposed § 25-7-209 is expanded to allow a warehouse to claim a lien under a storage agreement as well as under a warehouse receipt.

Proposed § 25-7-307 expands a carrier's lien to apply to proceeds of goods when the proceeds are in the carrier's possession.

Subpart B contains conforming amendments to other articles of Chapter 25 that are needed as a result of Revised Article 7.

Subpart C contains amendments to other parts of the General Statutes recommended as a result of Revised Article 7:

Section 57 amends G.S. 106-451.19 (contents of cotton warehouse receipts) to update the language of that section by requiring that the contents of such a receipt conform to the United States Warehouse Act, 7 U.S.C. § 214 et seq.

Section 58 repeals Article 5 of Chapter 27 as obsolete. Chapter 27 is the former Uniform Warehouse Receipts Act, a predecessor to Article 7 of the UCC. Article 5 of Chapter 27 contains various criminal provisions relating to fraud and deceptive practices in connection with warehouse receipts. The former Uniform Warehouse Receipts Act was enacted in this State before the creation of the General Statutes in 1943, and the criminal provisions in Article 5 have not been amended since that time. Except for Article 5, Chapter 27 was repealed when the UCC was first enacted in this State in 1965. At that time, Article 5 was left intact, contrary to NCCUSL's recommendation either to repeal it as duplicating the general criminal law on frauds or to recodify it into the general criminal law. It appears that no one has been charged under any of the sections in Article 5 for decades. The offenses contained in Article 5 have never been classified for sentencing purposes. The General Statutes Commission is informed by the North Carolina Conference of District Attorneys that the Article is no longer needed and can be repealed.

Part III contains applicability provisions for Revised Article 7 and sets the effective date as October 1, 2006. Generally speaking, the revision of Article 7 applies to bills of lading and warehouse receipts issued after the effective date. Part III also authorizes the Revisor of Statutes to print official and drafters' comments.

Attachment VI

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative Hackney (Chair) for the Committee on JUDICIARY I.

☒Committee Substitute for
SB 1555 A BILL TO BE ENTITLED AN ACT TO ENACT REVISED ARTICLE 1 OF THE UNIFORM COMMERCIAL CODE CONTAINING GENERAL PROVISIONS APPLICABLE TO THE ENTIRE CODE, TO MAKE CONFORMING AMENDMENTS TO OTHER ARTICLES OF THE UNIFORM COMMERCIAL CODE AND OTHER SECTIONS OF THE GENERAL STATUTES, TO ENACT REVISED ARTICLE 7 OF THE UNIFORM COMMERCIAL CODE RELATING TO WAREHOUSE RECEIPTS AND BILLS OF LADING, TO MAKE CONFORMING AMENDMENTS TO OTHER ARTICLES OF THE UNIFORM COMMERCIAL CODE AND OTHER SECTIONS OF THE GENERAL STATUTES, AND TO REPEAL OBSOLETE CRIMINAL PROVISIONS OF THE FORMER UNIFORM WAREHOUSE RECEIPTS ACT, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

_____ Pursuant to Rule 36(b), the bill/resolution is placed on the Calendar of _____.

Attachment VII

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 2

SENATE BILL 1378*

Judiciary II Committee Substitute Adopted 6/14/06

Short Title: Amend the Forfeiture of Property Rights Law. (Public)

Sponsors:

Referred to:

May 16, 2006

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW RELATING TO THE FORFEITURE OF PROPERTY RIGHTS BY SLAYERS, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 31A-3 reads as rewritten:

"**§ 31A-3. Definitions.**

As used in this Article, unless the context otherwise requires, the term –

(1) "Decedent" means the person whose life is taken by the slayer as defined in subdivision ~~(3).~~ (3) of this section.

(2) "Property" means any real or personal property and any right or interest therein.

(3) "Slayer" means any of the following:

a. ~~Any~~ A person ~~who~~ who, by a court of competent ~~jurisdiction~~ jurisdiction, ~~shall have been~~ is convicted as a principal or accessory before the fact of the willful and unlawful killing of another ~~person; or~~ person.

b. ~~Any~~ A person who ~~shall have~~ has entered a plea of guilty in open court as a principal or accessory before the fact of the willful and unlawful killing of another ~~person; or~~ person.

c. ~~Any~~ A person who, upon indictment or information as a principal or accessory before the fact of the willful and unlawful killing of another person, ~~shall have~~ has tendered a plea of nolo contendere which was accepted by the court and judgment entered ~~thereon; or~~ thereon.

d. ~~Any person who shall have been found in a civil action or proceeding brought within one year after the death of the decedent to have willfully and unlawfully killed the decedent or procured his killing, and who shall have died or committed~~

~~suicide before having been tried for the offense and before the settlement of the estate.~~ A person who is found by a preponderance of the evidence in a civil action brought within two years after the death of the decedent to have willfully and unlawfully killed the decedent or procured the killing of the decedent. If a criminal proceeding is brought against the person to establish the person's guilt as a principal or accessory before the fact of the willful and unlawful killing of the decedent within two years after the death of the decedent, the civil action may be brought within 90 days after a final determination is made by a court of competent jurisdiction in that criminal proceeding or within the original two years after the death of the decedent, whichever is later. The burden of proof in the civil action is on the party seeking to establish that the killing was willful and unlawful for the purposes of this Article.

e. A juvenile who is adjudicated delinquent by reason of committing an act that, if committed by an adult, would make the adult a principal or accessory before the fact of the willful and unlawful killing of another person.

The term "slayer" does not include a person who is found not guilty by reason of insanity of being a principal or accessory before the fact of the willful and unlawful killing of another person."

SECTION 2. Article 3 of Chapter 31A of the General Statutes is amended by adding a new section to read:

"**§ 31A-12.1. Remedies to be exclusive.**

This Article wholly supplants the common law rule preventing a person whose culpable negligence causes the death of a decedent from succeeding to any property passing by reason of the death of the decedent."

SECTION 3. This act is effective when it becomes law and applies to property passing from decedents dying on or after that date.

Attachment VIII

State of North Carolina
General Statutes
Commission

9001 Mail Service Center
RALEIGH, NORTH CAROLINA
27699-9001

MEMORANDUM
June 21, 2006

TO: House Judiciary I Committee
FROM: General Statutes Commission
RE: **Senate Bill 1378 (Amend the Forfeiture of Property Rights Law)**

This bill amends Article 3 of Chapter 31A of the General Statutes, the "slayer" statute, which bars a person from taking property by reason of the death of the decedent if that person is adjudicated to have willfully and unlawfully killed or procured the killing of the decedent. A "slayer" is treated as having predeceased the decedent for purposes of property disposition.

Section 1 amends the definition of "slayer" in G.S. 31A-3(3):

(1) To include a person who is found by a preponderance of the evidence in a civil action brought within two years after the death of the decedent to have willfully and unlawfully killed the decedent or procured the killing. The two-year period is tolled by any criminal action. Currently, the civil action must be brought within one year of the death of the decedent and may only be brought if the alleged slayer dies before being tried for the killing and before settlement of the decedent's estate. The amendment also clarifies that the burden of proof is on the party seeking to establish that the killing was willful and unlawful.

(2) To include a juvenile who is adjudicated delinquent by reason of committing an act that, if committed by an adult, would make the adult a principal or accessory before the fact of the willful and unlawful killing of another person.

(3) To clarify that the term "slayer" excludes a person who is found not guilty by reason of insanity of being a principal or accessory before the fact of the willful and unlawful killing of another person.

(4) To make minor stylistic changes.

Section 2 adds a new § 31A-12.1 to expressly provide that Article 3 wholly replaces the common law rule preventing a person whose culpable negligence causes the death of a decedent from succeeding to any property passing by reason of the death of the decedent (as a result of the holding in Quick v. United Benefit Life Ins. Co., 287 N.C. 47, 213 S.E.2d 563 (1975), which is inconsistent with decisions in other states). Accordingly, a conviction for involuntary manslaughter would not result in a forfeiture of property rights.

Section 3 provides that the act is effective when it becomes law and applies to property passing from decedents dying on or after that date.

Attachment IX

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative Hackney (Chair) for the Committee on JUDICIARY I.

☒Committee Substitute for
SB 1378 A BILL TO BE ENTITLED AN ACT TO AMEND THE LAW RELATING TO THE FORFEITURE OF PROPERTY RIGHTS BY SLAYERS, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

_____ Pursuant to Rule 36(b), the bill/resolution is placed on the Calendar of _____.

Attachment X

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

S 1

SENATE BILL 1485*

Short Title:	Occupational Licensing Board Reports.	(Public)
Sponsors:	Senators Nesbitt, Kerr, Stevens, Webster; Bland, Dorsett, Hartsell, Purcell, and Snow.	
Referred to:	Judiciary I.	

May 18, 2006

A BILL TO BE ENTITLED

AN ACT TO REQUIRE OCCUPATIONAL LICENSING BOARDS TO ANNUALLY REPORT CERTAIN INFORMATION TO THE JOINT LEGISLATIVE ADMINISTRATIVE PROCEDURE OVERSIGHT COMMITTEE, AS RECOMMENDED BY THE JOINT LEGISLATIVE ADMINISTRATIVE PROCEDURE OVERSIGHT COMMITTEE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 93B-2 reads as rewritten:

"**§ 93B-2. Annual reports required; contents; open to inspection.**

(a) Each occupational licensing board shall file with the Secretary of ~~State and with the Attorney General an annual financial report, and~~State, the Attorney General, and the Joint Legislative Administrative Procedure Oversight Committee an annual report containing all of the following information:

(1) The address of the board, and the names of its members and ~~officers;~~officers.

(2) The number of persons who applied to the board for ~~examination;~~examination.

(3) The number who were refused ~~examination;~~examination.

(4) The number who took the ~~examination;~~examination.

(5) The number to whom initial licenses were ~~issued;~~issued.

(6) The number who applied for license by reciprocity or ~~comity;~~comity.

(7) The number who were granted licenses by reciprocity or ~~comity;~~comity.

(8) The number of licenses suspended or ~~revoked; and~~revoked.

(9) The number of licenses terminated for any reason other than failure to pay the required renewal fee.

(10) The substance of any anticipated request by the occupational licensing board to the General Assembly to amend statutes related to the occupational licensing board.

(11) The substance of any anticipated change in rules adopted by the occupational licensing board or the substance of any anticipated adoption of new rules by the occupational licensing board.

(b) Each occupational licensing board shall file with the Secretary of State, the Attorney General, and the Joint Legislative Administrative Procedure Oversight Committee a financial report that includes the source and amount of all funds credited to the occupational licensing board and the purpose and amount of all funds disbursed by the occupational licensing board during the previous 12-month period.

(c) The reports required by this section shall be open to public inspection."

SECTION 2. This act becomes effective July 1, 2006. The first reports required by G.S. 93B-2, as amended by Section 1 of this act, are due no later than July 1, 2007.

Attachment XI

SENATE BILL 1485:
Occupational Licensing Board Reports

BILL ANALYSIS

Committee:	House Judiciary I	**Date:**	June 29, 2006
Introduced by:	Sen. Nesbitt	**Summary by:**	Karen Cochrane-Brown
Version:	First Edition		Staff Attorney

SUMMARY: Senate Bill 1485 is a recommendation of the Joint Legislative Administrative Procedure Oversight Committee and requires each occupational licensing board to file an annual report including a financial report with the Joint Legislative Administrative Procedure Oversight Committee.

CURRENT LAW: Under current G.S. 93B-2, each occupational licensing board must file an annual report and an annual financial report with the Secretary of State and with the Attorney General.

BILL ANALYSIS: Senate Bill 1485 would add the Joint Legislative Administrative Procedure Oversight Committee to the entities to which each occupational licensing board must file an annual report and an annual financial report. The legislative proposal would add to the information that must be contained in the annual report the substance of any anticipated request by the occupational licensing board to the General Assembly to amend statutes related to the occupational licensing board and the substance of any anticipated change in rules adopted by the occupational licensing board or the substance of any anticipated adoption of new rules by the occupational licensing board. The legislative proposal would require that the annual financial report include the sources and amount of all funds credited to the occupational licensing board and the purpose and amount of all funds disbursed by the occupational licensing board during the previous 12-month period.

EFFECTIVE DATE: This legislative proposal would become effective July 1, 2006. The first reports would be due no later than July 1, 2007.

S1485e1-SMRO

Attachment XII

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative Hackney (Chair) for the Committee on JUDICIARY I.

☐ Committee Substitute for
SB 1485 A BILL TO BE ENTITLED AN ACT TO REQUIRE OCCUPATIONAL LICENSING BOARDS TO ANNUALLY REPORT CERTAIN INFORMATION TO THE JOINT LEGISLATIVE ADMINISTRATIVE PROCEDURE OVERSIGHT COMMITTEE, AS RECOMMENDED BY THE JOINT LEGISLATIVE ADMINISTRATIVE PROCEDURE OVERSIGHT COMMITTEE.

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

_____ Pursuant to Rule 36(b), the bill/resolution is placed on the Calendar of _____.

Attachment XIII

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 1479*

Short Title:	Uniform Unincorporated Nonprofit Assoc. Act.	(Public)
Sponsors:	Senators Hagan and Hartsell.	
Referred to:	Judiciary II.	

May 18, 2006

A BILL TO BE ENTITLED

AN ACT TO ENACT THE UNIFORM UNINCORPORATED NONPROFIT ASSOCIATION ACT, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. The General Statutes are amended by adding a new Chapter to read:

"**Chapter 59B.**

"**Uniform Unincorporated Nonprofit Association Act.**

"**§ 59B-1. Short title.**

This Chapter may be cited as the Uniform Unincorporated Nonprofit Association Act.

"**§ 59B-2. Definitions.**

In this Chapter:

(1) "Member" means a person who, under the rules or practices of a nonprofit association, may participate in the selection of persons authorized to manage the affairs of the nonprofit association or in the development of policy of the nonprofit association.

(2) "Nonprofit association" means an unincorporated organization, other than one created by a trust and other than a limited liability company, consisting of two or more members joined by mutual consent for a common, nonprofit purpose. However, joint tenancy, tenancy in common, or tenancy by the entireties does not by itself establish a nonprofit association, even if the co-owners share use of the property for a nonprofit purpose.

(3) "Person" means an individual, corporation, limited liability company, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(4) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States.

"**§ 59B-3. Supplementary general principles of law and equity.**

Principles of law and equity supplement this Chapter unless displaced by a particular provision of it.

"**§ 59B-4. Title to property; choice of law.**

Real and personal property in this State may be acquired, held, encumbered, and transferred by a nonprofit association, whether or not the nonprofit association or a member has any other relationship to this State.

"**§ 59B-5. Real and personal property; nonprofit association as legatee, devisee, or beneficiary.**

(a) A nonprofit association is a legal entity separate from its members for the purposes of acquiring, holding, encumbering, and transferring real and personal property.

(b) A nonprofit association, in its name, may acquire, hold, encumber, or transfer an estate or interest in real or personal property.

(c) A nonprofit association may be a beneficiary of a trust or contract, a legatee, or a devisee.

(d) Any judgments and executions against a nonprofit association bind its real and personal property in like manner as if it were incorporated.

"**§ 59B-6. Statement of authority as to real property.**

(a) A nonprofit association may execute and record a statement of authority to transfer an estate or interest in real property in the name of the nonprofit association.

(b) An estate or interest in real property in the name of a nonprofit association may be transferred by a person so authorized in a statement of authority recorded in the office of the register of deeds in the county in which a transfer of the property would be recorded.

(c) A statement of authority must be set forth in a document styled "affidavit" that contains all of the following:

(1) The name of the nonprofit association.

(2) Reserved for future codification purposes.

(3) The street address, and the mailing address if different from the street address, of the nonprofit association, and the county in which it is located, or, if the nonprofit association does not have an address in this State, its address out-of-state.

(4) That the association is an unincorporated nonprofit association.

(5) The name or office of a person authorized to transfer an estate or interest in real property held in the name of the nonprofit association.

(6) That the association has duly authorized the member or agent executing the statement to do so.

(d) A statement of authority must be sworn to and subscribed in the same manner as an affidavit by a member or agent who is not the person authorized to transfer the estate or interest.

(e) The register of deeds shall collect a fee for recording a statement of authority in the amount authorized by G.S. 161-10(a)(1). The register of deeds shall index the name of the nonprofit association and the member or agent signing the statement of authority or any subsequent document relating thereto as Grantor and the name of the appointee as Grantee.

(f) An amendment, including a termination, of a statement of authority must meet the requirements for execution and recording of an original statement. Unless terminated earlier, a recorded statement of authority or its most recent amendment expires by operation of law five years after the date of the most recent recording.

(g) If the record title to real property is in the name of a nonprofit association and the statement of authority is recorded in the office of the register of deeds in the county in which a transfer of real property would be recorded, the authority of the person or officer named in a statement of authority is conclusive in favor of a person who gives value without notice that the person or officer lacks authority.

"**§ 59B-7. Liability of members or other persons.**

(a) A nonprofit association is a legal entity separate from its members for the purposes of determining and enforcing rights, duties, and liabilities.

(b) A person is not liable for the contract, tort, or other obligations of a nonprofit association merely because the person is a member, is authorized to participate in the management of the affairs of the nonprofit association, or is referred to as a "member" by the nonprofit association.

(c) Reserved for future codification purposes.

(d) A tortious act or omission of a member or other person for which a nonprofit association is liable is not imputed to a person merely because the person is a member of the nonprofit association, is authorized to participate in the management of the affairs of the nonprofit association, or is referred to as a "member" by the nonprofit association.

(e) A member of, or a person referred to as a "member" by, a nonprofit association may assert a claim against or on behalf of the nonprofit association. A nonprofit association may assert a claim against a member or a person referred to as a "member" by the nonprofit association.

"**§ 59B-8. Capacity to assert and defend; standing.**

(a) A nonprofit association, in its name, may institute, defend, intervene, or participate in a judicial, administrative, or other governmental proceeding or in an arbitration, mediation, or any other form of alternative dispute resolution.

(b) A nonprofit association may assert a claim in its name on behalf of its members or persons referred to as "members" by the nonprofit association if one or more of them have standing to assert a claim in their own right, the interests the nonprofit association seeks to protect are germane to its purposes, and neither the claim asserted nor the relief requested requires the participation of a member or a person referred to as a "member" by the nonprofit association.

"**§ 59B-9. Effect of judgment or order.**

A judgment or order against a nonprofit association is not by itself a judgment or order against a member, a person referred to as a "member" by the nonprofit

association, or a person authorized to participate in the management of the affairs of the nonprofit association.

"**§ 59B-10. Disposition of personal property of inactive nonprofit association.**

If a nonprofit association has been inactive for three years or longer, or a different period specified in a document of the nonprofit association, a person in possession or control of personal property of the nonprofit association may transfer custody of the property:

(1) If a document of the nonprofit association or document of gift specifies a person to whom transfer is to be made under these circumstances, to that person; or

(2) If no person is so specified, to a nonprofit association, nonprofit corporation, or other nonprofit entity pursuing broadly similar purposes, or to a government or governmental subdivision, agency, or instrumentality.

"**§ 59B-11. Appointment of agent to receive service of process.**

(a) A nonprofit association may file in the office of the Secretary of State a statement appointing an agent authorized to receive service of process, notice, or demand required or permitted by law to be served on a nonprofit association.

(b) A statement appointing an agent must set forth all of the following:

(1) The name of the nonprofit association.

(2) Reserved for future codification purposes.

(3) The street address, and the mailing address if different from the street address, of the nonprofit association, and the county in which it is located, or, if the nonprofit association does not have an address in this State, its address out-of-state.

(4) The name of the person in this State authorized to receive service of process and the person's address, including the street address, in this State.

(c) A statement appointing an agent must be signed and acknowledged by a person authorized to manage the affairs of a nonprofit association. The statement must also be signed and acknowledged by the person appointed agent, who thereby accepts the appointment. The appointed agent may resign by filing a resignation in the office of the Secretary of State and giving written notice to the nonprofit association at its last known address.

(d) The sole duty of the appointed agent to the nonprofit association is to forward to the nonprofit association at its last known address any notice, process, or demand that is served on the appointed agent.

(e) The Secretary of State is not an agent for service of any process, notice, or demand on any nonprofit association.

(f) The Secretary of State shall collect the following fees when the documents described in this subsection are delivered to the Secretary of State for filing:

	Document	Fee
(1)	Statement appointing an agent to receive service of process	$5.00
(2)	Amendment of statement appointing an agent	5.00

(3) Cancellation of statement appointing an agent 5.00
(4) Agent's statement of resignation No fee

(g) An amendment to or cancellation of a statement appointing an agent to receive service of process must meet the requirements for execution of an original statement.

"**§ 59B-12. Claim not abated by change.**

A claim for relief against a nonprofit association does not abate merely because of a change in its members or persons authorized to manage the affairs of the nonprofit association.

"**§ 59B-13. Venue.**

For purposes of venue, a nonprofit association is a resident of a county in which it has an office or maintains a place of operation or, if on due inquiry no office or place of operation can be found, in which any officer resides.

"**§ 59B-14. Uniformity of application and construction.**

This Chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this Chapter among states enacting it."

SECTION 2.(a) G.S. 39-24 and G.S. 39-25 are repealed.

SECTION 2.(b) G.S. 39-26 and G.S. 39-27 are recodified as G.S. 59B-15(a) and (b), respectively. As recodified by this act, G.S. 59B-15 reads as rewritten:

"**§ 59B-15. Effect as to conveyances by ~~trustees.~~ trustees; prior deeds validated.**

(a) Nothing in this ~~Article shall be deemed in any manner to change~~ Chapter changes the law with reference to the holding and conveyance of land by the trustees of churches ~~or other voluntary organizations~~ under Chapter 61 of the General Statutes where ~~such~~ the land is conveyed to and held by ~~such~~ the trustees.

(b) All deeds ~~heretofore~~ executed ~~in conformity with this Article~~ before the effective date of this Chapter in conformity with former G.S. 39-24 and former G.S. 39-25 are declared to be sufficient to pass title to real ~~estate held by such organizations.~~ estate."

SECTION 3. G.S. 1-69.1 reads as rewritten:

"**§ 1-69.1. Unincorporated associations and partnerships; suit by or against.**

(a) Except as provided in subsection (b) of this section:

(1) All unincorporated associations, organizations or societies, or general or limited partnerships, foreign or domestic, whether organized for profit or not, may hereafter sue or be sued under the name by which they are commonly known and called, or under which they are doing business, to the same extent as any other legal entity established by law and without naming any of the individual members composing it.

(2) Any judgments and executions against any such association, organization or society shall bind its real and personal property in like manner as if it were incorporated.

(3) Any unincorporated association, organization, society, or general partnership bringing a suit in the name by which it is commonly known and called must allege the specific location of the recordation required by G.S. 66-68.

(b) Unincorporated nonprofit associations are subject to Chapter 59B of the General Statutes and not this section."

SECTION 4. G.S. 47C-3-101 reads as rewritten:

"**§ 47C-3-101. Organization of unit owners' association.**

A unit owners' association shall be organized no later than the date the first unit in the condominium is conveyed. The membership of the association at all times shall consist exclusively of all the unit owners, or following termination of the condominium, of all persons entitled to distributions of proceeds under G.S. 47C-2-118. The association shall be organized as a profit or nonprofit corporation or as an unincorporated nonprofit association."

SECTION 5. If any provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect any other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

SECTION 6. This act does not affect an action or proceeding commenced or right accrued before this act takes effect.

SECTION 7. The Revisor of Statutes shall cause to be printed along with this act all relevant portions of the official comments to the Uniform Unincorporated Nonprofit Association Act and all explanatory comments of the drafters of this act as the Revisor deems appropriate.

SECTION 8. This act becomes effective January 1, 2007.

Attachment XIV

State of North Carolina
General Statutes
Commission

9001 Mail Service Center
RALEIGH, NORTH CAROLINA
27699-9001

MEMORANDUM
June 29, 2006

TO: House Judiciary I Committee
FROM: General Statutes Commission
RE: **Senate Bill 1479 (Uniform Unincorporated Nonprofit Assoc. Act)**

General Comments

This bill enacts a North Carolina version of the Uniform Unincorporated Nonprofit Associations Act (UUNAA) as a new Chapter 59B of the General Statutes and makes conforming amendments to other parts of the General Statutes. In brief summary, UUNAA:

- Incorporates in one act statutory law dealing with unincorporated nonprofit associations with respect to holding property and legal obligations.
- Treats unincorporated nonprofit associations as legal entities with respect to legal obligations, including provision for limitations on liability, holding property, and standing to sue and be sued.
- Provides a procedure for disposing of the property of a defunct association.
- Permits the designation of an agent for service of process.

UUNAA does not contain provisions concerning the governance of unincorporated nonprofit associations.

Specific Comments

Section 1 enacts a version of UUNAA as a new Chapter 59B of the General Statutes.

Proposed § 59B-1 has the title ("Uniform Unincorporated Nonprofit Association Act").

Proposed § 59B-2 is a definitions section. Key terms include "member" (person who may participate in the selection of managers or in policy development) and "nonprofit association" (unincorporated organization of two or more members joined by mutual consent for a common, nonprofit purpose; excludes trusts and limited liability companies).

Proposed § 59B-3 provides for supplementation of UUNAA by principles of law and equity.

Proposed § 59B-4 expressly authorizes a nonprofit association to hold real or personal property in this State, regardless of whether it or its members have any relationship to this State.

Subsection (a) of proposed § 59B-5 is new; it provides for a nonprofit association to be treated as a legal entity separate from its members for purposes of holding and dealing with its property. Subsections (b) and (c), consistent with current law, allows a nonprofit association to hold property in its association name and to be the beneficiary of a trust, will, or contract. Subsection (d) (judgment binds property as if association were incorporated) is not in the Uniform Act. It effectively brings forward the last sentence of current G.S. 1-69.1.

Proposed § 59B-6 is new. It permits a nonprofit association to record a statement of authority setting out who may transfer real property in the nonprofit association's name. The section describes the content, form (affidavit), and execution required for a statement of authority and provides for amendments and termination. A statement of authority expires by operation of law five years after the most recent recording. Proposed § 59B-6 also requires a statement of authority to be recorded in the county in which the real property is located and requires the register of deeds to collect the fees authorized by G.S. 161-10(a)(1) (instruments in general). Finally, subsection (g) protects a good faith purchaser for value who purchases a nonprofit association's real property from the person or officer named in a statement of authority.

Proposed § 59B-7 is new. Subsection (a) treats a nonprofit association as a legal entity separate from its members for the purposes of determining and enforcing rights, duties, and liabilities. The next two subsections provide that a person is not liable for the contract, tort or other obligations of a nonprofit association, and that a tortious act or omission is not imputed from one person to another, merely because the person is a member, is authorized to participate in the management of the affairs of the nonprofit association, or is referred to as a "member" by the nonprofit association. Subsection (e) allows a member or a person referred to as a "member" to assert a claim against a nonprofit association, and vice versa.

Subsection (a) of proposed § 59B-8 continues the current law allowing nonprofit associations to sue and be sued in their association name. Subsection (b) codifies U.S. Supreme Court case law standing requirements for a nonprofit association to bring a suit on behalf of its members and persons it refers to as members.

Proposed § 59B-9 provides that a judgment or order against a nonprofit association is not by itself a judgment or order against a member or person referred to as "member" by the nonprofit association, consistent with proposed § 59B-7.

Proposed § 59B-10 is new. It provides a statutory procedure for disposing of a defunct nonprofit association's personal property. If the nonprofit association has been inactive for three years or more, the provision authorizes a person who has possession of personal property belonging to the association to give the property to another nonprofit entity or to a government. This is a default provision; the nonprofit association may include a different minimum inactive period, name a taker for its property, or both, in appropriate documents.

Proposed § 59B-11 is new. It permits a nonprofit association to appoint an agent for service of process. A statement appointing a process agent must be filed in the office of the Secretary of State. The requirements for the statement's contents and for filing are similar to those in Chapter 55D for nonprofit corporate and business entities, except that a statement under

this section is required to be acknowledged by a manager of the nonprofit association and by the process agent. The filing fees are the same as those for similar documents filed by nonprofit corporations and business entities. Subsection (e) expressly provides that the Secretary of State is not a default process agent for nonprofit associations.

Proposed § 59B-12 provides that a claim for relief against a nonprofit association does not abate (go away) because its members or the persons authorized to manage its affairs change.

Proposed § 59B-13 provides that, for venue purposes, a nonprofit association is a resident of a county in which it has an office or place of operation, or if none, where an officer resides.

Proposed § 59B-14 is the standard provision on uniformity in interpretation and application.

Section 2 deals with the current statutory law on ownership of real property by nonprofit unincorporated associations, found in Article 4 of Chapter 39. Subsection 2(a) repeals G.S. 39-24 and G.S. 39-25 as no longer necessary. Subsection 2(b) recodifies G.S. 39-26 and G.S. 39-27 as new § 59B-15(a) and (b), respectively. Subsection 2(b) then amends new § 59B-15 to make conforming amendments and to update the style. New § 59B-15(b) is a validating provision; subsection 2(b) expands this provision to validate any deeds executed in conformity with G.S. 39-24 and G.S. 39-25 before their repeal.

Sections 3 and 4 make conforming amendments to G.S. 1-69.1 and G.S. 47C-3-101, respectively.

Section 5 is a severability clause.

Section 6 is a savings clause for rights accrued and actions or proceedings begun before the effective date.

Section 7 authorizes the Revisor of Statutes to print official and drafters' comments.

Section 8 provides an effective date of January 1, 2007.

For more information, see the General Statutes Commission's REPORT TO THE 2005 GENERAL ASSEMBLY OF NORTH CAROLINA, 2006 REGULAR SESSION, ON THE STUDY OF THE UNIFORM UNINCORPORATED NONPROFIT ASSOCIATION ACT.

House Judiciary I Committee

June 30, 2006
11:15 a.m.

Minutes

The House Judiciary I Committee met on Friday, June 30, 2006 at 11:15 p.m. in Room 1228 of the Legislative Building. Vice Chair Deborah Ross called the meeting to order and the following members were present: Representatives Capps, Goodwin, Harrison, Insko, Ross and Stiller.

Under consideration by the Committee was Senate Bill 1991, AN ACT TO PROVIDE BALANCE AMONG THE COUNTIES IN THE RESIDENCY OF DISTRICT COURT JUDGES IN DISTRICT COURT DISTRICT 13 AND TO DIVIDE SUPERIOR COURT DISTRICT 13, (Attachment I).

Representative Stiller was recognized to explain the bill. He noted that District 13 is comprised of Bladen, Brunswick and Columbus Counties. He said that Brunswick County had grown so significantly that it now exceeded the population of the other two combined. He said that the bill would make Brunswick County its own district for Superior Court and for District Court and would have no effect on the District Attorneys' office. A bill analysis prepared by Ms. Erika Churchill, Committee Counsel, is attached, (Attachment II).

Representative Capps moved that the bill be given a favorable report. The motion carried, (Attachment III).

The meeting was adjourned at 11:30 a.m.

Representative Deborah Ross
Vice Chair

Emily Reynolds Freeman
Committee Clerk

Attachment I

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 2

SENATE BILL 1991

Judiciary I Committee Substitute Adopted 6/26/06

Short Title: District 13 County Resident Judgeships. (Public)

Sponsors:

Referred to:

May 26, 2006

A BILL TO BE ENTITLED

AN ACT TO PROVIDE BALANCE AMONG THE COUNTIES IN THE RESIDENCY OF DISTRICT COURT JUDGES IN DISTRICT COURT DISTRICT 13 AND TO DIVIDE SUPERIOR COURT DISTRICT 13.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-133 is amended by adding a new subsection to read:

"(b2) The qualified voters of District Court District 13 shall elect all six judges established for the District in subsection (a) of this section, but only persons who reside in Bladen County may be candidates for one of those judgeships, only persons who reside in Columbus County may be candidates for one of those judgeships, and only persons who reside in Brunswick County may be candidates for two of those judgeships. The district court judgeship established for residents of Bladen County by this subsection shall be the judgeship currently held by Judge Phillips, who resides in Bladen County. The district court judgeship established for residents of Columbus County by this subsection shall be the judgeship currently held by Judge Jolly, who resides in Columbus County. The district court judgeships established for residents of Brunswick County by this subsection shall be the judgeships currently held by Judge Barefoot and Judge Warren, who reside in Brunswick County. Those judges' successors shall be elected for four-year terms in the 2008 general election. Candidates for the remaining judgeships in District 13 may be residents of any county within the district."

SECTION 2. G.S. 7A-41(a) reads as rewritten:

"(a) The counties of the State are organized into judicial divisions and superior court districts, and each superior court district has the counties, and the number of regular resident superior court judges set forth in the following table, and for districts of less than a whole county, as set out in subsection (b) of this section:

Judicial Division	Superior Court District	Counties	No. of Resident Judges

First	1	Camden, Chowan, Currituck, Dare, Gates, Pasquotank, Perquimans	2
First	2	Beaufort, Hyde, Martin, Tyrrell, Washington	1
First	3A	Pitt	2
Second	3B	Carteret, Craven, Pamlico	3
Second	4A	Duplin, Jones, Sampson	1
Second	4B	Onslow	1
Second	5A	(part of New Hanover, part of Pender see subsection (b))	1
	5B	(part of New Hanover, part of Pender see subsection (b))	1
	5C	(part of New Hanover, see subsection (b))	1
First	6A	Halifax	1
First	6B	Bertie, Hertford, Northampton	1
First	7A	Nash	1
First	7B	(part of Wilson, part of Edgecombe, see subsection (b))	1
First	7C	(part of Wilson, part of Edgecombe, see subsection (b))	1
Second	8A	Lenoir and Greene	1
Second	8B	Wayne	1
Third	9	Franklin, Granville, Vance, Warren	2
Third	9A	Person, Caswell	1
Third	10A	(part of Wake, see subsection (b))	2
Third	10B	(part of Wake, see subsection (b))	2
Third	10C	(part of Wake, see subsection (b))	1
Third	10D	(part of Wake, see subsection (b))	1
Fourth	11A	Harnett, Lee	1
Fourth	11B	Johnston	1
Fourth	12A	(part of Cumberland, see subsection (b))	1

Fourth	12B	(part of Cumberland, see subsection (b))	1
Fourth	12C	(part of Cumberland, see subsection (b))	2
Fourth	~~13~~ 13A	Bladen, ~~Brunswick,~~ Columbus	~~2~~ 1
Fourth	13B	Brunswick	1
Third	14A	(part of Durham, see subsection (b))	1
Third	14B	(part of Durham, see subsection (b))	3
Third	15A	Alamance	2
Third	15B	Orange, Chatham	2
Fourth	16A	Scotland, Hoke	1
Fourth	16B	Robeson	2
Fifth	17A	Rockingham	2
Fifth	17B	Stokes, Surry	2
Fifth	18A	(part of Guilford, see subsection (b))	1
Fifth	18B	(part of Guilford, see subsection (b))	1
Fifth	18C	(part of Guilford, see subsection (b))	1
Fifth	18D	(part of Guilford, see subsection (b))	1
Fifth	18E	(part of Guilford, see subsection (b))	1
Sixth	19A	Cabarrus	1
Fifth	19B	Montgomery, Randolph	1
Sixth	19C	Rowan	1
Fifth	19D	Moore	1
Sixth	20A	Anson, Richmond, Stanly	2
Sixth	20B	Union	1
Fifth	21A	(part of Forsyth, see subsection (b))	1
Fifth	21B	(part of Forsyth, see subsection (b))	1
Fifth	21C	(part of Forsyth, see subsection (b))	1
Fifth	21D	(part of Forsyth, see subsection (b))	1
Sixth	22	Alexander, Davidson, Davie, Iredell	3

Fifth	23	Alleghany, Ashe, Wilkes, Yadkin	1	
Eighth	24	Avery, Madison, Mitchell, Watauga, Yancey	2	
Seventh	25A	Burke, Caldwell	2	
Seventh	25B	Catawba	2	
Seventh	26A	(part of Mecklenburg, see subsection (b))	2	
Seventh	26B	(part of Mecklenburg, see subsection (b))	3	
Seventh	26C	(part of Mecklenburg, see subsection (b))	2	
Seventh	27A	Gaston	2	
Seventh	27B	Cleveland, Lincoln	2	
Eighth	28	Buncombe	2	
Eighth	29A	McDowell, Rutherford	1	
Eighth	29B	Henderson, Polk, Transylvania	1	
Eighth	30A	Cherokee, Clay, Graham, Macon, Swain	1	
Eighth	30B	Haywood, Jackson	1."	

SECTION 3. The superior court judgeship established for District 13A by Section 2 of this act shall be filled by the judge currently serving District 13 who resides in Bladen or Columbus County, who shall serve until the expiration of that judge's current term.

SECTION 4. The superior court judgeship established for District 13B by Section 2 of this act shall be filled by the judge currently serving District 13 who resides in Brunswick County, who shall serve until the expiration of that judge's current term.

SECTION 5. Section 5 of this act becomes effective October 1, 2006. Section 1 of this act becomes effective October 1, 2006, or the date upon which Section 1 of this act is approved under section 5 of the Voting Rights Act of 1965, whichever is later. Sections 2, 3, and 4 of this act become effective October 1, 2006, or the date upon which Section 2 of this act is approved under section 5 of the Voting Rights Act of 1965, whichever is later.

Attachment II

SENATE BILL 1991:
District 13 County Resident Judgeships

BILL ANALYSIS

Committee:	House Judiciary I	**Date:**	June 30, 2006
Introduced by:	Sen. Soles	**Summary by:**	R. Erika Churchill
Version:	Second Edition		Committee Counsel

SUMMARY: ***Senate Bill 1991 would provide balance among Bladen, Brunswick, and Columbus Counties, comprising the District Court District 13, for district court judges, and divides Superior Court District 13 into two separate superior court districts.***

CURRENT LAW: Currently all 6 district court judges of District 13, consisting of Bladen, Brunswick and Columbus, are elected district-wide and may be a resident of any of the counties within the district. Also currently there are 2 superior court judges of District 13, also consisting of Bladen, Brunswick and Columbus Counties.

BILL ANALYSIS: Section 1 of the Proposed Committee Substitute would specify that of the 6 district court judges elected in District 13, one judge must be a resident of Bladen County, one a resident of Columbus County, and two residents of Brunswick County. The remaining two judges may be residents of any of the three counties.

Sections 2, 3, and 4 divide Superior Court District 13, consisting of Bladen, Brunswick and Columbus Counties, into two districts, District 13A, consisting of Bladen and Columbus Counties, and District 13B, consisting of Brunswick County. These sections also designate which current sitting judges are designated for each district.

EFFECTIVE DATE: The bill becomes effective October 1, 2006, or the dates Sections 1 and 2 are approved under section 5 of the Voting Rights Act of 1965, whichever is later.

O. Walker Reagan contributed substantially to this summary.

S1991e2-SMST

Attachment III

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative Hackney (Chair) for the Committee on JUDICIARY I.

☒Committee Substitute for
SB 1991 A BILL TO BE ENTITLED AN ACT AMENDING THE CHARTER OF THE TOWN OF CAJAH MOUNTAIN TO CHANGE THE NAME OF THE BOARD OF ALDERMEN TO TOWN COUNCIL AND THE TITLE OF THE CHAIRMAN TO MAYOR.

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

_____ Pursuant to Rule 36(b), the bill/resolution is placed on the Calendar of _____.

House Judiciary I Committee

July 6, 2006
10:00 a.m.

Minutes

The House Judiciary I Committee met on Tuesday, July 6, 2006 at 10:00 a.m. in Room 1228 of the Legislative Building. Chairman Joe Hackney called the meeting to order and the following members were present: Representatives Alexander, Blust, Capps, Goodwin, Harrison, Insko, Ross, Stam, Stiller and West. A copy of the agenda and visitor registration is attached, (Attachments I and II).

The first bill under consideration by the Committee was Senate Bill 488. Chairman Hackney stated that Senate Bill 488 was being used as a vehicle for a Proposed Committee Substitute, AN ACT TO INCREASE THE CRIMINAL PENALTY FOR SIMPLE ASSAULT OR BATTERY ON A HANDICAPPED PERSON, (Attachment III), being offered by Senator Kinnaird.

Representative Ross moved that the Proposed Committee Substitute be adopted for the purpose of discussion.

Chairman Hackney stated that the bill would increase the criminal penalty for simple assault or battery on a handicapped person from a Class I misdemeanor to a Class A1 misdemeanor.

Mr. Brad Krehely, Committee Counsel, was recognized for further explanation of the bill. A bill analysis prepared by Mr. Krehely is attached to the minutes, (Attachment IV). A fiscal analysis was also provided to the Committee, (Attachment V).

Representative Insko moved for a favorable report for the committee substitute and an unfavorable report for the original bill. Upon vote of the Committee, the motion carried, (Attachment VI).

Representative Ross was recognized for a continuation of the discussion of House Bill 1851, AN ACT TO ESTABLISH A PILOT PROGRAM TO PROVIDE CANDIDATES FOR FOUR LEGISLATIVE SEATS WITH THE OPTION OF FINANCING THEIR CAMPAIGNS FROM A VOLUNTARY TAXPAYER-DESIGNATED FUND, PROVIDED THAT THEY GAIN AUTHORIZATION TO DO SO FROM REGISTERED VOTERS AND THAT THEY ABIDE BY STRICT FUND-RAISING AND SPENDING LIMITS; TO PROVIDE CANDIDATES IN THE PILOT PROGRAM WITH "RESCUE" FUNDS TO OFFSET HIGH LEVELS OF SPENDING BY OPPOSING CANDIDATRS AND ELECTIONEERING COMMUNICATIONS; AND TO MAKE CHANGES TO THE DEFINITION OF "POLITICAL COMMITTEE" AND THE STANDARD FOR PROVING THAT A COMMUNICATION SUPPORTS OR OPPOSES THE ELECTION OR DEFEAT OF A CLEARLY IDENTIFIED

CANDIDATE, (Attachment VII). The bill was explained during the June 29, 2006 meeting of the Committee. A bill analysis prepared by Mr. Bill Gilkeson, Committee Counsel, is attached, (Attachment VIII).

Representative Ross offered an amendment, (Attachment IX). The amendment would insure that the State Board's selection of the pilots would be bipartisan. Representative Ross moved adoption of the amendment.

Representative Capps spoke in opposition to the amendment saying that the Board's decision should be unanimous.

Following discussion, the amendment was adopted.

Representative Ross offered a second amendment, (Attachment X). The amendment would amend the purpose section of the bill making it narrower and more directly related to the actual provisions of the bill.

Representative Ross moved adoption of the amendment. The motion carried, and the amendment was adopted.

Representative Stam expressed concern regarding the trigger for rescue funds, the general fund being the source for the funds and the selection process for pilot districts. He expressed opposition to the use of taxpayer funds that might finance poor political speech. Representative Stam also spoke in opposition to the 21-day period prior to an election in which no rescue funds are given and no independent group may speak.

Representative Ross stated that the provision prohibits the contributions, but does not prohibit speech. She further stated that if any part of the legislation should be declared to be unconstitutional, there is a severability clause included in the bill.

Representative Blust expressed concern regarding how rescue funds would be triggered if the opposition receives large amounts of money during the final week or two prior to an election, and how one would know how much money might be spent against the candidate. Ms. Erika Churchill, Committee Counsel, pointed out language on page 8, lines 26-41 in response to Representative Blust's concerns.

Chairman Hackney questioned what would happen in a situation where a large amount of money has been given to a candidate and there is not enough money in the rescue fund.

Mr. Bob Hall, Democracy North Carolina, was recognized and stated that if there were insufficient funds, the candidate would be allowed to raise additional money.

Representative Ross moved that the amendments be rolled into a new Committee Substitute, that the Committee Substitute be given a favorable report, and the original bill an unfavorable report.

Representative Stam requested a roll call vote, (Attachment XI). Upon vote of the Committee, the motion carried, (Attachment XII). A copy of the new Committee Substitute is attached, (Attachment XIII).

The meeting was adjourned at 10:55 a.m.

Representative Joe Hackney
Chair

Emily Reynolds Freeman
Committee Clerk

Attachment I

HOUSE COMMITTEE ON JUDICIARY I

July 6, 2006
10:00 a.m.

AGENDA

OPENING REMARKS

AGENDA ITEM

House Bill 1851 – Legislative Campaigns Pilot
Representatives Hackney, Howard and Ross

Senate Bill 488 – Exploitation of Elder or Disabled Adults/POA
Senator Dannelly

ADJOURNMENT

Attachment II

VISITOR REGISTRATION SHEET

House Judiciary I — July 6, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Mary Edwards	DHHS
Dennis Streets	DAAS - NC DHHS
John Mebane	Coalition
Bryan Bull	Fiscal Research
Steve Wall	DENR
Bruce Thompson	Parker Poe
Jeff Mixon	Civitas
Johanna Reese	DOT
Chris Heagarty	Center for Voter Education

VISITOR REGISTRATION SHEET

House Judiciary I — **Name of Committee**

July 6, 2006 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jennifer Frye	Democracy NC 108 W. Main St. Carrboro 27510
Adam Sotak	Democracy NC
Ken Strach	SBOE
Kelly McCall	UNC-TV
Paul Stock	NCBA
Nathan Batts	NCBA
Kathleen Edwards	UNC-CH Daily Bulletin
Emily Kenny	NC Conservation Network
Jill Shotzberger	ACLU-NC
David Gartner	NC Bar Assoc.
Stacy Flannery	NCACFA

VISITOR REGISTRATION SHEET

House Judiciary I — July 6, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
PATRICK BUFFKIN	ALLEY ASSOC, INC.
Alyn Berry	Civitas Institute
Bill Wilson	AARP
Duane D. Hatch	AARP
Dick Hatch	AARP
P. Bly Hall	General Statutes Commission
Floyd Lewis	General Statutes Commission
Bly Hall	Democracy North Carolina
Jana Estes	Rep Starr
Christin Dinehi	Rep. Starr
Ed Turlington	BP

VISITOR REGISTRATION SHEET

House Judiciary I — July 6, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Joseph Ponzi	Brooks Pierce
Eric Sauls	Edmisten & Webb
Lee Hoke	KCCH
JUDIE BURKE	League of Women Voters - NC
Abby Emanuelson	NMSS
[illegible]	[illegible]
Sarah Schmidt	NC Justice Center
Rob Schofield	Center for Non Profits
Todd Barlow	NCATL
A. Khamala	Democracy- NC
Keisti Henderson	Democracy-NC

Attachment III

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 488*
Judiciary II Committee Substitute Adopted 4/21/05
Third Edition Engrossed 4/25/05
PROPOSED HOUSE COMMITTEE SUBSTITUTE S488-CSRN-13 [v.1]

6/21/2006 1:15:04 PM

Short Title: Assault Handicapped/Increase Penalty. (Public)

Sponsors:

Referred to:

March 15, 2005

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE CRIMINAL PENALTY FOR SIMPLE ASSAULT OR BATTERY ON A HANDICAPPED PERSON.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-32.1(f) reads as rewritten:

"(f) Any person who commits a simple assault or battery upon a handicapped person is guilty of a ~~Class 1~~ Class A1 misdemeanor."

SECTION 2. This act becomes effective December 1, 2006, and applies to offenses committed on or after that date.

Attachment IV

SENATE BILL 488:
Assault Handicapped/Increase Penalty

BILL ANALYSIS

Committee:	House Judiciary I	**Date:**	July 5, 2006
Introduced by:	Sen. Dannelly	**Summary by:**	Brad Krehely
Version:	PCS to Third Edition S488-CSRN		Committee Counsel

SUMMARY: The Proposed Committee Substitute for Senate Bill 488 increases the criminal penalty for simple assault or battery on a handicapped person from a Class 1 misdemeanor to a Class A1 misdemeanor.

CURRENT LAW: In general, assault is not defined by statute. Instead, it is defined by the common law. Assault is (1) an overt act, attempt, or the unequivocal appearance of attempt (2) with force or violence (3) to immediately physically injure another person (4) with a sufficient show of force (5) that would put a reasonable person in fear of immediate physical injury. An assault may be the actual unlawful physical touching of another person (battery) or simply the attempt to unlawfully touch another.

Assaults on a handicapped person are statutory crimes. G.S. 14-32.1 includes two separate crimes: **simple assault on a handicapped person** and **aggravated assault on a handicapped person.**

For the purposes of the statute, 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 (3) that substantially impairs that person's ability to defend himself or herself.

A person is guilty of **simple assault on a handicapped person** if he or she (1) commits an assault (2) on a handicapped person. The penalty for simple assault or battery on a handicapped person is a Class 1 misdemeanor.

A person is guilty of **aggravated assault on handicapped person** if he or she (1) commits an assault (2) on a handicapped person AND

- Uses a deadly weapon or other means of force likely to cause serious injury to a handicapped person OR
- Inflicts serious injury or serious damage to a handicapped person OR
- Intends to kill a handicapped person.

The penalty for aggravated assault on a handicapped person is a Class F felony.

BILL ANALYSIS: The Proposed Committee Substitute for Senate Bill 488 increases the criminal penalty for **simple assault or battery on a handicapped person** from a Class 1 misdemeanor to a Class A1 misdemeanor.

BACKGROUND: As introduced, Senate Bill 488 was identical to House Bill 1466. Both House Bill 1466 and earlier editions of Senate Bill 488 dealt with the exploitation of elderly or disabled adults. House Bill 1466, which was enacted into law last session as Session Law 2005-272, addresses the same topic as the 3rd edition of Senate Bill 488.

EFFECTIVE DATE: This act becomes effective December 1, 2006, and applies to offenses committed on or after that date.

S0488e3-SMRN-CSRN

Attachment V

GENERAL ASSEMBLY OF NORTH CAROLINA
Session 2005

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: June 28, 2006

TO: Rep. Hackney

FROM: Bryce Ball
Fiscal Research Division

RE: Senate Bill 488

FISCAL IMPACT

	Yes (X)	No ( )	No Estimate Available ( )		
	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11
GENERAL FUND					
Correction	No significant impact anticipated. Potential cost of reimbursement to counties by DOC.				
Recurring					
Nonrecurring					
	Small fiscal impact; amount cannot be determined. See "Assumptions and Methodology," p. 2.				
Judicial					
Recurring					
Nonrecurring					
TOTAL EXPENDITURES:	Amount cannot be determined.				
ADDITIONAL PRISON BEDS*	None anticipated. Possible, small impact on local jails. See "Assumptions and Methodology," p.2.				
POSITIONS: (cumulative)	None anticipated.				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Correction; Judicial Branch; Local Governments.

EFFECTIVE DATE: December 1, 2006.

**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: Rewrites G.S. 14-32.1(f) to increase the offense class for simple assault or battery of a handicapped person from a Class 1 misdemeanor to a Class A1 misdemeanor. Effective December 1, 2006, and applies to offenses committed on or after that date.

ASSUMPTIONS AND METHODOLOGY:

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 a specific bill. For such 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.

In response to the proposed penalty increase, the AOC anticipates more rigorous defense and prosecution of new cases, resulting in an increase in court-time and the number of trials, and a decrease in the number of pleas for this offense. In calendar year 2005, approximately 240 defendants were charged with, and 60 defendants convicted of, assaulting a handicapped person under G.S. 14-32.1(f). If, for example, 240 charges were to occur per year for this offense, the proposed penalty increase could require an additional $23,512 in estimated court costs in the first fiscal year, and approximately $42,350 in the second (full) fiscal year.[1] *However, it is not known how many charges might occur.* The AOC estimates court-time costs per single Class 1 misdemeanor trial and plea of $3,153 and $224, respectively; estimated Class A1 misdemeanor costs are $3,540 and $226.

Department of Correction – Division of Prisons

The Sentencing and Policy Advisory Commission prepares prison population projections for each criminal penalty bill. The Commission assumes for each bill that increasing criminal penalties does not have a deterrent or incapacitative effect on crime. Therefore, the Fiscal Research Division does not assume savings due to deterrent effects for this bill or any criminal penalty bill.

In FY 2004/05, 25% of Class A1 misdemeanor convictions resulted in active sentences, with an average estimated time served of 53.8 days; 5% resulted in intermediate sentences and 70% in community sentences. In comparison, 19% of Class 1 misdemeanor convictions resulted in active sentences in the same fiscal year, with an average estimated time served of 30.7 days; 2% resulted in intermediate sentences and 79% in community sentences.

While this proposed reclassification may increase active sentences for the offense, it is not expected to have a significant impact on the State's prison population – offenders serving active sentences of ninety days or less are housed in local jails. However, the Department of Correction reimburses counties for housing offenders sentenced to between thirty and ninety days at a rate of $18 per offender, per day. Thus, any additional active sentencing could generate additional costs for DOC.

Prior year conviction and sentencing data suggest only a small impact on local jail populations. For example, assuming 60 convictions occur per year under similar sentencing practice, local jail populations could experience a relative increase of 4 persons statewide as a result of the bill.[2] At an estimated time served of 53.8 days, such active sentencing could require approximately $3,874 in reimbursement costs for DOC.

Department of Correction – Division of Community Corrections

Though it is not known how many additional convictions and community or intermediate sentences might result under this bill, current sentencing practice suggests that additional costs for probation supervision could also be incurred. *However, based on CY 2005 conviction data, the Department of Correction does not expect a significant impact as a result of the proposed penalty increase.*

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[1] Estimate provided by the Administrative Office of the Courts. Costs are based on an estimated increase in in-court hours per case, attorney preparation hours, and number of projected cases per disposition (trial and plea). Costs also include estimated indigent defense.

[2] Compared to active sentencing percentage for Class 1 misdemeanor convictions in FY 2004/05.

General supervision from a probation officer costs the Division of Community Corrections $1.93 per offender, per day. Special sanctions under intermediate sentences generate higher costs. Intensive supervision probation, the most commonly utilized intermediate sanction, costs $12.95 (including probation officer cost) per offender per day and is for an average of six months. Electronic house arrest costs $8.64 (including probation officer cost). Such costs are projected to begin in FY 2007-2008, due to the effective date of December 1 and the lag time between charge and conviction.

In addition, offenders supervised by DCC are required to pay a $30 per month supervision fee. Those on electronic house arrest or electronic monitoring must also pay a one-time $90 fee. This money is collected by the Court System and goes to the General Fund. The percentage of fees actually collected cannot be determined from the Court's records, but survey information indicates that the compliance rate for supervised probationers is around 48%.

SOURCES OF DATA: Department of Correction; Judicial Branch; North Carolina Sentencing and Policy Advisory Commission; and Office of State Construction.

TECHNICAL CONSIDERATIONS: None

Attachment VI

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:

By Representative Hackney (Chair) for the Committee on JUDICIARY I.

☒Committee Substitute for

SB 488 A BILL TO BE ENTITLED AN ACT TO MAKE IT UNLAWFUL FOR A CARETAKER TO EXPLOIT AN ELDER OR DISABLED ADULT IN ANY SETTING.

☒ With a favorable report as to House committee substitute bill, which changes the title, unfavorable as to Senate committee substitute bill -1.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

_____ Pursuant to Rule 36(b), the (House/Senate) committee substitute bill/(joint) resolution (No._____) is placed on the Calendar of _____. (The original bill resolution No._____) is placed on the Unfavorable Calendar.

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

Attachment VII

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 1851
PROPOSED COMMITTEE SUBSTITUTE H1851-CSRR-73 [v.1]

6/28/2006 7:31:12 PM

Short Title: Legislative Campaigns Pilot. (Public)

Sponsors:

Referred to:

May 10, 2006

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH A PILOT PROGRAM TO PROVIDE CANDIDATES FOR FOUR LEGISLATIVE SEATS WITH THE OPTION OF FINANCING THEIR CAMPAIGNS FROM A VOLUNTARY TAXPAYER-DESIGNATED FUND, PROVIDED THAT THEY GAIN AUTHORIZATION TO DO SO FROM REGISTERED VOTERS AND THAT THEY ABIDE BY STRICT FUND-RAISING AND SPENDING LIMITS; TO PROVIDE CANDIDATES IN THE PILOT PROGRAM WITH "RESCUE" FUNDS TO OFFSET HIGH LEVELS OF SPENDING BY OPPOSING CANDIDATES AND ELECTIONEERING COMMUNICATIONS; AND TO MAKE CHANGES TO THE DEFINITION OF "POLITICAL COMMITTEE" AND THE STANDARD FOR PROVING THAT A COMMUNICATION SUPPORTS OR OPPOSES THE ELECTION OR DEFEAT OF A CLEARLY IDENTIFIED CANDIDATE.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 163 of the General Statutes is amended by adding a new Article to read:

"Article 22G.

"The North Carolina Legislative Campaigns Pilot Program.

"**§ 163-278.95. Purpose and establishment of North Carolina Legislative Campaigns Pilot Program.**

The purpose of this Article is to explore methods to ensure the vitality and fairness of democratic elections in North Carolina, to the end that any eligible citizen of this State can realistically choose to seek and run for public office. It is also the purpose of this Article to explore methods to protect the constitutional rights of voters and candidates from the detrimental effects of increasingly large amounts of money being raised and spent in North Carolina to influence the outcome of elections. It is essential to the public interest that the potential for corruption or the appearance of corruption is minimized and that the equal and meaningful participation of all citizens in the

democratic process is ensured. Accordingly, this Article establishes the North Carolina Legislative Campaigns Pilot Fund as an alternative source of campaign financing for candidates for the General Assembly who obtain a sufficient number of qualifying contributions from registered voters and who voluntarily accept strict fund-raising and spending limits. This Article is available to candidates for two seats in the House of Representatives and two seats in the Senate, as selected in G.S. 163-278.97A, in elections to be held in 2008 and thereafter.

"**§ 163-278.96. Definitions.**

The following definitions apply in this Article:

(1) Advisory Council. – The Advisory Counsel established in G.S. 163-278.68.

(2) Board. – The State Board of Elections.

(3) Campaign-related expenditure. – An expenditure that benefits the candidate's current campaign in accordance with guidelines established by the Board.

(4) Candidate. – An individual who becomes a candidate as described in G.S. 163-278.6(4). The term includes a political committee authorized by the candidate for that candidate's election.

(5) Certified candidate. – A candidate for office who chooses to receive campaign funds from the Fund and who is certified under G.S. 163-278.98(c).

(6) Contested primary and contested general election. – An election in which there are more candidates than the number to be elected.

(7) Contribution. – Defined in G.S. 163-278.6. A distribution from the Fund pursuant to this Article is not a 'contribution' and is not subject to the limitations of G.S. 163-278.13 or the prohibitions of G.S. 163-278.15 or G.S. 163-278.19.

(8) Expenditure. – Defined in G.S. 163-278.6.

(9) Fund. – The North Carolina Legislative Campaigns Pilot Fund established in G.S. 163-278.97.

(10) Independent expenditure. – Defined in G.S. 163-278.6.

(11) Nonparticipating candidate. – A candidate for office who is not seeking to be certified under G.S. 163-278.98(c).

(12) Office. – The two Senate seats and two House of Representatives seats designated pursuant to G.S. 163-278.97A.

(13) Participating candidate. – A candidate for office who has filed a declaration of intent to participate under G.S. 163-278.98(a).

(14) Political committee. – Defined in G.S. 163-278.6.

(15) Qualifying contribution. – A contribution of not less than ten dollars ($10.00) and not more than one hundred dollars ($100.00) in the form of a check or money order to the candidate or the candidate's committee that meets both of the following conditions:

a. Made by any registered voter who resides in the district in which the candidate seeks office.

b. Made only during the qualifying period and obtained with the approval of the candidate or candidate's committee.

c. Acknowledged by a written receipt, on a multicopy form approved by the Board, which identifies the complete name, residence address, and county of residence of the contributor and the amount and date of the contribution made; states that the contributor is a registered voter; states that the contributor authorizes the candidate to use the contribution to qualify to receive funds from the Fund; and is signed by the candidate or the candidate's representative.

(16) Qualifying period. – The period beginning October 1 of the year before the election and ending on the day of the primary.

(17) Trigger for rescue funds. – The dollar amount at which rescue funds are released for certified candidates. In the case of a primary, the trigger equals the maximum amount a participating candidate is permitted by G.S. 163-278.98(b) to raise in qualifying contributions. In the case of a general election, the trigger equals the funding available under G.S. 163-278.99(b)(4).

"**§ 163-278.97. Legislative Campaigns Pilot Fund established; sources of funding.**

(a) Establishment of Fund. – The North Carolina Legislative Campaigns Pilot Fund is established to finance the election campaigns of certified candidates for office and to pay administrative and enforcement costs of the Board related to this Article. The Fund is a special, dedicated, nonlapsing, nonreverting fund. Any interest generated by the Fund is credited to the Fund. The Board shall administer the Fund. No appropriation from the General Fund shall be made to finance the election campaigns of certified candidates, except for designations voluntarily made by taxpayers for that purpose.

(b) Sources of Funding. – Money received from all the following sources must be deposited in the Fund:

(1) Unspent 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.

(2) Voluntary donations made directly to the Fund.

(3) Designations by taxpayers to finance the election of campaigns of certified candidates.

(c) Determination of Fund Amount. – By April 1, 2007, and every two years thereafter, the Board, in conjunction with the Advisory Council, shall prepare and provide to the Joint Legislative Commission on Governmental Operations of the General Assembly a report documenting, evaluating, and making recommendations relating to the administration, implementation, and enforcement of this Article. In its report, the Board shall set out the funds received to date and the expected needs of the Fund during the next election cycle.

"**§ 163-278.97A. Selection of districts for pilot program.**

Four districts shall be selected for the pilot program every two years. In order to provide a useful test of the provisions in this Article, the pilot program shall occur in

districts (i) that are relatively competitive, based on the ratio of party affiliation of registered voters in the district compared to the statewide ratio, and (ii) where there is a demonstrated interest to use the pilot program. The districts shall be selected in the following manner:

(1) By July 1 of the year before the election, the Executive Director of the Board shall prepare a list of the legislative districts that meet the following two criteria:

a. The ratio in the district of registered voters affiliated with the State's majority party to voters affiliated with the minority party is greater than seventy-five percent (75%) and less than one hundred twenty-five percent (125%) of the ratio between those parties statewide for voters registered for the legislative primary election before the July 1 deadline.

b. At least one legislative candidate in the district has volunteered to participate in the pilot program in a written statement provided to the Executive Director.

(2) From the list of eligible districts prepared by the Executive Director, the majority and minority leaders of the Senate shall each select up to three districts in the Senate and the majority and minority leaders of the House of Representatives shall each select up to three districts in the House. Those leaders shall report their recommended selections to the Executive Director of the Board no later than Ju;y 31 of the year before the election.

(3) The State Board of Elections by August 15 shall consider the recommendations provided by the legislative leaders in subdivision (2) of this section and shall make a final selection of two districts in the Senate and two districts in the House of Representative that meet the criteria described in subdivision (1) of this section.

"**§ 163-278.98. Requirements for participation.**

(a) Declaration of Intent to Participate. – Any individual choosing to receive campaign funds from the Fund shall first file with the Board a declaration of intent to participate in the act as a candidate for a stated office. The declaration of intent shall be filed before or during the qualifying period and before collecting any qualifying contributions. In the declaration, the candidate shall swear or affirm that only one political committee, identified with its treasurer, shall handle all contributions, campaign-related expenditures, and obligations for the participating candidate and that the candidate will comply with the contribution and expenditure limits set forth in subsection (e) of this section and all other requirements set forth in this Article or adopted by the Board. Failure to comply is a violation of this Article.

(b) Demonstration of Support of Candidacy. – Participating candidates who seek certification to receive campaign funds from the Fund shall first, during the qualifying period, obtain qualifying contributions from at least 300 registered voters in the case of a Senate candidate and at least 150 registered voters in the case of a House candidate in an aggregate sum that at least equals six thousand dollars ($6,000) in the case of a

Senate candidate and three thousand dollars ($3,000) in the case of a House candidate, but that does not exceed forty thousand dollars ($40,000) in the case of a Senate candidate and twenty-five thousand dollars ($25,000) in the case of a House candidate.

(c) Certification of Candidates. – Upon receipt of a submittal of the record of demonstrated support by a participating candidate, the Board shall determine whether or not the candidate has complied with all the following requirements:

(1) Signed and filed a declaration of intent to participate in this Article.

(2) Submitted a report itemizing the appropriate number of qualifying contributions received from registered voters, which the Board shall verify through a random sample or other means it adopts. The report shall include the county of residence of each registered voter listed.

(3) Filed a valid notice of candidacy pursuant to this Chapter.

(4) Otherwise met the requirements for participation in this Article.

The Board shall certify candidates complying with the requirements of this section as soon as possible and no later than five business days after receipt of a satisfactory record of demonstrated support.

(d) Final Report for Qualifying Contributions. – No later than five business days after the end of the qualifying period, all participating candidates shall submit a report to the Board of all previously unreported qualifying contributions, together with copies of the contribution forms described in G.S. 163-278.96(15), in accordance with procedures developed by the Board. Within seven business days after submittal of the final report, the Board shall determine, through a random audit or other means it adopts, whether the contributions abide by the definition of qualifying contributions, whether they must be returned to the donor, and whether they exceed the maximum amount of qualifying contributions.

(e) Restrictions on Contributions and Expenditures for Participating and Certified Candidates. – The following restrictions shall apply to contributions and expenditures with respect to participating and certified candidates:

(1) Beginning January 1 of the year before the election and before the filing of a declaration of intent, a candidate for office may accept in contributions up to five thousand dollars ($5,000) from sources and in amounts permitted by Article 22A of this Chapter and may expend up to five thousand dollars ($5,000) for any campaign purpose related to the upcoming election. A candidate who exceeds either of these limits shall be ineligible to file a declaration of intent or receive funds from the Public Campaign Fund.

(2) From the filing of a declaration of intent through the end of the qualifying period, a candidate may accept only qualifying contributions, contributions under ten dollars ($10.00) from voters residing in the candidate's district, and personal and family contributions permitted under subdivision (4) of this subsection. The total contributions the candidate may accept during this period shall not exceed the maximum qualifying contributions for that candidate. In addition to these contributions, the candidate may only expend

during this period the remaining money raised pursuant to subdivision (1) of this subsection and possible rescue funds received pursuant to G.S. 163-278.101.

(3) After the qualifying period and through the date of the general election, the candidate shall expend only the funds the candidate receives from the Fund pursuant to G.S. 163-278.99(b)(4) plus any funds remaining from the qualifying period and possible rescue funds. In addition, during that period a candidate may accept in-kind contributions from political party executive committees, up to an aggregate value of ten percent (10%) of the amount the candidate is entitled to receive under G.S. 163-278.99(b)(4).

(4) During the qualifying period, the candidate may contribute up to one thousand dollars ($1,000) of that candidate's own money to the campaign. Debt incurred by the candidate for a campaign expenditure shall count toward that limit. During the qualifying period, the candidate may accept in contributions up to one thousand dollars ($1,000) from each member of that candidate's family consisting of spouse, parent, child, brother, and sister, as long as the candidate accepts no more than two thousand dollars ($2,000) from all those family members combined.

(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 related to the upcoming election. 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.

(6) Any contribution received by a participating or certified candidate that falls outside that permitted by this subsection shall be returned to the donor as soon as practicable. Contributions intentionally made, solicited, or accepted in violation of this Article are subject to civil penalties as specified in G.S. 163-278.70. The funds involved shall be forfeited to the Civil Penalty and Forfeiture Fund.

(7) A candidate shall return to the Fund any amount distributed for an election that is unspent and uncommitted at the date of the election, or at the time the individual ceases to be a certified candidate, whichever occurs first. For accounting purposes, all qualifying, personal, and family contributions shall be considered spent before revenue from the Fund is spent or committed.

(f) Revocation. – A candidate may revoke, in writing to the Board, a decision to

participate in the Fund at anytime. After a revocation, that candidate may accept and expend outside the limits of this Article without violating this Article. Within 10 days after revocation, a candidate shall return to the Board all money received from the Fund.

"**§ 163-278.99. Distribution from the Fund.**

(a) Timing of Fund Distribution. – The Board shall distribute to a certified candidate revenue from the Fund in an amount determined under subdivision (b)(4) of this section within five business days after the certified candidate's name is approved to appear on the ballot in a contested general election, but no earlier than five business days after the primary.

(b) Amount of Fund Distribution. – By August 1, 2007, and no less frequently than every two years thereafter, the Board shall determine the amount of funds, rounded to the nearest one hundred dollars ($100.00), to be distributed to certified candidates as follows:

(1) Uncontested primaries. – No funds shall be distributed.

(2) Contested primaries. – No funds shall be distributed except as provided in G.S. 163-278.101.

(3) Uncontested general elections. – No funds shall be distributed.

(4) Contested general elections. – Funds shall be distributed to a certified candidate for the Senate in an amount equal to the median amount of campaign-related expenditures made by all major party candidates who reported campaign expenditures for contested general election races for the Senate for the immediately preceding two general elections, but not less than seventy-five thousand dollars ($75,000). Funds shall be distributed to a certified candidate for the House in an amount equal to the median amount of campaign-related expenditures made by all major party candidates who reported campaign expenditures for contested general election races for the House for the immediately preceding two general elections, but not less than fifty thousand dollars ($50,000).

(c) Method of Fund Distribution. – The Board, in consultation with the State Treasurer and the State Controller, shall develop a rapid, reliable method of conveying funds to certified candidates. In all cases, the Board shall distribute funds to certified candidates in a manner that is expeditious, ensures accountability, and safeguards the integrity of the Fund. If the money in the Fund is insufficient to fully fund all certified candidates, then the available money shall be distributed proportionally, according to each candidate's eligible funding, and the candidate may raise additional money in the same manner as a noncertified candidate for the same office up to the unfunded amount of the candidate's eligible funding.

"**§ 163-278.100. Reporting requirements.**

(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. 163-278.96(17). Any entity making independent expenditures in support of or opposition to a certified candidate or in support of a candidate opposing a certified candidate, or paying for electioneering communications, as defined in G.S. 163-278.80 or G.S. 163-278.90, that refer to one of those candidates, shall report the total funds received, spent, or obligated for those expenditures or electioneering communications 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 or electioneering communications, exceeds three thousand dollars ($3,000). After this 24-hour filing, the noncertified candidate or independent expenditure or electioneering communications 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.

(b) Reporting by Participating and Certified Candidates. – Notwithstanding other provisions of law, participating and certified candidates shall report any money received, including all previously unreported qualifying contributions, all campaign expenditures, obligations, and related activities to the Board according to procedures developed by the Board. A certified candidate who ceases to be certified or ceases to be a candidate or who loses an election shall file a final report with the Board and return any unspent revenues received from the Fund. In developing these procedures, the Board shall utilize existing campaign reporting procedures whenever practical.

(c) Timely Access to Reports. – The Board shall ensure prompt public access to the reports received in accordance with this Article. The Board may utilize electronic means of reporting and storing information.

"**§ 163-278.101. Rescue funds.**

(a) When Rescue Funds Become Available. – When any report or group of reports shows that 'funds in opposition to a certified candidate or in support of an opponent to that candidate' as described in this section, exceed the trigger for rescue funds as defined in G.S. 163-278.96(17), the Board shall issue immediately to that certified candidate an additional amount equal to the reported excess within the limits set forth in this section. 'Funds in opposition to a certified candidate or in support of an opponent to that candidate' shall be equal to the sum of the following:

(1) Campaign expenditures or obligations made, or funds raised or borrowed, whichever is greater, reported by any one uncertified opponent of a certified candidate. Where a certified candidate has more than one uncertified opponent, the measure shall be taken from the uncertified candidate showing the highest relevant dollar amount.

(2) The sum of all expenditures and electioneering communications reported in accordance with G.S. 163-278.100(a) of entities making independent expenditures in opposition to the certified candidate or in support of any opponent of that certified candidate.

(b) Limit on Rescue Funds in Contested Primary. – Total rescue funds to a certified candidate in a contested primary shall be limited to an amount equal to two times the maximum qualifying contributions.

(c) Limit on Rescue Funds in Contested General Election. – Total rescue funds to a certified candidate in a contested general election shall be limited to an amount equal to two times the amount described in G.S. 163-278.99(b)(4).

"**§ 163-278.102. Unaffiliated and new-party candidates.**

Unaffiliated candidates certified pursuant to G.S. 163-122 and new-party candidates certified pursuant to G.S. 163-98 shall be eligible for revenues from the Fund in the same amounts and at the same time as specified in G.S. 163-278.99. For unaffiliated candidates and new-party candidates not certified to appear on the ballot by noon on the last business day in February, the deadline for seeking certification to receive revenue from the Fund is noon on the first business day of July of the election year.

"**§ 163-278.103. Enforcement by the Board; civil penalty.**

The Board, with the advice of the Advisory Council, shall administer the provisions of this Article in the same manner as described in Article 22D of this Chapter. In addition to any other penalties that may be applicable, any individual, political committee, or other entity that violates any provision of this Article is subject to a civil penalty in the same manner as described in Article 22D of this Chapter."

SECTION 2. G.S. 163-278.13(e) reads as rewritten:

"(e) ~~This~~ Except as provided in subsections (e2) and (e3) of this section, this section shall not apply to any national, State, district or county executive committee of any political party. For the purposes of this section only, the term "political party" means only those political parties officially recognized under G.S. 163-96."

SECTION 3. G.S. 163-278.13 is amended by adding a new subsection to read:

"(e3) In order to make meaningful the provisions of the North Carolina Legislative Campaigns Pilot Program, as set forth in Article 22G of this Chapter, no candidate for any office that is in that current election subject to the provisions of Article 22G of this Chapter shall accept, and no contributor shall make to that candidate, a contribution during the period beginning 21 days before the day of the general election and ending the day after the general election if that contribution causes the candidate to exceed the "trigger for rescue funds" defined in G.S. 163-278.96(17). The prohibitions in this subsection shall also apply to a political committee the principal purpose of which is to support a candidate for those offices. Nothing in this subsection shall prohibit a candidate from making a contribution or loan secured entirely by that candidate's assets to that candidate's own campaign or to a political committee the principal purpose of which is to support that candidate's campaign. This subsection applies with respect to a candidate only if both of the following statements are true regarding that candidate:

(1) That candidate is opposed in the general election by a certified candidate as defined in Article 22G of this Chapter.

(2) That certified candidate has not received the maximum rescue funds available under G.S. 163-278.101(c).

The recipient of a contribution that apparently violates this subsection has three days

to return the contribution or file a detailed statement with the State Board of Elections explaining why the contribution does not violate this subsection."

SECTION 3.1. G.S. 163-278.6(14) reads as rewritten:

"(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.

e. States in its application for classification with the Internal Revenue Service that it is created primarily to support or oppose the nomination or election of one or more candidates for public office.

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."

SECTION 3.2. G.S. 163-278.14A reads as rewritten:

"**§ 163-278.14A. Evidence that communications are "to support or oppose the nomination or election of one or more clearly identified candidates."**

(a) Either of the following shall be means, but not necessarily the exclusive or conclusive means, of proving that an individual or other entity acted "to support or oppose the nomination or election of one or more clearly identified candidates":

(1) Evidence of financial sponsorship of communications to the general public that use phrases such as "vote for", "reelect", "support", "cast your ballot for", "(name of candidate) for (name of office)", "(name of candidate) in (year)", "vote against", "defeat", "reject", "vote pro-(policy position)" or "vote anti-(policy position)" accompanied by a list of candidates clearly labeled "pro-(policy position)" or "anti-(policy position)", or communications of campaign words or slogans, such as posters, bumper stickers, advertisements, etc., which say "(name of candidate)'s the One", "(name of candidate) '98", "(name of candidate)!", or the names of two candidates joined by a hyphen or slash. The use of "phrases such as" means this subsection includes communications with unambiguous synonyms of the sample phrases listed, for example, "throw out" for "reject" and unambiguous antonyms of the sample phrases listed, for example, "(name of candidate) is not the one for us!" for "(name of candidate)'s the One."

(2) Evidence of financial sponsorship of communications whose essential nature expresses electoral advocacy to the general public and goes beyond a mere discussion of public issues in that they direct voters to take some action to nominate, elect, or defeat a candidate in an election. If the course of action is unclear, contextual factors such as the language of the communication as a whole, the timing of the communication in relation to events of the day, the distribution of the communication to a significant number of registered voters for that candidate's election, and the cost of the communication may be considered in determining whether the action urged could only be interpreted by a reasonable person as advocating the nomination, election, or defeat of that candidate in that election.

(b) Notwithstanding the provisions of subsection (a) of this section, a communication shall not be subject to regulation as a contribution or expenditure under this Article if it:

(1) Appears in a news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, or magazine, unless those facilities are owned or controlled by any political party, or political committee;

(2) Is distributed by a corporation solely to its stockholders and employees; or

(3) Is distributed by any organization, association, or labor union solely to its members or to subscribers or recipients of its regular publications,

or is made available to individuals in response to their request, including through the Internet. "

SECTION 4. 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 this act that can be given effect without the invalid provision.

SECTION 5. This act is effective when it becomes law. Sections 1 through 3 of this act apply to elections for the seats representing two districts in the House of Representatives and two districts in the Senate selected in accordance with G.S. 163-278.97A, as enacted by Section 1 of this act, in 2008 and thereafter.

Attachment VIII

HOUSE BILL 1851: Legislative Campaigns Pilot

BILL ANALYSIS

Committee:	House Judiciary I	**Date:**	June 28, 2006
Introduced by:	Reps. Hackney, Howard, Ross	**Summary by:**	William R. Gilkeson Committee Counsel
Version:	PCS to First Edition H1851-CSRR-73		

SUMMARY: ***This Proposed Committee Substitute for House Bill 1851 would establish a pilot program for public financing of campaigns for seats in the General Assembly. The pilot would begin in 2008 and would apply to two Senate seats and two House seats. The State Board of Elections would select those districts, considering the recommendations of the four party caucus leaders of Senate and House. The structure of the public funding pilot would be similar to that of the existing Public Campaign Fund, which applies to races for Supreme Court and Court of Appeals. The major source of funding would be designations by taxpayers. The PCS would also add to the definition of "political committee" an organization that states in its filing for tax status with the IRS that its principal purpose is to support or oppose the nomination or election of candidates. And it would add explanatory language to the "magic words" portion of the section about what it means to support or oppose the nomination or election of candidates.***

CURRENT LAW: In 2002 the General Assembly established the Public Campaign Fund for public financing of campaigns of those candidates for Supreme Court and Court of Appeals who voluntarily accepted contribution and expenditure limits that are not applied to all candidates. The Public Campaign Fund is an adaptation of the full-funding model of public campaign funding that was pioneered by Maine and Arizona rather than the older partial-funding models used by other states. Candidates qualify for the program by pledging to abide by the limits and by raising a certain amount in "qualifying contributions," small amounts given by individual voters. The basic public grants from the Fund do not come until after the primary, and with some exceptions the candidates are limited in their spending to the amount of those grants. If a participating candidate is faced with an opponent who spends more than he/she can match, or independent expenditures targeted at him/her beyond what they can spend, the Public Campaign Fund is supposed to come through with "rescue funds" with which to defend themselves. The Public Campaign is being used in judicial elections this year for the second time.

BILL ANALYSIS:

Secs. 1-3. Legislative Public Campaign Pilot. Section 1 of the bill would establish a pilot program that attempts to adapt the Public Campaign Fund model to public financing of campaigns in four legislative districts.

- Selection of Districts. The pilot program would begin in the 2008 election. It would be conducted in 4 districts, two in the House and two in the Senate. The districts would be selected by the State Board of Elections by August 15 of the year before the election. First, the Executive Director would prepare a list of districts meeting criteria designed to identify districts that are competitive but not too competitive, and where some candidate was willing to participate. Next, the majority and minority leaders of the House and Senate would each be given an opportunity to recommend three districts from the list. Finally, the State Board of Elections would choose districts from the list, considering the caucus leaders' recommendations. *Section 1 of bill. GS 163-278.97A.*

- Opting in and Qualifying. The requirements for participation follow essentially the same pattern as the Judicial Fund. Candidates could decide whether to opt in during the qualifying period,

which would run from October 1 of the year before through the day of the primary. Before opting in, they may raise and spend up to $5,000 toward their campaign the same way other candidates can without foreclosing their eligibility to opt in. Opting in would consist of making a declaration of intent in which they pledge to run their campaign out of one account and to abide by the contribution and expenditure limits in the act. They would then qualify by raising, by primary day, qualifying contributions in individual contributions from voters in their district of between $10 and $100. A Senate candidate would have to get at least 300 such contributions, amounting to at least $6,000 but no more than $40,000. A House candidate would have to get at least 150 qualifying contributions, amounting to at least $3,000 but not more than $25,000. (These amounts are lower than the equivalents for Supreme Court and Court of Appeals, which are of course statewide races.) *Section 1 of the bill, 163-278.98(b).*

- Raising and Spending While Qualifying. During the qualifying period after opting in, a candidate can accept only qualifying contributions, contributions under $10 from voters in the district, contributions from the candidate him/herself up to $1,000, and contributions from certain close family members up to $1,000 each subject to a cap of $2,000 from all family members together. All of that may not exceed the candidate's maximum for qualifying contributions. During the qualifying period after opting in, the candidate may spend all that, plus any leftover money raised before opting in. They may also qualify for rescue funds during this period due to the level of opposition spending. *Section 1 of the bill, 163-278.98(e).*

- Grants from the Fund. No basic grant money would be distributed in a primary -- only in a general election. The distribution for the Senate would be the median amount spent for contested seats in the Senate in the past two general elections, with a floor of $75,000. The distribution for the House would be the median amount spent for contested seats in the House in the past two general elections, with a floor of $50,000. *Section 1 of the bill, 163-278.99.*

- Spending Limits in General Election. In a general election a candidate would be limited to spending the money received from the Fund, plus any remaining funds from the qualifying period and any rescue funds. In addition, the candidate's party could give in-kind contributions up to 10% of the amount of the candidate's Fund grant. *Section 1 of the bill, 163-278.98(e).*

- Rescue Funds. Rescue funds would be available in a primary if a non-participating opponent outspent a participating candidate. This is the same as the judicial Fund -- no basic grant money for a primary, only rescue funds. Rescue funds would be triggered in a primary by opposition spending that exceeded the maximum amount a participating candidate could raise in qualifying contributions. Rescue funds would be triggered in the general election by opposition spending that exceeded the participating candidate's basic grant entitlement from the Fund. The opposition spending would be subject to special expedited reporting so the rescue fund provision could be administered. Rescue funds would be available in amounts matching the opposition spending, up to twice the trigger amount. In this bill, unlike in the judicial program, the reporting for rescue funds and the trigger for rescue funds would include not just spending by opposition candidates and independent expenditures, but also spending for electioneering communications. *Section 1 of the bill, 163-278.101.*

- Limit on Nonparticipating Candidates. As in the judicial Fund, a nonparticipating candidate with a participating opponent may not receive a contribution within 21 days before the general election if that contribution would cause the candidate to exceed the trigger for rescue funds. *Section 2 of the bill.*

- Source of Funding. The funding for the pilot program would be designations by taxpayers. The bill does not now contain a specific mechanism for them to do that.

Sec. 3.1. Change to Definition of "Political Committee" – Section 3.1 of the bill amends the definition of "political committee." It provides that one of the ways to meet the definition is to state in its application for classification with the IRS that it is created primarily to support or oppose the nomination or election of one or more clearly identified candidates.

Sec. 3.2. Added Explanation of "Support or Oppose." Currently the campaign finance law has a section, 163-278.14A, explaining what constitutes supporting or opposing the nomination or election of clearly identified candidates. This is North Carolina's version of "express advocacy," which the court's have said may be regulated fully under the campaign finance laws. The first part of that explanation is known as the "Magic Words" test. It lists certain common phrases used in campaign ads and says phrases "such as" those constitute express advocacy. The phrases include "vote for," "vote against" and some others. This section adds that "such as" means the provision covers unambiguous synonyms and unambiguous antonyms of the phrases listed, and gives examples.

BACKGROUND: New Jersey has conducted a similar pilot program for seats in its equivalent of NC's House. The Subcommittee on Campaign Finance of the House Select Committee on Ethics and Governmental Reform heard a report about that program, and recommended that North Carolina adopt a similar pilot. The full House Select Committee recommended the original version of House Bill 1851.

H1851e1-SMRR-CSRR-73

Attachment IX

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1851

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

H1851-AST-152 [v.1]

Date 7/6 ,2006

Comm. Sub. [YES]
Amends Title [NO]
H1851-CSRR-73v.1

Representative Ross

moves to amend the bill on page 4, line 28 by inserting the following at the end of that line:

"The selection shall be made by at least a three-fourths vote of the members of the State Board present and voting.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

Attachment X

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1851

AMENDMENT NO. 2
(to be filled in by
Principal Clerk)

H1851-AST-154 [v.2]

Date 7/6 ,2006

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

Representative Ross

moves to amend the bill on page 1, line 21 through page 2, line 7 by rewriting those lines to read:

"This Article establishes the North Carolina Legislative Campaign Pilot Program as an alternative source of campaign financing for candidates who demonstrate public support and voluntarily accept strict fund-raising and spending limits. The purpose of this Article is to develop methods to promote fairness of democratic elections and to protect the rights of voters and candidates from the detrimental effects of large amounts of money being raised and spent to influence the outcome of elections.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

Attachment XI

ROLL CALL VOTE

6 YES 5 NO = _____(TOTAL)

HB# 1851
SB# _____

HOUSE STANDING COMMITTEE ON JUDICIARY I

YES	NO	MEMBER (last name)	YES	NO	MEMBER (last name)
✓		Alexander			
	✓	Blust			
	✓	Capps			
		Clary			
✓		Goodwin			
✓		Harrison			
✓		Insko			
		Miller			
✓		Ross			
	✓	Stam			
	✓	Stiller			
	✓	West			
✓		Hackney, Chairman			
			Ex officio Members		
					Rep. Culpepper
					Rep. Cunningham
					Rep. Eddins

Attachment XII

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative Hackney (Chair) for the Committee on JUDICIARY I.

☐ Committee Substitute for
HB 1851 A BILL TO BE ENTITLED AN ACT TO ESTABLISH A PILOT PROGRAM TO PROVIDE CANDIDATES FOR SELECTED LEGISLATIVE SEATS WITH THE OPTION OF FINANCING THEIR CAMPAIGNS FROM A PUBLICLY SUPPORTED FUND, PROVIDED THAT THEY GAIN AUTHORIZATION TO DO SO FROM REGISTERED VOTERS AND THAT THEY ABIDE BY STRICT FUND-RAISING AND SPENDING LIMITS; AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON ETHICS AND GOVERNMENTAL REFORM.

☒ With a favorable report as to the committee substitute bill, unfavorable as to the original bill.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

_____ Pursuant to Rule 36(b), the (House/Senate) committee substitute bill/(joint) resolution (No._____) is placed on the Calendar of _____. (The original bill resolution No._____) is placed on the Unfavorable Calendar.

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

Attachment XIII

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 1851
PROPOSED COMMITTEE SUBSTITUTE H1851-PCS80673-RR-73

Short Title: Legislative Campaigns Pilot. (Public)

Sponsors:

Referred to:

May 10, 2006

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH A PILOT PROGRAM TO PROVIDE CANDIDATES FOR FOUR LEGISLATIVE SEATS WITH THE OPTION OF FINANCING THEIR CAMPAIGNS FROM A VOLUNTARY TAXPAYER-DESIGNATED FUND, PROVIDED THAT THEY GAIN AUTHORIZATION TO DO SO FROM REGISTERED VOTERS AND THAT THEY ABIDE BY STRICT FUND-RAISING AND SPENDING LIMITS; TO PROVIDE CANDIDATES IN THE PILOT PROGRAM WITH "RESCUE" FUNDS TO OFFSET HIGH LEVELS OF SPENDING BY OPPOSING CANDIDATES AND ELECTIONEERING COMMUNICATIONS; AND TO MAKE CHANGES TO THE DEFINITION OF "POLITICAL COMMITTEE" AND THE STANDARD FOR PROVING THAT A COMMUNICATION SUPPORTS OR OPPOSES THE ELECTION OR DEFEAT OF A CLEARLY IDENTIFIED CANDIDATE.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 163 of the General Statutes is amended by adding a new Article to read:

"Article 22G.

"The North Carolina Legislative Campaigns Pilot Program.

"**§ 163-278.95. Purpose and establishment of North Carolina Legislative Campaigns Pilot Program.**

This Article establishes the North Carolina Legislative Campaign Pilot Program as an alternative source of campaign financing for candidates who demonstrate public support and voluntarily accept strict fund-raising and spending limits. The purpose of this Article is to develop methods to promote fairness of democratic elections and to protect the rights of voters and candidates from the detrimental effects of large amounts of money being raised and spent to influence the outcome of elections.

"**§ 163-278.96. Definitions.**

The following definitions apply in this Article:

(1) Advisory Council. – The Advisory Council established in G.S. 163-278.68.
(2) Board. – The State Board of Elections.
(3) Campaign-related expenditure. – An expenditure that benefits the candidate's current campaign in accordance with guidelines established by the Board.
(4) Candidate. – An individual who becomes a candidate as described in G.S. 163-278.6(4). The term includes a political committee authorized by the candidate for that candidate's election.
(5) Certified candidate. – A candidate for office who chooses to receive campaign funds from the Fund and who is certified under G.S. 163-278.98(c).
(6) Contested primary and contested general election. – An election in which there are more candidates than the number to be elected.
(7) Contribution. – Defined in G.S. 163-278.6. A distribution from the Fund pursuant to this Article is not a 'contribution' and is not subject to the limitations of G.S. 163-278.13 or the prohibitions of G.S. 163-278.15 or G.S. 163-278.19.
(8) Expenditure. – Defined in G.S. 163-278.6.
(9) Fund. – The North Carolina Legislative Campaigns Pilot Fund established in G.S. 163-278.97.
(10) Independent expenditure. – Defined in G.S. 163-278.6.
(11) Nonparticipating candidate. – A candidate for office who is not seeking to be certified under G.S. 163-278.98(c).
(12) Office. – The two Senate seats and two House of Representatives seats designated pursuant to G.S. 163-278.97A.
(13) Participating candidate. – A candidate for office who has filed a declaration of intent to participate under G.S. 163-278.98(a).
(14) Political committee. – Defined in G.S. 163-278.6.
(15) Qualifying contribution. – A contribution of not less than ten dollars ($10.00) and not more than one hundred dollars ($100.00) in the form of a check or money order to the candidate or the candidate's committee that meets all of the following conditions:
a. Made by any registered voter who resides in the district in which the candidate seeks office.
b. Made only during the qualifying period and obtained with the approval of the candidate or candidate's committee.
c. Acknowledged by a written receipt, on a multicopy form approved by the Board, which identifies the complete name, residence address, and county of residence of the contributor and the amount and date of the contribution made; states that the contributor is a registered voter; states that the contributor authorizes the candidate to use the contribution to qualify to

receive funds from the Fund; and is signed by the candidate or the candidate's representative.

(16) Qualifying period. – The period beginning October 1 of the year before the election and ending on the day of the primary.

(17) Trigger for rescue funds. – The dollar amount at which rescue funds are released for certified candidates. In the case of a primary, the trigger equals the maximum amount a participating candidate is permitted by G.S. 163-278.98(b) to raise in qualifying contributions. In the case of a general election, the trigger equals the funding available under G.S. 163-278.99(b)(4).

"**§ 163-278.97. Legislative Campaigns Pilot Fund established; sources of funding.**

(a) Establishment of Fund. – The North Carolina Legislative Campaigns Pilot Fund is established to finance the election campaigns of certified candidates for office and to pay administrative and enforcement costs of the Board related to this Article. The Fund is a special, dedicated, nonlapsing, nonreverting fund. Any interest generated by the Fund is credited to the Fund. The Board shall administer the Fund. No appropriation from the General Fund shall be made to finance the election campaigns of certified candidates, except for designations voluntarily made by taxpayers for that purpose.

(b) Sources of Funding. – Money received from all the following sources must be deposited in the Fund:

(1) Unspent 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.

(2) Voluntary donations made directly to the Fund.

(3) Designations by taxpayers to finance the election of campaigns of certified candidates.

(c) Determination of Fund Amount. – By April 1, 2007, and every two years thereafter, the Board, in conjunction with the Advisory Council, shall prepare and provide to the Joint Legislative Commission on Governmental Operations of the General Assembly a report documenting, evaluating, and making recommendations relating to the administration, implementation, and enforcement of this Article. In its report, the Board shall set out the funds received to date and the expected needs of the Fund during the next election cycle.

"**§ 163-278.97A. Selection of districts for pilot program.**

Four districts shall be selected for the pilot program every two years. In order to provide a useful test of the provisions in this Article, the pilot program shall occur in districts (i) that are relatively competitive, based on the ratio of party affiliation of registered voters in the district compared to the statewide ratio, and (ii) where there is a demonstrated interest to use the pilot program. The districts shall be selected in the following manner:

(1) By July 1 of the year before the election, the Executive Director of the Board shall prepare a list of the legislative districts that meet the following two criteria:

a. The ratio in the district of registered voters affiliated with the State's majority party to voters affiliated with the minority party is greater than seventy-five percent (75%) and less than one hundred twenty-five percent (125%) of the ratio between those parties statewide for voters registered for the legislative primary election before the July 1 deadline.

b. At least one legislative candidate in the district has volunteered to participate in the pilot program in a written statement provided to the Executive Director.

(2) From the list of eligible districts prepared by the Executive Director, the majority and minority leaders of the Senate shall each select up to three districts in the Senate, and the majority and minority leaders of the House of Representatives shall each select up to three districts in the House. Those leaders shall report their recommended selections to the Executive Director of the Board no later than July 31 of the year before the election.

(3) The State Board of Elections by August 15 shall consider the recommendations provided by the legislative leaders in subdivision (2) of this section and shall make a final selection of two districts in the Senate and two districts in the House of Representatives that meet the criteria described in subdivision (1) of this section. The selection shall be made by at least a three-fourths vote of the members of the State Board present and voting.

"**§ 163-278.98. Requirements for participation.**

(a) Declaration of Intent to Participate. – Any individual choosing to receive campaign funds from the Fund shall first file with the Board a declaration of intent to participate in the act as a candidate for a stated office. The declaration of intent shall be filed before or during the qualifying period and before collecting any qualifying contributions. In the declaration, the candidate shall swear or affirm that only one political committee, identified with its treasurer, shall handle all contributions, campaign-related expenditures, and obligations for the participating candidate and that the candidate will comply with the contribution and expenditure limits set forth in subsection (e) of this section and all other requirements set forth in this Article or adopted by the Board. Failure to comply is a violation of this Article.

(b) Demonstration of Support of Candidacy. – Participating candidates who seek certification to receive campaign funds from the Fund shall first, during the qualifying period, obtain qualifying contributions from at least 300 registered voters in the case of a Senate candidate and at least 150 registered voters in the case of a House of Representatives candidate in an aggregate sum that at least equals six thousand dollars ($6,000) in the case of a Senate candidate and three thousand dollars ($3,000) in the case of a House candidate, but that does not exceed forty thousand dollars ($40,000) in the case of a Senate candidate and twenty-five thousand dollars ($25,000) in the case of a House candidate.

(c) Certification of Candidates. – Upon receipt of a submittal of the record of demonstrated support by a participating candidate, the Board shall determine whether or not the candidate has complied with all the following requirements:

(1) Signed and filed a declaration of intent to participate in this Article.

(2) Submitted a report itemizing the appropriate number of qualifying contributions received from registered voters, which the Board shall verify through a random sample or other means it adopts. The report shall include the county of residence of each registered voter listed.

(3) Filed a valid notice of candidacy pursuant to this Chapter.

(4) Otherwise met the requirements for participation in this Article.

The Board shall certify candidates complying with the requirements of this section as soon as possible and no later than five business days after receipt of a satisfactory record of demonstrated support.

(d) Final Report for Qualifying Contributions. – No later than five business days after the end of the qualifying period, all participating candidates shall submit a report to the Board of all previously unreported qualifying contributions, together with copies of the contribution forms described in G.S. 163-278.96(15), in accordance with procedures developed by the Board. Within seven business days after submittal of the final report, the Board shall determine, through a random audit or other means it adopts, whether the contributions abide by the definition of qualifying contributions, whether they must be returned to the donor, and whether they exceed the maximum amount of qualifying contributions.

(e) Restrictions on Contributions and Expenditures for Participating and Certified Candidates. – The following restrictions shall apply to contributions and expenditures with respect to participating and certified candidates:

(1) Beginning January 1 of the year before the election and before the filing of a declaration of intent, a candidate for office may accept in contributions up to five thousand dollars ($5,000) from sources and in amounts permitted by Article 22A of this Chapter and may expend up to five thousand dollars ($5,000) for any campaign purpose related to the upcoming election. A candidate who exceeds either of these limits shall be ineligible to file a declaration of intent or receive funds from the Public Campaign Fund.

(2) From the filing of a declaration of intent through the end of the qualifying period, a candidate may accept only qualifying contributions, contributions under ten dollars ($10.00) from voters residing in the candidate's district, and personal and family contributions permitted under subdivision (4) of this subsection. The total contributions the candidate may accept during this period shall not exceed the maximum qualifying contributions for that candidate. In addition to these contributions, the candidate may only expend during this period the remaining money raised pursuant to subdivision (1) of this subsection and possible rescue funds received pursuant to G.S. 163-278.101.

(3) After the qualifying period and through the date of the general election, the candidate shall expend only the funds the candidate receives from the Fund pursuant to G.S. 163-278.99(b)(4) plus any funds remaining from the qualifying period and possible rescue funds. In addition, during that period a candidate may accept in-kind contributions from political party executive committees, up to an aggregate value of ten percent (10%) of the amount the candidate is entitled to receive under G.S. 163-278.99(b)(4).

(4) During the qualifying period, the candidate may contribute up to one thousand dollars ($1,000) of that candidate's own money to the campaign. Debt incurred by the candidate for a campaign expenditure shall count toward that limit. During the qualifying period, the candidate may accept in contributions up to one thousand dollars ($1,000) from each member of that candidate's family consisting of spouse, parent, child, brother, and sister, as long as the candidate accepts no more than two thousand dollars ($2,000) from all those family members combined.

(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 related to the upcoming election. 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.

(6) Any contribution received by a participating or certified candidate that falls outside that permitted by this subsection shall be returned to the donor as soon as practicable. Contributions intentionally made, solicited, or accepted in violation of this Article are subject to civil penalties as specified in G.S. 163-278.70. The funds involved shall be forfeited to the Civil Penalty and Forfeiture Fund.

(7) A candidate shall return to the Fund any amount distributed for an election that is unspent and uncommitted at the date of the election, or at the time the individual ceases to be a certified candidate, whichever occurs first. For accounting purposes, all qualifying, personal, and family contributions shall be considered spent before revenue from the Fund is spent or committed.

(f) Revocation. – A candidate may revoke, in writing to the Board, a decision to participate in the Fund at anytime. After a revocation, that candidate may accept and expend outside the limits of this Article without violating this Article. Within 10 days after revocation, a candidate shall return to the Board all money received from the Fund.

"**§ 163-278.99. Distribution from the Fund.**

(a) Timing of Fund Distribution. – The Board shall distribute to a certified candidate revenue from the Fund in an amount determined under subdivision (b)(4) of this section within five business days after the certified candidate's name is approved to appear on the ballot in a contested general election, but no earlier than five business days after the primary.

(b) Amount of Fund Distribution. – By August 1, 2007, and no less frequently than every two years thereafter, the Board shall determine the amount of funds, rounded to the nearest one hundred dollars ($100.00), to be distributed to certified candidates as follows:

(1) Uncontested primaries. – No funds shall be distributed.

(2) Contested primaries. – No funds shall be distributed except as provided in G.S. 163-278.101.

(3) Uncontested general elections. – No funds shall be distributed.

(4) Contested general elections. – Funds shall be distributed to a certified candidate for the Senate in an amount equal to the median amount of campaign-related expenditures made by all major party candidates who reported campaign expenditures for contested general election races for the Senate for the immediately preceding two general elections, but not less than seventy-five thousand dollars ($75,000). Funds shall be distributed to a certified candidate for the House in an amount equal to the median amount of campaign-related expenditures made by all major party candidates who reported campaign expenditures for contested general election races for the House for the immediately preceding two general elections, but not less than fifty thousand dollars ($50,000).

(c) Method of Fund Distribution. – The Board, in consultation with the State Treasurer and the State Controller, shall develop a rapid, reliable method of conveying funds to certified candidates. In all cases, the Board shall distribute funds to certified candidates in a manner that is expeditious, ensures accountability, and safeguards the integrity of the Fund. If the money in the Fund is insufficient to fully fund all certified candidates, then the available money shall be distributed proportionally, according to each candidate's eligible funding, and the candidate may raise additional money in the same manner as a noncertified candidate for the same office up to the unfunded amount of the candidate's eligible funding.

"**§ 163-278.100. Reporting requirements.**

(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. 163-278.96(17). Any entity making independent expenditures in support of or opposition to a certified candidate or in support of a candidate opposing a certified

candidate, or paying for electioneering communications, as defined in G.S. 163-278.80 or G.S. 163-278.90, that refer to one of those candidates, shall report the total funds received, spent, or obligated for those expenditures or electioneering communications 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 or electioneering communications, exceeds three thousand dollars ($3,000). After this 24-hour filing, the noncertified candidate or independent expenditure or electioneering communications 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.

(b) Reporting by Participating and Certified Candidates. – Notwithstanding other provisions of law, participating and certified candidates shall report any money received, including all previously unreported qualifying contributions, all campaign expenditures, obligations, and related activities to the Board according to procedures developed by the Board. A certified candidate who ceases to be certified or ceases to be a candidate or who loses an election shall file a final report with the Board and return any unspent revenues received from the Fund. In developing these procedures, the Board shall utilize existing campaign reporting procedures whenever practical.

(c) Timely Access to Reports. – The Board shall ensure prompt public access to the reports received in accordance with this Article. The Board may utilize electronic means of reporting and storing information.

"**§ 163-278.101. Rescue funds.**

(a) When Rescue Funds Become Available. – When any report or group of reports shows that 'funds in opposition to a certified candidate or in support of an opponent to that candidate' as described in this section, exceed the trigger for rescue funds as defined in G.S. 163-278.96(17), the Board shall issue immediately to that certified candidate an additional amount equal to the reported excess within the limits set forth in this section. 'Funds in opposition to a certified candidate or in support of an opponent to that candidate' shall be equal to the sum of the following:

(1) Campaign expenditures or obligations made, or funds raised or borrowed, whichever is greater, reported by any one uncertified opponent of a certified candidate. Where a certified candidate has more than one uncertified opponent, the measure shall be taken from the uncertified candidate showing the highest relevant dollar amount.

(2) The sum of all expenditures and electioneering communications reported in accordance with G.S. 163-278.100(a) of entities making independent expenditures in opposition to the certified candidate or in support of any opponent of that certified candidate.

(b) Limit on Rescue Funds in Contested Primary. – Total rescue funds to a certified candidate in a contested primary shall be limited to an amount equal to two times the maximum qualifying contributions.

(c) Limit on Rescue Funds in Contested General Election. – Total rescue funds to a certified candidate in a contested general election shall be limited to an amount equal to two times the amount described in G.S. 163-278.99(b)(4).

"**§ 163-278.102. Unaffiliated and new-party candidates.**

Unaffiliated candidates certified pursuant to G.S. 163-122 and new-party candidates certified pursuant to G.S. 163-98 shall be eligible for revenues from the Fund in the same amounts and at the same time as specified in G.S. 163-278.99. For unaffiliated candidates and new-party candidates not certified to appear on the ballot by noon on the last business day in February, the deadline for seeking certification to receive revenue from the Fund is noon on the first business day of July of the election year.

"**§ 163-278.103. Enforcement by the Board; civil penalty.**

The Board, with the advice of the Advisory Council, shall administer the provisions of this Article in the same manner as described in Article 22D of this Chapter. In addition to any other penalties that may be applicable, any individual, political committee, or other entity that violates any provision of this Article is subject to a civil penalty in the same manner as described in Article 22D of this Chapter."

SECTION 2. G.S. 163-278.13(e) reads as rewritten:

"(e) ~~This~~ Except as provided in subsections (e2) and (e3) of this section, this section shall not apply to any national, State, district or county executive committee of any political party. For the purposes of this section only, the term "political party" means only those political parties officially recognized under G.S. 163-96."

SECTION 3. G.S. 163-278.13 is amended by adding a new subsection to read:

"(e3) In order to make meaningful the provisions of the North Carolina Legislative Campaigns Pilot Program, as set forth in Article 22G of this Chapter, no candidate for any office that is in that current election subject to the provisions of Article 22G of this Chapter shall accept, and no contributor shall make to that candidate, a contribution during the period beginning 21 days before the day of the general election and ending the day after the general election if that contribution causes the candidate to exceed the "trigger for rescue funds" defined in G.S. 163-278.96(17). The prohibitions in this subsection shall also apply to a political committee the principal purpose of which is to support a candidate for those offices. Nothing in this subsection shall prohibit a candidate from making a contribution or loan secured entirely by that candidate's assets to that candidate's own campaign or to a political committee the principal purpose of which is to support that candidate's campaign. This subsection applies with respect to a candidate only if both of the following statements are true regarding that candidate:

(1) That candidate is opposed in the general election by a certified candidate as defined in Article 22G of this Chapter.

(2) That certified candidate has not received the maximum rescue funds available under G.S. 163-278.101(c).

The recipient of a contribution that apparently violates this subsection has three days to return the contribution or file a detailed statement with the State Board of Elections explaining why the contribution does not violate this subsection."

SECTION 3.1. G.S. 163-278.6(14) reads as rewritten:

"(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.~~candidates; or

e. States in its application for classification with the Internal Revenue Service that it is created primarily to support or oppose the nomination or election of one or more candidates for public office.

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."

SECTION 3.2. G.S. 163-278.14A reads as rewritten:

"§ 163-278.14A. Evidence that communications are "to support or oppose the nomination or election of one or more clearly identified candidates."

(a) Either of the following shall be means, but not necessarily the exclusive or conclusive means, of proving that an individual or other entity acted "to support or oppose the nomination or election of one or more clearly identified candidates":

(1) Evidence of financial sponsorship of communications to the general public that use phrases such as "vote for", "reelect", "support", "cast your ballot for", "(name of candidate) for (name of office)", "(name of candidate) in (year)", "vote against", "defeat", "reject", "vote pro-(policy position)" or "vote anti-(policy position)" accompanied by a list of candidates clearly labeled "pro-(policy position)" or "anti-(policy position)", or communications of campaign words or slogans, such as posters, bumper stickers, advertisements, etc., which say "(name of candidate)'s the One", "(name of candidate) '98", "(name of candidate)!", or the names of two candidates joined by a hyphen or slash. The use of "phrases such as" means this subsection includes communications with unambiguous synonyms of the sample phrases listed, for example, "throw out" for "reject" and unambiguous antonyms of the sample phrases listed, for example, "(name of candidate) is not the one for us!" for "(name of candidate)'s the One."

(2) Evidence of financial sponsorship of communications whose essential nature expresses electoral advocacy to the general public and goes beyond a mere discussion of public issues in that they direct voters to take some action to nominate, elect, or defeat a candidate in an election. If the course of action is unclear, contextual factors such as the language of the communication as a whole, the timing of the communication in relation to events of the day, the distribution of the communication to a significant number of registered voters for that candidate's election, and the cost of the communication may be considered in determining whether the action urged could only be interpreted by a reasonable person as advocating the nomination, election, or defeat of that candidate in that election.

(b) Notwithstanding the provisions of subsection (a) of this section, a communication shall not be subject to regulation as a contribution or expenditure under this Article if it:

(1) Appears in a news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, or magazine, unless those facilities are owned or controlled by any political party, or political committee;

(2) Is distributed by a corporation solely to its stockholders and employees; or

(3) Is distributed by any organization, association, or labor union solely to its members or to subscribers or recipients of its regular publications,

or is made available to individuals in response to their request, including through the Internet. "

SECTION 4. 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 this act that can be given effect without the invalid provision.

SECTION 5. This act is effective when it becomes law. Sections 1 through 3 of this act apply to elections for the seats representing two districts in the House of Representatives and two districts in the Senate selected in accordance with G.S. 163-278.97A, as enacted by Section 1 of this act, in 2008 and thereafter.

House Judiciary I Committee

July 11, 2006
10:00 a.m.

Minutes

The House Judiciary I Committee met on Tuesday, July 11, 2006 at 10:00 a.m. in Room 1228 of the Legislative Building. Chairman Joe Hackney called the meeting to order and the following members were present: Representatives Alexander, Blust, Capps, Clary, Goodwin, Harrison, Insko, Ross, Stam, Stiller and West. A copy of the agenda and visitor registration is attached, (Attachments I and II).

The first bill to be considered was Senate Bill 1479, AN ACT TO ENACT THE UNIFORM UNINCORPORATED NONPROFIT ASSOCIATION ACT, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION, (Attachment III). The bill was explained and briefly discussed during the June 29, 2006 meeting of the Committee. A memorandum prepared by the General Statutes Commission offering explanation of the bill is attached to the minutes, (Attachment IV).

Representative Ross offered a Proposed Committee Substitute, (Attachment V), and moved its adoption for the purpose of discussion. The motion carried.

Chairman Hackney stated that the Proposed Committee Substitute contained the General Statute Commission's technical corrections.

Representative Ross offered an amendment (Attachment VI) to amend the bill on age 6, line 37 through page 7, line 24 by deleting those lines. This deletes a technical correction that has already been made in another bill. Representative Ross moved adoption of the amendment. The motion carried.

Representative Ross moved that the adopted House Committee Substitute for Senate Bill 1479, as amended, be rolled into a new House Committee Substitute, that it be given a favorable report and the original bill an unfavorable report. The motion carried, (Attachment VII). A copy of the new House Committee Substitute is attached, (Attachment VIII).

House Bill 2188, AN ACT TO PROVIDE FOR A PROCEDURE FOR CHALLENGING THE QUALIFICATIONS OF A CANDIDATE, (Attachment IX), was before the committee for a recommendation on concurrence.

Ms. Erika Churchill, Committee Counsel, was recognized to explain the changes made by the Senate. She pointed out a change on page 2, line 11 where the words "contains territory in more than one county" rather than "covers more than one county" as had been in the House version. A second change was in the appeals section of the bill with the Senate version being solely the appeal of right.

Representative Ross moved that the Committee recommend that the House concur in the Senate Committee Substitute. The motion carried, (Attachment X).

House Bill 1048 AN ACT TO PROVIDE: (1) IMPROVED DETECTION OF IMPAIRED DRIVERS ON THE STATE'S ROADS AND HIGHWAYS; (2) IMPROVED METHODS OF DETERMINING HOW UNDERAGE DRIVERS OBTAIN ALCOHOL; (3) PROCEDURES FOR INVESTIGATING, ARRESTING, CHARGING, AND JUDICIAL PROCESSING OF IMPAIRED DRIVING OFFENSES; (4) RULES FOR THE COURTROOM ADMISSION OF EVIDENCE THAT IS RELEVANT TO IMPAIRED DRIVING OFFENSES, (5) CLARIFICATION ON WHEN A DRIVER IS GUILTY OF DRIVING WHILE IMPAIRED; (6) AGGRAVATED PENALTIES FOR OFFENDERS WHO SERIOUSLY INJURE OR KILL WHEN DRIVING WHILE IMPAIRED; (7) A SYSTEM OF REPORTING BY STATE PROSECUTORS AND THE COURTS ON THE DISPOSITION OF IMPAIRED DRIVING OFFENSES; (8) ELECTRONIC MONITORING AFTER AN IMPAIRED DRIVER HAS BEEN RELEASED FROM CONFINEMENT; (9) PROCEDURES TO DETERMINE IF IMPAIRED DRIVERS WHO ARE FOREIGN NATIONALS ARE LAWFULLY IN THE UNITED STATES; (10) OTHER MEASURES DESIGNED TO IMPROVE THE SAFETY OF THE MOTORING PUBLIC OF NORTH CAROLINA; AND TO PROVIDE THAT THE ACT SHALL BE KNOWN AS THE "MOTOR VEHICLE DRIVER PROTECTION ACT OF 2006," (Attachment XI), was back before the Committee for a recommendation of concurrence or non-concurrence. Chairman Hackney stated that he anticipated a motion not to concur.

Ms. Susan Sitze, Committee Counsel, was recognized to discussion the comparison between the House and Senate versions of the bill. Ms. Sitze distributed a handout outlining the comparisons, (Attachment XII).

Considerable discussion followed with regard to keg registration and it was determined that this was a major point of contention.

Mr. Andy Ellen, Retail Merchants Association, commented briefly in support of the Senate's version regarding the regulation of beverage kegs.

The Committee discussed differences in policy requirements for checking stations and roadblocks and the removal of the language directing the Office of the Attorney General to create policy for this and determined that this should be discussed.

The Senate version changed the level for commercial DWI from 0.00 to 0.04. The Committee felt that this point should also be negotiated. In addition, it was determined that the under 21 punishment levels should be negotiated because it was felt that this weakens current law.

The Committee was opposed to the Section 29 that required 2 hours of DWI training every two years for judges. They also expressed concern regarding the charging of $50 fee for compliance dismissals.

Chairman Hackney commented on the provision in Section 30.1-31 regarding the requirement for the jail to determine if a DWI offender is a foreign national and if so, if they are unlawfully admitted to the US and to notify the US Department of Homeland Security. He said that he had been told by sheriffs that they cannot do this, and if they did, nothing would happen. He further stated that there is an effort underway to search for a way to send a message to the Latino community which is having DWIs in a much higher percentage than other communities of interest. Representative Hackney noted that the federal policy is not to deport for DWI.

Representative Ross added that if illegals are to be reported, there should also be a requirement that they be notified that under our treaties with foreign countries they have a right to go to their consulate.

Mr. Matt Osborne, Administrative Office of the Courts, Ms. Peg Dorer, Conference of District Attorneys and Judge Ralph A. Walker, Administrative Office of the Courts offered brief comments on various sections that were under discussion.

Representative Stam moved that the Committee recommend that the House not concur in the Senate Committee Substitute. The motion carried, (Attachment XIII).

Chairman Hackney asked for a show of hands of those who would be interested in serving on a conference committee.

The meeting adjourned at 10:55 a.m.

Representative Joe Hackney
Chair

Emily Reynolds Freeman
Committee Clerk

Attachment I

HOUSE COMMITTEE ON JUDICIARY I

July 11, 2006
10:00 a.m.

AGENDA

OPENING REMARKS

AGENDA ITEM

House Bill 1048 – Governor's DWI Task Force Recommendations
Representative Hackney

House Bill 2188 – Candidate Challenge Procedure
Representatives Hackney and Howard

Senate Bill 1479 – Uniform Unincorporated Nonprofit Association Act
Senators Hagan and Hartsell

ADJOURNMENT

Attachment II

VISITOR REGISTRATION SHEET

House Judiciary I — July 11, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Rob Schofield	NCCVP
David Gardner	NC BAR Assoc.
Andy Elkin	NCRLMA
Bly Hall	General Statutes Commission
Cameron Cousiano	Daily Bulletin
Mike Baker	AP
Johanna Reese	DOT
Chris Heagy	Civitas Institute
Mark Fleming	University System
[illegible]	RAM - SSNC
Christin Pancki	Rep. Stam

VISITOR REGISTRATION SHEET

House Judiciary I — July 11, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Troy Page	N.C. Sentencing Commission
Cathy Matthews	DMV
Kimberly N Overton	Conference of DA's
Peg Dunn	Conference of DAs
Kathryn Pomeroy	Gov's Office
Jennifer Epperson	Governor's Office
ANN LOVE	DUIS
CP McKee	NCATL
Holly Bryson	NCATL
Jim Dunn	IOG
Mark Osborne	AOC

VISITOR REGISTRATION SHEET

House Judiciary I — July 11, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Dick Zorn	AG CAPITOL
FRANK W. FOLGER	HELMS MULLISS WICKER
Jon Carr	Jordan Price
Steve Keene	NCMS
Rob Arnold	AOC
Elizabeth Dalton	NCRMA

Attachment III

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 1479*

Short Title:	Uniform Unincorporated Nonprofit Assoc. Act.	(Public)
Sponsors:	Senators Hagan and Hartsell.	
Referred to:	Judiciary II.	

May 18, 2006

A BILL TO BE ENTITLED

AN ACT TO ENACT THE UNIFORM UNINCORPORATED NONPROFIT ASSOCIATION ACT, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. The General Statutes are amended by adding a new Chapter to read:

"**Chapter 59B.**

"**Uniform Unincorporated Nonprofit Association Act.**

"**§ 59B-1. Short title.**

This Chapter may be cited as the Uniform Unincorporated Nonprofit Association Act.

"**§ 59B-2. Definitions.**

In this Chapter:

(1) "Member" means a person who, under the rules or practices of a nonprofit association, may participate in the selection of persons authorized to manage the affairs of the nonprofit association or in the development of policy of the nonprofit association.

(2) "Nonprofit association" means an unincorporated organization, other than one created by a trust and other than a limited liability company, consisting of two or more members joined by mutual consent for a common, nonprofit purpose. However, joint tenancy, tenancy in common, or tenancy by the entireties does not by itself establish a nonprofit association, even if the co-owners share use of the property for a nonprofit purpose.

(3) "Person" means an individual, corporation, limited liability company, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(4) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States.

"**§ 59B-3. Supplementary general principles of law and equity.**

Principles of law and equity supplement this Chapter unless displaced by a particular provision of it.

"**§ 59B-4. Title to property; choice of law.**

Real and personal property in this State may be acquired, held, encumbered, and transferred by a nonprofit association, whether or not the nonprofit association or a member has any other relationship to this State.

"**§ 59B-5. Real and personal property; nonprofit association as legatee, devisee, or beneficiary.**

(a) A nonprofit association is a legal entity separate from its members for the purposes of acquiring, holding, encumbering, and transferring real and personal property.

(b) A nonprofit association, in its name, may acquire, hold, encumber, or transfer an estate or interest in real or personal property.

(c) A nonprofit association may be a beneficiary of a trust or contract, a legatee, or a devisee.

(d) Any judgments and executions against a nonprofit association bind its real and personal property in like manner as if it were incorporated.

"**§ 59B-6. Statement of authority as to real property.**

(a) A nonprofit association may execute and record a statement of authority to transfer an estate or interest in real property in the name of the nonprofit association.

(b) An estate or interest in real property in the name of a nonprofit association may be transferred by a person so authorized in a statement of authority recorded in the office of the register of deeds in the county in which a transfer of the property would be recorded.

(c) A statement of authority must be set forth in a document styled "affidavit" that contains all of the following:

(1) The name of the nonprofit association.

(2) Reserved for future codification purposes.

(3) The street address, and the mailing address if different from the street address, of the nonprofit association, and the county in which it is located, or, if the nonprofit association does not have an address in this State, its address out-of-state.

(4) That the association is an unincorporated nonprofit association.

(5) The name or office of a person authorized to transfer an estate or interest in real property held in the name of the nonprofit association.

(6) That the association has duly authorized the member or agent executing the statement to do so.

(d) A statement of authority must be sworn to and subscribed in the same manner as an affidavit by a member or agent who is not the person authorized to transfer the estate or interest.

(e) The register of deeds shall collect a fee for recording a statement of authority in the amount authorized by G.S. 161-10(a)(1). The register of deeds shall index the name of the nonprofit association and the member or agent signing the statement of authority or any subsequent document relating thereto as Grantor and the name of the appointee as Grantee.

(f) An amendment, including a termination, of a statement of authority must meet the requirements for execution and recording of an original statement. Unless terminated earlier, a recorded statement of authority or its most recent amendment expires by operation of law five years after the date of the most recent recording.

(g) If the record title to real property is in the name of a nonprofit association and the statement of authority is recorded in the office of the register of deeds in the county in which a transfer of real property would be recorded, the authority of the person or officer named in a statement of authority is conclusive in favor of a person who gives value without notice that the person or officer lacks authority.

"**§ 59B-7. Liability of members or other persons.**

(a) A nonprofit association is a legal entity separate from its members for the purposes of determining and enforcing rights, duties, and liabilities.

(b) A person is not liable for the contract, tort, or other obligations of a nonprofit association merely because the person is a member, is authorized to participate in the management of the affairs of the nonprofit association, or is referred to as a "member" by the nonprofit association.

(c) Reserved for future codification purposes.

(d) A tortious act or omission of a member or other person for which a nonprofit association is liable is not imputed to a person merely because the person is a member of the nonprofit association, is authorized to participate in the management of the affairs of the nonprofit association, or is referred to as a "member" by the nonprofit association.

(e) A member of, or a person referred to as a "member" by, a nonprofit association may assert a claim against or on behalf of the nonprofit association. A nonprofit association may assert a claim against a member or a person referred to as a "member" by the nonprofit association.

"**§ 59B-8. Capacity to assert and defend; standing.**

(a) A nonprofit association, in its name, may institute, defend, intervene, or participate in a judicial, administrative, or other governmental proceeding or in an arbitration, mediation, or any other form of alternative dispute resolution.

(b) A nonprofit association may assert a claim in its name on behalf of its members or persons referred to as "members" by the nonprofit association if one or more of them have standing to assert a claim in their own right, the interests the nonprofit association seeks to protect are germane to its purposes, and neither the claim asserted nor the relief requested requires the participation of a member or a person referred to as a "member" by the nonprofit association.

"**§ 59B-9. Effect of judgment or order.**

A judgment or order against a nonprofit association is not by itself a judgment or order against a member, a person referred to as a "member" by the nonprofit

association, or a person authorized to participate in the management of the affairs of the nonprofit association.

"**§ 59B-10. Disposition of personal property of inactive nonprofit association.**

If a nonprofit association has been inactive for three years or longer, or a different period specified in a document of the nonprofit association, a person in possession or control of personal property of the nonprofit association may transfer custody of the property:

(1) If a document of the nonprofit association or document of gift specifies a person to whom transfer is to be made under these circumstances, to that person; or

(2) If no person is so specified, to a nonprofit association, nonprofit corporation, or other nonprofit entity pursuing broadly similar purposes, or to a government or governmental subdivision, agency, or instrumentality.

"**§ 59B-11. Appointment of agent to receive service of process.**

(a) A nonprofit association may file in the office of the Secretary of State a statement appointing an agent authorized to receive service of process, notice, or demand required or permitted by law to be served on a nonprofit association.

(b) A statement appointing an agent must set forth all of the following:

(1) The name of the nonprofit association.

(2) Reserved for future codification purposes.

(3) The street address, and the mailing address if different from the street address, of the nonprofit association, and the county in which it is located, or, if the nonprofit association does not have an address in this State, its address out-of-state.

(4) The name of the person in this State authorized to receive service of process and the person's address, including the street address, in this State.

(c) A statement appointing an agent must be signed and acknowledged by a person authorized to manage the affairs of a nonprofit association. The statement must also be signed and acknowledged by the person appointed agent, who thereby accepts the appointment. The appointed agent may resign by filing a resignation in the office of the Secretary of State and giving written notice to the nonprofit association at its last known address.

(d) The sole duty of the appointed agent to the nonprofit association is to forward to the nonprofit association at its last known address any notice, process, or demand that is served on the appointed agent.

(e) The Secretary of State is not an agent for service of any process, notice, or demand on any nonprofit association.

(f) The Secretary of State shall collect the following fees when the documents described in this subsection are delivered to the Secretary of State for filing:

	Document	Fee
(1)	Statement appointing an agent to receive service of process	$5.00
(2)	Amendment of statement appointing an agent	5.00

(3) Cancellation of statement appointing an agent 5.00
(4) Agent's statement of resignation No fee

(g) An amendment to or cancellation of a statement appointing an agent to receive service of process must meet the requirements for execution of an original statement.

"**§ 59B-12. Claim not abated by change.**

A claim for relief against a nonprofit association does not abate merely because of a change in its members or persons authorized to manage the affairs of the nonprofit association.

"**§ 59B-13. Venue.**

For purposes of venue, a nonprofit association is a resident of a county in which it has an office or maintains a place of operation or, if on due inquiry no office or place of operation can be found, in which any officer resides.

"**§ 59B-14. Uniformity of application and construction.**

This Chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this Chapter among states enacting it."

SECTION 2.(a) G.S. 39-24 and G.S. 39-25 are repealed.

SECTION 2.(b) G.S. 39-26 and G.S. 39-27 are recodified as G.S. 59B-15(a) and (b), respectively. As recodified by this act, G.S. 59B-15 reads as rewritten:

"**§ 59B-15. Effect as to conveyances by ~~trustees.~~ trustees; prior deeds validated.**

(a) Nothing in this ~~Article shall be deemed in any manner to change~~ Chapter changes the law with reference to the holding and conveyance of land by the trustees of churches ~~or other voluntary organizations~~ under Chapter 61 of the General Statutes where ~~such~~ the land is conveyed to and held by ~~such~~ the trustees.

(b) All deeds ~~heretofore~~ executed ~~in conformity with this Article~~ before the effective date of this Chapter in conformity with former G.S. 39-24 and former G.S. 39-25 are declared to be sufficient to pass title to real ~~estate held by such organizations.~~ estate."

SECTION 3. G.S. 1-69.1 reads as rewritten:

"**§ 1-69.1. Unincorporated associations and partnerships; suit by or against.**

(a) Except as provided in subsection (b) of this section:

(1) All unincorporated associations, organizations or societies, or general or limited partnerships, foreign or domestic, whether organized for profit or not, may hereafter sue or be sued under the name by which they are commonly known and called, or under which they are doing business, to the same extent as any other legal entity established by law and without naming any of the individual members composing it.

(2) Any judgments and executions against any such association, organization or society shall bind its real and personal property in like manner as if it were incorporated.

(3) Any unincorporated association, organization, society, or general partnership bringing a suit in the name by which it is commonly known and called must allege the specific location of the recordation required by G.S. 66-68.

(b) Unincorporated nonprofit associations are subject to Chapter 59B of the General Statutes and not this section."

SECTION 4. G.S. 47C-3-101 reads as rewritten:

"**§ 47C-3-101. Organization of unit owners' association.**

A unit owners' association shall be organized no later than the date the first unit in the condominium is conveyed. The membership of the association at all times shall consist exclusively of all the unit owners, or following termination of the condominium, of all persons entitled to distributions of proceeds under G.S. 47C-2-118. The association shall be organized as a profit or nonprofit corporation or as an unincorporated nonprofit association."

SECTION 5. If any provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect any other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

SECTION 6. This act does not affect an action or proceeding commenced or right accrued before this act takes effect.

SECTION 7. The Revisor of Statutes shall cause to be printed along with this act all relevant portions of the official comments to the Uniform Unincorporated Nonprofit Association Act and all explanatory comments of the drafters of this act as the Revisor deems appropriate.

SECTION 8. This act becomes effective January 1, 2007.

Attachment IV

State of North Carolina
General Statutes
Commission

9001 Mail Service Center
RALEIGH, NORTH CAROLINA
27699-9001

MEMORANDUM
May 25, 2006

TO: Senate Judiciary II Committee
FROM: General Statutes Commission
RE: **Senate Bill 1479 (Uniform Unincorporated Nonprofit Assoc. Act)**

General Comments

This bill enacts a North Carolina version of the Uniform Unincorporated Nonprofit Associations Act (UUNAA) as a new Chapter 59B of the General Statutes and makes conforming amendments to other parts of the General Statutes. In brief summary, UUNAA:

- Incorporates in one act statutory law dealing with unincorporated nonprofit associations with respect to holding property and legal obligations.
- Treats unincorporated nonprofit associations as legal entities with respect to legal obligations, including provision for limitations on liability, holding property, and standing to sue and be sued.
- Provides a procedure for disposing of the property of a defunct association.
- Permits the designation of an agent for service of process.

UUNAA does not contain provisions concerning the governance of unincorporated nonprofit associations.

Specific Comments

Section 1 enacts a version of UUNAA as a new Chapter 59B of the General Statutes.

Proposed § 59B-1 has the title ("Uniform Unincorporated Nonprofit Association Act").

Proposed § 59B-2 is a definitions section. Key terms include "member" (person who may participate in the selection of managers or in policy development) and "nonprofit association" (unincorporated organization of two or more members joined by mutual consent for a common, nonprofit purpose; excludes trusts and limited liability companies).

Proposed § 59B-3 provides for supplementation of UUNAA by principles of law and equity.

Proposed § 59B-4 expressly authorizes a nonprofit association to hold real or personal property in this State, regardless of whether it or its members have any relationship to this State.

Subsection (a) of proposed § 59B-5 is new; it provides for a nonprofit association to be treated as a legal entity separate from its members for purposes of holding and dealing with its property. Subsections (b) and (c), consistent with current law, allows a nonprofit association to hold property in its association name and to be the beneficiary of a trust, will, or contract. Subsection (d) (judgment binds property as if association were incorporated) is not in the Uniform Act. It effectively brings forward the last sentence of current G.S. 1-69.1.

Proposed § 59B-6 is new. It permits a nonprofit association to record a statement of authority setting out who may transfer real property in the nonprofit association's name. The section describes the content, form (affidavit), and execution required for a statement of authority and provides for amendments and termination. A statement of authority expires by operation of law five years after the most recent recording. Proposed § 59B-6 also requires a statement of authority to be recorded in the county in which the real property is located and requires the register of deeds to collect the fees authorized by G.S. 161-10(a)(1) (instruments in general). Finally, subsection (g) protects a good faith purchaser for value who purchases a nonprofit association's real property from the person or officer named in a statement of authority.

Proposed § 59B-7 is new. Subsection (a) treats a nonprofit association as a legal entity separate from its members for the purposes of determining and enforcing rights, duties, and liabilities. The next two subsections provide that a person is not liable for the contract, tort or other obligations of a nonprofit association, and that a tortious act or omission is not imputed from one person to another, merely because the person is a member, is authorized to participate in the management of the affairs of the nonprofit association, or is referred to as a "member" by the nonprofit association. Subsection (e) allows a member or a person referred to as a "member" to assert a claim against a nonprofit association, and vice versa.

Subsection (a) of proposed § 59B-8 continues the current law allowing nonprofit associations to sue and be sued in their association name. Subsection (b) codifies U.S. Supreme Court case law standing requirements for a nonprofit association to bring a suit on behalf of its members and persons it refers to as members.

Proposed § 59B-9 provides that a judgment or order against a nonprofit association is not by itself a judgment or order against a member or person referred to as "member" by the nonprofit association, consistent with proposed § 59B-7.

Proposed § 59B-10 is new. It provides a statutory procedure for disposing of a defunct nonprofit association's personal property. If the nonprofit association has been inactive for three years or more, the provision authorizes a person who has possession of personal property belonging to the association to give the property to another nonprofit entity or to a government. This is a default provision; the nonprofit association may include a different minimum inactive period, name a taker for its property, or both, in appropriate documents.

Proposed § 59B-11 is new. It permits a nonprofit association to appoint an agent for service of process. A statement appointing a process agent must be filed in the office of the Secretary of State. The requirements for the statement's contents and for filing are similar to those in Chapter 55D for nonprofit corporate and business entities, except that a statement under

this section is required to be acknowledged by a manager of the nonprofit association and by the process agent. The filing fees are the same as those for similar documents filed by nonprofit corporations and business entities. Subsection (e) expressly provides that the Secretary of State is not a default process agent for nonprofit associations.

Proposed § 59B-12 provides that a claim for relief against a nonprofit association does not abate (go away) because its members or the persons authorized to manage its affairs change.

Proposed § 59B-13 provides that, for venue purposes, a nonprofit association is a resident of a county in which it has an office or place of operation, or if none, where an officer resides.

Proposed § 59B-14 is the standard provision on uniformity in interpretation and application.

Section 2 deals with the current statutory law on ownership of real property by nonprofit unincorporated associations, found in Article 4 of Chapter 39. Subsection 2(a) repeals G.S. 39-24 and G.S. 39-25 as no longer necessary. Subsection 2(b) recodifies G.S. 39-26 and G.S. 39-27 as new § 59B-15(a) and (b), respectively. Subsection 2(b) then amends new § 59B-15 to make conforming amendments and to update the style. New § 59B-15(b) is a validating provision; subsection 2(b) expands this provision to validate any deeds executed in conformity with G.S. 39-24 and G.S. 39-25 before their repeal.

Sections 3 and 4 make conforming amendments to G.S. 1-69.1 and G.S. 47C-3-101, respectively.

Section 5 is a severability clause.

Section 6 is a savings clause for rights accrued and actions or proceedings begun before the effective date.

Section 7 authorizes the Revisor of Statutes to print official and drafters' comments.

Section 8 provides an effective date of January 1, 2007.

For more information, see the General Statutes Commission's REPORT TO THE 2005 GENERAL ASSEMBLY OF NORTH CAROLINA, 2006 REGULAR SESSION, ON THE STUDY OF THE UNIFORM UNINCORPORATED NONPROFIT ASSOCIATION ACT.

State of North Carolina
General Statutes Commission
9001 Mail Service Center
RALEIGH, NORTH CAROLINA
27699-9001

MEMORANDUM

TO: House Committee on Rules, the Calendar, and Operations of the House

FROM: General Statutes Commission

DATE: July 6, 2006

RE: House Bill 2043 (2006 Technical Corrections Act)

General Comments

Sections 1 through 26 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 correct redlining, grammatical, stylistic, punctuation, and other obvious drafting errors, conform terminology and language and make other conforming amendments, update or correct names and statutory references, alter punctuation to make a provision more clear, make two obvious clarifying amendments, codify two applicability provisions that are long-term or permanent rather than transitional, and authorize the printing of official and drafters comments.

Specific Comments

Section 1. S.L. 2005-149 amended G.S. 9-6.1 to raise the age at which a person summoned for jury duty could request an exemption on the grounds of age from 65 to 72. This section makes a conforming change to G.S. 9-10(b), which requires the summons to inform recipients of this exemption.

Section 2. This section makes two technical corrections in the new notary chapter, Chapter 10B of the General Statutes. Subsection (a) amends G.S. 10B-20(l) to correct a cross-reference ("subsection (g)" should be "subsection (i)"). Subsection (b) amends G.S. 10B-106(d) to correct the terminology ("subsection" here should be "subdivision") and the style of the cross-reference.

Section 3. This section amends the introductory language of G.S. 15A-615(a) by changing the commas between the offenses listed in this part of the subsection to semicolons to make the paragraph easier to read.

Section 4. This section amends G.S. 41-47(c) to specify that when a claimant to a security registered in TOD form wishes to contest the transfer to the TOD beneficiary after the security owner's death, the written notice the claimant must give the registering entity must actually be addressed to that entity.

Section 5. G.S. 45-37(a)(1), (5), and (6) were enacted as part of S.L. 2005-123, which substantially revised the law dealing with mortgage satisfactions. These three subdivisions were intended to preserve the effectiveness of security instruments that were satisfied of record in accordance with the former law. This section amends these three subdivisions to make it clear that they apply only to security instruments that were satisfied of record before the effective date of the revision by S.L. 2005-123 (October 1, 2005).

Section 6. This section amends G.S. 45-38 to correct an obvious error in terminology. The reference to a "notice of forfeiture" should be to a "notice of foreclosure". The section also corrects the style of a citation ("G.S. 161-14.1", not "G.S. 161.14.1").

Section 7. Subsection (a) of this section amends G.S. 47C-3-116(e) to correct a citation (from a section in the chapter on planned communities to the equivalent section in Chapter 47C, on condominiums). Subsection (b) deletes an extra word in G.S. 47C-3-121(2)b. (see essentially the same amendment in the next section).

Section 8. Subsection (a) of this section amends G.S. 47F-1-102(c) to correct a citation (from a section in the chapter on condominiums to the equivalent section in Chapter 47F, on planned communities). Subsection (b) deletes an extra word in G.S. 47F-3-121(2)b. (see essentially the same amendment in the preceding section).

Section 9. This section amends four different business entity statutes. Subsection (a) amends G.S. 55-11-04(b) to correct the terminology. The current wording assumes that the parent corporation in a merger between a parent and its subsidiary under this provision will be the surviving corporation, and this is not necessarily the case. Subsection (b) amends G.S. 55-11-05(d) to make the language parallel to similar language in G.S. 55-11-06(c). Subsection (c) amends G.S. 55A-11-06(c) to correct the terminology; nonprofit corporations organized under Chapter 55A of the General Statutes may have members but they do not have shareholders or issue shares. Subsection (d) corrects a cross-reference in G.S. 57C-9A-02(a2).

Section 10. This section amends G.S. 58-47-140 to delete extra language that was inadvertently not deleted when the section was reformatted last year by Section 15 of S.L. 2005-215, when the current introductory language was added.

Section 11. This section amends G.S. 90-270.67 to conform the style of the definition of "occupational therapy" to the style of every other definition in G.S. 90-270.67.

Section 12. This section corrects three cross-references in G.S. 90B-9.

Section 13. This section makes a conforming amendment to G.S. 113-133.1(e) by deleting the entry for Harnett County. The local act reflected in that entry, Chapter 636 of the 1977 Session Laws, was repealed last year by S.L. 2005-28.

Section 14. This section makes a conforming amendment to G.S. 113-270.3(d) to add a reference to G.S. 113-270.3(b)(5), bringing G.S. 113-270.3(d) into conformity with G.S. 113-270.2. Waterfowl privileges were added to the comprehensive hunting licenses by S.L. 1999-399.

Section 15. This section amends G.S. 115C-499.3(a) to insert the missing word "under".

Section 16. G.S. 120-4.21(c) was amended last year in S.L. 2005-276 (Section 29.30A(j)), but these amendments were restricted to members retiring on or after September 1, 2005. This section codifies both versions of the subsection and also codifies the applicability language for each.

Section 17. This section amends G.S. 130A-309.10(f)(7) to delete "garbage language" from the version of that subdivision that will become effective October 1, 2009. The subdivision was amended in 2005 by two different acts, S.L. 2005-348, s. 3, and S.L. 2005-326, ss. 2 and 3, effective on different dates. The amendments with the latest effective date did not take into account amendments in the other act, with the result that when the amendments with the latest effective date take effect on October 1, 2009, there will be extra, unneeded, words in the subdivision that should be deleted.

Section 18. G.S. 135-3(8)c. was amended multiple times in 2005, with the result that the version effective June 30, 2007, contains "garbage language" that should be deleted. This section deletes this "garbage language" effective June 30, 2007.

Section 19. This section makes a conforming amendment to the catchline of G.S. 158-33 to update the name of the Global TransPark Development Zone to North Carolina's Eastern Region. This name change was made by the General Assembly last year in S.L. 2005-364, but the name was not changed in this one place.

Section 20. Subsection (a) of this section amends the introductory language of Section 5 of S.L. 2005-123 to include a reference to G.S. 47-46.2, which is also amended in Section 5. Subsection (b) makes this section effective on the effective date of S.L. 2005-123.

Section 21. This section amends S.L. 2005-123 to add a new section that authorizes the Revisor of Statutes to print the Official Comments to the Uniform Residential Mortgage Satisfaction Act and comments of the drafters of S.L. 2005-123 in the appropriate locations in the General Statutes.

Section 22. This section amends the effective date and applicability section of S.L. 2005-127 by correcting a citation ("162" should have been "162A").

Section 23. This section amends Section 1 of S.L. 2005-133 to complete the general authorization for the Revisor of Statutes to update the name of the Safety and Health Review Board to the North Carolina Occupational Safety and Health Review Commission.

Section 24. S.L. 2005-192 enacted a North Carolina version of the Uniform Trust Code, with conforming amendments. Section 7(a) of S.L. 2005-192 contains effective date and applicability provisions for Section 2 of S.L. 2005-192 (which contains the Uniform Trust Code, codified as Chapter 36C of the General Statutes); Section 7(b) contains effective date provisions for the remainder of S.L. 2005-192. Although some provisions in Section 7(a) are truly transitional, having only a limited lifespan, others, such as the applicability of the new act to existing trusts and trust documents, have permanent application and should be codified.

Subsections (a) and (b) of this section amend Section 7(a) of S.L. 2005-192 to move the effective date of Section 2 of S.L. 2005-192 from Section 7(a) to Section 7(b), leaving only applicability provisions in Section 7(a). Subsection (a) of this section codifies Section 7(a) of S.L. 2005-192 as G.S. 36C-11-1106. Subsection (c) of this section authorizes the Revisor of Statutes to print the Official Comment to the applicability section of the Uniform Trust Code and the drafters comment to Section 7(a).

Section 25. This section amends the applicability language in Section 7 of S.L. 2005-351 to fill a time gap.

Section 26. This section amends S.L. 2006-11 to add authorization for the Revisor of Statutes to print drafters comments for the amendment to G.S. 25-9-705 made by S.L. 2006-11.

Section 27. This section is the effective date section for the entire bill ("when it becomes law").

Attachment V

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 1479*
PROPOSED HOUSE COMMITTEE SUBSTITUTE S1479-PCS35449-ST-126

Short Title: Uninc. Nonprofit Assoc. Act/GSC Tech. Corr. (Public)

Sponsors:

Referred to:

May 18, 2006

A BILL TO BE ENTITLED

AN ACT TO ENACT THE UNIFORM UNINCORPORATED NONPROFIT ASSOCIATION ACT AND 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:

PART I. Uniform Unincorporated Nonprofit Association Act.

SECTION 1. The General Statutes are amended by adding a new Chapter to read:

"**Chapter 59B.**

"**Uniform Unincorporated Nonprofit Association Act.**

"**§ 59B-1. Short title.**

This Chapter may be cited as the Uniform Unincorporated Nonprofit Association Act.

"**§ 59B-2. Definitions.**

In this Chapter:

(1) "Member" means a person who, under the rules or practices of a nonprofit association, may participate in the selection of persons authorized to manage the affairs of the nonprofit association or in the development of policy of the nonprofit association.

(2) "Nonprofit association" means an unincorporated organization, other than one created by a trust and other than a limited liability company, consisting of two or more members joined by mutual consent for a common, nonprofit purpose. However, joint tenancy, tenancy in common, or tenancy by the entireties does not by itself establish a nonprofit association, even if the co-owners share use of the property for a nonprofit purpose.

(3) "Person" means an individual, corporation, limited liability company, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(4) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States.

"**§ 59B-3. Supplementary general principles of law and equity.**

Principles of law and equity supplement this Chapter unless displaced by a particular provision of it.

"**§ 59B-4. Title to property; choice of law.**

Real and personal property in this State may be acquired, held, encumbered, and transferred by a nonprofit association, whether or not the nonprofit association or a member has any other relationship to this State.

"**§ 59B-5. Real and personal property; nonprofit association as legatee, devisee, or beneficiary.**

(a) A nonprofit association is a legal entity separate from its members for the purposes of acquiring, holding, encumbering, and transferring real and personal property.

(b) A nonprofit association, in its name, may acquire, hold, encumber, or transfer an estate or interest in real or personal property.

(c) A nonprofit association may be a beneficiary of a trust or contract, a legatee, or a devisee.

(d) Any judgments and executions against a nonprofit association bind its real and personal property in like manner as if it were incorporated.

"**§ 59B-6. Statement of authority as to real property.**

(a) A nonprofit association may execute and record a statement of authority to transfer an estate or interest in real property in the name of the nonprofit association.

(b) An estate or interest in real property in the name of a nonprofit association may be transferred by a person so authorized in a statement of authority recorded in the office of the register of deeds in the county in which a transfer of the property would be recorded.

(c) A statement of authority must be set forth in a document styled "affidavit" that contains all of the following:

(1) The name of the nonprofit association.

(2) Reserved for future codification purposes.

(3) The street address, and the mailing address if different from the street address, of the nonprofit association, and the county in which it is located, or, if the nonprofit association does not have an address in this State, its address out-of-state.

(4) That the association is an unincorporated nonprofit association.

(5) The name or office of a person authorized to transfer an estate or interest in real property held in the name of the nonprofit association.

(6) That the association has duly authorized the member or agent executing the statement to do so.

(d) A statement of authority must be sworn to and subscribed in the same manner as an affidavit by a member or agent who is not the person authorized to transfer the estate or interest.

(e) The register of deeds shall collect a fee for recording a statement of authority in the amount authorized by G.S. 161-10(a)(1). The register of deeds shall index the name of the nonprofit association and the member or agent signing the statement of authority or any subsequent document relating thereto as Grantor and the name of the appointee as Grantee.

(f) An amendment, including a termination, of a statement of authority must meet the requirements for execution and recording of an original statement. Unless terminated earlier, a recorded statement of authority or its most recent amendment expires by operation of law five years after the date of the most recent recording.

(g) If the record title to real property is in the name of a nonprofit association and the statement of authority is recorded in the office of the register of deeds in the county in which a transfer of real property would be recorded, the authority of the person or officer named in a statement of authority is conclusive in favor of a person who gives value without notice that the person or officer lacks authority.

"**§ 59B-7. Liability of members or other persons.**

(a) A nonprofit association is a legal entity separate from its members for the purposes of determining and enforcing rights, duties, and liabilities.

(b) A person is not liable for the contract, tort, or other obligations of a nonprofit association merely because the person is a member, is authorized to participate in the management of the affairs of the nonprofit association, or is referred to as a "member" by the nonprofit association.

(c) Reserved for future codification purposes.

(d) A tortious act or omission of a member or other person for which a nonprofit association is liable is not imputed to a person merely because the person is a member of the nonprofit association, is authorized to participate in the management of the affairs of the nonprofit association, or is referred to as a "member" by the nonprofit association.

(e) A member of, or a person referred to as a "member" by, a nonprofit association may assert a claim against or on behalf of the nonprofit association. A nonprofit association may assert a claim against a member or a person referred to as a "member" by the nonprofit association.

"**§ 59B-8. Capacity to assert and defend; standing.**

(a) A nonprofit association, in its name, may institute, defend, intervene, or participate in a judicial, administrative, or other governmental proceeding or in an arbitration, mediation, or any other form of alternative dispute resolution.

(b) A nonprofit association may assert a claim in its name on behalf of its members or persons referred to as "members" by the nonprofit association if one or more of them have standing to assert a claim in their own right, the interests the nonprofit association seeks to protect are germane to its purposes, and neither the claim

asserted nor the relief requested requires the participation of a member or a person referred to as a "member" by the nonprofit association.

"**§ 59B-9. Effect of judgment or order.**

A judgment or order against a nonprofit association is not by itself a judgment or order against a member, a person referred to as a "member" by the nonprofit association, or a person authorized to participate in the management of the affairs of the nonprofit association.

"**§ 59B-10. Disposition of personal property of inactive nonprofit association.**

If a nonprofit association has been inactive for three years or longer, or a different period specified in a document of the nonprofit association, a person in possession or control of personal property of the nonprofit association may transfer custody of the property:

(1) If a document of the nonprofit association or document of gift specifies a person to whom transfer is to be made under these circumstances, to that person; or

(2) If no person is so specified, to a nonprofit association, nonprofit corporation, or other nonprofit entity pursuing broadly similar purposes, or to a government or governmental subdivision, agency, or instrumentality.

"**§ 59B-11. Appointment of agent to receive service of process.**

(a) A nonprofit association may file in the office of the Secretary of State a statement appointing an agent authorized to receive service of process, notice, or demand required or permitted by law to be served on a nonprofit association.

(b) A statement appointing an agent must set forth all of the following:

(1) The name of the nonprofit association.

(2) Reserved for future codification purposes.

(3) The street address, and the mailing address if different from the street address, of the nonprofit association, and the county in which it is located, or, if the nonprofit association does not have an address in this State, its address out-of-state.

(4) The name of the person in this State authorized to receive service of process and the person's address, including the street address, in this State.

(c) A statement appointing an agent must be signed and acknowledged by a person authorized to manage the affairs of a nonprofit association. The statement must also be signed and acknowledged by the person appointed agent, who thereby accepts the appointment. The appointed agent may resign by filing a resignation in the office of the Secretary of State and giving written notice to the nonprofit association at its last known address.

(d) The sole duty of the appointed agent to the nonprofit association is to forward to the nonprofit association at its last known address any notice, process, or demand that is served on the appointed agent.

(e) The Secretary of State is not an agent for service of any process, notice, or demand on any nonprofit association.

(f) The Secretary of State shall collect the following fees when the documents described in this subsection are delivered to the Secretary of State for filing:

	Document	Fee
(1)	Statement appointing an agent to receive service of process	$5.00
(2)	Amendment of statement appointing an agent	5.00
(3)	Cancellation of statement appointing an agent	5.00
(4)	Agent's statement of resignation	No fee

(g) An amendment to or cancellation of a statement appointing an agent to receive service of process must meet the requirements for execution of an original statement.

"**§ 59B-12. Claim not abated by change.**

A claim for relief against a nonprofit association does not abate merely because of a change in its members or persons authorized to manage the affairs of the nonprofit association.

"**§ 59B-13. Venue.**

For purposes of venue, a nonprofit association is a resident of a county in which it has an office or maintains a place of operation or, if on due inquiry no office or place of operation can be found, in which any officer resides.

"**§ 59B-14. Uniformity of application and construction.**

This Chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this Chapter among states enacting it."

SECTION 2.(a) G.S. 39-24 and G.S. 39-25 are repealed.

SECTION 2.(b) G.S. 39-26 and G.S. 39-27 are recodified as G.S. 59B-15(a) and (b), respectively. As recodified by this act, G.S. 59B-15 reads as rewritten:

"**§ 59B-15. Effect as to conveyances by ~~trustees.~~ trustees; prior deeds validated.**

(a) Nothing in this ~~Article shall be deemed in any manner to change~~ Chapter changes the law with reference to the holding and conveyance of land by the trustees of churches ~~or other voluntary organizations~~ under Chapter 61 of the General Statutes where ~~such~~ the land is conveyed to and held by ~~such~~ the trustees.

(b) All deeds ~~heretofore~~ executed ~~in conformity with this Article~~ before the effective date of this Chapter in conformity with former G.S. 39-24 and former G.S. 39-25 are declared to be sufficient to pass title to real ~~estate held by such organizations.~~ estate."

SECTION 3. G.S. 1-69.1 reads as rewritten:

"**§ 1-69.1. Unincorporated associations and partnerships; suit by or against.**

(a) Except as provided in subsection (b) of this section:

(1) All unincorporated associations, organizations or societies, or general or limited partnerships, foreign or domestic, whether organized for profit or not, may hereafter sue or be sued under the name by which they are commonly known and called, or under which they are doing business, to the same extent as any other legal entity established by law and without naming any of the individual members composing it.

(2) Any judgments and executions against any such association, organization or society shall bind its real and personal property in like manner as if it were incorporated.

(3) Any unincorporated association, organization, society, or general partnership bringing a suit in the name by which it is commonly known and called must allege the specific location of the recordation required by G.S. 66-68.

(b) Unincorporated nonprofit associations are subject to Chapter 59B of the General Statutes and not this section."

SECTION 4. G.S. 47C-3-101 reads as rewritten:

"**§ 47C-3-101. Organization of unit owners' association.**

A unit owners' association shall be organized no later than the date the first unit in the condominium is conveyed. The membership of the association at all times shall consist exclusively of all the unit owners, or following termination of the condominium, of all persons entitled to distributions of proceeds under G.S. 47C-2-118. The association shall be organized as a profit or nonprofit corporation or as an unincorporated nonprofit association."

SECTION 5. If any provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect any other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

SECTION 6. This act does not affect an action or proceeding commenced or right accrued before this act takes effect.

SECTION 7. The Revisor of Statutes shall cause to be printed along with this act all relevant portions of the official comments to the Uniform Unincorporated Nonprofit Association Act and all explanatory comments of the drafters of this act as the Revisor deems appropriate.

PART II. Technical Corrections.

SECTION 8. G.S. 9-10(b) reads as rewritten:

"(b) All summons served personally or by mail under this section or under G.S. 9-11 shall inform the prospective juror that persons ~~65~~72 years of age or older are entitled to establish in writing exemption from jury service for good cause, shall contain a statement for claiming such exemption and stating the cause and a place for the prospective juror's signature, and shall state the mailing address of the clerk of superior court and the date by which such request for exemption must be received."

SECTION 9.(a) G.S. 10B-20(l) reads as rewritten:

"(l) A notary public required to comply with the provisions of ~~subsection (g)~~subsection (i) of this section shall prominently post at the notary public's place of business a schedule of fees established by law, which a notary public may charge. The fee schedule shall be written in English and in the non-English language in which the notary services were solicited and shall contain the notice required in subsection (i) of this section, unless the notice is otherwise prominently posted at the notary public's place of business."

SECTION 9.(b) G.S. 10B-106(d) reads as rewritten:

"(d) An electronic form shall be used by an electronic notary in registering with the Secretary and it shall include, at least all of the following:

(1) The applicant's full legal name and the name to be used for commissioning, excluding nicknames.
(2) The state and county of commissioning of the registrant.
(3) The expiration date of the registrant's notary commission.
(4) Proof of successful completion of the course of instruction on electronic notarization as required by this Article.
(5) A description of the technology the registrant will use to create an electronic signature in performing official acts.
(6) If the device used to create the registrant's electronic signature was issued or registered through a licensed certification authority, the name of that authority, the source of the license, the starting and expiration dates of the device's term of registration, and any revocations, annulments, or other premature terminations of any registered device of the registrant that was due to misuse or compromise of the device, with the date, cause, and nature of each termination explained in detail.
(7) The e-mail address of the registrant.

The information contained in a registration under this section is a public record as defined in G.S. 132-1, except for information contained in ~~subsection (7),~~ subdivision (7) of this subsection, which shall be considered confidential information and shall not be subject to disclosure except as provided in Chapter 132 of the General Statutes or as provided by rule."

SECTION 10. G.S. 15A-615(a) reads as rewritten:

"(a) After a finding of probable cause pursuant to the provisions of Article 30 of Chapter 15A of the General Statutes or indictment for an offense that involves nonconsensual vaginal, anal, or oral ~~intercourse,~~ intercourse; an offense that involves vaginal, anal, or oral intercourse with a child 12 years old or ~~less,~~ less; or an offense under G.S. 14-202.1 that involves vaginal, anal, or oral intercourse with a child less than 16 years ~~old,~~ old; the victim or the parent, guardian, or guardian ad litem of a minor victim may request that a defendant be tested for the following sexually transmitted infections:

(1) Chlamydia;
(2) Gonorrhea;
(3) Hepatitis B;
(3a) Herpes;
(4) HIV; and
(5) Syphilis.

In the case of herpes, the defendant, pursuant to the provisions of this section, shall be examined for oral and genital herpetic lesions and, if a suggestive but nondiagnostic lesion is present, a culture for herpes shall be performed."

SECTION 11. G.S. 41-47(c) reads as rewritten:

"(c) A registering entity is discharged from all claims to a security by the estate, creditors, heirs, or devisees of a deceased owner if it registers a transfer of a security in accordance with G.S. 41-46 and does so in good faith reliance (i) on the registration, (ii) on this Article, and (iii) on information provided to it by affidavit of the personal representative of the deceased owner, or by the surviving beneficiary or by the surviving beneficiary's representatives, or other information available to the registering entity. The protections of this Article do not extend to a reregistration or payment made after a registering entity has received written ~~notice~~ notice, addressed to the registering entity, from any claimant to any interest in the security objecting to implementation of a registration in beneficiary form. No other notice or other information available to the registering entity affects its right to protection under this Article."

SECTION 12. G.S. 45-37(a) reads as rewritten:

"(a) Subject to the provisions of G.S. 45-36.9(a) and G.S. 45-73 relating to security instruments which secure future advances, any security instrument intended to secure the payment of money or the performance of any other obligation registered as required by law may be satisfied of record and thereby discharged and released of record in the following manner:

(1) Security instruments satisfied of record prior to October 1, 2005, pursuant to this subdivision as it was in effect prior to October 1, 2005, shall be deemed satisfied of record, discharged, and released.

...

(5) Security instruments satisfied of record prior to October 1, 2005, pursuant to this subdivision as it was in effect prior to October 1, 2005, shall be deemed satisfied of record, discharged, and released.

(6) Security instruments satisfied of record prior to October 1, 2005, pursuant to this subdivision as it was in effect prior to October 1, 2005, shall be deemed satisfied of record, discharged, and released.

...."

SECTION 13. G.S. 45-38 reads as rewritten:

"**§ 45-38. Recording of foreclosure.**

In case of foreclosure of any deed of trust, or mortgage, the trustee, mortgagee, or the trustee's or mortgagee's attorney shall record a notice of foreclosure that includes the date when, and the person to whom, a conveyance was made by reason of the foreclosure. In the event the entire obligation secured by a mortgage or deed of trust is satisfied by a sale of only a part of the property embraced within the terms of the mortgage or deed of trust, the trustee, mortgagee, or the trustee's or mortgagee's attorney shall indicate in the notice of foreclosure which property was sold.

A notice of foreclosure shall consist of a separate instrument, or that part of the original deed of trust or mortgage rerecorded, reciting the information required hereinabove, the names of the original parties to the original instrument foreclosed, and the recording data for the instrument foreclosed. A notice of ~~forfeiture~~ foreclosure shall be indexed by the register of deeds in accordance with ~~G.S. 161.14.1.~~G.S. 161-14.1."

SECTION 14.(a) G.S. 47C-3-116(e) reads as rewritten:

"(e) A judgment, decree, or order in any action brought under this section shall include costs and reasonable attorneys' fees for the prevailing party. If the unit owner does not contest the collection of debt and enforcement of a lien after the expiration of the 15-day period following notice as required in subsection (e1) of this section, then reasonable attorneys' fees shall not exceed one thousand two hundred dollars ($1,200), not including costs or expenses incurred. The collection of debt and enforcement of a lien remain uncontested as long as the unit owner does not dispute, contest, or raise any objection, defense, offset, or counterclaim as to the amount or validity of the debt and lien asserted or the association's right to collect the debt and enforce the lien as provided in this section. The attorneys' fee limitation in this subsection shall not apply to judicial foreclosures or proceedings authorized under subsection (d) of this section or ~~G.S. 47F-4-117.~~ G.S. 47C-4-117."

SECTION 14.(b) G.S. 47C-3-121(2)b. reads as rewritten:

"b. For restrictions registered on or after October 1, 2005, the restriction shall be written on the first page of the instrument or conveyance in print that is in boldface type, capital letters, and no smaller than the largest print used elsewhere in the instrument or conveyance. The restriction shall be construed to regulate or prohibit the display of political signs only if the restriction specifically states: **"THIS DOCUMENT REGULATES OR PROHIBITS THE DISPLAY OF ~~THE~~ POLITICAL SIGNS"."**

SECTION 15.(a) G.S. 47F-1-102(c) reads as rewritten:

"(c) Notwithstanding the provisions of subsection (a) of this section, G.S. 47F-3-102(1) through (6) and (11) through (17) (Powers of owners' association), G.S. 47F-3-103(f) (Executive board members and officers), G.S. 47F-3-107(a), (b), and (c) (Upkeep of planned community; responsibility and assessments for damages), G.S. 47F-3-107.1 (Procedures for fines and suspension of planned community privileges or services), G.S. 47F-3-108 (Meetings), G.S. 47F-3-115 (Assessments for common expenses), G.S. 47F-3-116 (Lien for assessments), G.S. 47F-3-118 (Association records), and ~~G.S. 47C-3-121~~ G.S. 47F-3-121 (American and State flags and political sign displays) apply to all planned communities created in this State before January 1, 1999, unless the articles of incorporation or the declaration expressly provides to the contrary, and G.S. 47F-3-120 (Declaration limits on attorneys' fees) applies to all planned communities created in this State before January 1, 1999. These sections apply only with respect to events and circumstances occurring on or after January 1, 1999, and do not invalidate existing provisions of the declaration, bylaws, or plats and plans of those planned communities. G.S. 47F-1-103 (Definitions) also applies to all planned communities created in this State before January 1, 1999, to the extent necessary in construing any of the preceding sections."

SECTION 15.(b) G.S. 47F-3-121(2)b. reads as rewritten:

"b. For restrictions registered on or after October 1, 2005, the restriction shall be written on the first page of the instrument or conveyance in print that is in boldface type, capital letters, and

no smaller than the largest print used elsewhere in the instrument or conveyance. The restriction shall be construed to regulate or prohibit the display of political signs only if the restriction specifically states: **"THIS DOCUMENT REGULATES OR PROHIBITS THE DISPLAY OF ~~THE~~ POLITICAL SIGNS"."**

SECTION 16.(a) G.S. 55-11-04(b) reads as rewritten:

"(b) If a merger is consummated without approval of the subsidiary corporation's shareholders, the ~~parent~~ surviving corporation shall, within 10 days after the effective date of the merger, notify each shareholder of the subsidiary corporation as of the effective date of the merger, that the merger has become effective."

SECTION 16.(b) G.S. 55-11-05(d) reads as rewritten:

"(d) In the case of a merger ~~or share exchange~~ pursuant to G.S. 55-11-07 or ~~G.S. 55-11-09,~~a share exchange pursuant to G.S. 55-11-07, references in subsections (a) and ~~(b)~~(a1) of this section to "corporation" shall include a domestic corporation, a domestic nonprofit corporation, a foreign corporation, and a foreign nonprofit corporation as applicable.

SECTION 16.(c) G.S. 55A-11-06(c) reads as rewritten:

"(c) This section does not limit the power of a foreign corporation to acquire all or part of the ~~shares~~ memberships of one or more classes ~~or series~~ of a domestic nonprofit corporation through a voluntary exchange or otherwise."

SECTION 16.(d) G.S. 57C-9A-02(a2) reads as rewritten:

"(a2) The provisions of the plan of conversion, other than the provisions required by subdivisions (1) and ~~(2)~~(1a) of subsection (a) of this section, may be made dependent on facts objectively ascertainable outside the plan of conversion if the plan of conversion sets forth the manner in which the facts will operate upon the affected provisions. The facts may include any of the following:

(1) Statistical or market indices, market prices of any security or group of securities, interest rates, currency exchange rates, or similar economic or financial data.

(2) A determination or action by the converting business entity or by any other person, group, or body.

(3) The terms of, or actions taken under, an agreement to which the converting business entity is a party, or any other agreement or document."

SECTION 17. G.S. 58-47-140 reads as rewritten:

"**§ 58-47-140. Other provisions of this Chapter.**

The following provisions of this Chapter apply to workers' compensation self-insurance groups that are subject to this Article:

G.S. 58-1-10, 58-2-45, 58-2-50, 58-2-70, 58-2-100, 58-2-105, 58-2-155, 58-2-161, 58-2-180, 58-2-185, 58-2-190, 58-2-200, 58-3-71, 58-3-81, 58-3-100, 58-3-120, 58-6-25, 58-7-21, 58-7-26, 58-7-30, 58-7-33, 58-7-73, and Articles 13, 19, 30, 33, 34, and 63 of this ~~Chapter apply to groups.~~ Chapter."

SECTION 18. G.S. 90-270.67 reads as rewritten:

"**§ 90-270.67. Definitions.**

As used in this Article, unless the context clearly requires a different meaning:

(1) Accrediting body. – The Accrediting Council for Occupational Therapy Education.

(1a) Board. – The North Carolina Board of Occupational Therapy.

(1b) Examining body. – The National Board for Certification in Occupational Therapy.

(2) Occupational therapist. – An individual licensed in good standing to practice occupational therapy as defined in this Article.

(3) Occupational therapy assistant. – An individual licensed in good standing to assist in the practice of occupational therapy under this Article, who performs activities commensurate with his or her education and training under the supervision of a licensed occupational therapist.

(4) ~~"Occupational therapy" means a~~ Occupational therapy. – A health care profession providing evaluation, treatment and consultation to help individuals achieve a maximum level of independence by developing skills and abilities interfered with by disease, emotional disorder, physical injury, the aging process, or impaired development. Occupational therapists use purposeful activities and specially designed orthotic and prosthetic devices to reduce specific impairments and to help individuals achieve independence at home and in the work place.

(5) Person. – Any individual, partnership, unincorporated organization, or corporate body, except that only an individual may be licensed under this Article."

SECTION 19. G.S. 90B-9 reads as rewritten:

"**§ 90B-9. Renewal of certificates and licenses.**

(a) All certificates and licenses shall be effective upon date of issuance by the Board, and shall be renewed on or before the second June 30 thereafter.

(b) All certificates and licenses issued hereunder shall be renewed at the times and in the manner provided by this section. At least 45 days prior to expiration of each certificate or license, the Board shall mail a notice and application for renewal to the certificate holder or licensee. Prior to the expiration date, the application shall be returned properly completed, together with a renewal fee established by the Board pursuant to ~~G.S. 90B-6.2(a)(5)~~ G.S. 90B-6.2(a)(4) and evidence of completion of the continuing education requirements established by the Board pursuant to G.S. 90B-6(g), upon receipt of which the Board shall renew the certificate or license. If a certificate or license is not renewed on or before the expiration date, an additional fee shall be charged for late renewal as provided in ~~G.S. 90B-6.2(a)(6).~~ G.S. 90B-6.2(a)(5).

(c) A certificate or license issued under this Chapter shall be automatically suspended for failure to renew for a period of more than 60 days after the renewal date. The Board may reinstate a certificate or license suspended under this subsection upon payment of a reinstatement fee as provided in ~~G.S. 90B-6.2(a)(7)~~ G.S. 90B-6.2(a)(6)

and may require that the applicant file a new application, furnish new supervisory reports or references or otherwise update his or her credentials, or submit to examination for reinstatement. The Board shall have exclusive jurisdiction to investigate alleged violations of this Chapter by any person whose certificate or license has been suspended under this subsection and, upon proof of any violation of this Chapter, the Board may take disciplinary action as provided in G.S. 90B-11.

(d) Any person certified or licensed and desiring to retire temporarily from the practice of social work shall send written notice thereof to the Board. Upon receipt of such notice, his or her name shall be placed upon the nonpracticing list and he or she shall not be subject to payment of renewal fees while temporarily retired. In order to reinstate certification or licensure, the person shall apply to the Board by making a request for reinstatement and paying the appropriate fee as provided in G.S. 90B-6.2."

SECTION 20. G.S. 113-133.1(e) reads as rewritten:

"(e) Because of strong community interest expressed in their retention, the local acts or portions of local acts listed in this section are not repealed. The following local acts are retained to the extent they apply to the county for which listed:

Alleghany: Session Laws 1951, Chapter 665; Session Laws 1977, Chapter 526; Session Laws 1979, Chapter 556.

Anson: Former G.S. 113-111, as amended by Session Laws 1955, Chapter 286.

Ashe: Former G.S. 113-111; Session Laws 1951, Chapter 665.

Avery: Former G.S. 113-122.

Beaufort: Session Laws 1947, Chapter 466, as amended by Session Laws 1979, Chapter 219; Session Laws 1957, Chapter 1364; Session Laws 1971, Chapter 173.

Bertie: Session Laws 1955, Chapter 1376; Session Laws 1975, Chapter 287.

Bladen: Public-Local Laws 1933, Chapter 550, Section 2 (as it pertains to fox season); Session Laws 1961, Chapter 348 (as it applies to Bladen residents fishing in Robeson County); Session Laws 1961, Chapter 1023; Session Laws 1971, Chapter 384.

Brunswick: Session Laws 1975, Chapter 218.

Buncombe: Public-Local Laws 1933, Chapter 308.

Burke: Public-Local Laws 1921, Chapter 454; Public-Local Laws 1921 (Extra Session), Chapter 213, Section 3 (with respect to fox seasons); Public-Local Laws 1933, Chapter 422, Section 3; Session Laws 1965, Chapter 608, as amended by Session Laws 1977, Chapter 68; Session Laws 1977, Chapter 636.

Caldwell: Former G.S. 113-122; Session Laws 1965, Chapter 608, as amended by Session Laws 1977, Chapter 68; Session Laws 1977, Chapter 636; Session Laws 1979, Chapter 507.

Camden: Session Laws 1955, Chapter 362 (to the extent it applies to inland fishing waters); Session Laws 1967, Chapter 441.

Carteret: Session Laws 1955, Chapter 1036; Session Laws 1977, Chapter 695.

Caswell: Public-Local Laws 1933, Chapter 311; Public-Local Laws 1937, Chapter 411.

Catawba: Former G.S. 113-111, as amended by Session Laws 1955, Chapter 1037.

Chatham: Public-Local Laws 1937 Chapter 236; Session Laws 1963, Chapter 271.

Chowan: Session Laws 1979, Chapter 184; Session Laws 1979, Chapter 582.

Cleveland: Public Laws 1907, Chapter 388; Session Laws 1951, Chapter 1101; Session Laws 1979, Chapter 587.

Columbus: Session Laws 1951, Chapter 492, as amended by Session Laws 1955, Chapter 506.

Craven: Session Laws 1971, Chapter 273, as amended by Session Laws 1971, Chapter 629.

Cumberland: Session Laws 1975, Chapter 748; Session Laws 1977, Chapter 471.

Dare: Session Laws 1973, Chapter 259.

Davie: Former G.S. 113-111, as amended by Session Laws 1947, Chapter 333.

Duplin: Session Laws 1965, Chapter 774; Session Laws 1973 (Second Session 1974), Chapter 1266; Session Laws 1979, Chapter 466.

Edgecombe: Session Laws 1961, Chapter 408.

Gates: Session Laws 1959, Chapter 298; Session Laws 1975, Chapter 269; Session Laws 1975, Chapter 748.

Granville: Session Laws 1963, Chapter 670.

Greene: Session Laws 1975, Chapter 219; Session Laws 1979, Chapter 360.

Halifax: Public-Local Laws 1925, Chapter 571, Section 3 (with respect to fox-hunting seasons); Session Laws 1947, Chapter 954; Session Laws 1955, Chapter 1376.

~~Harnett: Former G.S. 113-111, as modified by Session Laws 1977, Chapter 636.~~

Haywood: Former G.S. 113-111, as modified by Session Laws 1963, Chapter 322.

Henderson: Former G.S. 113-111.

Hertford: Session Laws 1959, Chapter 298; Session Laws 1975, Chapter 269; Session Laws 1975, Chapter 748; Session Laws 1977, Chapter 67.

Hoke: Session Laws 1963, Chapter 267.

Hyde: Public-Local Laws 1929, Chapter 354, Section 1 (as it relates to foxes); Session Laws 1951, Chapter 932.

Iredell: Session Laws 1979, Chapter 577.

Jackson: Session Laws 1965, Chapter 765; Session Laws 1971, Chapter 424.

Johnston: Session Laws 1975, Chapter 342.

Jones: Session Laws 1979, Chapter 441.

Lee: Session Laws 1963, Chapter 271; Session Laws 1977, Chapter 636.

Lenoir: Session Laws 1979, Chapter 441.

Lincoln: Public-Local Laws 1925, Chapter 449, Sections 1 and 2; Session Laws 1955, Chapter 878.

Madison: Public-Local Laws 1925, Chapter 418, Section 4; Session Laws 1951, Chapter 1040.

Martin: Session Laws 1955, Chapter 1376; Session Laws 1977, Chapter 636.

Mitchell: Session Laws 1965, Chapter 608, as amended by Session Laws 1977, Chapter 68.

Montgomery: Session Laws 1977 (Second Session 1978), Chapter 1142.

Nash: Session Laws 1961, Chapter 408.

New Hanover: Session Laws 1971, Chapter 559; Session Laws 1975, Chapter 95.

Northampton: Session Laws 1955, Chapter 1376; Session Laws 1975, Chapter 269; Session Laws 1975, Chapter 748; Session Laws 1977, Chapter 67; Session Laws 1979, Chapter 548.

Orange: Public-Local Laws 1913, Chapter 547.

Pamlico: Session Laws 1977, Chapter 636.

Pender: Session Laws 1961, Chapter 333; Session Laws 1967, Chapter 229; Session Laws 1969, Chapter 258, as amended by Session Laws 1973, Chapter 420; Session Laws 1977, Chapter 585, as amended by Session Laws 1985, Chapter 421; Session Laws 1977, Chapter 805; Session Laws 1979, Chapter 546.

Perquimans: Former G.S. 113-111; Session Laws 1973, Chapter 160; Session Laws 1973, Chapter 264; Session Laws 1979, Chapter 582.

Polk: Session Laws 1975, Chapter 397; Session Laws 1975, Chapter 269, as amended by Session Laws 1977, Chapter 167.

Randolph: Public-Local Laws 1941, Chapter 246; Session Laws 1947, Chapter 920.

Robeson: Public-Local Laws 1924 (Extra Session), Chapter 92; Session Laws 1961, Chapter 348.

Rockingham: Former G.S. 113-111; Public-Local Laws 1933, Chapter 310.

Rowan: Session Laws 1975, Chapter 269, as amended by Session Laws 1977, Chapter 106, and Session Laws 1977, Chapter 500; Session Laws 1979, Chapter 556.

Rutherford: Session Laws 1973, Chapter 114; Session Laws 1975, Chapter 397.

Sampson: Session Laws 1979, Chapter 373.

Scotland: Session Laws 1959, Chapter 1143; Session Laws 1977, Chapter 436.

Stokes: Former G.S. 113-111; Public-Local Laws 1933, Chapter 310; Session Laws 1979, Chapter 556.

Surry: Public-Local Laws 1925, Chapter 474, Section 6 (as it pertains to fox seasons); Session Laws 1975, Chapter 269, as amended by Session Laws 1977, Chapter 167.

Swain: Public-Local Laws 1935, Chapter 52; Session Laws 1953, Chapter 270; Session Laws 1965, Chapter 765.

Transylvania: Public Laws 1935, Chapter 107, Section 2, as amended by Public Laws 1935, Chapter 238.

Tyrrell: Former G.S. 113-111; Session Laws 1953, Chapter 685.

Wake: Session Laws 1973 (Second Session 1974), Chapter 1382.

Washington: Session Laws 1947, Chapter 620.

Wayne: Session Laws 1975, Chapter 269; Session Laws 1975, Chapter 342, as amended by Session Laws 1977, Chapter 43; Session Laws 1975, Chapter 343, as amended by Session Laws 1977, Chapter 45; Session Laws 1977, Chapter 695.

Wilkes: Former G.S. 113-111, as amended by Session Laws 1971, Chapter 385; Session Laws 1951, Chapter 665; Session Laws 1973, Chapter 106; Session Laws 1979, Chapter 507.

Yadkin: Former G.S. 113-111, as amended by Session Laws 1953, Chapter 199; Session Laws 1979, Chapter 507.

Yancey: Session Laws 1965, Chapter 522."

SECTION 21. G.S. 113-270.3(d) reads as rewritten:

"(d) Any individual who possesses any of the lifetime sportsman licenses established by G.S. 113-270.1D(b) may engage in specially regulated activities without the licenses required by subdivisions (1), (2), (3), and (5) of subsection (b) of this section. Any individual possessing an annual sportsman license established by G.S. 113-270.1D(a) or a lifetime or annual comprehensive hunting license established by G.S.113-270.2(c)(2) or (5) may engage in specially regulated activities without the licenses required by subdivisions ~~(1) and (3)~~(1), (3), and (5) of subsection (b) of this section."

SECTION 22. G.S. 115C-499.3(a) reads as rewritten:

"(a) Subject to the amount of net income available under G.S. 18C-164(b)(2), a scholarship awarded under this Article to a student at an eligible postsecondary institution shall be based upon the enrollment status and expected family contribution of the student and shall not exceed four thousand dollars ($4,000) per academic year, including any federal Pell Grant, to be used for the costs of attendance as defined for federal Title IV programs."

SECTION 23.(a) G.S. 120-4.21(c), as it applies to members retiring before September 1, 2005, reads as rewritten:

"(c) ~~Limitations.~~ Limitations applicable to members retiring before September 1, 2005. – In no event shall any member receive a service retirement allowance greater than seventy-five percent (75%) of his "highest annual salary"."

SECTION 23.(b) G.S. 120-4.21(c), as it applies to members retiring on or after September 1, 2005, is recodified as G.S. 120-4.21(d) and reads as rewritten:

"(d) ~~Limitations.~~ Limitations applicable to members retiring on or after September 1, 2005. – In no event shall any member receive a service retirement allowance greater than seventy-five percent (75%) of the member's "highest annual salary" nor shall a member receive any service retirement allowance whatsoever while employed in a position that makes the member a contributing member of either the Teachers' and State Employees' Retirement System or the Consolidated Judicial Retirement System. If the member should become a member of either of these systems, payment of the member's service retirement allowance shall be suspended until the member withdraws from membership in that system."

SECTION 24.(a) G.S. 130A-309.10 (f)(7) reads as rewritten:

"(7) Whole scrap tires, as provided in G.S. 130A-309.58(b). The prohibition ~~of the disposal of~~ on disposal of whole scrap tires in landfills applies to all whole pneumatic rubber coverings, but does not apply to whole solid rubber coverings."

SECTION 24.(b) This section is effective October 1, 2009.

SECTION 25.(a) G.S. 135-3(8)c. reads as rewritten:

"c. 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%).

~~in full-time capacity that exceeds fifty percent (50%) of the applicable workweek.~~"

SECTION 25.(b) This section is effective June 30, 2007.

SECTION 26. The catch line of G.S. 158-33 reads as rewritten:

"**§ 158-33. Creation of ~~Global TransPark Development Zone.~~North Carolina's Eastern Region.**"

SECTION 27.(a) The introductory language of Section 5 of S.L. 2005-123 reads as rewritten:

"**SECTION 5.** G.S. 47-46.1 and G.S. 47-46.2 read ~~reads~~ as rewritten:".

SECTION 27.(b) This section is effective October 1, 2005.

SECTION 28. S.L. 2005-123 is amended by adding a new section to read:

"**SECTION 9.1.** The Revisor of Statutes shall cause to be printed at the appropriate locations in the General Statutes all relevant portions of the official comments to the Uniform Residential Mortgage Satisfaction Act and all explanatory comments of the drafters of this act as the Revisor deems appropriate."

SECTION 29. Section 3 of S.L. 2005-127 reads as rewritten:

"**SECTION 3.** This act is effective when it becomes law. For each water and sewer authority organized under Article 1 of Chapter ~~162~~ 162A of the General Statutes, Section 2 of this act applies on the first day of the fiscal year of the authority that begins on or after the date this act becomes effective."

SECTION 30. Section 1 of S.L. 2005-133 reads as rewritten:

"**SECTION 1.** Under the Occupational Safety and Health Act of North Carolina, the name of the Safety and Health Review Board is changed to the North Carolina Occupational Safety and Health Review Commission. The Revisor of Statutes is authorized to substitute the term "Commission" for the term "Board" wherever that term appears in the General Statutes in relation to the Act. The Revisor of Statutes is also authorized to insert the words "North Carolina Occupational" in front of the phrase "Safety and Health Review Commission" wherever that phrase appears in the General Statutes in relation to the Act."

SECTION 31(a). Section 7(a) of S.L. 2005-192 is codified as G.S. 36C-11-1106, and reads as rewritten:

"**§ 36C-11-1106. Application to existing relationships.**

(a) ~~Section 2 of this act becomes effective January 1, 2006, and except~~Except as otherwise provided in ~~Chapter 36C of the General Statutes, as enacted by Section 2 of this act,~~this Chapter, this Chapter applies to (i) all trusts created before, on, or after ~~that date;~~January 1, 2006; (ii) all judicial proceedings concerning trusts commenced on or after ~~that date;~~January 1, 2006; and (iii) judicial proceedings concerning trusts commenced before ~~that date~~January 1, 2006, unless the court finds that application of a particular provision of ~~Chapter 36C of the General Statutes~~this Chapter would substantially interfere with the effective conduct of the judicial proceedings or prejudice the rights of the parties, in which case the particular provision of ~~Chapter 36C of the General Statutes~~this Chapter does not apply and the superseded law applies.

(b) Except as otherwise provided in ~~Chapter 36C of the General Statutes, as enacted by Section 2 of this act,~~this Chapter, any rule of construction or presumption provided in ~~Chapter 36C of the General Statutes~~ this Chapter applies to trust instruments executed before ~~the effective date of Section 2 of this act~~ January 1, 2006, unless there is a clear indication of a contrary intent in the terms of the trust or unless application of that rule of construction or presumption would impair substantial rights of a beneficiary. Except as otherwise provided in ~~Chapter 36C of the General Statutes, as enacted by Section 2 of this act,~~ this Chapter, an act done before ~~the effective date of Section 2 of this act~~January 1, 2006, is not affected by ~~Chapter 36C of the General Statutes.~~this Chapter. If a right is acquired, extinguished, or barred upon the expiration of a prescribed period that has commenced to run under any other statute before ~~the effective date of Section 2 of this act,~~January 1, 2006, that statute continues to apply to the right even if it has been repealed or superseded."

SECTION 31.(b) Section 7(b) of S.L. 2005-192 reads as rewritten:

"**SECTION 7.(b)** ~~Section 1 and Sections 3 through 5~~Sections 1 through 5 of this act become effective January 1, 2006. The remainder of this act is effective when it becomes law."

SECTION 31.(c) The Revisor of Statutes is authorized to cause to be printed along with G.S. 36C-11-1106, as enacted by this section, all relevant portions of the Official Commentary to this section of the Uniform Trust Code and all explanatory comments of the drafters as the Revisor deems appropriate.

SECTION 32. Section 7 of S.L. 2005-351 reads as rewritten:

"**SECTION 7.** This act becomes effective October 1, 2005, and applies to powers of attorney created ~~before and~~ on, before, or after that date."

SECTION 33. S.L. 2006-11 is amended by adding a new section to read:

"**SECTION 2.1.** The Revisor of Statutes shall cause to be printed along with G.S. 25-9-705, as amended by this act, all explanatory comments of the drafters of this act as the Revisor deems appropriate."

SECTION 34. Sections 1-7 of this act become effective January 1, 2007. The remainder of this act is effective when it becomes law.

Attachment VI

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1479*

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

S1479-AST-164 [v.1]

Date _____,2006

Comm. Sub. [YES]
Amends Title [NO]
S1479-PCS35449-ST-126

Representative Russ

moves to amend the bill on page 6, line 37 through page 7, line 24 by deleting those lines.

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

Attachment III

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:

By Representative Hackney (Chair) for the Committee on JUDICIARY I.

☐ Committee Substitute for

SB 1479 A BILL TO BE ENTITLED AN ACT TO ENACT THE UNIFORM UNINCORPORATED NONPROFIT ASSOCIATION ACT, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

☒ With a favorable report as to the House committee substitute bill, which changes the title, unfavorable as to the original bill..

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

_____ Pursuant to Rule 36(b), the (House/Senate) committee substitute bill/(joint) resolution (No._____) is placed on the Calendar of _____. (The original bill resolution No._____) is placed on the Unfavorable Calendar.

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

Attachment VIII

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 1479*
PROPOSED HOUSE COMMITTEE SUBSTITUTE S1479-PCS35449-ST-126

Short Title: Uninc. Nonprofit Assoc. Act/GSC Tech. Corr. (Public)

Sponsors:

Referred to:

May 18, 2006

A BILL TO BE ENTITLED

AN ACT TO ENACT THE UNIFORM UNINCORPORATED NONPROFIT ASSOCIATION ACT AND 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:

PART I. UNIFORM UNINCORPORATED NONPROFIT ASSOCIATION ACT.

SECTION 1. The General Statutes are amended by adding a new Chapter to read:

"**Chapter 59B.**

"**Uniform Unincorporated Nonprofit Association Act.**

"**§ 59B-1. Short title.**

This Chapter may be cited as the Uniform Unincorporated Nonprofit Association Act.

"**§ 59B-2. Definitions.**

In this Chapter:

(1) "Member" means a person who, under the rules or practices of a nonprofit association, may participate in the selection of persons authorized to manage the affairs of the nonprofit association or in the development of policy of the nonprofit association.

(2) "Nonprofit association" means an unincorporated organization, other than one created by a trust and other than a limited liability company, consisting of two or more members joined by mutual consent for a common, nonprofit purpose. However, joint tenancy, tenancy in common, or tenancy by the entireties does not by itself establish a nonprofit association, even if the co-owners share use of the property for a nonprofit purpose.

(3) "Person" means an individual, corporation, limited liability company, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(4) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States.

"**§ 59B-3. Supplementary general principles of law and equity.**

Principles of law and equity supplement this Chapter unless displaced by a particular provision of it.

"**§ 59B-4. Title to property; choice of law.**

Real and personal property in this State may be acquired, held, encumbered, and transferred by a nonprofit association, whether or not the nonprofit association or a member has any other relationship to this State.

"**§ 59B-5. Real and personal property; nonprofit association as legatee, devisee, or beneficiary.**

(a) A nonprofit association is a legal entity separate from its members for the purposes of acquiring, holding, encumbering, and transferring real and personal property.

(b) A nonprofit association, in its name, may acquire, hold, encumber, or transfer an estate or interest in real or personal property.

(c) A nonprofit association may be a beneficiary of a trust or contract, a legatee, or a devisee.

(d) Any judgments and executions against a nonprofit association bind its real and personal property in like manner as if it were incorporated.

"**§ 59B-6. Statement of authority as to real property.**

(a) A nonprofit association may execute and record a statement of authority to transfer an estate or interest in real property in the name of the nonprofit association.

(b) An estate or interest in real property in the name of a nonprofit association may be transferred by a person so authorized in a statement of authority recorded in the office of the register of deeds in the county in which a transfer of the property would be recorded.

(c) A statement of authority must be set forth in a document styled "affidavit" that contains all of the following:

(1) The name of the nonprofit association.

(2) Reserved for future codification purposes.

(3) The street address, and the mailing address if different from the street address, of the nonprofit association, and the county in which it is located, or, if the nonprofit association does not have an address in this State, its address out-of-state.

(4) That the association is an unincorporated nonprofit association.

(5) The name or office of a person authorized to transfer an estate or interest in real property held in the name of the nonprofit association.

(6) That the association has duly authorized the member or agent executing the statement to do so.

(d) A statement of authority must be sworn to and subscribed in the same manner as an affidavit by a member or agent who is not the person authorized to transfer the estate or interest.

(e) The register of deeds shall collect a fee for recording a statement of authority in the amount authorized by G.S. 161-10(a)(1). The register of deeds shall index the name of the nonprofit association and the member or agent signing the statement of authority or any subsequent document relating thereto as Grantor and the name of the appointee as Grantee.

(f) An amendment, including a termination, of a statement of authority must meet the requirements for execution and recording of an original statement. Unless terminated earlier, a recorded statement of authority or its most recent amendment expires by operation of law five years after the date of the most recent recording.

(g) If the record title to real property is in the name of a nonprofit association and the statement of authority is recorded in the office of the register of deeds in the county in which a transfer of real property would be recorded, the authority of the person or officer named in a statement of authority is conclusive in favor of a person who gives value without notice that the person or officer lacks authority.

"**§ 59B-7. Liability of members or other persons.**

(a) A nonprofit association is a legal entity separate from its members for the purposes of determining and enforcing rights, duties, and liabilities.

(b) A person is not liable for the contract, tort, or other obligations of a nonprofit association merely because the person is a member, is authorized to participate in the management of the affairs of the nonprofit association, or is referred to as a "member" by the nonprofit association.

(c) Reserved for future codification purposes.

(d) A tortious act or omission of a member or other person for which a nonprofit association is liable is not imputed to a person merely because the person is a member of the nonprofit association, is authorized to participate in the management of the affairs of the nonprofit association, or is referred to as a "member" by the nonprofit association.

(e) A member of, or a person referred to as a "member" by, a nonprofit association may assert a claim against or on behalf of the nonprofit association. A nonprofit association may assert a claim against a member or a person referred to as a "member" by the nonprofit association.

"**§ 59B-8. Capacity to assert and defend; standing.**

(a) A nonprofit association, in its name, may institute, defend, intervene, or participate in a judicial, administrative, or other governmental proceeding or in an arbitration, mediation, or any other form of alternative dispute resolution.

(b) A nonprofit association may assert a claim in its name on behalf of its members or persons referred to as "members" by the nonprofit association if one or more of them have standing to assert a claim in their own right, the interests the nonprofit association seeks to protect are germane to its purposes, and neither the claim

asserted nor the relief requested requires the participation of a member or a person referred to as a "member" by the nonprofit association.

"**§ 59B-9. Effect of judgment or order.**

A judgment or order against a nonprofit association is not by itself a judgment or order against a member, a person referred to as a "member" by the nonprofit association, or a person authorized to participate in the management of the affairs of the nonprofit association.

"**§ 59B-10. Disposition of personal property of inactive nonprofit association.**

If a nonprofit association has been inactive for three years or longer, or a different period specified in a document of the nonprofit association, a person in possession or control of personal property of the nonprofit association may transfer custody of the property:

(1) If a document of the nonprofit association or document of gift specifies a person to whom transfer is to be made under these circumstances, to that person; or

(2) If no person is so specified, to a nonprofit association, nonprofit corporation, or other nonprofit entity pursuing broadly similar purposes, or to a government or governmental subdivision, agency, or instrumentality.

"**§ 59B-11. Appointment of agent to receive service of process.**

(a) A nonprofit association may file in the office of the Secretary of State a statement appointing an agent authorized to receive service of process, notice, or demand required or permitted by law to be served on a nonprofit association.

(b) A statement appointing an agent must set forth all of the following:

(1) The name of the nonprofit association.

(2) Reserved for future codification purposes.

(3) The street address, and the mailing address if different from the street address, of the nonprofit association, and the county in which it is located, or, if the nonprofit association does not have an address in this State, its address out-of-state.

(4) The name of the person in this State authorized to receive service of process and the person's address, including the street address, in this State.

(c) A statement appointing an agent must be signed and acknowledged by a person authorized to manage the affairs of a nonprofit association. The statement must also be signed and acknowledged by the person appointed agent, who thereby accepts the appointment. The appointed agent may resign by filing a resignation in the office of the Secretary of State and giving written notice to the nonprofit association at its last known address.

(d) The sole duty of the appointed agent to the nonprofit association is to forward to the nonprofit association at its last known address any notice, process, or demand that is served on the appointed agent.

(e) The Secretary of State is not an agent for service of any process, notice, or demand on any nonprofit association.

(f) The Secretary of State shall collect the following fees when the documents described in this subsection are delivered to the Secretary of State for filing:

	Document	Fee
(1)	Statement appointing an agent to receive service of process	$5.00
(2)	Amendment of statement appointing an agent	5.00
(3)	Cancellation of statement appointing an agent	5.00
(4)	Agent's statement of resignation	No fee

(g) An amendment to or cancellation of a statement appointing an agent to receive service of process must meet the requirements for execution of an original statement.

"**§ 59B-12. Claim not abated by change.**

A claim for relief against a nonprofit association does not abate merely because of a change in its members or persons authorized to manage the affairs of the nonprofit association.

"**§ 59B-13. Venue.**

For purposes of venue, a nonprofit association is a resident of a county in which it has an office or maintains a place of operation or, if on due inquiry no office or place of operation can be found, in which any officer resides.

"**§ 59B-14. Uniformity of application and construction.**

This Chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this Chapter among states enacting it."

SECTION 2.(a) G.S. 39-24 and G.S. 39-25 are repealed.

SECTION 2.(b) G.S. 39-26 and G.S. 39-27 are recodified as G.S. 59B-15(a) and (b), respectively. As recodified by this act, G.S. 59B-15 reads as rewritten:

"**§ 59B-15. Effect as to conveyances by ~~trustees.~~ trustees; prior deeds validated.**

(a) Nothing in this ~~Article shall be deemed in any manner to change~~ Chapter changes the law with reference to the holding and conveyance of land by the trustees of churches ~~or other voluntary organizations~~ under Chapter 61 of the General Statutes where ~~such~~ the land is conveyed to and held by ~~such~~ the trustees.

(b) All deeds ~~heretofore~~ executed ~~in conformity with this Article~~ before the effective date of this Chapter in conformity with former G.S. 39-24 and former G.S. 39-25 are declared to be sufficient to pass title to real ~~estate held by such organizations.~~ estate."

SECTION 3. G.S. 1-69.1 reads as rewritten:

"**§ 1-69.1. Unincorporated associations and partnerships; suit by or against.**

(a) Except as provided in subsection (b) of this section:

(1) All unincorporated associations, organizations or societies, or general or limited partnerships, foreign or domestic, whether organized for profit or not, may hereafter sue or be sued under the name by which they are commonly known and called, or under which they are doing business, to the same extent as any other legal entity established by law and without naming any of the individual members composing it.

(2) Any judgments and executions against any such association, organization or society shall bind its real and personal property in like manner as if it were incorporated.

(3) Any unincorporated association, organization, society, or general partnership bringing a suit in the name by which it is commonly known and called must allege the specific location of the recordation required by G.S. 66-68.

(b) Unincorporated nonprofit associations are subject to Chapter 59B of the General Statutes and not this section."

SECTION 4. G.S. 47C-3-101 reads as rewritten:

"**§ 47C-3-101. Organization of unit owners' association.**

A unit owners' association shall be organized no later than the date the first unit in the condominium is conveyed. The membership of the association at all times shall consist exclusively of all the unit owners, or following termination of the condominium, of all persons entitled to distributions of proceeds under G.S. 47C-2-118. The association shall be organized as a profit or nonprofit corporation or as an unincorporated nonprofit association."

SECTION 5. If any provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect any other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

SECTION 6. This act does not affect an action or proceeding commenced or right accrued before this act takes effect.

SECTION 7. The Revisor of Statutes shall cause to be printed along with this act all relevant portions of the official comments to the Uniform Unincorporated Nonprofit Association Act and all explanatory comments of the drafters of this act as the Revisor deems appropriate.

PART II. TECHNICAL CORRECTIONS.

SECTION 8. G.S. 9-10(b) reads as rewritten:

"(b) All summons served personally or by mail under this section or under G.S. 9-11 shall inform the prospective juror that persons ~~65~~72 years of age or older are entitled to establish in writing exemption from jury service for good cause, shall contain a statement for claiming such exemption and stating the cause and a place for the prospective juror's signature, and shall state the mailing address of the clerk of superior court and the date by which such request for exemption must be received."

SECTION 10. G.S. 15A-615(a) reads as rewritten:

"(a) After a finding of probable cause pursuant to the provisions of Article 30 of Chapter 15A of the General Statutes or indictment for an offense that involves nonconsensual vaginal, anal, or oral ~~intercourse,~~ intercourse; an offense that involves vaginal, anal, or oral intercourse with a child 12 years old or ~~less,~~ less; or an offense under G.S. 14-202.1 that involves vaginal, anal, or oral intercourse with a child less than 16 years ~~old,~~ old; the victim or the parent, guardian, or guardian ad litem of a minor

victim may request that a defendant be tested for the following sexually transmitted infections:

(1) Chlamydia;
(2) Gonorrhea;
(3) Hepatitis B;
(3a) Herpes;
(4) HIV; and
(5) Syphilis.

In the case of herpes, the defendant, pursuant to the provisions of this section, shall be examined for oral and genital herpetic lesions and, if a suggestive but nondiagnostic lesion is present, a culture for herpes shall be performed."

SECTION 11. G.S. 41-47(c) reads as rewritten:

"(c) A registering entity is discharged from all claims to a security by the estate, creditors, heirs, or devisees of a deceased owner if it registers a transfer of a security in accordance with G.S. 41-46 and does so in good faith reliance (i) on the registration, (ii) on this Article, and (iii) on information provided to it by affidavit of the personal representative of the deceased owner, or by the surviving beneficiary or by the surviving beneficiary's representatives, or other information available to the registering entity. The protections of this Article do not extend to a reregistration or payment made after a registering entity has received written ~~notice~~ notice, addressed to the registering entity, from any claimant to any interest in the security objecting to implementation of a registration in beneficiary form. No other notice or other information available to the registering entity affects its right to protection under this Article."

SECTION 12. G.S. 45-37(a) reads as rewritten:

"(a) Subject to the provisions of G.S. 45-36.9(a) and G.S. 45-73 relating to security instruments which secure future advances, any security instrument intended to secure the payment of money or the performance of any other obligation registered as required by law may be satisfied of record and thereby discharged and released of record in the following manner:

(1) Security instruments satisfied of record prior to October 1, 2005, pursuant to this subdivision as it was in effect prior to October 1, 2005, shall be deemed satisfied of record, discharged, and released.

...

(5) Security instruments satisfied of record prior to October 1, 2005, pursuant to this subdivision as it was in effect prior to October 1, 2005, shall be deemed satisfied of record, discharged, and released.

(6) Security instruments satisfied of record prior to October 1, 2005, pursuant to this subdivision as it was in effect prior to October 1, 2005, shall be deemed satisfied of record, discharged, and released.

...."

SECTION 13. G.S. 45-38 reads as rewritten:

"**§ 45-38. Recording of foreclosure.**

In case of foreclosure of any deed of trust, or mortgage, the trustee, mortgagee, or the trustee's or mortgagee's attorney shall record a notice of foreclosure that includes the

date when, and the person to whom, a conveyance was made by reason of the foreclosure. In the event the entire obligation secured by a mortgage or deed of trust is satisfied by a sale of only a part of the property embraced within the terms of the mortgage or deed of trust, the trustee, mortgagee, or the trustee's or mortgagee's attorney shall indicate in the notice of foreclosure which property was sold.

A notice of foreclosure shall consist of a separate instrument, or that part of the original deed of trust or mortgage rerecorded, reciting the information required hereinabove, the names of the original parties to the original instrument foreclosed, and the recording data for the instrument foreclosed. A notice of ~~forfeiture~~ foreclosure shall be indexed by the register of deeds in accordance with ~~G.S. 161-14.1.~~G.S. 161-14.1."

SECTION 14.(a) G.S. 47C-3-116(e) reads as rewritten:

"(e) A judgment, decree, or order in any action brought under this section shall include costs and reasonable attorneys' fees for the prevailing party. If the unit owner does not contest the collection of debt and enforcement of a lien after the expiration of the 15-day period following notice as required in subsection (e1) of this section, then reasonable attorneys' fees shall not exceed one thousand two hundred dollars ($1,200), not including costs or expenses incurred. The collection of debt and enforcement of a lien remain uncontested as long as the unit owner does not dispute, contest, or raise any objection, defense, offset, or counterclaim as to the amount or validity of the debt and lien asserted or the association's right to collect the debt and enforce the lien as provided in this section. The attorneys' fee limitation in this subsection shall not apply to judicial foreclosures or proceedings authorized under subsection (d) of this section or ~~G.S. 47F-4-117.~~ G.S. 47C-4-117."

SECTION 14.(b) G.S. 47C-3-121(2)b. reads as rewritten:

"b. For restrictions registered on or after October 1, 2005, the restriction shall be written on the first page of the instrument or conveyance in print that is in boldface type, capital letters, and no smaller than the largest print used elsewhere in the instrument or conveyance. The restriction shall be construed to regulate or prohibit the display of political signs only if the restriction specifically states: **"THIS DOCUMENT REGULATES OR PROHIBITS THE DISPLAY OF ~~THE~~ POLITICAL SIGNS"**."

SECTION 15.(a) G.S. 47F-1-102(c) reads as rewritten:

"(c) Notwithstanding the provisions of subsection (a) of this section, G.S. 47F-3-102(1) through (6) and (11) through (17) (Powers of owners' association), G.S. 47F-3-103(f) (Executive board members and officers), G.S. 47F-3-107(a), (b), and (c) (Upkeep of planned community; responsibility and assessments for damages), G.S. 47F-3-107.1 (Procedures for fines and suspension of planned community privileges or services), G.S. 47F-3-108 (Meetings), G.S. 47F-3-115 (Assessments for common expenses), G.S. 47F-3-116 (Lien for assessments), G.S. 47F-3-118 (Association records), and ~~G.S. 47C-3-121~~ G.S. 47F-3-121 (American and State flags and political sign displays) apply to all planned communities created in this State before January 1, 1999, unless the articles of incorporation or the declaration expressly

provides to the contrary, and G.S. 47F-3-120 (Declaration limits on attorneys' fees) applies to all planned communities created in this State before January 1, 1999. These sections apply only with respect to events and circumstances occurring on or after January 1, 1999, and do not invalidate existing provisions of the declaration, bylaws, or plats and plans of those planned communities. G.S. 47F-1-103 (Definitions) also applies to all planned communities created in this State before January 1, 1999, to the extent necessary in construing any of the preceding sections."

SECTION 15.(b) G.S. 47F-3-121(2)b. reads as rewritten:

"b. For restrictions registered on or after October 1, 2005, the restriction shall be written on the first page of the instrument or conveyance in print that is in boldface type, capital letters, and no smaller than the largest print used elsewhere in the instrument or conveyance. The restriction shall be construed to regulate or prohibit the display of political signs only if the restriction specifically states: **"THIS DOCUMENT REGULATES OR PROHIBITS THE DISPLAY OF ~~THE~~ POLITICAL SIGNS"**."

SECTION 16.(a) G.S. 55-11-04(b) reads as rewritten:

"(b) If a merger is consummated without approval of the subsidiary corporation's shareholders, the ~~parent~~ surviving corporation shall, within 10 days after the effective date of the merger, notify each shareholder of the subsidiary corporation as of the effective date of the merger, that the merger has become effective."

SECTION 16.(b) G.S. 55-11-05(d) reads as rewritten:

"(d) In the case of a merger ~~or share exchange~~ pursuant to G.S. 55-11-07 or ~~G.S. 55-11-09,~~a share exchange pursuant to G.S. 55-11-07, references in subsections (a) and ~~(b)~~(a1) of this section to "corporation" shall include a domestic corporation, a domestic nonprofit corporation, a foreign corporation, and a foreign nonprofit corporation as applicable.

SECTION 16.(c) G.S. 55A-11-06(c) reads as rewritten:

"(c) This section does not limit the power of a foreign corporation to acquire all or part of the ~~shares~~ memberships of one or more classes ~~or series~~ of a domestic nonprofit corporation through a voluntary exchange or otherwise."

SECTION 16.(d) G.S. 57C-9A-02(a2) reads as rewritten:

"(a2) The provisions of the plan of conversion, other than the provisions required by subdivisions (1) and ~~(2)~~(1a) of subsection (a) of this section, may be made dependent on facts objectively ascertainable outside the plan of conversion if the plan of conversion sets forth the manner in which the facts will operate upon the affected provisions. The facts may include any of the following:

(1) Statistical or market indices, market prices of any security or group of securities, interest rates, currency exchange rates, or similar economic or financial data.

(2) A determination or action by the converting business entity or by any other person, group, or body.

(3) The terms of, or actions taken under, an agreement to which the converting business entity is a party, or any other agreement or document."

SECTION 17. G.S. 58-47-140 reads as rewritten:

"**§ 58-47-140. Other provisions of this Chapter.**

The following provisions of this Chapter apply to workers' compensation self-insurance groups that are subject to this Article:

G.S. 58-1-10, 58-2-45, 58-2-50, 58-2-70, 58-2-100, 58-2-105, 58-2-155, 58-2-161, 58-2-180, 58-2-185, 58-2-190, 58-2-200, 58-3-71, 58-3-81, 58-3-100, 58-3-120, 58-6-25, 58-7-21, 58-7-26, 58-7-30, 58-7-33, 58-7-73, and Articles 13, 19, 30, 33, 34, and 63 of this ~~Chapter apply to groups.~~ Chapter."

SECTION 18. G.S. 90-270.67 reads as rewritten:

"**§ 90-270.67. Definitions.**

As used in this Article, unless the context clearly requires a different meaning:

(1) Accrediting body. – The Accrediting Council for Occupational Therapy Education.

(1a) Board. – The North Carolina Board of Occupational Therapy.

(1b) Examining body. – The National Board for Certification in Occupational Therapy.

(2) Occupational therapist. – An individual licensed in good standing to practice occupational therapy as defined in this Article.

(3) Occupational therapy assistant. – An individual licensed in good standing to assist in the practice of occupational therapy under this Article, who performs activities commensurate with his or her education and training under the supervision of a licensed occupational therapist.

(4) ~~"Occupational therapy" means a~~ Occupational therapy. – A health care profession providing evaluation, treatment and consultation to help individuals achieve a maximum level of independence by developing skills and abilities interfered with by disease, emotional disorder, physical injury, the aging process, or impaired development. Occupational therapists use purposeful activities and specially designed orthotic and prosthetic devices to reduce specific impairments and to help individuals achieve independence at home and in the work place.

(5) Person. – Any individual, partnership, unincorporated organization, or corporate body, except that only an individual may be licensed under this Article."

SECTION 19. G.S. 90B-9 reads as rewritten:

"**§ 90B-9. Renewal of certificates and licenses.**

(a) All certificates and licenses shall be effective upon date of issuance by the Board, and shall be renewed on or before the second June 30 thereafter.

(b) All certificates and licenses issued hereunder shall be renewed at the times and in the manner provided by this section. At least 45 days prior to expiration of each

certificate or license, the Board shall mail a notice and application for renewal to the certificate holder or licensee. Prior to the expiration date, the application shall be returned properly completed, together with a renewal fee established by the Board pursuant to ~~G.S. 90B-6.2(a)(5)~~ G.S. 90B-6.2(a)(4) and evidence of completion of the continuing education requirements established by the Board pursuant to G.S. 90B-6(g), upon receipt of which the Board shall renew the certificate or license. If a certificate or license is not renewed on or before the expiration date, an additional fee shall be charged for late renewal as provided in ~~G.S. 90B-6.2(a)(6).~~ G.S. 90B-6.2(a)(5).

(c) A certificate or license issued under this Chapter shall be automatically suspended for failure to renew for a period of more than 60 days after the renewal date. The Board may reinstate a certificate or license suspended under this subsection upon payment of a reinstatement fee as provided in ~~G.S. 90B-6.2(a)(7)~~ G.S. 90B-6.2(a)(6) and may require that the applicant file a new application, furnish new supervisory reports or references or otherwise update his or her credentials, or submit to examination for reinstatement. The Board shall have exclusive jurisdiction to investigate alleged violations of this Chapter by any person whose certificate or license has been suspended under this subsection and, upon proof of any violation of this Chapter, the Board may take disciplinary action as provided in G.S. 90B-11.

(d) Any person certified or licensed and desiring to retire temporarily from the practice of social work shall send written notice thereof to the Board. Upon receipt of such notice, his or her name shall be placed upon the nonpracticing list and he or she shall not be subject to payment of renewal fees while temporarily retired. In order to reinstate certification or licensure, the person shall apply to the Board by making a request for reinstatement and paying the appropriate fee as provided in G.S. 90B-6.2."

SECTION 20. G.S. 113-133.1(e) reads as rewritten:

"(e) Because of strong community interest expressed in their retention, the local acts or portions of local acts listed in this section are not repealed. The following local acts are retained to the extent they apply to the county for which listed:

Alleghany: Session Laws 1951, Chapter 665; Session Laws 1977, Chapter 526; Session Laws 1979, Chapter 556.

Anson: Former G.S. 113-111, as amended by Session Laws 1955, Chapter 286.

Ashe: Former G.S. 113-111; Session Laws 1951, Chapter 665.

Avery: Former G.S. 113-122.

Beaufort: Session Laws 1947, Chapter 466, as amended by Session Laws 1979, Chapter 219; Session Laws 1957, Chapter 1364; Session Laws 1971, Chapter 173.

Bertie: Session Laws 1955, Chapter 1376; Session Laws 1975, Chapter 287.

Bladen: Public-Local Laws 1933, Chapter 550, Section 2 (as it pertains to fox season); Session Laws 1961, Chapter 348 (as it applies to Bladen residents fishing in Robeson County); Session Laws 1961, Chapter 1023; Session Laws 1971, Chapter 384.

Brunswick: Session Laws 1975, Chapter 218.

Buncombe: Public-Local Laws 1933, Chapter 308.

Burke: Public-Local Laws 1921, Chapter 454; Public-Local Laws 1921 (Extra Session), Chapter 213, Section 3 (with respect to fox seasons); Public-Local Laws 1933,

Chapter 422, Section 3; Session Laws 1965, Chapter 608, as amended by Session Laws 1977, Chapter 68; Session Laws 1977, Chapter 636.

Caldwell: Former G.S. 113-122; Session Laws 1965, Chapter 608, as amended by Session Laws 1977, Chapter 68; Session Laws 1977, Chapter 636; Session Laws 1979, Chapter 507.

Camden: Session Laws 1955, Chapter 362 (to the extent it applies to inland fishing waters); Session Laws 1967, Chapter 441.

Carteret: Session Laws 1955, Chapter 1036; Session Laws 1977, Chapter 695.

Caswell: Public-Local Laws 1933, Chapter 311; Public-Local Laws 1937, Chapter 411.

Catawba: Former G.S. 113-111, as amended by Session Laws 1955, Chapter 1037.

Chatham: Public-Local Laws 1937 Chapter 236; Session Laws 1963, Chapter 271.

Chowan: Session Laws 1979, Chapter 184; Session Laws 1979, Chapter 582.

Cleveland: Public Laws 1907, Chapter 388; Session Laws 1951, Chapter 1101; Session Laws 1979, Chapter 587.

Columbus: Session Laws 1951, Chapter 492, as amended by Session Laws 1955, Chapter 506.

Craven: Session Laws 1971, Chapter 273, as amended by Session Laws 1971, Chapter 629.

Cumberland: Session Laws 1975, Chapter 748; Session Laws 1977, Chapter 471.

Dare: Session Laws 1973, Chapter 259.

Davie: Former G.S. 113-111, as amended by Session Laws 1947, Chapter 333.

Duplin: Session Laws 1965, Chapter 774; Session Laws 1973 (Second Session 1974), Chapter 1266; Session Laws 1979, Chapter 466.

Edgecombe: Session Laws 1961, Chapter 408.

Gates: Session Laws 1959, Chapter 298; Session Laws 1975, Chapter 269; Session Laws 1975, Chapter 748.

Granville: Session Laws 1963, Chapter 670.

Greene: Session Laws 1975, Chapter 219; Session Laws 1979, Chapter 360.

Halifax: Public-Local Laws 1925, Chapter 571, Section 3 (with respect to fox-hunting seasons); Session Laws 1947, Chapter 954; Session Laws 1955, Chapter 1376.

~~Harnett: Former G.S. 113-111, as modified by Session Laws 1977, Chapter 636.~~

Haywood: Former G.S. 113-111, as modified by Session Laws 1963, Chapter 322.

Henderson: Former G.S. 113-111.

Hertford: Session Laws 1959, Chapter 298; Session Laws 1975, Chapter 269; Session Laws 1975, Chapter 748; Session Laws 1977, Chapter 67.

Hoke: Session Laws 1963, Chapter 267.

Hyde: Public-Local Laws 1929, Chapter 354, Section 1 (as it relates to foxes); Session Laws 1951, Chapter 932.

Iredell: Session Laws 1979, Chapter 577.

Jackson: Session Laws 1965, Chapter 765; Session Laws 1971, Chapter 424.

Johnston: Session Laws 1975, Chapter 342.

Jones: Session Laws 1979, Chapter 441.

Lee: Session Laws 1963, Chapter 271; Session Laws 1977, Chapter 636.

Lenoir: Session Laws 1979, Chapter 441.

Lincoln: Public-Local Laws 1925, Chapter 449, Sections 1 and 2; Session Laws 1955, Chapter 878.

Madison: Public-Local Laws 1925, Chapter 418, Section 4; Session Laws 1951, Chapter 1040.

Martin: Session Laws 1955, Chapter 1376; Session Laws 1977, Chapter 636.

Mitchell: Session Laws 1965, Chapter 608, as amended by Session Laws 1977, Chapter 68.

Montgomery: Session Laws 1977 (Second Session 1978), Chapter 1142.

Nash: Session Laws 1961, Chapter 408.

New Hanover: Session Laws 1971, Chapter 559; Session Laws 1975, Chapter 95.

Northampton: Session Laws 1955, Chapter 1376; Session Laws 1975, Chapter 269; Session Laws 1975, Chapter 748; Session Laws 1977, Chapter 67; Session Laws 1979, Chapter 548.

Orange: Public-Local Laws 1913, Chapter 547.

Pamlico: Session Laws 1977, Chapter 636.

Pender: Session Laws 1961, Chapter 333; Session Laws 1967, Chapter 229; Session Laws 1969, Chapter 258, as amended by Session Laws 1973, Chapter 420; Session Laws 1977, Chapter 585, as amended by Session Laws 1985, Chapter 421; Session Laws 1977, Chapter 805; Session Laws 1979, Chapter 546.

Perquimans: Former G.S. 113-111; Session Laws 1973, Chapter 160; Session Laws 1973, Chapter 264; Session Laws 1979, Chapter 582.

Polk: Session Laws 1975, Chapter 397; Session Laws 1975, Chapter 269, as amended by Session Laws 1977, Chapter 167.

Randolph: Public-Local Laws 1941, Chapter 246; Session Laws 1947, Chapter 920.

Robeson: Public-Local Laws 1924 (Extra Session), Chapter 92; Session Laws 1961, Chapter 348.

Rockingham: Former G.S. 113-111; Public-Local Laws 1933, Chapter 310.

Rowan: Session Laws 1975, Chapter 269, as amended by Session Laws 1977, Chapter 106, and Session Laws 1977, Chapter 500; Session Laws 1979, Chapter 556.

Rutherford: Session Laws 1973, Chapter 114; Session Laws 1975, Chapter 397.

Sampson: Session Laws 1979, Chapter 373.

Scotland: Session Laws 1959, Chapter 1143; Session Laws 1977, Chapter 436.

Stokes: Former G.S. 113-111; Public-Local Laws 1933, Chapter 310; Session Laws 1979, Chapter 556.

Surry: Public-Local Laws 1925, Chapter 474, Section 6 (as it pertains to fox seasons); Session Laws 1975, Chapter 269, as amended by Session Laws 1977, Chapter 167.

Swain: Public-Local Laws 1935, Chapter 52; Session Laws 1953, Chapter 270; Session Laws 1965, Chapter 765.

Transylvania: Public Laws 1935, Chapter 107, Section 2, as amended by Public Laws 1935, Chapter 238.

Tyrrell: Former G.S. 113-111; Session Laws 1953, Chapter 685.

Wake: Session Laws 1973 (Second Session 1974), Chapter 1382.

Washington: Session Laws 1947, Chapter 620.

Wayne: Session Laws 1975, Chapter 269; Session Laws 1975, Chapter 342, as amended by Session Laws 1977, Chapter 43; Session Laws 1975, Chapter 343, as amended by Session Laws 1977, Chapter 45; Session Laws 1977, Chapter 695.

Wilkes: Former G.S. 113-111, as amended by Session Laws 1971, Chapter 385; Session Laws 1951, Chapter 665; Session Laws 1973, Chapter 106; Session Laws 1979, Chapter 507.

Yadkin: Former G.S. 113-111, as amended by Session Laws 1953, Chapter 199; Session Laws 1979, Chapter 507.

Yancey: Session Laws 1965, Chapter 522."

SECTION 21. G.S. 113-270.3(d) reads as rewritten:

"(d) Any individual who possesses any of the lifetime sportsman licenses established by G.S. 113-270.1D(b) may engage in specially regulated activities without the licenses required by subdivisions (1), (2), (3), and (5) of subsection (b) of this section. Any individual possessing an annual sportsman license established by G.S. 113-270.1D(a) or a lifetime or annual comprehensive hunting license established by G.S.113-270.2(c)(2) or (5) may engage in specially regulated activities without the licenses required by subdivisions ~~(1) and (3)~~(1), (3), and (5) of subsection (b) of this section."

SECTION 22. G.S. 115C-499.3(a) reads as rewritten:

"(a) Subject to the amount of net income available under G.S. 18C-164(b)(2), a scholarship awarded under this Article to a student at an eligible postsecondary institution shall be based upon the enrollment status and expected family contribution of the student and shall not exceed four thousand dollars ($4,000) per academic year, including any federal Pell Grant, to be used for the costs of attendance as defined for federal Title IV programs."

SECTION 23.(a) G.S. 120-4.21(c), as it applies to members retiring before September 1, 2005, reads as rewritten:

"(c) ~~Limitations.~~ Limitations Applicable to Members Retiring Before September 1, 2005. – In no event shall any member receive a service retirement allowance greater than seventy-five percent (75%) of his "highest annual salary"."

SECTION 23.(b) G.S. 120-4.21(c), as it applies to members retiring on or after September 1, 2005, is recodified as G.S. 120-4.21(d) and reads as rewritten:

"(d) ~~Limitations.~~ Limitations Applicable to Members Retiring on or After September 1, 2005. – In no event shall any member receive a service retirement allowance greater than seventy-five percent (75%) of the member's "highest annual salary" nor shall a member receive any service retirement allowance whatsoever while employed in a position that makes the member a contributing member of either the Teachers' and State Employees' Retirement System or the Consolidated Judicial Retirement System. If the member should become a member of either of these systems, payment of the member's service retirement allowance shall be suspended until the member withdraws from membership in that system."

SECTION 24.(a) G.S. 130A-309.10(f)(7) reads as rewritten:

"(7) Whole scrap tires, as provided in G.S. 130A-309.58(b). The prohibition ~~of the disposal of~~ on disposal of whole scrap tires in landfills applies to all whole pneumatic rubber coverings, but does not apply to whole solid rubber coverings."

SECTION 24.(b) This section becomes effective October 1, 2009.

SECTION 25.(a) G.S. 135-3(8)c. reads as rewritten:

"c. 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%).

~~in full-time capacity that exceeds fifty percent (50%) of the applicable workweek.~~"

SECTION 25.(b) This section becomes effective June 30, 2007.

SECTION 26. The catch line of G.S. 158-33 reads as rewritten:

"**§ 158-33. Creation of ~~Global TransPark Development Zone.~~<u>North Carolina's Eastern Region.</u>**"

SECTION 27.(a) The introductory language of Section 5 of S.L. 2005-123 reads as rewritten:

"**SECTION 5.** G.S. 47-46.1 <u>and G.S. 47-46.2 read</u> ~~reads~~ as rewritten:".

SECTION 27.(b) This section becomes effective October 1, 2005.

SECTION 28. S.L. 2005-123 is amended by adding a new section to read:

"**SECTION 9.1.** The Revisor of Statutes shall cause to be printed at the appropriate locations in the General Statutes all relevant portions of the official comments to the Uniform Residential Mortgage Satisfaction Act and all explanatory comments of the drafters of this act as the Revisor deems appropriate."

SECTION 29. Section 3 of S.L. 2005-127 reads as rewritten:

"**SECTION 3.** This act is effective when it becomes law. For each water and sewer authority organized under Article 1 of Chapter ~~162~~ 162A of the General Statutes, Section 2 of this act applies on the first day of the fiscal year of the authority that begins on or after the date this act becomes effective."

SECTION 30. Section 1 of S.L. 2005-133 reads as rewritten:

"**SECTION 1.** Under the Occupational Safety and Health Act of North Carolina, the name of the Safety and Health Review Board is changed to the North Carolina Occupational Safety and Health Review Commission. The Revisor of Statutes is authorized to substitute the term "Commission" for the term "Board" wherever that term appears in the General Statutes in relation to the Act. The Revisor of Statutes is also authorized to insert the words "North Carolina Occupational" in front of the phrase "Safety and Health Review Commission" wherever that phrase appears in the General Statutes in relation to the Act."

SECTION 31.(a) Section 7(a) of S.L. 2005-192 is codified as G.S. 36C-11-1106, and reads as rewritten:

"**§ 36C-11-1106. Application to existing relationships.**

(a) ~~Section 2 of this act becomes effective January 1, 2006, and except~~Except as otherwise provided in ~~Chapter 36C of the General Statutes, as enacted by Section 2 of this act,~~this Chapter, this Chapter applies to (i) all trusts created before, on, or after ~~that date;~~January 1, 2006; (ii) all judicial proceedings concerning trusts commenced on or after ~~that date;~~January 1, 2006; and (iii) judicial proceedings concerning trusts commenced before ~~that date~~January 1, 2006, unless the court finds that application of a particular provision of ~~Chapter 36C of the General Statutes~~this Chapter would substantially interfere with the effective conduct of the judicial proceedings or prejudice the rights of the parties, in which case the particular provision of ~~Chapter 36C of the General Statutes~~this Chapter does not apply and the superseded law applies.

(b) Except as otherwise provided in ~~Chapter 36C of the General Statutes, as enacted by Section 2 of this act,~~this Chapter, any rule of construction or presumption provided in ~~Chapter 36C of the General Statutes~~ this Chapter applies to trust instruments executed before ~~the effective date of Section 2 of this act~~ January 1, 2006, unless there is a clear indication of a contrary intent in the terms of the trust or unless application of that rule of construction or presumption would impair substantial rights of a beneficiary. Except as otherwise provided in ~~Chapter 36C of the General Statutes, as enacted by Section 2 of this act,~~ this Chapter, an act done before ~~the effective date of Section 2 of this act~~January 1, 2006, is not affected by ~~Chapter 36C of the General Statutes.~~this Chapter. If a right is acquired, extinguished, or barred upon the expiration of a prescribed period that has commenced to run under any other statute before ~~the effective date of Section 2 of this act,~~January 1, 2006, that statute continues to apply to the right even if it has been repealed or superseded."

SECTION 31.(b) Section 7(b) of S.L. 2005-192 reads as rewritten:

"**SECTION 7.(b)** ~~Section 1 and Sections 3 through 5~~Sections 1 through 5 of this act become effective January 1, 2006. The remainder of this act is effective when it becomes law."

SECTION 31.(c) The Revisor of Statutes is authorized to cause to be printed along with G.S. 36C-11-1106, as enacted by this section, all relevant portions of the Official Commentary to this section of the Uniform Trust Code and all explanatory comments of the drafters as the Revisor deems appropriate.

SECTION 32. Section 7 of S.L. 2005-351 reads as rewritten:

"**SECTION 7.** This act becomes effective October 1, 2005, and applies to powers of attorney created ~~before and~~ on, before, or after that date."

SECTION 33. S.L. 2006-11 is amended by adding a new section to read:

"**SECTION 2.1.** The Revisor of Statutes shall cause to be printed along with G.S. 25-9-705, as amended by this act, all explanatory comments of the drafters of this act as the Revisor deems appropriate."

SECTION 34. Sections 1, 2, 3, 4, 5, 6, and 7 of this act become effective January 1, 2007. The remainder of this act is effective when it becomes law.

Attachment IX

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 4

HOUSE BILL 2188

Committee Substitute Favorable 6/21/06
Senate Judiciary I Committee Substitute Adopted 6/30/06
Fourth Edition Engrossed 7/7/06

Short Title: Candidate Challenge Procedure. (Public)

Sponsors:

Referred to:

May 18, 2006

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR A PROCEDURE FOR CHALLENGING THE QUALIFICATIONS OF A CANDIDATE.

The General Assembly of North Carolina enacts:

SECTION 1. Subchapter V of Chapter 163 of the General Statutes is amended by adding a new Article to read:

"Article 11B.

"Challenge to a Candidacy.

"**§ 163-127.1. Definitions.**

As used in this Article, the following terms mean:

(1) Board. – State Board of Elections.

(2) Candidate. – A person having filed a notice of candidacy under Article 10 of Chapter 163 of the General Statutes or having filed a petition under Article 11 of Chapter 163 of the General Statutes.

(3) Challenger. – Any qualified voter registered in the same district as the office for which the candidate has filed or petitioned.

(4) Office. – The elected office for which the candidate has filed or petitioned.

"**§ 163-127.2. When and how a challenge to a candidate may be made.**

(a) When. – A challenge to a candidate may be filed under this Article with the board of elections receiving the notice of the candidacy or petition no later than 10 business days after the close of the filing period for notice of candidacy or petition.

(b) How. – The challenge must be made in a verified affidavit by a challenger, based on reasonable suspicion or belief of the facts stated. Grounds for filing a challenge are that the candidate does not meet the constitutional or statutory qualifications for the office, including residency.

(c) If Defect Discovered After Deadline, Protest Available. – If a challenger discovers one or more grounds for challenging a candidate after the deadline in subsection (a) of this section, the grounds may be the basis for a protest under G.S. 163-182.9.

"**§ 163-127.3. Panel to conduct the hearing on a challenge.**

(a) Upon filing of a challenge, a panel shall hear the challenge, as follows:

(1) Single county. – If the district for the office subject to the challenge covers territory in all or part of only one county, the panel shall be the county board of elections of that county.

(2) Multicounty but less than entire State. – If the district for the office subject to the challenge contains territory in more than one county but is less than the entire State, the Board shall appoint a panel within two business days after the challenge is filed. The panel shall consist of at least one member of the county board of elections in each county in the district of the office. The panel shall have an odd number of members, no fewer than three and no more than five. In appointing members to the panel, the Board shall appoint members from each county in proportion to the relative total number of registered voters of the counties in the district for the office. If the district for the office subject to the challenge covers more than five counties, the panel shall consist of five members with at least one member from the county receiving the notice of candidacy or petition and at least one member from the county of residency of the challenger. The Board shall, to the extent possible, appoint members affiliated with different political parties in proportion to the representation of those parties on the county boards of elections in the district for the office. The Board shall designate a chair for the panel. A meeting of the Board to appoint a panel under this subdivision shall be treated as an emergency meeting for purposes of G.S. 143-318.12.

(3) Entire State. – If the district for the office subject to the challenge consists of the entire State, the panel shall be the Board.

"**§ 163-127.4. Conduct of hearing by panel.**

(a) The panel conducting a hearing under this Article shall do all of the following:

(1) Within five business days after the challenge is filed, designate and announce the time of the hearing and the facility where the hearing will be held. The hearing shall be held at a location in the district reasonably convenient to the public, and shall preferably be held in the county receiving the notice of the candidacy or petition. If the district for the office covers only part of a county, the hearing shall be at a location in the county convenient to residents of the district, but need not be in the district.

(2) Allow for depositions prior to the hearing, if requested by the challenger or candidate before the time of the hearing is designated and announced.

(3) Issue subpoenas for witnesses or documents, or both, upon request of the parties or upon its own motion.

(4) Render a written decision within 20 business days after the challenge is filed and serve that written decision on the parties.

(b) Notice of Hearing. – The panel shall give notice of the hearing to the challenger, to the candidate, other candidates filing or petitioning to be elected to the same office, to the county chair of each political party in every county in the district for the office, and to those persons who have requested to be notified. Each person given notice shall also be given a copy of the challenge or a summary of its allegations.

Failure to comply with the notice requirements in this subsection shall not delay the holding of a hearing nor invalidate the results if the individuals required by this section to be notified have been notified.

(c) Conduct of Hearing. – The hearing under this Article shall be conducted as follows:

(1) The panel may allow evidence to be presented at the hearing in the form of affidavits supporting documents, or it may examine witnesses. The chair or any two members of the panel may subpoena witnesses or documents. The parties shall be allowed to issue subpoenas for witnesses or documents, or both, including a subpoena of the candidate. Each witness must be placed under oath before testifying. The Board shall provide the wording of the oath to the panel.

(2) The panel may receive evidence at the hearing from any person with information concerning the subject of the challenge, and such presentation of evidence shall be subject to Chapter 8C of the General Statutes. The challenger shall be permitted to present evidence at the hearing, but the challenger shall not be required to testify unless subpoenaed by a party. The panel may allow evidence to be presented by a person who is present.

(3) The hearing shall be recorded by a reporter or by mechanical means, and the full record of the hearing shall be preserved by the panel until directed otherwise by the Board.

(d) Findings of Fact and Conclusions of Law by Panel. – The panel shall make a written decision on each challenge by separately stating findings of facts, conclusions of law, and an order.

(e) Rules by Board. – The Board shall adopt rules providing for adequate notice to parties, scheduling of hearings, and the timing of deliberations and issuance of decisions.

"**§ 163-127.5. Burden of proof.**

(a) The burden of proof shall be upon the candidate, who must show by a preponderance of the evidence of the record as a whole that he or she is qualified to be a candidate for the office.

(b) If the challenge is based upon a question of residency, the candidate must show all of the following:

(1) An actual abandonment of the first domicile, coupled with an intent not to return to the first domicile.

(2) The acquisition of a new domicile by actual residence at another place.

(3) The intent of making the newer domicile a permanent domicile.

"**§ 163-127.6. Appeals.**

(a) Appeals from Single or Multicounty Panel. – The decision of a panel created under G.S. 163-127.3(a)(1) or G.S. 163-127.3(a)(2) may be appealed as of right to the Board by any of the following:

(1) The challenger.

(2) A candidate adversely affected by the panel's decision.

Appeal must be taken within two business days after the panel serves the written decision on the parties. The written appeal must be delivered or deposited in the mail to the Board by the end of the second business day after the written decision was filed by the panel. The Board shall prescribe forms for filing appeals from a panel's decision in a challenge. The Board shall base its appellate decision on the whole record of the hearing conducted by the panel and render its opinion on an expedited basis. From the final order or decision by the Board under this subsection, appeal as of right lies directly to the Court of Appeals. Appeal shall be filed no later than two business days after the Board files its final order or decision in its office.

(b) Appeals from Statewide Panel. – The decision of a panel created under G.S. 163-127.3(a)(3) may be appealed as of right to the Court of Appeals by any of the following:

(1) The challenger.

(2) A candidate adversely affected by the panel's decision.

Appeal must be taken within two business days after the panel files the written decision. The written appeal must be delivered or deposited in the mail to the Court of Appeals by the end of the second business day after the written decision was filed by the panel. "

SECTION 1.1. G.S. 7A-29 reads as rewritten:

"**§ 7A-29. Appeals of right from certain administrative agencies.**

(a) From any final order or decision of the North Carolina Utilities Commission not governed by subsection (b) of this section, the Department of Health and Human Services under G.S. 131E-188(b), the North Carolina Industrial Commission, the North Carolina State Bar under G.S. 84-28, the Property Tax Commission under G.S. 105-290 and G.S. 105-342, the Commissioner of Insurance under G.S. 58-2-80, the State Board of Elections under G.S. 163-127.6, or the Secretary of Environment and Natural Resources under G.S. 104E-6.2 or G.S. 130A-293, appeal as of right lies directly to the Court of Appeals.

(b) From any final order or decision of the Utilities Commission in a general rate case, appeal as of right lies directly to the Supreme Court."

SECTION 2. G.S. 163-106(g) reads as rewritten:

"(g) When any candidate files a notice of candidacy with a ~~county~~ board of elections under subsection (c) of this section or under G.S. 163-291(2), the ~~chairman or director~~board of elections shall, immediately upon receipt of the notice of candidacy, inspect the registration records of the county, and cancel the notice of candidacy of any person who ~~is not eligible under subsection (c) of this section.~~ does not meet the constitutional or statutory qualifications for the office, including residency.

The ~~Board~~ board shall give notice of cancellation to any candidate whose notice of candidacy has been cancelled under this subsection by mail or by having the notice served on him by the ~~sheriff.~~sheriff, and to any other candidate filing for the same office. A candidate who has been adversely affected by a cancellation or another candidate for the same office affected by a substantiation under this subsection may request a hearing on the cancellation. If the candidate requests a hearing, the hearing shall be conducted in accordance with Article 11B of Chapter 163 of the General Statutes."

SECTION 3. G.S. 163-122 is amended by adding a new subsection to read:

"(d) When any person files a petition with a board of elections under this section, the board of elections shall, immediately upon receipt of the petition, inspect the registration records of the county and cancel the petition of any person who does not meet the constitutional or statutory qualifications for the office, including residency.

The board shall give notice of cancellation to any person whose petition has been cancelled under this subsection by mail or by having the notice served on that person by the sheriff and to any other candidate filing for the same office. A person whose petition has been cancelled or another candidate for the same office affected by a substantiation under this subsection may request a hearing on the issue of constitutional or statutory qualifications for the office. If the person requests a hearing, the hearing shall be conducted in accordance with Article 11B of Chapter 163 of the General Statutes."

SECTION 4. G.S. 163-123 is amended by adding a new subsection to read:

"(f1) When any person files a petition with a board of elections under this section, the board of elections shall, immediately upon receipt of the petition, inspect the registration records of the county and cancel the petition of any person who does not meet the constitutional or statutory qualifications for the office, including residency.

The board shall give notice of cancellation to any person whose petition has been cancelled under this subsection by mail or by having the notice served on that person by the sheriff. A person whose petition has been cancelled or another candidate for the same office affected by a substantiation under this subsection may request a hearing on the issue of constitutional or statutory qualifications for the office. If the person requests a hearing, the hearing shall be conducted in accordance with Article 11B of Chapter 163 of the General Statutes."

SECTION 5. G.S. 163-295 reads as rewritten:

"**§ 163-295. Municipal and special district elections; application of Chapter 163.**

To the extent that the laws, rules and procedures applicable to the conduct of primary, general or special elections by county boards of elections under Articles 3, 4, 5, 6, 7A, 8, 9, 10, 11, 11B, 12, 13, 14, 15, 19 and 22 of this Chapter are not inconsistent with the provisions of this Article, those laws, rules and procedures shall apply to

municipal and special district elections and their conduct by the board of elections conducting those elections. The State Board of Elections shall have the same authority over all such elections as it has over county and State elections under those Articles."

SECTION 6. The North Carolina Supreme Court is respectfully requested to adopt rules necessary to implement the provisions as to appeal in G.S. 163-127.6.

SECTION 7. If any section or provision of this act is declared unconstitutional or invalid by the courts, it does not affect the validity of this act as a whole or any part other than the part so declared to be unconstitutional or invalid.

SECTION 8. This act becomes effective January 1, 2007, and applies to actions filed on or after that date.

Attachment X

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:

By Representative Hackney (Chair) for the Committee on JUDICIARY I.

☒ Senate Committee Substitute for

HB 2188 A BILL TO BE ENTITLED AN ACT TO PROVIDE FOR A PROCEDURE FOR CHALLENGING THE QUALIFICATIONS OF A CANDIDATE.

☒ With recommendation that the House concur.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

_____ Pursuant to Rule 36(b), the bill/resolution is placed on the Calendar of _____.

Attachment XI

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 5

HOUSE BILL 1048

Committee Substitute Favorable 6/8/05
Third Edition Engrossed 7/20/05
Senate Judiciary I Committee Substitute Adopted 6/27/06
Senate Finance Committee Substitute Adopted 6/30/06

Short Title: Governor's DWI Task Force Recommendations. (Public)

Sponsors:

Referred to:

March 31, 2005

A BILL TO BE ENTITLED

AN ACT TO PROVIDE: (1) IMPROVED DETECTION OF IMPAIRED DRIVERS ON THE STATE'S ROADS AND HIGHWAYS; (2) IMPROVED METHODS OF DETERMINING HOW UNDERAGE DRIVERS OBTAIN ALCOHOL; (3) PROCEDURES FOR INVESTIGATING, ARRESTING, CHARGING, AND JUDICIAL PROCESSING OF IMPAIRED DRIVING OFFENSES; (4) RULES FOR THE COURTROOM ADMISSION OF EVIDENCE THAT IS RELEVANT TO IMPAIRED DRIVING OFFENSES; (5) CLARIFICATION ON WHEN A DRIVER IS GUILTY OF DRIVING WHILE IMPAIRED; (6) AGGRAVATED PENALTIES FOR OFFENDERS WHO SERIOUSLY INJURE OR KILL WHEN DRIVING WHILE IMPAIRED; (7) A SYSTEM OF REPORTING BY STATE PROSECUTORS AND THE COURTS ON THE DISPOSITION OF IMPAIRED DRIVING OFFENSES; (8) ELECTRONIC MONITORING AFTER AN IMPAIRED DRIVER HAS BEEN RELEASED FROM CONFINEMENT; (9) PROCEDURES TO DETERMINE IF IMPAIRED DRIVERS WHO ARE FOREIGN NATIONALS ARE LAWFULLY IN THE UNITED STATES; (10) OTHER MEASURES DESIGNED TO IMPROVE THE SAFETY OF THE MOTORING PUBLIC OF NORTH CAROLINA; AND TO PROVIDE THAT THE ACT SHALL BE KNOWN AS THE "MOTOR VEHICLE DRIVER PROTECTION ACT OF 2006."

The General Assembly of North Carolina enacts:

SECTION 1. This act shall be known as "THE MOTOR VEHICLE DRIVER PROTECTION ACT OF 2006".

PART I. REGULATING MALT BEVERAGE KEGS

SECTION 2. G.S. 18B-101 is amended by adding a new subdivision to read:

"(7b) "Keg" means a portable container designed to hold and dispense in excess of eight gallons of malt beverage."

SECTION 3.1. Chapter 18B of the General Statutes is amended by adding a new section to read:

"**§ 18B-403.1. Purchase-transportation permit for keg or kegs of malt beverages.**

(a) Purchase-Transportation. – A person who is not a permittee may purchase and transport for off-premises consumption a keg or kegs as defined in G.S. 18B-101(7b) after obtaining a purchase-transportation permit. Failure to obtain a purchase-transportation permit according to this section is a violation of G.S. 18B-303(b).

(b) Issuance. – A person holding a permit pursuant to G.S. 18B-1001(2) may issue a purchase-transportation permit for a keg or kegs of malt beverage to a purchaser. A copy of the purchase-transportation permit shall be maintained by the permittee for 30 days.

(c) Form. – A purchase-transportation permit shall be issued on a printed form adopted and provided by the Commission. The Commission shall adopt rules specifying the content of the permit form.

(d) Restrictions on Permit. – A purchase may be made only from the store named on the permit. One copy of the permit shall be kept by the purchaser and one by the permittee from whom the purchase is made. The purchaser shall display his copy of the permit to any law enforcement officer upon request.

(e) Violation. – The first violation of this section shall result in a warning to the permittee."

SECTION 3.2. G.S. 18B-303(a) reads as rewritten:

"(a) Purchases Allowed. – Without a permit, a person may purchase at one time:

(1) Not more than 80 liters of malt ~~beverages, other than draft malt beverages in kegs;~~ beverages, except draft malt beverages in kegs for off-premises consumption. For purchase of a keg or kegs of malt beverages for off-premises consumption, the permit required by G.S. 18B-403.1(a)(4) must first be obtained;

(2) Any amount of draft malt beverages by a permittee in ~~kegs;~~ kegs for on-premise consumption;

(3) Not more than 50 liters of unfortified wine;

(4) Not more than eight liters of either fortified wine or spirituous liquor, or eight liters of the two combined."

PART II. MODIFYING THE STATUTES ON CHECKING STATIONS AND ROADBLOCKS

SECTION 4. G.S. 20-16.3A reads as rewritten:

"**§ 20-16.3A. ~~Impaired driving checks.~~ Checking stations and roadblocks.**

(a) A law-enforcement agency may ~~make impaired driving checks of drivers of vehicles on highways and public vehicular areas if~~ conduct checking stations to determine compliance with the provisions of this Chapter. If the agency is conducting a checking station for the purposes of determining compliance with this Chapter, it must:

~~(1) Develops a systematic plan in advance that takes into account the likelihood of detecting impaired drivers, traffic conditions, number of vehicles to be stopped, and the convenience of the motoring public.~~

~~Designates~~Designate in advance the pattern both for stopping vehicles and for requesting drivers that are stopped ~~to submit to alcohol screening tests~~ to produce drivers license, registration, and insurance information. ~~The plan~~

Operate under a written policy that provides guidelines for the pattern. The policy may be either the agency's own policy, or the policy of another law enforcement agency, and may include contingency provisions for altering either pattern if actual traffic conditions are different from those anticipated, but no individual officer may be given discretion as to which vehicle is stopped or, of the vehicles stopped, which driver is requested ~~to submit to an alcohol screening test.~~ to produce drivers license, registration, and insurance information. If officers of a law enforcement agency are operating under another agency's policy, it must be stated in writing.

~~Marks the area in which checks are conducted to advise~~ Advise the public that an authorized ~~impaired driving check~~ checking station is being ~~made~~ operated by having, at a minimum, one law enforcement vehicle with its blue light in operation during the conducting of the checking station.

(b) An officer who determines there is a reasonable suspicion that an occupant has violated a provision of this Chapter, or any other provision of law, may detain the driver to further investigate in accordance with law. The operator of any vehicle stopped at a checking station established under this subsection may be requested to submit to an alcohol screening test under G.S. 20-16.3 if during the course of the stop the officer determines the driver had previously consumed alcohol or has an open container of alcoholic beverage in the vehicle. The officer so requesting shall consider the results of any alcohol screening test or the driver's refusal in determining if there is reasonable suspicion to investigate further.

(c) Law enforcement agencies may conduct any type of checking station or roadblock as long as it is established and operated in accordance with the provisions of the United States Constitution and the Constitution of North Carolina.

(d) The placement of checkpoints should be random and agencies shall avoid placing checkpoints repeatedly in the same location or proximity. This subsection shall not be a defense to any offense arising out of the operation of a checking station.

~~This section does not prevent an officer from using the authority of G.S. 20-16.3 to request a screening test if, in the course of dealing with a driver under the authority of this section, he develops grounds for requesting such a test under G.S. 20-16.3. Alcohol screening tests and the results from them are subject to the provisions of subsections (b), (c), and (d) of G.S. 20-16.3. This section does not limit the authority of a law enforcement officer or agency to conduct a license check independently or in conjunction with the impaired driving check, to administer psychophysical tests to~~

~~screen for impairment, or to utilize roadblocks or other types of vehicle checks or checkpoints that are consistent with the laws of this State and the Constitution of North Carolina and of the United States.~~"

PART III. PROVIDING FOR IMPLIED-CONSENT PRETRIAL AND COURT PROCEEDINGS

SECTION 5. Chapter 20 of the General Statutes is amended by adding a new Article to read:

"Article 2D.

"Implied-Consent Offense Procedures.

"**§ 20-38.1. Applicability.**

The procedures set forth in this Article shall be followed for the investigation and processing of an implied-consent offense as defined in G.S. 20-16.2. The trial procedures shall apply to any implied-consent offense litigated in the District Court Division.

"**§ 20-38.2. Investigation.**

A law enforcement officer who is investigating an implied-consent offense or a vehicle crash that occurred in the officer's territorial jurisdiction is authorized to seek evidence of the driver's impairment, and make arrests, at any place within the State.

"**§ 20-38.3. Police processing duties.**

Upon the arrest of a person, with or without a warrant, but not necessarily in the order listed, a law enforcement officer:

(1) Shall inform the person arrested of the charges or a cause for the arrest.

(2) May take the person arrested to any place within the State for one or more chemical analyses at the request of any law enforcement officer and for any evaluation by a law enforcement officer, medical professional, or other person to determine the extent or cause of the person's impairment.

(3) May take the person arrested to some other place within the State for the purpose of having the person identified, to complete a crash report, or for any other lawful purpose.

(4) May take photographs and fingerprints in accordance with G.S. 15A-502.

(5) Shall take the person arrested before a judicial official for an initial appearance after completion of all investigatory procedures, crash reports, chemical analyses, and other procedures provided for in this section.

"**§ 20-38.4. Initial appearance.**

(a) Appearance Before a Magistrate. – Except as modified in this Article, a magistrate shall follow the procedures set forth in Article 24 of Chapter 15A of the General Statutes.

(1) A magistrate may hold an initial appearance at any place within the county and shall, to the extent practicable, be available at locations other than the courthouse when it will expedite the initial appearance.

(2) In determining whether there is probable cause to believe a person is impaired, the magistrate may review all alcohol screening tests, chemical analyses, receive testimony from any law enforcement officer concerning impairment and the circumstances of the arrest, and observe the person arrested.

(3) If there is a finding of probable cause, the magistrate shall consider whether the person is impaired to the extent that the provisions of G.S. 15A-534.2 should be imposed.

(4) The magistrate shall also:

a. Inform the person in writing of the established procedure to have others appear at the jail to observe his condition or to administer an additional chemical analysis if the person is unable to make bond; and

b. Require the person who is unable to make bond to list all persons he wishes to contact and telephone numbers on a form that sets forth the procedure for contacting the persons listed. A copy of this form shall be filed with the case file.

(b) The Administrative Office of the Courts shall adopt forms to implement this Article.

"**§ 20-38.5. Facilities.**

(a) The Chief District Court Judge, the Department of Health and Human Services, the district attorney, and the sheriff shall:

(1) Establish a written procedure for attorneys and witnesses to have access to the chemical analysis room.

(2) Approve the location of written notice of implied-consent rights in the chemical analysis room in accordance with G.S. 20-16.2.

(3) Approve a procedure for access to a person arrested for an implied-consent offense by family and friends or a qualified person contacted by the arrested person to obtain blood or urine when the arrested person is held in custody and unable to obtain pretrial release from jail.

(b) Signs shall be posted explaining to the public the procedure for obtaining access to the room where the chemical analysis of the breath is administered and to any person arrested for an implied-consent offense. The initial signs shall be provided by the Department of Transportation, without costs. The signs shall thereafter be maintained by the county for all county buildings and the county courthouse.

(c) If the instrument for performing a chemical analysis of the breath is located in a State or municipal building, then the head of the highway patrol for the county, the chief of police for the city or that person's designee shall be substituted for the sheriff when determining signs and access to the chemical analysis room. The signs shall be maintained by the owner of the building. When a breath testing instrument is in a motor vehicle or at a temporary location, the Department of Health and Human Services shall alone perform the functions listed in subdivisions (a)(1) and (a)(2) of this section.

"**§ 20-38.6. Motions and district court procedure.**

(a) The defendant may move to suppress evidence or dismiss charges only prior to trial, except the defendant may move to dismiss the charges for insufficient evidence at the close of the State's evidence and at the close of all of the evidence without prior notice. If, during the course of the trial, the defendant discovers facts not previously known, a motion to suppress or dismiss may be made during the trial.

(b) Upon a motion to suppress or dismiss the charges, other than at the close of the State's evidence or at the close of all the evidence, the State shall be granted reasonable time to procure witnesses or evidence and to conduct research required to defend against the motion.

(c) The judge shall summarily grant the motion to suppress evidence if the State stipulates that the evidence sought to be suppressed will not be offered in evidence in any criminal action or proceeding against the defendant.

(d) The judge may summarily deny the motion to suppress evidence if the defendant failed to make the motion pretrial when all material facts were known to the defendant.

(e) If the motion is not determined summarily, the judge shall make the determination after a hearing and finding of facts. Testimony at the hearing shall be under oath.

(f) The judge shall set forth in writing the findings of fact and conclusions of law and preliminarily indicate whether the motion should be granted or denied. If the judge preliminarily indicates the motion should be granted, the judge shall not enter a final judgment on the motion until after the State has appealed to superior court or has indicated it does not intend to appeal.

"**§ 20-38.7. Appeal to superior court.**

(a) The State may appeal to superior court any district court preliminary determination granting a motion to suppress or dismiss. If there is a dispute about the findings of fact, the superior court shall not be bound by the findings of the district court but shall determine the matter de novo. Any further appeal shall be governed by Article 90 of Chapter 15A of the General Statutes.

(b) The defendant may not appeal a denial of a pretrial motion to suppress or to dismiss but may appeal upon conviction as provided by law.

(c) Notwithstanding the provisions of G.S. 15A-1431, for any implied-consent offense that is first tried in district court and that is appealed to superior court by the defendant for a trial de novo as a result of a conviction, the sentence imposed by the district court is vacated upon giving notice of appeal. The case shall only be remanded back to district court with the consent of the prosecutor and the superior court. When an appeal is withdrawn or a case is remanded back to district court, the district court shall hold a new sentencing hearing and shall consider any new convictions and, if the defendant has any pending charges of offenses involving impaired driving, shall delay sentencing in the remanded case until all cases are resolved."

PART IV. ALLOWING THE ADMISSIBILITY OF DRUG RECOGNITION EXPERTS, HGN TESTIMONY, AND OPINION AS TO SPEED BY AN ACCIDENT RECONSTRUCTION EXPERT

SECTION 6. G.S. 8C-702 reads as rewritten:

"**Rule 702. Testimony by experts.**

(a) If scientific, technical or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion.

(a1) In an impaired driving action under Chapter 20 of the General Statutes, a witness, qualified under subsection (a) of this section and with proper foundation, may give expert testimony solely on the issue of impairment and not on the issue of specific alcohol concentration level relating to the following:

(1) The results of a Horizontal Gaze Nystagmus (HGN) Test when the test is administered by a person who has successfully completed training in HGN.

(2) Whether a person was under the influence of one or more impairing substances, and the category of such impairing substance or substances. A witness who has received training and holds a current certification as a Drug Recognition Expert, issued by the State Department of Health and Human Services, shall be qualified to give the testimony under this subdivision.

...

(i) A witness qualified as an expert in accident reconstruction who has performed a reconstruction of a crash, or has reviewed the report of investigation, with proper foundation may give an opinion as to the speed of a vehicle even if the witness did not observe the vehicle moving."

PART V. ALCOHOL SCREENING DEVICES

SECTION 7. G.S. 20-16.3 reads as rewritten:

"**§ 20-16.3. Alcohol screening tests required of certain drivers; approval of test devices and manner of use by ~~Commission for Health Services;~~ Department of Health and Human Services; use of test results or refusal.**

(a) When Alcohol Screening Test May Be Required; Not an Arrest. – A law-enforcement officer may require the driver of a vehicle to submit to an alcohol screening test within a relevant time after the driving if the officer has:

(1) Reasonable grounds to believe that the driver has consumed alcohol and has:

a. Committed a moving traffic violation; or

b. Been involved in an accident or collision; or

(2) An articulable and reasonable suspicion that the driver has committed an implied-consent offense under G.S. 20-16.2, and the driver has been lawfully stopped for a driver's license check or otherwise lawfully stopped or lawfully encountered by the officer in the course of the performance of the officer's duties.

Requiring a driver to submit to an alcohol screening test in accordance with this section does not in itself constitute an arrest.

(b) Approval of Screening Devices and Manner of Use. – The ~~Commission for Health Services~~Department of Health and Human Services is directed to examine and

approve devices suitable for use by law-enforcement officers in making on-the-scene tests of drivers for alcohol concentration. For each alcohol screening device or class of devices approved, the ~~Commission~~ Department must adopt regulations governing the manner of use of the device. For any alcohol screening device that tests the breath of a driver, the ~~Commission~~ Department is directed to specify in its regulations the shortest feasible minimum waiting period that does not produce an unacceptably high number of false positive test results.

(c) Tests Must Be Made with Approved Devices and in Approved Manner. – No screening test for alcohol concentration is a valid one under this section unless the device used is one approved by the ~~Commission for Health Services~~ Department and the screening test is conducted in accordance with the applicable regulations of the ~~Commission~~ Department as to the manner of its use.

(d) Use of Screening Test Results or Refusal by Officer. – The ~~results of an~~fact that a driver showed a positive or negative result on an alcohol screening test, but not the actual alcohol concentration result, or a driver's refusal to submit may be used by a law-enforcement officer, is admissible in a court, or may also be used by an administrative agency in determining if there are reasonable grounds for ~~believing~~believing:

(1) ~~that~~That the driver has committed an implied-consent offense under ~~G.S. 20-16.2.~~ G.S. 20-16.2; and

(2) That the driver had consumed alcohol and that the driver had in his or her body previously consumed alcohol, but not to prove a particular alcohol concentration. Negative ~~or low~~ results on the alcohol screening test may be used in factually appropriate cases by the officer, a court, or an administrative agency in determining whether a person's alleged impairment is caused by an impairing substance other than alcohol. ~~Except as provided in this subsection, the results of an alcohol screening test may not be admitted in evidence in any court or administrative proceeding.~~"

PART VI. CLARIFICATION OF IMPAIRED DRIVING OFFENSES

SECTION 8. G.S. 20-4.01 reads as rewritten:

"**§ 20-4.01. Definitions.**

Unless the context requires otherwise, the following definitions apply throughout this Chapter to the defined words and phrases and their cognates:

...

(32) Public Vehicular Area. – Any area within the State of North Carolina that meets one or more of the following requirements:

a. The area is ~~generally open to and~~ used by the public for vehicular ~~traffic,~~ traffic at any time, including by way of illustration and not limitation any drive, driveway, road, roadway, street, alley, or parking lot upon the grounds and premises of any of the following:

1. Any public or private hospital, college, university, school, orphanage, church, or any of the institutions, parks or other facilities maintained and supported by the State of North Carolina or any of its subdivisions.
2. Any service station, drive-in theater, supermarket, store, restaurant, or office building, or any other business, residential, or municipal establishment providing parking space ~~for customers, patrons, or the public.~~ whether the business or establishment is open or closed.
3. Any property owned by the United States and subject to the jurisdiction of the State of North Carolina. (The inclusion of property owned by the United States in this definition shall not limit assimilation of North Carolina law when applicable under the provisions of Title 18, United States Code, section 13).

b. The area is a beach area used by the public for vehicular traffic.

c. The area is a road ~~opened to~~ used by vehicular traffic within or leading to a ~~subdivision for use by subdivision residents, their guests, and members of the public,~~ subdivision, whether or not the subdivision roads have been offered for dedication to the public.

d. The area is a portion of private property used ~~for~~ by vehicular traffic and designated by the private property owner as a public vehicular area in accordance with G.S. 20-219.4.

...

(45) State. – A state, territory, or possession of the United States, District of Columbia, Commonwealth of Puerto Rico, ~~or a province of Canada.~~ a province of Canada, or the Sovereign Nation of the Eastern Band of the Cherokee Indians with tribal lands, as defined in 18 U.S.C. § 1151, located within the boundaries of the State of North Carolina.

..."

SECTION 9. G.S. 20-138.1 reads as rewritten:

"**§ 20-138.1. Impaired driving.**

(a) Offense. – A person commits the offense of impaired driving if he drives any vehicle upon any highway, any street, or any public vehicular area within this State:

(1) While under the influence of an impairing substance; or

(2) After having consumed sufficient alcohol that he has, at any relevant time after the driving, an alcohol concentration of 0.08 or more. The results of a chemical analysis shall be deemed sufficient evidence to prove a person's alcohol concentration; or

(3) With any amount of a Schedule I controlled substance, as listed in G.S. 90-89, or its metabolites in his blood or urine.

(a1) A person who has submitted to a chemical analysis of a blood sample, pursuant to G.S. 20-139.1(d), may use the result in rebuttal as evidence that the person did not have, at a relevant time after driving, an alcohol concentration of 0.08 or more.

(b) Defense Precluded. – The fact that a person charged with violating this section is or has been legally entitled to use alcohol or a drug is not a defense to a charge under this section.

(b1) Defense Allowed. – Nothing in this section shall preclude a person from asserting that a chemical analysis result is inadmissible pursuant to G.S. 20-139.1(b2).

(c) Pleading. – In any prosecution for impaired driving, the pleading is sufficient if it states the time and place of the alleged offense in the usual form and charges that the defendant drove a vehicle on a highway or public vehicular area while subject to an impairing substance.

(d) Sentencing Hearing and Punishment. – Impaired driving as defined in this section is a misdemeanor. Upon conviction of a defendant of impaired driving, the presiding judge ~~must~~ shall hold a sentencing hearing and impose punishment in accordance with G.S. 20-179.

(e) Exception. – Notwithstanding the definition of "vehicle" pursuant to G.S. 20-4.01(49), for purposes of this section the word "vehicle" does not include a horse~~, bicycle, or lawnmower.~~ or bicycle."

SECTION 10. G.S. 20-138.2 reads as rewritten:

"(a) Offense. – A person commits the offense of impaired driving in a commercial motor vehicle if he drives a commercial motor vehicle upon any highway, any street, or any public vehicular area within the State:

(1) While under the influence of an impairing substance; or

(2) After having consumed sufficient alcohol that he has, at any relevant time after the driving, an alcohol concentration of 0.04 or more. The results of a chemical analysis shall be deemed sufficient evidence to prove a person's alcohol concentration; or

(3) With any amount of a Schedule I controlled substance, as listed in G.S. 90-89, or its metabolites in his blood or urine.

(a1) A person who has submitted to a chemical analysis of a blood sample, pursuant to G.S. 20-139.1(d), may use the result in rebuttal as evidence that the person did not have, at a relevant time after driving, an alcohol concentration of 0.04 or more.

(a2) In order to prove the gross vehicle weight rating of a vehicle as defined in G.S. 20-4.01(12b), the opinion of a person who observed the vehicle as to the weight, the testimony of the gross vehicle weight rating affixed to the vehicle, the registered or declared weight shown on the Division's records pursuant to G.S. 20-26(b1), the gross vehicle weight rating as determined from the vehicle identification number, the listed gross weight publications from the manufacturer of the vehicle, or any other description or evidence shall be admissible.

(b) Defense Precluded. – The fact that a person charged with violating this section is or has been legally entitled to use alcohol or a drug is not a defense to a charge under this section.

(b1) Defense Allowed. – Nothing in this section shall preclude a person from asserting that a chemical analysis result is inadmissible pursuant to G.S. 20-139.1(b2).

..."

SECTION 11.1. G.S. 20-138.3 reads as rewritten:

"**§ 20-138.3. Driving by person less than 21 years old after consuming alcohol or drugs.**

(a) Offense. – It is unlawful for a person less than 21 years old to drive a motor vehicle on a highway or public vehicular area while consuming alcohol or at any time while he has remaining in his body any alcohol or controlled substance previously consumed, but a person less than 21 years old does not violate this section if he drives with a controlled substance in his body which was lawfully obtained and taken in therapeutically appropriate amounts.

(b) Subject to Implied-Consent Law. – An offense under this section is an alcohol-related offense subject to the implied-consent provisions of G.S. 20-16.2.

(b1) Odor Insufficient. – The odor of an alcoholic beverage on the breath of the driver is insufficient evidence by itself to prove beyond a reasonable doubt that alcohol was remaining in the driver's body in violation of this section unless the driver was offered an alcohol screening test or chemical analysis and refused to provide all required samples of breath or blood for analysis.

(b2) Alcohol Screening Test. – Notwithstanding any other provision of law, an alcohol screening test may be administered to a driver suspected of violation of subsection (a) of this section, and the results of an alcohol screening test or the driver's refusal to submit may be used by a law enforcement officer, a court, or an administrative agency in determining if alcohol was present in the driver's body. No alcohol screening tests are valid under this section unless the device used is one approved by the ~~Commission for Health Services,~~ Department of Health and Human Services, and the screening test is conducted in accordance with the applicable regulations of the ~~Commission~~Department as to its manner and use.

(c) Punishment; Effect When Impaired Driving Offense Also Charged. – The offense in this section is a ~~Class 2~~ Class 3 misdemeanor. It is not, in any circumstances, a lesser included offense of impaired driving under G.S. 20-138.1, but if a person is convicted under this section and of an offense involving impaired driving arising out of the same transaction, the aggregate punishment imposed by the court may not exceed the maximum applicable to the offense involving impaired driving, and any minimum punishment applicable shall be imposed.

~~(d) Limited Driving Privilege. – A person who is convicted of violating subsection (a) of this section and whose drivers license is revoked solely based on that conviction may apply for a limited driving privilege as provided in G.S. 20-179.3. This subsection shall apply only if the person meets both of the following requirements:~~

~~(1) Is 18, 19, or 20 years old on the date of the offense.~~

~~(2) Has not previously been convicted of a violation of this section.~~

~~The judge may issue the limited driving privilege only if the person meets the eligibility requirements of G.S. 20-179.3, other than the requirement in G.S. 20-179.3(b)(1)c. G.S. 20-179.3(e) shall not apply. All other terms, conditions, and restrictions provided~~

~~for in G.S. 20-179.3 shall apply. G.S. 20-179.3, rather than this subsection, governs the issuance of a limited driving privilege to a person who is convicted of violating subsection (a) of this section and of driving while impaired as a result of the same transaction.~~"

SECTION 11.2. G.S. 20-13.2 reads as rewritten:

"**§ 20-13.2. Grounds for revoking provisional license.**

(a) The Division ~~must~~ must, upon receipt of a record of the licensee's conviction, revoke the license of a person who is convicted of violating the provisions of G.S. 20-138.3 and who was under 18 years of age at the time of the offense.~~upon receipt of a record of the licensee's conviction.~~

(b) If a person is convicted of an offense involving impaired driving and was less than 18 years of age at the time of the offense, then ~~offense occurs while he is less than 21 years old,~~ his license must be revoked under this section in addition to any other revocation required or authorized by law.

(c) If a person less than 18 years of age willfully refuses to submit to a chemical analysis pursuant to ~~G.S. 20-16.2 while he is less than 21 years old,~~ G.S. 20-16.2, then his license must be revoked under this section, in addition to any other revocation required or authorized by law. A revocation order entered under authority of this subsection becomes effective at the same time as a revocation order issued under G.S. 20-16.2 for the same willful refusal.

...."

SECTION 12. G.S. 20-138.5(a) reads as rewritten:

"(a) A person commits the offense of habitual impaired driving if he drives while impaired as defined in G.S. 20-138.1 and has been convicted of three or more offenses involving impaired driving as defined in G.S. 20-4.01(24a) within ~~seven~~ 10 years of the date of this offense."

SECTION 13. G.S. 20-138.5(c) reads as rewritten:

"(c) An offense under this section is an implied consent offense subject to the provisions of G.S. 20-16.2. The provisions of G.S. 20-139.1 shall apply to an offense committed under this section."

PART VII. FELONY DEATH BY VEHICLE AND INJURY BY VEHICLE

SECTION 14. G.S. 20-141.4 reads as rewritten:

"**§ 20-141.4. Felony and misdemeanor death by ~~vehicle.~~vehicle; felony serious injury by vehicle; aggravated offenses; repeat felony death by vehicle.**

(a) Repealed by Session Laws 1983, c. 435, s. 27.

(a1) Felony Death by Vehicle. – A person commits the offense of felony death by vehicle ~~if he unintentionally causes the death of another person while engaged in the offense of impaired driving under G.S. 20-138.1 or G.S. 20-138.2 and commission of that offense is the proximate cause of the death.~~ if:

(1) The person unintentionally causes the death of another person,

(2) The person was engaged in the offense of impaired driving under G.S. 20-138.1 or G.S. 20-138.2, and

(3) The commission of the offense in subdivision (2) of this subsection is the proximate cause of the death.

(a2) Misdemeanor Death by Vehicle. – A person commits the offense of misdemeanor death by vehicle ~~if he unintentionally causes the death of another person while engaged in the violation of any State law or local ordinance applying to the operation or use of a vehicle or to the regulation of traffic, other than impaired driving under G.S. 20-138.1, and commission of that violation is the proximate cause of the death.~~ if:

(1) The person unintentionally causes the death of another person.

(2) The person was engaged in the violation of any State law or local ordinance applying to the operation or use of a vehicle or to the regulation of traffic, other than impaired driving under G.S. 20-138.1, and

(3) The commission of the offense in subdivision (2) of this subsection is the proximate cause of the death.

(a3) Felony Serious Injury by Vehicle. – A person commits the offense of felony serious injury by vehicle if:

(1) The person unintentionally causes serious injury to another person.

(2) The person was engaged in the offense of impaired driving under G.S. 20-138.1 or G.S. 20-138.2, and

(3) The commission of the offense in subdivision (2) of this subsection is the proximate cause of the serious injury.

(a4) Aggravated Felony Serious Injury by Vehicle. – A person commits the offense of aggravated felony serious injury by vehicle if:

(1) The person unintentionally causes serious injury to another person.

(2) The person was engaged in the offense of impaired driving under G.S. 20-138.1 or G.S. 20-138.2,

(3) The commission of the offense in subdivision (2) of this subsection is the proximate cause of the serious injury, and

(4) The person has a previous conviction involving impaired driving, as defined in G.S. 20-4.01(24a), within seven years of the date of the offense.

(a5) Aggravated Felony Death by Vehicle. – A person commits the offense of aggravated felony death by vehicle if:

(1) The person unintentionally causes the death of another person.

(2) The person was engaged in the offense of impaired driving under G.S. 20-138.1 or G.S. 20-138.2,

(3) The commission of the offense in subdivision (2) of this subsection is the proximate cause of the death, and

(4) The person has a previous conviction involving impaired driving, as defined in G.S. 20-4.01(24a), within seven years of the date of the offense.

(a6) Repeat Felony Death by Vehicle Offender. – A person who commits an offense under subsection (a1) or subsection (a5) of this section, and who has a previous conviction under subsection (a1) or subsection (a5), shall be subject to the same sentence as if the person had been convicted of second degree murder.

(b) Punishments. – Unless the conduct is covered under some other provision of law providing greater punishment, the following classifications apply to the offenses set forth in this section:

(1) Aggravated felony death by vehicle is a Class D felony.

(2) Felony death by vehicle is a Class E felony.

(3) Aggravated felony serious injury by vehicle is a Class E felony.

(4) Felony serious injury by vehicle is a Class F felony.

(5) Misdemeanor death by vehicle is a Class 1 misdemeanor.~~Felony death by vehicle is a Class G felony. Misdemeanor death by vehicle is a Class 1 misdemeanor.~~

(c) No Double Prosecutions. – No person who has been placed in jeopardy upon a charge of death by vehicle may be prosecuted for the offense of manslaughter arising out of the same death; and no person who has been placed in jeopardy upon a charge of manslaughter may be prosecuted for death by vehicle arising out of the same death."

PART VIII. CLARIFYING AND SIMPLIFYING THE IMPLIED-CONSENT LAW

SECTION 15. G.S. 20-16.2 reads as rewritten:

"**§ 20-16.2. Implied consent to chemical analysis; mandatory revocation of license in event of refusal; right of driver to request analysis.**

(a) Basis for Charging Officer to Require Chemical Analysis; Notification of Rights. – Any person who drives a vehicle on a highway or public vehicular area thereby gives consent to a chemical analysis if charged with an implied-consent offense. ~~The charging officer shall designate the type of chemical analysis to be administered, and it may be administered when the officer~~ Any law enforcement officer who has reasonable grounds to believe that the person charged has committed the implied-consent ~~offense.~~offense may obtain a chemical analysis of the person.

~~Except as provided in this subsection or subsection (b), before~~ Before any type of chemical analysis is administered the person charged shall be taken before a chemical analyst authorized to administer a test of a person's breath or a law enforcement officer who is authorized to administer chemical analysis of the breath, who shall inform the person orally and also give the person a notice in writing that:

(1) ~~The person has a right to refuse to be tested.~~You have been charged with an implied-consent offense. Under the implied-consent law, you can refuse any test, but your drivers license will be revoked for one year and could be revoked for a longer period of time under certain circumstances, and an officer can compel you to be tested under other laws.

~~(2) Refusal to take any required test or tests will result in an immediate revocation of the person's driving privilege for at least 30 days and an additional 12 month revocation by the Division of Motor Vehicles.~~

(3) The test results, or the fact of ~~the person's~~your refusal, will be admissible in evidence at ~~trial on the offense charged.~~trial.

(4) ~~The person's~~ Your driving privilege will be revoked immediately for at least 30 days~~if:~~ if you refuse any test or the test result is 0.08 or more,

0.04 or more if you were driving a commercial vehicle, or 0.01 or more if you are under the age of 21.

~~a. The test reveals an alcohol concentration of 0.08 or more;~~

~~b. The person was driving a commercial motor vehicle and the test reveals an alcohol concentration of 0.04 or more; or~~

~~c. The person is under 21 years of age and the test reveals any alcohol concentration.~~

(5) ~~The person may choose a qualified person to administer a chemical test or tests in addition to any test administered at the direction of the charging officer.~~After you are released, you may seek your own test in addition to this test.

(6) ~~The person has the right to~~ You may call an attorney for advice and select a witness to view ~~for him or her~~ the testing ~~procedures,~~ procedures remaining after the witness arrives, but the testing may not be delayed for these purposes longer than 30 minutes from the time ~~when the person~~ you ~~is~~ are notified ~~of his or her~~ of these rights. You must take the test at the end of 30 minutes even if you have not contacted an attorney or your witness has not arrived.

~~If the charging officer or an arresting officer is authorized to administer a chemical analysis of a person's breath, the charging officer or the arresting officer may give the person charged the oral and written notice of rights required by this subsection. This authority applies regardless of the type of chemical analysis designated.~~

(a1) Meaning of Terms. – Under this section, an "implied-consent offense" is an offense involving impaired driving or an alcohol-related offense made subject to the procedures of this section. A person is "charged" with an offense if the person is arrested for it or if criminal process for the offense has been issued. ~~A "charging officer" is a law enforcement officer who arrests the person charged, lodges the charge, or assists the officer who arrested the person or lodged the charge by assuming custody of the person to make the request required by subsection (c) and, if necessary, to present the person to a judicial official for an initial appearance.~~

(b) Unconscious Person May Be Tested. – If a ~~charging~~ law enforcement officer has reasonable grounds to believe that a person has committed an implied-consent offense, and the person is unconscious or otherwise in a condition that makes the person incapable of refusal, the ~~charging~~ law enforcement officer may direct the taking of a blood sample ~~by a person qualified under G.S. 20-139.1~~ or may direct the administration of any other chemical analysis that may be effectively performed. In this instance the notification of rights set out in subsection (a) and the request required by subsection (c) are not necessary.

(c) Request to Submit to Chemical Analysis. – ~~The charging~~ A law enforcement ~~officer,~~ officer or chemical analyst ~~in the presence of the chemical analyst who has notified the person of his or her rights under subsection (a), must~~ shall designate the type of test or tests to be given and may request the person charged to submit to the type of chemical analysis designated. If the person charged willfully refuses to submit to that

chemical analysis, none may be given under the provisions of this section, but the refusal does not preclude testing under other applicable procedures of law.

(c1) Procedure for Reporting Results and Refusal to Division. – Whenever a person refuses to submit to a chemical ~~analysis~~analysis, a person has an alcohol concentration of 0.16 or more, or a person's drivers license has an alcohol concentration restriction and the results of the chemical analysis establish a violation of the restriction, the charging officer and the chemical analyst ~~must~~shall without unnecessary delay go before an official authorized to administer oaths and execute an affidavit(s) stating that:

(1) The person was charged with an implied-consent offense or had an alcohol concentration restriction on the drivers license;

(2) ~~The charging officer~~A law enforcement officer had reasonable grounds to believe that the person had committed an implied-consent offense or violated the alcohol concentration restriction on the drivers license;

(3) Whether the implied-consent offense charged involved death or critical injury to another person, if the person willfully refused to submit to chemical analysis;

(4) The person was notified of the rights in subsection (a); and

(5) The results of any tests given or that the person willfully refused to submit to a chemical ~~analysis upon the request of the charging officer.~~analysis.

If the person's drivers license has an alcohol concentration restriction, pursuant to G.S. 20-19(c3), and an officer has reasonable grounds to believe the person has violated a provision of that restriction other than violation of the alcohol concentration level, the ~~charging~~officer and chemical analyst shall complete the applicable sections of the affidavit and indicate the restriction which was violated. The ~~charging~~officer ~~must~~shall immediately mail the affidavit(s) to the Division. If the ~~charging~~officer is also the chemical analyst who has notified the person of the rights under subsection (a), the ~~charging~~officer may perform alone the duties of this subsection.

(d) Consequences of Refusal; Right to Hearing before Division; Issues. – Upon receipt of a properly executed affidavit required by subsection (c1), the Division ~~must~~ shall expeditiously notify the person charged that the person's license to drive is revoked for 12 months, effective on the tenth calendar day after the mailing of the revocation order unless, before the effective date of the order, the person requests in writing a hearing before the Division. Except for the time referred to in G.S. 20-16.5, if the person shows to the satisfaction of the Division that his or her license was surrendered to the court, and remained in the court's possession, then the Division shall credit the amount of time for which the license was in the possession of the court against the 12-month revocation period required by this subsection. If the person properly requests a hearing, the person retains his or her license, unless it is revoked under some other provision of law, until the hearing is held, the person withdraws the request, or the person fails to appear at a scheduled hearing. The hearing officer may subpoena any witnesses or documents that the hearing officer deems necessary. The person may request the hearing officer to subpoena the charging officer, the chemical analyst, or

both to appear at the hearing if the person makes the request in writing at least three days before the hearing. The person may subpoena any other witness whom the person deems necessary, and the provisions of G.S. 1A-1, Rule 45, apply to the issuance and service of all subpoenas issued under the authority of this section. The hearing officer is authorized to administer oaths to witnesses appearing at the hearing. The hearing ~~must~~ shall be conducted in the county where the charge was brought, and ~~must~~ shall be limited to consideration of whether:

(1) The person was charged with an implied-consent offense or the driver had an alcohol concentration restriction on the drivers license pursuant to G.S. 20-19;

(2) ~~The charging~~ A law enforcement officer had reasonable grounds to believe that the person had committed an implied-consent offense or violated the alcohol concentration restriction on the drivers license;

(3) The implied-consent offense charged involved death or critical injury to another person, if this allegation is in the affidavit;

(4) The person was notified of the person's rights as required by subsection (a); and

(5) The person willfully refused to submit to a chemical ~~analysis upon the request of the charging officer.~~ analysis.

If the Division finds that the conditions specified in this subsection are met, it ~~must~~ shall order the revocation sustained. If the Division finds that any of the conditions (1), (2), (4), or (5) is not met, it ~~must~~ shall rescind the revocation. If it finds that condition (3) is alleged in the affidavit but is not met, it ~~must~~ shall order the revocation sustained if that is the only condition that is not met; in this instance subsection (d1) does not apply to that revocation. If the revocation is sustained, the person ~~must~~ shall surrender his or her license immediately upon notification by the Division.

(d1) Consequences of Refusal in Case Involving Death or Critical Injury. – If the refusal occurred in a case involving death or critical injury to another person, no limited driving privilege may be issued. The 12-month revocation begins only after all other periods of revocation have terminated unless the person's license is revoked under G.S. 20-28, 20-28.1, 20-19(d), or 20-19(e). If the revocation is based on those sections, the revocation under this subsection begins at the time and in the manner specified in subsection (d) for revocations under this section. However, the person's eligibility for a hearing to determine if the revocation under those sections should be rescinded is postponed for one year from the date on which the person would otherwise have been eligible for ~~such a~~ the hearing. If the person's driver's license is again revoked while the 12-month revocation under this subsection is in effect, that revocation, whether imposed by a court or by the Division, may only take effect after the period of revocation under this subsection has terminated.

(e) Right to Hearing in Superior Court. – If the revocation for a willful refusal is sustained after the hearing, the person whose license has been revoked has the right to file a petition in the superior court for a hearing ~~de novo upon the issues listed in subsection (d), in the same manner and under the same conditions as provided in G.S. 20-25 except that the de novo hearing is conducted in the superior court district or~~

~~set of districts as defined in G.S. 7A-41.1 where the charge was made.~~on the record. The superior court review shall be limited to whether there is sufficient evidence in the record to support the Commissioner's findings of fact and whether the conclusions of law are supported by the findings of fact and whether the Commissioner committed an error of law in revoking the license.

(e1) Limited Driving Privilege after Six Months in Certain Instances. – A person whose driver's license has been revoked under this section may apply for and a judge authorized to do so by this subsection may issue a limited driving privilege if:

(1) At the time of the refusal the person held either a valid drivers license or a license that had been expired for less than one year;

(2) At the time of the refusal, the person had not within the preceding seven years been convicted of an offense involving impaired driving;

(3) At the time of the refusal, the person had not in the preceding seven years willfully refused to submit to a chemical analysis under this section;

(4) The implied consent offense charged did not involve death or critical injury to another person;

(5) The underlying charge for which the defendant was requested to submit to a chemical analysis has been finally disposed of:

a. Other than by conviction; or

b. By a conviction of impaired driving under G.S. 20-138.1, at a punishment level authorizing issuance of a limited driving privilege under G.S. 20-179.3(b), and the defendant has complied with at least one of the mandatory conditions of probation listed for the punishment level under which the defendant was sentenced;

(6) Subsequent to the refusal the person has had no unresolved pending charges for or additional convictions of an offense involving impaired driving;

(7) The person's license has been revoked for at least six months for the refusal; and

(8) The person has obtained a substance abuse assessment from a mental health facility and successfully completed any recommended training or treatment program.

Except as modified in this subsection, the provisions of G.S. 20-179.3 relating to the procedure for application and conduct of the hearing and the restrictions required or authorized to be included in the limited driving privilege apply to applications under this subsection. If the case was finally disposed of in the district court, the hearing shall be conducted in the district court district as defined in G.S. 7A-133 in which the refusal occurred by a district court judge. If the case was finally disposed of in the superior court, the hearing shall be conducted in the superior court district or set of districts as defined in G.S. 7A-41.1 in which the refusal occurred by a superior court judge. A limited driving privilege issued under this section authorizes a person to drive if the person's license is revoked solely under this section or solely under this section and

G.S. 20-17(2). If the person's license is revoked for any other reason, the limited driving privilege is invalid.

(f) Notice to Other States as to Nonresidents. – When it has been finally determined under the procedures of this section that a nonresident's privilege to drive a motor vehicle in this State has been revoked, the Division ~~must~~ shall give information in writing of the action taken to the motor vehicle administrator of the state of the person's residence and of any state in which the person has a license.

(g) Repealed by Session Laws 1973, c. 914.

(h) Repealed by Session Laws 1979, c. 423, s. 2.

(i) Right to Chemical Analysis before Arrest or Charge. – A person stopped or questioned by a law enforcement officer who is investigating whether the person may have committed an implied consent offense may request the administration of a chemical analysis before any arrest or other charge is made for the offense. Upon this request, the officer shall afford the person the opportunity to have a chemical analysis of his or her breath, if available, in accordance with the procedures required by G.S. 20-139.1(b). The request constitutes the person's consent to be transported by the law enforcement officer to the place where the chemical analysis is to be administered. Before the chemical analysis is made, the person shall confirm the request in writing and shall be notified:

(1) That the test results will be admissible in evidence and may be used against ~~the person~~you in any implied consent offense that may arise;

(2) ~~That the person's license will be revoked for at least 30 days if:~~

~~a. The test reveals an alcohol concentration of 0.08 or more; or~~

~~b. The person was driving a commercial motor vehicle and the test results reveal an alcohol concentration of 0.04 or more; or~~

~~c. The person is under 21 years of age and the test reveals any alcohol concentration.~~

Your driving privilege will be revoked immediately for at least 30 days if the test result is 0.08 or more, 0.04 or more if you were driving a commercial vehicle, or 0.01 or more if you are under the age of 21.

(3) That if ~~the person fails~~you fail to comply fully with the test procedures, the officer may charge ~~the person~~you with any offense for which the officer has probable cause, and if ~~the person is~~you are charged with an implied consent offense, ~~the person's~~your refusal to submit to the testing required as a result of that charge would result in revocation of ~~the person's driver's license.~~your driving privilege. The results of the chemical analysis are admissible in evidence in any proceeding in which they are relevant."

PART IX. ADMISSIBILITY OF CHEMICAL ANALYSES

SECTION 16. G.S. 20-139.1 reads as rewritten:

"**§ 20-139.1. Procedures governing chemical analyses; admissibility; evidentiary provisions; controlled-drinking programs.**

(a) Chemical Analysis Admissible. – In any implied-consent offense under G.S. 20-16.2, a person's alcohol concentration or the presence of any other impairing

substance in the person's body as shown by a chemical analysis is admissible in evidence. This section does not limit the introduction of other competent evidence as to a person's alcohol concentration or results of other tests showing the presence of an impairing substance, including other chemical tests.

(b) Approval of Valid Test Methods; Licensing Chemical Analysts. – ~~A~~ The results of a chemical ~~analysis, to be valid, shall be~~ analysis shall be deemed sufficient evidence to prove a person's alcohol concentration. A chemical analysis of the breath administered pursuant to the implied-consent law is admissible in any court or administrative hearing or proceeding if it meets both of the following requirements:

(1) It is performed in accordance with the ~~provisions of this section. The chemical analysis shall be performed according to methods approved by the Commission for Health Services by an individual possessing~~ rules of the Department of Health and Human Services.

(2) The person performing the analysis had, at the time of the analysis, a current permit issued by the Department of Health and Human Services authorizing the person to perform a test of the breath using the type of instrument employed. ~~for that type of chemical analysis.~~

For purposes of establishing compliance with subdivision (b)(1) of this section, the court or administrative agency shall take notice of the rules of the Department of Health and Human Services. For purposes of establishing compliance with subdivision (b)(2) of this section, the court or administrative agency shall take judicial notice of the list of permits issued to the person performing the analysis, the type of instrument on which the person is authorized to perform tests of the breath, and the date the permit was issued. The ~~Commission for Health Services may adopt rules approving satisfactory methods or techniques for performing chemical analyses, and the~~ Department of Health and Human Services may ascertain the qualifications and competence of individuals to conduct particular chemical ~~analyses.~~ analyses and the methods for conducting chemical analyses. The Department may issue permits to conduct chemical analyses to individuals it finds qualified subject to periodic renewal, termination, and revocation of the permit in the Department's discretion.

(b1) When Officer May Perform Chemical Analysis. – ~~Except as provided in this subsection, a chemical analysis is not valid in any case in which it is performed by an arresting officer or by a charging officer under the terms of G.S. 20-16.2. A chemical analysis of the breath may be performed by an arresting officer or by a charging officer when both of the following apply:~~

~~(1) The officer possesses a current permit issued by the Department of Health and Human Services for the type of chemical analysis.~~

~~(2) The officer performs the chemical analysis by using an automated instrument that prints the results of the analysis.~~

Any person possessing a current permit authorizing the person to perform chemical analysis may perform a chemical analysis.

(b2) Breath Analysis Results ~~Inadmissible if~~ Preventive ~~Maintenance Not Performed.~~ Maintenance. – The Department of Health and Human Services shall perform preventive maintenance on breath-testing instruments used for chemical

analysis. A court or administrative agency shall take judicial notice of the preventive maintenance records of the Department. Notwithstanding the provisions of subsection (b), the results of a chemical analysis of a person's breath performed in accordance with this section are not admissible in evidence if:

(1) The defendant objects to the introduction into evidence of the results of the chemical analysis of the defendant's breath; and

(2) The defendant demonstrates that, with respect to the instrument used to analyze the defendant's breath, preventive maintenance procedures required by the regulations of the ~~Commission for Health Services~~ Department of Health and Human Services had not been performed within the time limits prescribed by those regulations.

(b3) Sequential Breath Tests Required. – ~~By January 1, 1985, the regulations of the Commission for Health Services~~ The methods governing the administration of chemical analyses of the breath shall require the testing of at least duplicate sequential breath samples. The results of the chemical analysis of all breath samples are admissible if the test results from any two consecutively collected breath samples do not differ from each other by an alcohol concentration greater than 0.02. Only the lower of the two test results of the consecutively administered tests can be used to prove a particular alcohol concentration. ~~Those regulations must provide:~~

~~(1) A specification as to the minimum observation period before collection of the first breath sample and the time requirements as to collection of second and subsequent samples.~~

~~(2) That the test results may only be used to prove a person's particular alcohol concentration if:~~

~~a. The pair of readings employed are from consecutively administered tests; and~~

~~b. The readings do not differ from each other by an alcohol concentration greater than 0.02.~~

~~(3) That when a pair of analyses meets the requirements of subdivision (2), only the lower of the two readings may be used by the State as proof of a person's alcohol concentration in any court or administrative proceeding.~~

A person's refusal to give the sequential breath samples necessary to constitute a valid chemical analysis is a refusal under G.S. 20-16.2(c).

A person's refusal to give the second or subsequent breath sample shall make the result of the first breath sample, or the result of the sample providing the lowest alcohol concentration if more than one breath sample is provided, admissible in any judicial or administrative hearing for any relevant purpose, including the establishment that a person had a particular alcohol concentration for conviction of an offense involving impaired driving.

~~(b4) Introducing Routine Records Kept as Part of Breath Testing Program. In civil and criminal proceedings, any party may introduce, without further authentication, simulator logs and logs for other devices used to verify a breath testing instrument, certificates and other records concerning the check of ampoules and of simulator stock~~

~~solution and the stock solution used in any other equilibration device, preventive maintenance records, and other records that are routinely kept concerning the maintenance and operation of breath testing instruments. In a criminal case, however, this subsection does not authorize the State to introduce records to prove the results of a chemical analysis of the defendant or of any validation test of the instrument that is conducted during that chemical analysis.~~

(b5) Subsequent Tests Allowed. – A person may be requested, pursuant to G.S. 20-16.2, to submit to a chemical analysis of the person's blood or other bodily fluid or substance in addition to or in lieu of a chemical analysis of the breath, in the discretion of ~~the charging~~ a law enforcement officer. If a subsequent chemical analysis is requested pursuant to this subsection, the person shall again be advised of the implied consent rights in accordance with G.S. 20-16.2(a). A person's willful refusal to submit to a chemical analysis of the blood or other bodily fluid or substance is a willful refusal under G.S. 20-16.2.

(b6) The Department of Health and Human Services shall post on a Web page and file with the clerk of superior court in each county a list of all persons who have a permit authorizing them to perform chemical analyses, the types of analyses that they can perform, the instruments that each person is authorized to operate, and the effective dates of the permits, and records of preventive maintenance. A court shall take judicial notice of whether, at the time of the chemical analysis, the chemical analyst possessed a permit authorizing the chemical analyst to perform the chemical analysis administered and whether preventive maintenance had been performed on the breath-testing instrument in accordance with the Department's rules.

(c) ~~Withdrawal of~~ Blood and Urine for Chemical Analysis. – Notwithstanding any other provision of law, ~~When~~ when a blood or urine test is specified as the type of chemical analysis by ~~the charging~~ a law enforcement officer, ~~only~~ a physician, registered nurse, emergency medical technician, or other qualified person ~~may~~ shall withdraw the blood ~~sample.~~ sample and obtain the urine sample, and no further authorization or approval is required. If the person withdrawing the blood or collecting the urine requests written confirmation of the ~~charging~~ law enforcement officer's request for the withdrawal of ~~blood,~~ blood or collecting the urine, the officer shall furnish it before blood is ~~withdrawn.~~ withdrawn or urine collected. When blood is withdrawn or urine collected pursuant to a ~~charging~~ law enforcement officer's request, neither the person withdrawing the blood nor any hospital, laboratory, or other institution, person, firm, or corporation employing that person, or contracting for the service of withdrawing blood, may be held criminally or civilly liable by reason of withdrawing that blood, except that there is no immunity from liability for negligent acts or omissions.

~~The chemical analyst who analyzes the blood shall complete an affidavit stating the results of the analysis on a form developed by the Department of Health and Human Services and provide the affidavit to the charging officer and the clerk of superior court in the county in which the criminal charges are pending.~~

~~Evidence regarding the qualifications of the person who withdrew the blood sample may be provided at trial by testimony of the charging officer or by an affidavit of the~~

~~person who withdrew the blood sample and shall be sufficient to constitute prima facie evidence regarding the person's qualifications.~~

(c1) Admissibility. – The results of a chemical analysis of blood or urine by the North Carolina State Bureau of Investigation Laboratory, the Charlotte, North Carolina, Police Department Laboratory, or any other laboratory approved for chemical analysis by the Department of Health and Human Services, are admissible as evidence in all administrative hearings, and in any court, without further authentication. The results shall be certified by the person who performed the analysis, and reported on a form approved by the Attorney General. However, if the defendant notifies the State, at least five days before trial in the superior court division or an adjudicatory hearing in juvenile court, that the defendant objects to the introduction of the report into evidence, the admissibility of the report shall be determined and governed by the appropriate rules of evidence.

The report containing the results of any blood or urine test may be transmitted electronically or via facsimile. A copy of the affidavit sent electronically or via facsimile shall be admissible in any court or administrative hearing without further authentication. A copy of the report shall be sent to the charging officer, the clerk of superior court in the county in which the criminal charges are pending, the Division of Motor Vehicles, and the Department of Health and Human Services.

Nothing in this subsection precludes the right of any party to call any witness or to introduce any evidence supporting or contradicting the evidence contained in the report.

(c2) A chemical analysis of blood or urine, to be admissible under this section, shall be performed in accordance with rules or procedures adopted by the State Bureau of Investigation, or by another laboratory certified by the American Society of Crime Laboratory Directors (ASCLD), for the submission, identification, analysis, and storage of forensic analyses.

(c3) Procedure for Establishing Chain of Custody Without Calling Unnecessary Witnesses. –

(1) For the purpose of establishing the chain of physical custody or control of blood or urine tested or analyzed to determine whether it contains alcohol, a controlled substance or its metabolite, or any impairing substance, a statement signed by each successive person in the chain of custody that the person delivered it to the other person indicated on or about the date stated is prima facie evidence that the person had custody and made the delivery as stated, without the necessity of a personal appearance in court by the person signing the statement.

(2) The statement shall contain a sufficient description of the material or its container so as to distinguish it as the particular item in question and shall state that the material was delivered in essentially the same condition as received. The statement may be placed on the same document as the report provided for in subsection (c1) of this section.

(3) The provisions of this subsection may be utilized in any administrative hearing and by the State in district court, but can only be utilized in a case originally tried in superior court or an adjudicatory hearing in

juvenile court if the defendant fails to notify the State at least five days before trial that the defendant objects to the introduction of the statement into evidence.

(4) Nothing in this subsection precludes the right of any party to call any witness or to introduce any evidence supporting or contradicting the evidence contained in the statement.

(c4) The results of a blood or urine test are admissible to prove a person's alcohol concentration or the presence of controlled substances or metabolites or any other impairing substance if:

(1) A law enforcement officer or chemical analyst requested a blood and/or urine sample from the person charged; and

(2) A chemical analysis of the person's blood was performed by a chemical analyst possessing a permit issued by the Department of Health and Human Services authorizing the chemical analyst to analyze blood or urine for alcohol or controlled substances, metabolites of a controlled substance, or any other impairing substance.

For purposes of establishing compliance with subdivision (2) of this subsection, the court or administrative agency shall take judicial notice of the list of persons possessing permits, the type of instrument on which each person is authorized to perform tests of the blood and/or urine, and the date the permit was issued and the date it expires.

(d) Right to Additional Test. – ~~A person who submits to a chemical analysis may have a qualified person of his own choosing administer an additional chemical test or tests, or have a qualified person withdraw a blood sample for later chemical testing by a qualified person of his own choosing. Any law enforcement officer having in his charge any person who has submitted to a chemical analysis shall assist the person in contacting someone to administer the additional testing or to withdraw blood, and shall allow access to the person for that purpose.~~ Nothing in this section shall be construed to prohibit a person from obtaining or attempting to obtain an additional chemical analysis. If the person is not released from custody after the initial appearance, the agency having custody of the person shall make reasonable efforts in a timely manner to assist the person in obtaining access to a telephone to arrange for any additional test and allow access to the person in accordance with the agreed procedure in G.S. 20-38.4. The failure or inability of the person who submitted to a chemical analysis to obtain any additional test or to withdraw blood does not preclude the admission of evidence relating to the chemical analysis.

(d1) Right to Require Additional Tests. – If a person refuses to submit to any test or tests pursuant to this section, any law enforcement officer with probable cause may, without a court order, compel the person to provide blood or urine samples for analysis if the officer reasonably believes that the delay necessary to obtain a court order, under the circumstances, would result in the dissipation of the percentage of alcohol in the person's blood or urine.

(d2) Notwithstanding any other provision of law, when a blood or urine sample is requested under subsection (d1) of this section by a law enforcement officer, a

physician, registered nurse, emergency medical technician, or other qualified person shall withdraw the blood and obtain the urine sample, and no further authorization or approval is required. If the person withdrawing the blood or collecting the urine requests written confirmation of the charging officer's request for the withdrawal of blood or obtaining urine, the officer shall furnish it before blood is withdrawn or urine obtained.

(d3) When blood is withdrawn or urine collected pursuant to a law enforcement officer's request, neither the person withdrawing the blood nor any hospital, laboratory, or other institution, person, firm, or corporation employing that person, or contracting for the service of withdrawing blood, may be held criminally or civilly liable by reason of withdrawing that blood, except that there is no immunity from liability for negligent acts or omissions. The results of the analysis of blood or urine under this subsection shall be admissible if performed by the State Bureau of Investigation Laboratory or any other hospital or qualified laboratory.

(e) Recording Results of Chemical Analysis of Breath. – ~~The chemical analyst who administers a test of a person's breath shall record the following information after making any chemical analysis:~~

~~(1) The alcohol concentration or concentrations revealed by the chemical analysis.~~

~~(2) The time of the collection of the breath sample or samples used in the chemical analysis.~~

~~A copy of the record of this information shall be furnished to the person submitting to the chemical analysis, or to his attorney, before any trial or proceeding in which the results of the chemical analysis may be used.~~ A person charged with an implied-consent offense who has not received, prior to a trial, a copy of the chemical analysis results the State intends to offer into evidence may request in writing a copy of the results. The failure to provide a copy prior to any trial shall be grounds for a continuance of the case but shall not be grounds to suppress the results of the chemical analysis or to dismiss the criminal charges.

(e1) Use of Chemical Analyst's Affidavit in District Court. – An affidavit by a chemical analyst sworn to and properly executed before an official authorized to administer oaths is admissible in evidence without further authentication in any hearing or trial in the District Court Division of the General Court of Justice with respect to the following matters:

(1) The alcohol concentration or concentrations or the presence or absence of an impairing substance of a person given a chemical analysis and who is involved in the hearing or trial.

(2) The time of the collection of the blood, breath, or other bodily fluid or substance sample or samples for the chemical analysis.

(3) The type of chemical analysis administered and the procedures followed.

(4) The type and status of any permit issued by the Department of Health and Human Services that the analyst held on the date the analyst performed the chemical analysis in question.

(5) If the chemical analysis is performed on a breath-testing instrument for which regulations adopted pursuant to subsection (b) require preventive maintenance, the date the most recent preventive maintenance procedures were performed on the breath-testing instrument used, as shown on the maintenance records for that instrument.

The Department of Health and Human Services shall develop a form for use by chemical analysts in making this affidavit. If any person who submitted to a chemical analysis desires that a chemical analyst personally testify in the hearing or trial in the District Court Division, the person may subpoena the chemical analyst and examine him as if he were an adverse witness. A subpoena for a chemical analyst shall not be issued unless the person files in writing with the court and serves a copy on the district attorney at least five days prior to trial an affidavit specifying the factual grounds on which the person believes the chemical analysis was not properly administered and the facts that the chemical analyst will testify about and stating that the presence of the analyst is necessary for the proper defense of the case. The district court shall determine if there are grounds to believe that the presence of the analyst requested is necessary for the proper defense. If so, the case shall be continued until the analyst can be present. The criminal case shall not be dismissed due to the failure of the analyst to appear, unless the analyst willfully fails to appear after being ordered to appear by the court.

(f) Evidence of Refusal Admissible. – If any person charged with an implied-consent offense refuses to submit to a chemical ~~analysis,~~ analysis or to perform field sobriety tests at the request of an officer, evidence of that refusal is admissible in any ~~criminal~~ criminal, civil, or administrative action against ~~him for an implied-consent offense under G.S. 20-16.2.~~ the person.

(g) Controlled-Drinking Programs. – The Department of Health and Human Services may adopt rules concerning the ingestion of controlled amounts of alcohol by individuals submitting to chemical testing as a part of scientific, experimental, educational, or demonstration programs. These regulations shall prescribe procedures consistent with controlling federal law governing the acquisition, transportation, possession, storage, administration, and disposition of alcohol intended for use in the programs. Any person in charge of a controlled-drinking program who acquires alcohol under these regulations must keep records accounting for the disposition of all alcohol acquired, and the records must at all reasonable times be available for inspection upon the request of any federal, State, or local law-enforcement officer with jurisdiction over the laws relating to control of alcohol. A controlled-drinking program exclusively using lawfully purchased alcoholic beverages in places in which they may be lawfully possessed, however, need not comply with the record-keeping requirements of the regulations authorized by this subsection. All acts pursuant to the regulations reasonably done in furtherance of bona fide objectives of a controlled-drinking program authorized by the regulations are lawful notwithstanding the provisions of any other general or local statute, regulation, or ordinance controlling alcohol."

PART X. IMPROVED ACCESS TO MEDICAL RECORDS IN IMPAIRED DRIVING CASES

SECTION 17. Chapter 90 of the General Statutes is amended by adding a new section to read:

"**§ 90-21.20B. Access to medical information for law enforcement purposes.**

(a) Notwithstanding any other provision of law, if a person is involved in a vehicle crash:

(1) Any health care provider who is providing medical treatment to the person shall, upon request, disclose to any law enforcement officer investigating the crash the following information about the person: name, current location, and whether the person appears to be impaired by alcohol, drugs, or another substance.

(2) Law enforcement officers shall be provided access to visit and interview the person upon request, except when the health care provider requests temporary privacy for medical reasons.

(3) A health care provider shall disclose a certified copy of all identifiable health information related to that person as specified in a search warrant or an order issued by a judicial official.

(b) A prosecutor or law enforcement officer receiving identifiable health information under this section shall not disclose this information to others except as necessary to the investigation or otherwise allowed by law.

(c) A certified copy of identifiable health information, if relevant, shall be admissible in any hearing or trial without further authentication.

(d) As used in this section, "health care provider" has the same meaning as in G.S. 90-21.11."

SECTION 18. G.S. 8-53.1 reads as rewritten:

"**§ 8-53.1. Physician-patient and nurse privilege waived in child ~~abuse.~~abuse; disclosure of information in impaired driving accident cases.**

(a) Notwithstanding the provisions of G.S. 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.

(b) Nothing in this Article shall preclude a health care provider, as defined in G.S. 90-21.11, from disclosing information to a law enforcement agency investigating a vehicle crash under the provisions of G.S. 90-21.20B."

PART XI. PROSECUTOR REPORTING WHEN IMPLIED-CONSENT CASE IS DISMISSED

SECTION 19. G.S. 20-138.4 reads as rewritten:

"**§ 20-138.4. Requirement that prosecutor explain reduction or dismissal of charge involving impaired driving.**

(a) Any prosecutor ~~must~~ shall enter detailed facts in the record of any case ~~involving impaired driving~~ subject to the implied-consent law or involving driving while license revoked for impaired driving as defined in G.S. 20-28.2 explaining orally in open court and in writing the reasons for his action if he:

(1) Enters a voluntary dismissal; or
(2) Accepts a plea of guilty or no contest to a lesser included offense; or
(3) Substitutes another charge, by statement of charges or otherwise, if the substitute charge carries a lesser mandatory minimum punishment or is not an offense involving impaired driving; or
(4) Otherwise takes a discretionary action that effectively dismisses or reduces the original charge in the case involving impaired driving.

General explanations such as "interests of justice" or "insufficient evidence" are not sufficiently detailed to meet the requirements of this section.

(b) The written explanation shall be signed by the prosecutor taking the action on a form approved by the Administrative Office of the Courts and shall contain, at a minimum:

(1) The alcohol concentration or the fact that the driver refused.
(2) A list of all prior convictions of implied-consent offenses or driving while license revoked.
(3) Whether the driver had a valid drivers license or privilege to drive in this State as indicated by the Division's records.
(4) A statement that a check of the database of the Administrative Office of the Courts revealed whether any other charges against the defendant were pending.
(5) The elements that the prosecutor believes in good faith can be proved, and a list of those elements that the prosecutor cannot prove and why.
(6) The name and agency of the charging officer and whether the officer is available.
(7) Any other reason why the charges are dismissed.

(c) A copy of the form required in subsection (b) of this section shall be sent to the head of the law enforcement agency that employed the charging officer, to the district attorney who employs the prosecutor, and filed in the court file. The Administrative Office of the Courts shall electronically record this data in its database and make it available upon request."

SECTION 20.1. G.S. 7A-109.2 reads as rewritten:

"**§ 7A-109.2. Records of dispositions in criminal ~~cases.~~cases; impaired driving integrated data system.**

(a) Each clerk of superior court shall ensure that all records of dispositions in criminal cases, including those records filed electronically, contain all the essential information about the case, including the ~~identity~~ the name of the presiding judge and the attorneys representing the State and the defendant.

(b) In addition to the information required by subsection (a) of this section for all offenses involving impaired driving as defined by G.S. 20-4.01, all charges of driving while license revoked for an impaired driving license revocation as defined by G.S. 20-28.2, and any other violation of the motor vehicle code involving the operation of a vehicle and the possession, consumption, use, or transportation of alcoholic beverages, the clerk shall include in the electronic records the following information:

(1) The reasons for any voluntary dismissal or reduction of charges as specified in G.S. 20-138.4;
(2) The reasons for any pretrial dismissal by the court;
(3) The reasons for any continuances granted in the case;
(4) The alcohol concentration reported by the charging officer or chemical analyst, if any;
(5) The reasons for any suppression of evidence;
(6) The reasons for dismissal of charges at trial;
(7) The punishment imposed, including community service, jail, substance abuse assessment and education or treatment, amount of any fine, costs, and fees imposed;
(8) The amount and reason for waiving or reduction of any fee or fine;
(9) The time or other conditions given to pay any fine, cost, or fees;
(10) After the initial disposition, the modification or reduction to any sentence, fee owed, fine, or restitution and the name and agency of the person requesting the modification;
(11) The date of compliance with court-ordered community service, jail sentence, substance abuse assessment, substance abuse education or treatment, and payment of fines, costs, and fees; and
(12) Subsequent court proceedings to enforce compliance with punishment, assessment, treatment, education, or payment of fines, costs, and fees."

SECTION 20.2. Chapter 7A of the General Statutes is amended by adding a new section to read:

"**§ 7A-346.3. Impaired driving integrated data system report.**

The information compiled by G.S. 7A-109.2 shall be maintained in an Administrative Office of the Courts database. By March 1, the Administrative Office of the Courts shall provide an annual report of the previous calendar year to the Joint Legislative Commission on Governmental Operations and the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee. The annual report shall show the types of dispositions for the entire State by county, by judge, by prosecutor, and by defense attorney. This report shall also include the amount of fines, costs, and fees ordered at the disposition of the charge, the amount of any subsequent reduction, amount collected, and the amount still owed, and compliance with sanctions of community service, jail, substance abuse assessment, treatment, and education. The Administrative Office of the Courts shall facilitate public access to the information collected under this section by posting this information on the court's Internet page in a manner accessible to the public and shall make reports of any information collected under this section available to the public upon request and without charge."

PART XII. NOTICE PROCEDURE AND DRIVING WHILE LICENSE REVOKED AFTER FAILURE TO APPEAR

SECTION 21. G.S. 20-48 reads as rewritten:

"**§ 20-48. Giving of notice.**

(a) Whenever the Division is authorized or required to give any notice under this Chapter or other law regulating the operation of vehicles, unless a different method of

giving such notice is otherwise expressly prescribed, such notice shall be given either by personal delivery thereof to the person to be so notified or by deposit in the United States mail of such notice in an envelope with postage prepaid, addressed to such person at his address as shown by the records of the Division. The giving of notice by mail is complete upon the expiration of four days after such deposit of such notice. Proof of the giving of notice in either such manner may be made by ~~the certificate of any officer or employee of the Division or affidavit of any person over 18 years of age, naming the person to whom such notice was given and specifying the time, place, and manner of the giving thereof.~~a notation in the records of the Division that the notice was sent to a particular address and the purpose of the notice. A certified copy of the Division's records may be sent by the Police Information Network, facsimile, or other electronic means. A copy of the Division's records sent under the authority of this section is admissible as evidence in any court or administrative agency and is sufficient evidence to discharge the burden of the person presenting the record that notice was sent to the person named in the record, at the address indicated in the record, and for the purpose indicated in the record. There is no requirement that the actual notice or letter be produced.

(b) Notwithstanding any other provision of this Chapter at any time notice is now required by registered mail with return receipt requested, certified mail with return receipt requested may be used in lieu thereof and shall constitute valid notice to the same extent and degree as notice by registered mail with return receipt requested.

(c) The Commissioner shall appoint such agents of the Division as may be needed to serve revocation notices required by this Chapter. The fee for service of a notice shall be fifty dollars ($50.00)."

SECTION 22.1. G.S. 20-28 reads as rewritten:

"**§ 20-28. Unlawful to drive while license ~~revoked~~ revoked, after notification, or while disqualified.**

(a) Driving While License Revoked. – Except as provided in subsection (a1) of this section, any person whose drivers license has been revoked who drives any motor vehicle upon the highways of the State while the license is revoked is guilty of a Class 1 misdemeanor. Upon conviction, the person's license shall be revoked for an additional period of one year for the first offense, two years for the second offense, and permanently for a third or subsequent offense.

The restoree of a revoked drivers license who operates a motor vehicle upon the highways of the State without maintaining financial responsibility as provided by law shall be punished as for driving without a license.

(a1) Driving Without Reclaiming License. – A person convicted under subsection (a) shall be punished as if the person had been convicted of driving without a license under G.S. 20-35 if the person demonstrates to the court that either subdivisions (1) and (2), or subdivision (3) of this subsection is true:

(1) At the time of the offense, the person's license was revoked solely under G.S. 20-16.5; and

(2) a. The offense occurred more than 45 days after the effective date of a revocation order issued under G.S. 20-16.5(f) and the

period of revocation was 45 days as provided under subdivision (3) of that subsection; or

b. The offense occurred more than 30 days after the effective date of the revocation order issued under any other provision of G.S. 20-16.5; or

(3) At the time of the offense the person had met the requirements of G.S. 50-13.12, or G.S. 110-142.2 and was eligible for reinstatement of the person's drivers license privilege as provided therein.

In addition, a person punished under this subsection shall be treated for drivers license and insurance rating purposes as if the person had been convicted of driving without a license under G.S. 20-35, and the conviction report sent to the Division must indicate that the person is to be so treated.

(a2) Driving After Notification or Failure to Appear. – A person shall be guilty of a Class 1 misdemeanor if:

(1) The person drives upon a highway while that person's license is revoked for an impaired drivers license revocation after the Division has sent notification in accordance with G.S. 20-48; or

(2) The person fails to appear for two years from the date of the charge after being charged with an implied-consent offense.

Upon conviction, the person's drivers license shall be revoked for an additional period of one year for the first offense, two years for the second offense, and permanently for a third or subsequent offense. The restoree of a revoked drivers license who operates a motor vehicle upon the highways of the State without maintaining financial responsibility as provided by law shall be punished as for driving without a license.

(b) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 761, s. 3.

(c) When Person May Apply for License. – A person whose license has been revoked may apply for a license as follows:

(1) If revoked under subsection (a) of this section for one ~~year~~ year, the person may apply for a license after 90 days.

(2) If punished under subsection (a1) of this section and the original revocation was pursuant to G.S. 20-16.5, in order to obtain reinstatement of a drivers license, the person must obtain a substance abuse assessment and show proof of financial responsibility to the Division. If the assessment recommends education or treatment, the person must complete the education or treatment within the time limits specified by the Division.

(3) If revoked under subsection (a2) of this section for one year, the person may apply for a license after one year.

(4) If revoked under this section for two years, the person may apply for a license after one year.

(5) If revoked under this section permanently, the person may apply for a license after three years.~~A person whose license has been revoked under this section for two years may apply for a license after 12~~

~~months. A person whose license has been revoked under this section permanently may apply for a license after three years.~~

(c1) Upon the filing of an application the Division may, with or without a hearing, issue a new license upon satisfactory proof that the former licensee has not been convicted of a moving violation under this Chapter or the laws of another state, a violation of any provision of the alcoholic beverage laws of this State or another state, or a violation of any provisions of the drug laws of this State or another state when any of these violations occurred during the revocation period.

(c2) The Division may impose any restrictions or conditions on the new license that the Division considers appropriate for the balance of the revocation period. When the revocation period is permanent, the restrictions and conditions imposed by the Division may not exceed three years.

(c3) A person whose license is revoked for violation of subsection (a1) of this section where the person's license was originally revoked for an impaired driving revocation, or a person whose license is revoked for a violation of subsection (a2) of this section, may only have the license conditionally restored by the Division pursuant to the provisions of subsection (c4) of this section.

(c4) For a conditional restoration under subsection (c3) of this section, the Division shall require at a minimum that the driver obtain a substance abuse assessment prior to issuance of a license and show proof of financial responsibility. If the substance abuse assessment recommends education or treatment, the person must complete the education or treatment within the time limits specified. If the assessment determines that the person abuses alcohol, the Division shall require the person to install and use an ignition interlock system on any vehicles that are to be driven by that person for the period of time set forth in G.S. 20-17.8(c).

(c5) For licenses conditionally restored pursuant to subsections (c3) and (c4) of this section, the Division shall cancel the license and impose the remaining revocation period if any of the following occur:

(1) The person violates any condition of the restoration;

(2) The person is convicted of any moving offense in this or another state;

(3) The person is convicted for a violation of the alcoholic beverage or control substance laws of this or any other state.

The Division shall also cancel the registration on any vehicles registered in the driver's name and shall require the driver to surrender all current registration plates and cards.

(d) Driving While Disqualified. – A person who was convicted of a violation that disqualified the person and required the person's drivers license to be revoked who drives a motor vehicle during the revocation period is punishable as provided in the other subsections of this section. A person who has been disqualified who drives a commercial motor vehicle during the disqualification period is guilty of a Class 1 misdemeanor and is disqualified for an additional period as follows:

(1) For a first offense of driving while disqualified, a person is disqualified for a period equal to the period for which the person was disqualified when the offense occurred.

(2) For a second offense of driving while disqualified, a person is disqualified for a period equal to two times the period for which the person was disqualified when the offense occurred.

(3) For a third offense of driving while disqualified, a person is disqualified for life.

The Division may reduce a disqualification for life under this subsection to 10 years in accordance with the guidelines adopted under G.S. 20-17.4(b). A person who drives a commercial motor vehicle while the person is disqualified and the person's drivers license is revoked is punishable for both driving while the person's license was revoked and driving while disqualified."

SECTION 22.2. G.S. 20-17(a)(2) 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:

...

(2) Impaired driving under G.S. 20-138.1. ~~Either of the following impaired driving offenses:~~

~~a. Impaired driving under G.S. 20-138.1.~~

~~b. Impaired driving under G.S. 20-138.2.~~"

SECTION 22.3. G.S. 20-17.8(b) reads as rewritten:

"(b) Ignition Interlock Required. – ~~When~~ Except as provided in subdivision (1) of this subsection, when the Division restores the license of a person who is subject to this section, in addition to any other restriction or condition, it shall require the person to agree to and shall indicate on the person's drivers license the following restrictions for the period designated in subsection (c):

(1) A restriction that the person may operate only a vehicle that is equipped with a functioning ignition interlock system of a type approved by the Commissioner. The Commissioner shall not unreasonably withhold approval of an ignition interlock system and shall consult with the Division of Purchase and Contract in the Department of Administration to ensure that potential vendors are not discriminated against.

(2) A requirement that the person personally activate the ignition interlock system before driving the motor vehicle.

(3) An alcohol concentration restriction as follows:

a. If the ignition interlock system is required pursuant only to subdivision (a)(1) of this section, a requirement that the person not drive with an alcohol concentration of 0.04 or greater;

b. If the ignition interlock system is required pursuant to subdivision (a)(2) of this section, a requirement that the person not drive with an alcohol concentration of greater than 0.00; or

c. If the ignition interlock system is required pursuant to subdivision (a)(1) of this section, and the person has also been convicted, based on the same set of circumstances, of: (i) driving while impaired in a commercial vehicle, G.S. 20-138.2,

(ii) driving while less than 21 years old after consuming alcohol or drugs, G.S. 20-138.3, (iii) felony death by vehicle, G.S. 20-141.4(a1), or (iv) manslaughter or negligent homicide resulting from the operation of a motor vehicle when the offense involved impaired driving, a requirement that the person not drive with an alcohol concentration of greater than 0.00."

SECTION 22.4. G.S. 20-17.8 is amended by adding a new subsection to read:

"(l) Medical Exception to Requirement. – A person subject to this section who has a medically diagnosed physical condition that makes the person incapable of personally activating an ignition interlock system may request an exception to the requirements of this section from the Division. The Division shall not issue an exception to this section unless the person has submitted to a physical examination by two or more physicians or surgeons duly licensed to practice medicine in this State or in any other state of the United States and unless such examining physicians or surgeons have completed and signed a certificate in the form prescribed by the Division. Such certificate shall be devised by the Commissioner with the advice of those qualified experts in the field of diagnosing and treating physical disorders that the Commissioner may select and shall be designed to elicit the maximum medical information necessary to aid in determining whether or not the person is capable of personally activating an ignition interlock system. The certificate shall contain a waiver of privilege and the recommendation of the examining physician to the Commissioner as to whether the person is capable of personally activating an ignition interlock system.

The Commissioner is not bound by the recommendations of the examining physicians but shall give fair consideration to such recommendations in acting upon the request for medical exception, the criterion being whether or not, upon all the evidence, it appears that the person is in fact incapable of personally activating an ignition interlock system. The burden of proof of such fact is upon the person seeking the exception.

Whenever an exception is denied by the Commissioner, such denial may be reviewed by a reviewing board upon written request of the person seeking the exception filed with the Division within 10 days after receipt of such denial. The composition, procedures, and review of the reviewing board shall be as provided in G.S. 20-9(g)(4)."

PART XIII. MODIFYING CURRENT PUNISHMENTS

SECTION 23. G.S. 20-179 reads as rewritten:

"**§ 20-179. Sentencing hearing after conviction for impaired driving; determination of grossly aggravating and aggravating and mitigating factors; punishments.**

(a) Sentencing Hearing Required. – After a conviction ~~for impaired driving~~ under G.S. 20-138.1, G.S. 20-138.2, a second or subsequent conviction under G.S. 20-138.2A, or a second or subsequent conviction under G.S. 20-138.2B, G.S. 20-138.3, or when any of those offenses are remanded back to district court after an appeal to superior court,

the judge ~~must~~ shall hold a sentencing hearing to determine whether there are aggravating or mitigating factors that affect the sentence to be imposed.

(1) The court shall consider evidence of aggravating or mitigating factors present in the offense that make an aggravated or mitigated sentence appropriate. The State bears the burden of proving beyond a reasonable doubt that an aggravating factor exists, and the offender bears the burden of proving by a preponderance of the evidence that a mitigating factor exists.

(2) Before the hearing the prosecutor ~~must~~ shall make all feasible efforts to secure the defendant's full record of traffic convictions, and ~~must~~ shall present to the judge that record for consideration in the hearing. Upon request of the defendant, the prosecutor ~~must~~ shall furnish the defendant or his attorney a copy of the defendant's record of traffic convictions at a reasonable time prior to the introduction of the record into evidence. In addition, the prosecutor ~~must~~ shall present all other appropriate grossly aggravating and aggravating factors of which he is aware, and the defendant or his attorney may present all appropriate mitigating factors. In every instance in which a valid chemical analysis is made of the defendant, the prosecutor ~~must~~ shall present evidence of the resulting alcohol concentration.

(a1) Jury Trial in Superior Court; Jury Procedure if Trial Bifurcated. –

(1) Notice. – If the defendant appeals to superior court, and the State intends to use one or more aggravating factors under subsections (c) or (d) of this section, the State must provide the defendant with notice of its intent. The notice shall be provided no later than 10 days prior to trial and shall contain a plain and concise factual statement indicating the factor or factors it intends to use under the authority of subsections (c) and (d) of this section. The notice must list all the aggravating factors that the State seeks to establish.

(2) Aggravating factors. – The defendant may admit to the existence of an aggravating factor, and the factor so admitted shall be treated as though it were found by a jury pursuant to the procedures in this section. If the defendant does not so admit, only a jury may determine if an aggravating factor is present. The jury impaneled for the trial may, in the same trial, also determine if one or more aggravating factors is present, unless the court determines that the interests of justice require that a separate sentencing proceeding be used to make that determination. If the court determines that a separate proceeding is required, the proceeding shall be conducted by the trial judge before the trial jury as soon as practicable after the guilty verdict is returned. The State bears the burden of proving beyond a reasonable doubt that an aggravating factor exists, and the offender bears the burden of proving by a preponderance of the evidence that a mitigating factor exists.

(3) Convening the jury. – If prior to the time that the trial jury begins its deliberations on the issue of whether one or more aggravating factors exist, any juror dies, becomes incapacitated or disqualified, or is discharged for any reason, an alternate juror shall become a part of the jury and serve in all respects as those selected on the regular trial panel. An alternate juror shall become a part of the jury in the order in which the juror was selected. If the trial jury is unable to reconvene for a hearing on the issue of whether one or more aggravating factors exist after having determined the guilt of the accused, the trial judge shall impanel a new jury to determine the issue.

(4) Jury selection. – A jury selected to determine whether one or more aggravating factors exist shall be selected in the same manner as juries are selected for the trial of criminal cases.

(a2) Jury Trial on Aggravating Factors in Superior Court. –

(1) Defendant admits aggravating factor only. – If the defendant admits that an aggravating factor exists, but pleads not guilty to the underlying charge, a jury shall be impaneled to dispose of the charge only. In that case, evidence that relates solely to the establishment of an aggravating factor shall not be admitted in the trial.

(2) Defendant pleads guilty to the charge only. – If the defendant pleads guilty to the charge, but contests the existence of one or more aggravating factors, a jury shall be impaneled to determine if the aggravating factor or factors exist.

(b) Repealed by Session Laws 1983, c. 435, s. 29.

(c) Determining Existence of Grossly Aggravating Factors. – At the sentencing hearing, based upon the evidence presented at trial and in the hearing, the ~~judge~~ judge, or the jury in superior court, must first determine whether there are any grossly aggravating factors in the case. Whether a prior conviction exists under subdivision (1) of this subsection shall be a matter to be determined by the judge, and not the jury, in district or superior court. If the sentencing hearing is for a case remanded back to district court from superior court, the judge shall determine whether the defendant has been convicted of any offense that was not considered at the initial sentencing hearing and impose the appropriate sentence under this section. The judge must impose the Level One punishment under subsection (g) of this section if ~~the judge determines~~it is determined that two or more grossly aggravating factors apply. The judge must impose the Level Two punishment under subsection (h) of this section if ~~the judge determines~~it is determined that only one of the grossly aggravating factors applies. The grossly aggravating factors are:

(1) A prior conviction for an offense involving impaired driving if:

a. The conviction occurred within seven years before the date of the offense for which the defendant is being sentenced; or

b. The conviction occurs after the date of the offense for which the defendant is presently being sentenced, but prior to or contemporaneously with the present sentencing.

Each prior conviction is a separate grossly aggravating factor.

(2) Driving by the defendant at the time of the offense while his driver's license was revoked under G.S. 20-28, and the revocation was an impaired driving revocation under G.S. 20-28.2(a).

(3) Serious injury to another person caused by the defendant's impaired driving at the time of the offense.

(4) Driving by the defendant while a child under the age of 16 years was in the vehicle at the time of the offense.

In imposing a Level One or Two punishment, the judge may consider the aggravating and mitigating factors in subsections (d) and (e) in determining the appropriate sentence. If there are no grossly aggravating factors in the case, the judge must weigh all aggravating and mitigating factors and impose punishment as required by subsection (f).

(c1) Written Findings. – The court shall make findings of the aggravating and mitigating factors present in the offense. If the jury finds factors in aggravation, the court shall ensure that those findings are entered in the court's determination of sentencing factors form or any comparable document used to record the findings of sentencing factors. Findings shall be in writing.

(d) Aggravating Factors to Be Weighed. – The ~~judge~~judge, or the jury in superior court, ~~must~~ shall determine before sentencing under subsection (f) whether any of the aggravating factors listed below apply to the defendant. The judge ~~must~~ shall weigh the seriousness of each aggravating factor in the light of the particular circumstances of the case. The factors are:

(1) Gross impairment of the defendant's faculties while driving or an alcohol concentration of 0.16 or more within a relevant time after the driving.

(2) Especially reckless or dangerous driving.

(3) Negligent driving that led to a reportable accident.

(4) Driving by the defendant while his driver's license was revoked.

(5) Two or more prior convictions of a motor vehicle offense not involving impaired driving for which at least three points are assigned under G.S. 20-16 or for which the convicted person's license is subject to revocation, if the convictions occurred within five years of the date of the offense for which the defendant is being sentenced, or one or more prior convictions of an offense involving impaired driving that occurred more than seven years before the date of the offense for which the defendant is being sentenced.

(6) Conviction under G.S. 20-141.5 of speeding by the defendant while fleeing or attempting to elude apprehension.

(7) Conviction under G.S. 20-141 of speeding by the defendant by at least 30 miles per hour over the legal limit.

(8) Passing a stopped school bus in violation of G.S. 20-217.

(9) Any other factor that aggravates the seriousness of the offense.

Except for the factor in subdivision (5) the conduct constituting the aggravating factor ~~must~~ shall occur during the same transaction or occurrence as the impaired driving offense.

(e) Mitigating Factors to Be Weighed. – The judge ~~must~~ shall also determine before sentencing under subsection (f) whether any of the mitigating factors listed below apply to the defendant. The judge ~~must~~ shall weigh the degree of mitigation of each factor in light of the particular circumstances of the case. The factors are:

(1) Slight impairment of the defendant's faculties resulting solely from alcohol, and an alcohol concentration that did not exceed 0.09 at any relevant time after the driving.

(2) Slight impairment of the defendant's faculties, resulting solely from alcohol, with no chemical analysis having been available to the defendant.

(3) Driving at the time of the offense that was safe and lawful except for the impairment of the defendant's faculties.

(4) A safe driving record, with the defendant's having no conviction for any motor vehicle offense for which at least four points are assigned under G.S. 20-16 or for which the person's license is subject to revocation within five years of the date of the offense for which the defendant is being sentenced.

(5) Impairment of the defendant's faculties caused primarily by a lawfully prescribed drug for an existing medical condition, and the amount of the drug taken was within the prescribed dosage.

(6) The defendant's voluntary submission to a mental health facility for assessment after he was charged with the impaired driving offense for which he is being sentenced, and, if recommended by the facility, his voluntary participation in the recommended treatment.

(7) Any other factor that mitigates the seriousness of the offense.

Except for the factors in subdivisions (4), (6) and (7), the conduct constituting the mitigating factor ~~must~~ shall occur during the same transaction or occurrence as the impaired driving offense.

(f) Weighing the Aggravating and Mitigating Factors. – If the judge or the jury in the sentencing hearing determines that there are no grossly aggravating factors, ~~he~~the judge ~~must~~ shall weigh all aggravating and mitigating factors listed in subsections (d) and (e). If the judge determines that:

(1) The aggravating factors substantially outweigh any mitigating factors, ~~he must~~ the judge shall note in the judgment the factors found and his finding that the defendant is subject to the Level Three punishment and impose a punishment within the limits defined in subsection (i).

(2) There are no aggravating and mitigating factors, or that aggravating factors are substantially counterbalanced by mitigating factors, ~~he must~~ the judge shall note in the judgment any factors found and ~~his~~the finding that the defendant is subject to the Level Four punishment and impose a punishment within the limits defined in subsection (j).

(3) The mitigating factors substantially outweigh any aggravating factors, ~~he must~~ the judge shall note in the judgment the factors found and his finding that the defendant is subject to the Level Five punishment and impose a punishment within the limits defined in subsection (k).

It is not a mitigating factor that the driver of the vehicle was suffering from alcoholism, drug addiction, diminished capacity, or mental disease or defect. Evidence of these matters may be received in the sentencing hearing, however, for use by the judge in formulating terms and conditions of sentence after determining which punishment level ~~must~~ shall be imposed.

(f1) Aider and Abettor Punishment. – Notwithstanding any other provisions of this section, a person convicted of impaired driving under G.S. 20-138.1 under the common law concept of aiding and abetting is subject to Level Five punishment. The judge need not make any findings of grossly aggravating, aggravating, or mitigating factors in such cases.

(f2) Limit on Consolidation of Judgments. – Except as provided in subsection (f1), in each charge of impaired driving for which there is a conviction the judge ~~must~~ shall determine if the sentencing factors described in subsections (c), (d) and (e) are applicable unless the impaired driving charge is consolidated with a charge carrying a greater punishment. Two or more impaired driving charges may not be consolidated for judgment.

(g) Level One Punishment. – A defendant subject to Level One punishment may be fined up to four thousand dollars ($4,000) and shall be sentenced to a term of imprisonment that includes a minimum term of not less than 30 days and a maximum term of not more than 24 months. The term of imprisonment may be suspended only if a condition of special probation is imposed to require the defendant to serve a term of imprisonment of at least 30 days. If the defendant is placed on probation, the judge shall impose a requirement that the defendant obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a drivers license and as a condition of probation. The judge may impose any other lawful condition of probation.

(h) Level Two Punishment. – A defendant subject to Level Two punishment may be fined up to two thousand dollars ($2,000) and shall be sentenced to a term of imprisonment that includes a minimum term of not less than seven days and a maximum term of not more than 12 months. The term of imprisonment may be suspended only if a condition of special probation is imposed to require the defendant to serve a term of imprisonment of at least seven days. If the defendant is placed on probation, the judge shall impose a requirement that the defendant obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a drivers license and as a condition of probation. The judge may impose any other lawful condition of probation.

(i) Level Three Punishment. – A defendant subject to Level Three punishment may be fined up to one thousand dollars ($1,000) and shall be sentenced to a term of imprisonment that includes a minimum term of not less than 72 hours and a maximum

term of not more than six months. The term of imprisonment may be suspended. However, the suspended sentence shall include the condition that the defendant:

(1) Be imprisoned for a term of at least 72 hours as a condition of special probation; or

(2) Perform community service for a term of at least 72 hours; or

~~(3) Not operate a motor vehicle for a term of at least 90 days; or~~

(4) Any combination of these conditions.

If the defendant is placed on probation, the judge shall impose a requirement that the defendant obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a drivers license and as a condition of probation. The judge may impose any other lawful condition of probation.

(j) Level Four Punishment. – A defendant subject to Level Four punishment may be fined up to five hundred dollars ($500.00) and shall be sentenced to a term of imprisonment that includes a minimum term of not less than 48 hours and a maximum term of not more than 120 days. The term of imprisonment may be suspended. However, the suspended sentence shall include the condition that the defendant:

(1) Be imprisoned for a term of 48 hours as a condition of special probation; or

(2) Perform community service for a term of 48 hours; or

~~(3) Not operate a motor vehicle for a term of 60 days; or~~

(4) Any combination of these conditions.

If the defendant is placed on probation, the judge shall impose a requirement that the defendant obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a drivers license and as a condition of probation. The judge may impose any other lawful condition of probation.

(k) Level Five Punishment. – A defendant subject to Level Five punishment may be fined up to two hundred dollars ($200.00) and shall be sentenced to a term of imprisonment that includes a minimum term of not less than 24 hours and a maximum term of not more than 60 days. The term of imprisonment may be suspended. However, the suspended sentence shall include the condition that the defendant:

(1) Be imprisoned for a term of 24 hours as a condition of special probation; or

(2) Perform community service for a term of 24 hours; or

~~(3) Not operate a motor vehicle for a term of 30 days; or~~

(4) Any combination of these conditions.

If the defendant is placed on probation, the judge shall impose a requirement that the defendant obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a drivers license and as a condition of probation. The judge may impose any other lawful condition of probation.

(k1) Credit for Inpatient Treatment. – Pursuant to G.S. 15A-1351(a), the judge may order that a term of imprisonment imposed as a condition of special probation under any level of punishment be served as an inpatient in a facility operated or licensed by the State for the treatment of alcoholism or substance abuse where the defendant has been accepted for admission or commitment as an inpatient. The defendant shall bear

the expense of any treatment unless the trial judge orders that the costs be absorbed by the State. The judge may impose restrictions on the defendant's ability to leave the premises of the treatment facility and require that the defendant follow the rules of the treatment facility. The judge may credit against the active sentence imposed on a defendant the time the defendant was an inpatient at the treatment facility, provided such treatment occurred after the commission of the offense for which the defendant is being sentenced. This section shall not be construed to limit the authority of the judge in sentencing under any other provisions of law.

(l) Repealed by Session Laws 1989, c. 691.

(m) Repealed by Session Laws 1995, c. 496, s. 2.

(n) Time Limits for Performance of Community Service. – If the judgment requires the defendant to perform a specified number of hours of community service as provided in subsections (i), (j), or (k), the community service ~~must~~ shall be completed:

(1) Within 90 days, if the amount of community service required is 72 hours or more; or

(2) Within 60 days, if the amount of community service required is 48 hours; or

(3) Within 30 days, if the amount of community service required is 24 hours.

The court may extend these time limits upon motion of the defendant if it finds that the defendant has made a good faith effort to comply with the time limits specified in this subsection.

(o) Evidentiary Standards; Proof of Prior Convictions. – In the sentencing hearing, the State ~~must~~ shall prove any grossly aggravating or aggravating factor ~~by the greater weight of the evidence,~~ beyond a reasonable doubt, and the defendant ~~must~~ shall prove any mitigating factor by the greater weight of the evidence. Evidence adduced by either party at trial may be utilized in the sentencing hearing. Except as modified by this section, the procedure in G.S. 15A-1334(b) governs. The judge may accept any evidence as to the presence or absence of previous convictions that he finds reliable but he ~~must~~ shall give prima facie effect to convictions recorded by the Division or any other agency of the State of North Carolina. A copy of such conviction records transmitted by the police information network in general accordance with the procedure authorized by G.S. 20-26(b) is admissible in evidence without further authentication. If the judge decides to impose an active sentence of imprisonment that would not have been imposed but for a prior conviction of an offense, the judge ~~must~~ shall afford the defendant an opportunity to introduce evidence that the prior conviction had been obtained in a case in which he was indigent, had no counsel, and had not waived his right to counsel. If the defendant proves by the preponderance of the evidence all three above facts concerning the prior case, the conviction may not be used as a grossly aggravating or aggravating factor.

(p) Limit on Amelioration of Punishment. – For active terms of imprisonment imposed under this section:

(1) The judge may not give credit to the defendant for the first 24 hours of time spent in incarceration pending trial.

(2) The defendant shall serve the mandatory minimum period of imprisonment and good or gain time credit may not be used to reduce that mandatory minimum period.

(3) The defendant may not be released on parole unless he is otherwise eligible, has served the mandatory minimum period of imprisonment, and has obtained a substance abuse assessment and completed any recommended treatment or training program or is paroled into a residential treatment program.

With respect to the minimum or specific term of imprisonment imposed as a condition of special probation under this section, the judge may not give credit to the defendant for the first 24 hours of time spent in incarceration pending trial.

(q) Repealed by Session Laws 1991, c. 726, s. 20.

(r) Supervised Probation Terminated. – Unless a judge in his discretion determines that supervised probation is necessary, and includes in the record that he has received evidence and finds as a fact that supervised probation is necessary, and states in his judgment that supervised probation is necessary, a defendant convicted of an offense of impaired driving shall be placed on unsupervised probation if he meets three conditions. These conditions are that he has not been convicted of an offense of impaired driving within the seven years preceding the date of this offense for which he is sentenced, that the defendant is sentenced under subsections (i), (j), and (k) of this section, and has obtained any necessary substance abuse assessment and completed any recommended treatment or training program.

When a judge determines in accordance with the above procedures that a defendant should be placed on supervised probation, the judge shall authorize the probation officer to modify the defendant's probation by placing the defendant on unsupervised probation upon the completion by the defendant of the following conditions of his suspended sentence:

(1) Community service; or

(2) Repealed by Session Laws 1995 c. 496, s. 2.

(3) Payment of any fines, court costs, and fees; or

(4) Any combination of these conditions.

(s) Method of Serving Sentence. – The judge in his discretion may order a term of imprisonment ~~or community service~~ to be served on weekends, even if the sentence cannot be served in consecutive sequence. However, if the defendant is ordered to a term of 48 hours or more, or has 48 hours or more remaining on a term of imprisonment, the defendant shall be required to serve 48 continuous hours of imprisonment to be given credit for time served.

(1) Credit for any jail time shall only be given hour for hour for time actually served. The jail shall maintain a log showing number of hours served.

(2) The defendant shall be refused entrance and shall be reported back to court if the defendant appears at the jail and has remaining in his body any alcohol as shown by an alcohol screening device or controlled

substance previously consumed, unless lawfully obtained and taken in therapeutically appropriate amounts.

(3) If a defendant has been reported back to court under subdivision (2) of this subsection, the court shall hold a hearing. The defendant shall be ordered to serve his jail time immediately and shall not be eligible to serve jail time on weekends if the court determines that, at the time of his entrance to the jail, if

a. The defendant had previously consumed alcohol in his body as shown by an alcohol screening device, or

b. The defendant had a previously consumed controlled substance in his body.

It shall be a defense to an immediate service of sentence of jail time and ineligibility for weekend service of jail time if the court determines that alcohol or controlled substance was lawfully obtained and was taken in therapeutically appropriate amounts.

(t) Repealed by Session Laws 1995, c. 496, s. 2."

SECTION 24. Chapter 7A of the General Statutes is amended by adding a new section to read:

"**§ 7A-109.4. Records of offenses involving impaired driving.**

The clerk of superior court shall maintain all records relating to an offense involving impaired driving as defined in G.S. 20-4.01(24a) for a minimum of 10 years from the date of conviction. Prior to destroying the record, the clerk shall record the name of the defendant, the judge, the prosecutor, and the attorney or whether there was a waiver of attorney, the alcohol concentration or the fact of refusal, the sentence imposed, and whether the case was appealed to superior court and its disposition."

SECTION 25. G.S. 20-17.2 is repealed.

PART XIV. MAKING IT ILLEGAL FOR A PERSON UNDER 21 YEARS OF AGE TO CONSUME AS WELL AS POSSESS ALCOHOL AND TO ALLOW ALCOHOL SCREENING DEVICES TO BE USED TO PROVE A PERSON HAS CONSUMED ALCOHOL

SECTION 26. G.S. 18B-302 reads as rewritten:

"**§ 18B-302. Sale to or purchase by underage persons.**

(a) Sale. – It shall be unlawful for any person to:

(1) Sell or give malt beverages or unfortified wine to anyone less than 21 years old; or

(2) Sell or give fortified wine, spirituous liquor, or mixed beverages to anyone less than 21 years old.

(b) ~~Purchase or Possession.~~ Purchase, Possession, or Consumption. – It shall be unlawful for:

(1) A person less than 21 years old to purchase, to attempt to purchase, or to possess malt beverages or unfortified wine; or

(2) A person less than 21 years old to purchase, to attempt to purchase, or to possess fortified wine, spirituous liquor, or mixed ~~beverages.~~ beverages; or

(3) A person less than 21 years old to consume any alcoholic beverage.

...

(i) ~~Purchase or Possession~~Purchase, Possession, or Consumption by 19 or 20-Year Old. – A violation of subdivision (b)(1) or (b)(3) of this section by a person who is 19 or 20 years old is a Class 3 misdemeanor.

(j) Notwithstanding any other provisions of law, a law enforcement officer may require any person the officer has probable cause to believe is under age 21 and has consumed alcohol to submit to an alcohol screening test using a device approved by the Department of Health and Human Services. The results of any screening device administered in accordance with the rules of the Department of Health and Human Services shall be admissible in any court or administrative proceeding. A refusal to submit to an alcohol screening test shall be admissible in any court or administrative proceeding.

(k) Notwithstanding the provisions in this section, it shall not be unlawful for a person less than 21 years old to consume unfortified wine or fortified wine during participation in an exempted activity under G.S. 18B-103(4), (8), or (11)."

PART XV. REQUIRING THAT CERTAIN DWI DEFENDANTS WHO ARE RELEASED FROM PRISON EARLY ARE TO BE ASSIGNED COMMUNITY SERVICE PAROLE OR HOUSE ARREST

SECTION 27. G.S. 15A-1374 reads as rewritten:

"**§ 15A-1374. Conditions of parole.**

(a) In General. – The Post-Release Supervision and Parole Commission may in its discretion impose conditions of parole it believes reasonably necessary to insure that the parolee will lead a law-abiding life or to assist him to do so. The Commission must provide as an express condition of every parole that the parolee not commit another crime during the period for which the parole remains subject to revocation. When the Commission releases a person on parole, it must give him a written statement of the conditions on which he is being released.

(a1) Required Conditions for Certain Offenders. – A person serving a term of imprisonment for an impaired driving offense sentenced pursuant to G.S. 20-179 that:

(1) Has completed any recommended treatment or training program required by G.S. 20-179(p)(3); and

(2) Is not being paroled to a residential treatment program;

shall, as a condition of parole, receive community service parole pursuant to G.S. 15A-1371(h), or be required to comply with subdivision (b)(8a) of this section.

(b) Appropriate Conditions. – As conditions of parole, the Commission may require that the parolee comply with one or more of the following conditions:

(1) Work faithfully at suitable employment or faithfully pursue a course of study or vocational training that will equip him for suitable employment.

(2) Undergo available medical or psychiatric treatment and remain in a specified institution if required for that purpose.

(3) Attend or reside in a facility providing rehabilitation, instruction, recreation, or residence for persons on parole.

(4) Support his dependents and meet other family responsibilities.
(5) Refrain from possessing a firearm, destructive device, or other dangerous weapon unless granted written permission by the Commission or the parole officer.
(6) Report to a parole officer at reasonable times and in a reasonable manner, as directed by the Commission or the parole officer.
(7) Permit the parole officer to visit him at reasonable times at his home or elsewhere.
(8) Remain within the geographic limits fixed by the Commission unless granted written permission to leave by the Commission or the parole officer.
(8a) Remain in one or more specified places for a specified period or periods each day and wear a device that permits the defendant's compliance with the condition to be monitored electronically.
(9) Answer all reasonable inquiries by the parole officer and obtain prior approval from the parole officer for any change in address or employment.
(10) Promptly notify the parole officer of any change in address or employment.
(11) Submit at reasonable times to searches of his person by a parole officer for purposes reasonably related to his parole supervision. The Commission may not require as a condition of parole that the parolee submit to any other searches that would otherwise be unlawful. Whenever the search consists of testing for the presence of illegal drugs, the parolee may also be required to reimburse the Department of Correction for the actual cost of drug testing and drug screening, if the results are positive.
(11a) Make restitution or reparation to an aggrieved party as provided in G.S. 148-57.1.
(11b) Comply with an order from a court of competent jurisdiction regarding the payment of an obligation of the parolee in connection with any judgment rendered by the court.
(11c) In the case of a parolee who was attending a basic skills program during incarceration, continue attending a basic skills program in pursuit of a General Education Development Degree or adult high school diploma.
(12) Satisfy other conditions reasonably related to his rehabilitation.

(c) Supervision Fee. – The Commission must require as a condition of parole that the parolee pay a supervision fee of thirty dollars ($30.00) per month. The Commission may exempt a parolee from this condition of parole only if it finds that requiring him to pay the fee will constitute an undue economic burden. The fee must be paid to the clerk of superior court of the county in which the parolee was convicted. The clerk must transmit any money collected pursuant to this subsection to the State to be deposited in

the general fund of the State. In no event shall a person released on parole be required to pay more than one supervision fee per month."

PART XVI. PREVENT NONCOMPLIANT PERMIT HOLDERS FROM CONTINUING IRRESPONSIBLE ALCOHOL SERVICE PRACTICES BY SWITCHING PERMITS TO ANOTHER NAME

SECTION 28. G.S. 18B-1003(c) reads as rewritten:

"(c) Certain Employees Prohibited. – A permittee shall not knowingly employ in the sale or distribution of alcoholic beverages any person who has been:

(1) Convicted of a felony within three years;

(2) Convicted of a felony more than three years previously and has not had his citizenship restored;

(3) Convicted of an alcoholic beverage offense within two years; or

(4) Convicted of a misdemeanor controlled substances offense within two years.

(5) A permit holder under Chapter 18B of the General Statutes and whose permit has been revoked within three years.

For purposes of this subsection, "conviction" has the same meaning as in G.S. 18B-900(b). To avoid undue hardship, the Commission may, in its discretion, exempt persons on a case-by-case basis from this subsection."

PART XVII. DWI TRAINING FOR JUDGES

SECTION 29. Chapter 7A of the General Statutes is amended by adding a new section to read:

"**§ 7A-10.2. Judicial education requirements.**

All justices and judges of the General Court of Justice shall be required to attend continuing judicial education as prescribed by the Supreme Court. At a minimum, every justice and judge shall be required to obtain two hours every two years of continuing judicial education regarding driving while impaired offenses and related issues."

PART XVIII. REQUIRE A DA SIGNATURE BEFORE A MOTION FOR APPROPRIATE RELIEF IS GRANTED IN DISTRICT COURT

SECTION 30.1. G.S. 15A-1420(a) reads as rewritten:

"(a) Form, Service, Filing.

(1) A motion for appropriate relief must:

a. Be made in writing unless it is made:

1. In open court;

2. Before the judge who presided at trial;

3. Before the end of the session if made in superior court; and

4. Within 10 days after entry of judgment;

b. State the grounds for the motion;

c. Set forth the relief sought; and

d. Be timely filed.

(2) A written motion for appropriate relief must be served in the manner provided in G.S. 15A-951(b). When the written motion is made more than 10 days after entry of judgment, service of the motion and a

notice of hearing must be made not less than five working days prior to the date of the hearing. When a motion for appropriate relief is permitted to be made orally the court must determine whether the matter may be heard immediately or at a later time. If the opposing party, or his counsel if he is represented, is not present, the court must provide for the giving of adequate notice of the motion and the date of hearing to the opposing party, or his counsel if he is represented by counsel.

(3) A written motion for appropriate relief must be filed in the manner provided in G.S. 15A-951(c).

(4) An oral or written motion for appropriate relief may not be granted in district court without the signature of the district attorney, indicating that the State has had an opportunity to consent or object to the motion. However, the court may grant a motion for appropriate relief without the district attorney's signature 10 business days after the district attorney has been notified in open court of the motion, or served with the motion pursuant to G.S. 15A-951(c)."

SECTION 30.2. G.S. 7A-304 is amended by adding a new subsection to read:

"(f) A person charged for any of the offenses set forth in this subsection may, in lieu of the payment of fines or the making of court appearances, elect to provide proof of compliance to the district attorney prior to or on the scheduled court appearance date, and the district attorney may in turn agree to voluntarily dismiss the case in exchange for the person's signed waiver of appearance and payment of court costs in the sum of fifty dollars ($50.00). Court costs assessed under this subsection are for the support of the General Court of Justice and shall be remitted to the State Treasurer.

Compliance dismissals authorized by this subsection may be obtained only for the following offenses:

(1) No operator's license, in violation of G.S. 20-7(a).

(2) Driving while license revoked, not alcohol-related, in violation of G.S. 20-28.

(3) Registration violations under G.S. 20-111(1) though (3).

(4) Failure to notify the Division of Motor Vehicles of change of address in violation of G.S. 20-7.1.

(5) Expired license, in violation of G.S. 20-7.

(6) Unsafe tires, in violation of G.S. 20-122.1.

(7) Inspection violations under G.S. 20-183.2.

(8) No registration card, in violation of G.S. 20-111.

(9) Failure to comply with license restrictions, in violation of G.S. 20-179.3.

(10) Failure to obtain commercial drivers license, in violation of G.S. 20-37.12.

(11) Allowing unlicensed person to drive, in violation of G.S. 20-32.

(12) Failure to notify the Division of Motor Vehicles of change of address registration, in violation of G.S. 20-67.
(13) Rearview mirror violations under G.S. 20-117.1(a).
(14) Safety equipment violations under G.S. 20-123.2, 20-124, 20-125, 20-125.1, 20-126, 20-127, 20-128, 20-128.1, 20-129, and 20-129.1.
(15) Child restraint violations under G.S. 20-137.1.
(16) Motorcycle and moped helmet violations under G.S. 20-140.4(2).
(17) Any violation arising from a vehicular accident or collision in which a citation is issued, but which in the interests of justice the State elects to accept a compliance dismissal rather than prosecute.

For purposes of this section, "compliance" means proof satisfactory to the district attorney that the person has corrected the violation and is therefore in compliance with the applicable statute, or that the underlying condition which gave rise to the violation is no longer present. However, a compliance dismissal shall not be valid in any case in which the person's compliance, if presented to the court, would qualify for a statutory defense to the charge, such as those defenses contained in G.S. 20-35(c), 20-122.1(b), 20-127(e), 20-133(b), and 20-137.1(c). Nothing in this subsection shall limit the discretion of the district attorney to otherwise dismiss a charge."

SECTION 30.3. G.S. 7A-304(a) reads as rewritten:

"(a) In every criminal case in the superior or district court, wherein the defendant is convicted, or enters a plea of guilty or nolo contendere, or when costs are assessed against the prosecuting witness, the following costs shall be assessed and collected, except that when the judgment imposes an active prison sentence, costs shall be assessed and collected only when the judgment specifically so provides, and that no costs may be assessed when a case is ~~dismissed.~~dismissed, except as provided in subsection (f) of this section.

..."

SECTION 31. Chapter 162 of the General Statutes is amended by adding a new section to read:

"**§ 162-62. Legal status of prisoners.**

(a) When any person charged with a felony or an impaired driving offense is confined for any period in a county jail, local confinement facility, district confinement facility, or satellite jail/work release unit, the administrator or other person in charge of the facility shall make a reasonable effort to determine the nationality of the person so confined.

(b) If the prisoner is a foreign national, the administrator or other person in charge of the facility holding the prisoner shall make a reasonable effort to verify that the prisoner has been lawfully admitted to the United States and if lawfully admitted, that the prisoner's lawful status has not expired. If verification of lawful status cannot be made from documents in the possession of the prisoner, verification shall be attempted within 48 hours through a query to the Law Enforcement Support Center (LESC) of the United States Department of Homeland Security or other office or agency designated for that purpose by the United States Department of Homeland Security. If the LESC or other office or agency determines that the prisoner has not been lawfully admitted to the

United States, the administrator or other person in charge of the facility holding the prisoner shall notify the United States Department of Homeland Security.

(c) Nothing in this section shall be construed to deny bond to a person or to prevent a person from being released from confinement when that person is otherwise eligible for release.

(d) The Department of Crime Control and Public Safety, after consultation with the North Carolina Sheriffs' Association, shall prepare and issue guidelines and procedures to be used to comply with the provisions of this section."

PART XIX. EFFECTIVE DATE

SECTION 32. Sections 19, 20.1, and 20.2 of this act become effective upon the effective date of the next rewrite of the superior court clerks system by the Administrative Office of the Courts. Sections 30.2 and 30.3 become effective October 1, 2006, and apply to offenses committed on or after that date. The remainder of this act becomes effective December 1, 2006, and applies to offenses committed on or after that date.

Attachment XII

COMPARISON -- H1048/ House and Senate Version

Subject Area	House Version	Senate Version
PART I. Regulating Malt Beverage Kegs	Sections 1 & 2 -requires transportation permit for keg - requires permittee to keep record 1 year	Sections 2 & 3 -defines keg as 8 gallons or more -requires permittee to keep record for 30 days - creates new statute for keg permit
PART II. Modifying the Statutes on Checking Stations and Roadblocks	Sec. 3 – no written pattern required for a particular checkpoint, if a written policy that establishes a pattern exists -prohibits repeated checking stations within close proximity to a particular permittee(s)	Sec. 4 - requires written policy and must have in writing what policy following -removes direction to AG to create model policy -checkpoints should be random and not repeatedly in same location or proximity
PART III. Providing for Implied Consent Pretrial and Court Proceedings	Section 4 -allowed officer to investigate outside state	Section 5 -limits investigation to in-state -removes direction to magistrate to find prob.cause if 'reasonable person would believe crime committed' -adds that Dist. Ct. sentence is vacated on appeal to Sup. Ct.
PART IV. Allowing the Admissibility of Drug Recognition Experts, HGN Testimony, and Opinion as to speed by an Accident. Reconstruction Expert	Section 5 -added a new rule of evidence, rule 707, allowing HGN, DRE, and accident reconstruction testimony with proper training or certification in all cases.	Section 6 -amends existing Rule 702 on expert testimony to allow the same 3 types of testimony, but the HGN or DRE testimony is only admissible in an impaired driving action.

PART V. Alcohol Screening Devices	Section 6 – Allows only to show driver consumed alcohol, not to prove a particular BAC level	Section 7 – same
PART VI. Clarification of Impaired Driving Offenses .02	Sections 7 – 14 (1) amends PVA to delete "generally open to" and "by the public" (2) provides that a .08 result is DWI (3) includes Schedule I and II substances (4) removes exemption for horses, bicycles, or lawnmowers (5) changes .04 level for commercial vehicles to 0.00 (6) punishes driving with any alcohol under 21 the same as DWI, provides for diversion program resulting in dismissal if certain conditions met, only allows LDP for 18, 19, & 20	Sections 8 – 13 (1) leaves in "by the public" (1a) amends definition of "State" to include Cherokee lands (2) states that results of chemical analysis is sufficient to prove BAC (3) includes Schedule I, but not Schedule II (3a) adds that person submitting to blood sample may use result as rebuttal evidence (4) removes exemption for lawnmowers, but leaves horses & bicycles (5) keeps .04 level for commercial vehicles (6) reduces current under 21 punishment from a Class 2 to a Class 3 misdemeanor, amends current revocation statute to only revoke for this offense if under 18.
PART VII. Felony Death by Vehicle and Injury by Vehicle	Section 15 – - makes felony death by vehicle a Class D felony - makes felony serious injury by vehicle a Class E felony	Section 14 – - makes felony death by vehicle a Class E felony - makes felony serious injury by vehicle a Class F felony - adds aggravated felony serious injury (previous DWI) as a Class E felony - adds aggravated felony death (previous DWI) as a Class D felony - adds language punishing a

		person with a previous conviction of felony death or aggravated felony death as second degree murder
PART VIII. Clarifying and Simplifying the Implied Consent Law	Section 16	Section 15
PART IX. Admissibility of Chemical Analysis	Section 17	Section 16 - to compel blood or urine sample without court order, LEO must reasonably believe that the delay necessary to obtain a court order would result in dissipation of the alcohol in person's blood or urine
PART X. Improved Access to Medical Records in Impaired Driving Cases	Section 18	Sections 17 and 18 - adds provision exempting information from any applicable privilege
PART XI. Prosecutor Reporting When Implied Consent Case is Dismissed	Section 19	Sections 19-20.2 - adds req.'ment for electronic reporting by clerk - adds annual report requirement by AOC

PART XII. Driving While License Revoked After Failure to Appear	Sections 20 and 21	Sections 21-22.4 - re-draft req.'ments for cond. license where revoked under specified sections - Adds cancellation of registration and plate surrender - amends revocation statute to not revoke drivers' license for conviction of .04 in a commercial vehicle

regular license not revoked
only disqualify CDL

		- provides a medical exception to the ignition interlock requirement
PART XIII. Modifying Current Punishments	Sections 22 -- 24	Sections 23 -- 25
PART XIV. Making it Illegal for a Person Under 21 Years of Age to Consume as well as Possess Alcohol and to Allow Alcohol Screening Devices to be Used to Prove a Person has Consumed Alcohol	Section 25 and 26	Section 26 - adds technical addition for 19 and 20 year olds
PART XV. Requiring that Certain DWI Defendants who are Release From Prison Early are to be Assigned Community Service Parole or House Arrest	Section 27	Section 27
PART XVI. Prevent Noncompliant Permit Holders From Continuing Irresponsible Alcohol Service Practices by Switching Permits to Another Name		Section 28 - prohibits someone whose permit has been revoked within 3 years from being employed by a permittee
PART XVII. DWI Training for Judges		Section 29 -requires 2 hours every 2 years of DWI training for judges
PART XVIII. Require DA Signature before MAR is Granted in District Court		Sections 30.1 – 31 - requires DA signature before granting MAR unless more than 10 days

		after DA notified of motion - provides for charging of $50 fee for compliance dismissals - requires jail to determine if a DWI offender is a foreign national and if so, if they are unlawfully admitted to the US to notify the US Department of Homeland Security
PART XIX. Effective Date	Section 28 -delays only the electronic recording provisions of Section 19 until AOC revises the court computer systems; makes the remainder of the section, requiring a written explanation of dismissal of a DWI case by the DA, effective December 1, 2006	Section 32 -delays the entire Section 19 until the revision of the AOC computer system, including the provision regarding written explanation of dismissal by the DA

Attachment XIII

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative Hackney (Chair) for the Committee on JUDICIARY I.

☒ Senate Committee Substitute for
HB 1048 A BILL TO BE ENTITLED AN ACT TO PROVIDE: (1) IMPROVED DETECTION OF IMPAIRED DRIVERS ON THE STATE'S ROADS AND HIGHWAYS; (2) IMPROVED METHODS OF DETERMINING HOW UNDERAGE DRIVERS OBTAIN ALCOHOL; (3) PROCEDURES FOR INVESTIGATING, ARRESTING, CHARGING, AND JUDICIAL PROCESSING OF IMPAIRED DRIVING OFFENSES; (4) RULES FOR THE COURTROOM ADMISSION OF EVIDENCE THAT IS RELEVANT TO IMPAIRED DRIVING OFFENSES; (5) CLARIFICATION ON WHEN A DRIVER IS GUILTY OF DRIVING WHILE IMPAIRED; (6) AGGRAVATED PENALTIES FOR OFFENDERS WHO SERIOUSLY INJURE OR KILL WHEN DRIVING WHILE IMPAIRED; (7) A SYSTEM OF REPORTING BY STATE PROSECUTORS AND THE COURTS ON THE DISPOSITION OF IMPAIRED DRIVING OFFENSES; (8) ELECTRONIC MONITORING AFTER AN IMPAIRED DRIVER HAS BEEN RELEASED FROM CONFINEMENT; (9) PROCEDURES TO DETERMINE IF IMPAIRED DRIVERS WHO ARE FOREIGN NATIONALS ARE LAWFULLY IN THE UNITED STATES; (10) OTHER MEASURES DESIGNED TO IMPROVE THE SAFETY OF THE MOTORING PUBLIC OF NORTH CAROLINA; AND TO PROVIDE THAT THE ACT SHALL BE KNOWN AS THE "MOTOR VEHICLE DRIVER PROTECTION ACT OF 2006."

☒ With recommendation that the House do not concur.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

_____ Pursuant to Rule 36(b), the bill/resolution is placed on the Calendar of _____.

_____ On motion of Representative_____, Committee Amendment No.(s) ___ is/are adopted by EV (_____).

House Judiciary I Committee

July 12, 2006
9:00 a.m.

Minutes

The House Judiciary I Committee met on Wednesday, July 12, 2006 at 9:00 a.m. in Room 1228 of the Legislative Building. Chairman Joe Hackney called the meeting to order and the following members were present: Representatives Blust, Capps, Goodwin, Harrison, Insko, Ross, Stam, Stiller and West. A copy of the agenda and visitor registration is attached, (Attachments I and II).

House Bill 1845, AN ACT TO RESTRICT THE USE OF CONTRIBUTIONS TO CANDIDATES AND CANDIDATES' CAMPAIGN FUNDS TO THOSE RELATED TO CAMPAIGNS AND OFFICE-HOLDING CUTIES; TO PROHIBIT PERSONAL USE OF CONTRIBUTIONS BY CANDIDATES AND CANDIDATE CAMPAIGN COMMITTEES; AND TO STRENGTHEN REPORTING REQUIREMENTS TO PREVENT VIOLATIONS, (Attachment III), was before the Committee to make a recommendation whether to concur in the Senate Committee Substitute.

Ms. Erika Churchill, Committee Counsel, was recognized to explain changes in the Senate Committee Substitute. She pointed out that payment to the Escheat Fund had been added as an additional use of campaign funds that can be utilized by candidate campaign committee. She also pointed out a new subsection (c) on page 2 that prohibit campaign funds in the candidate campaign committee from becoming a part of the candidates' personal estate upon death.

Representative Blust moved that the Committee recommend that the House concur in the Senate Committee Substitute. The motion carried, (Attachment IV).

The next bill before the Committee was House Bill 1847, AN ACT TO STRENGTHEN REGULATION OF ELECTIONEERING COMMUNICATIONS IN NORTH CAROLINA, (Attachment V). Chairman Hackney stated that this is the only one of the ethics bills that was considered first by the Senate. They placed the provisions of the bill into the Treasurer Training bill that was not needed because they combined the Treasurer Training with other bills. He stated that the provisions in the bill address communications not done by a candidate committee, a candidate or political party. Ms. Churchill added that the bill addresses communication that states a clearly identified candidate either for state-wide race or for the General Assembly and is targeted to the relative electorate and is made within a certain timeframe before an election or primary. She added that it would not address anyone who must currently report to the State Board of Elections. The bill would address an additional report by someone who is not regulated by campaign finance regulations to the State Board of Elections.

Ms. Churchill offered some background information regarding electioneering communication. That information and additional explanation is found in her bill analysis, (Attachment VI). She discussed provisions in the bill regarding disclosure date, mass mailing, the definition for the term "race," and conforming changes to the disclosure statement requirements.

Representative Stam raised a point of order saying that the committee substitute way totally non-germane to the original bill.

Chairman Hackney stated that the point of order would be decided on the House floor and not in committee. He reminded the Committee that they could not take any action on the bill, but could only recommend to the House whether to concur.

Following considerable discussion, Representative Ross moved that the Committee recommend that the House concur in the Senate Committee Substitute.

Mr. Bob Hall, Democracy North Carolina, stated that the legislation was balanced and spoke in support of it.

Mr. Daren Bakst, John Locke Foundation, spoke in opposition to the bill.

Upon vote of the Committee, the motion carried, (Attachment VII).

The meeting was adjourned at 9:55 a.m.

Representative Joe Hackney
Chair

Emily Reynolds Freeman
Committee Clerk

Attachment I

HOUSE COMMITTEE ON JUDICIARY I

July 12, 2006
9:00 a.m.

AGENDA

OPENING REMARKS

AGENDA ITEM

House Bill 1845 – Permitted Use of Campaign Funds
Representatives Hackney, Howard, Eddins and Ross

House Bill 1847 – Treasurer Training
Representatives Hackney, Howard and Ross

ADJOURNMENT

Attachment II

VISITOR REGISTRATION SHEET

House Judiciary I — July 12, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
ANTHONY ALLEN	NCAEC
JIM BACKBURN	NCAEC
Michael Houser	NCAE
Todd Barlow	NCATL
DAVID CARTNER	NC BAR Assoc.
Lauren Rogers	NCFPC
BR Hall	Democracy NC
Becki Gray	Civitas Institute
Rebekah Gonzales	ACLU-NC
Jon Hardy	NCPC / SHFB
Barbara Carslaw	BSCGR
John Bourdish	AstraZeneca

VISITOR REGISTRATION SHEET

House Judiciary I — July 12, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Rebecca Barringer	CAU's office
DAREN BAKS	John Locke Fdt.

Attachment III

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 4

HOUSE BILL 1845

Committee Substitute Favorable 6/20/06
Third Edition Engrossed 6/22/06
Senate Judiciary I Committee Substitute Adopted 7/10/06

Short Title: Permitted Use of Campaign Funds. (Public)

Sponsors:

Referred to:

May 10, 2006

A BILL TO BE ENTITLED

AN ACT TO RESTRICT THE USE OF CONTRIBUTIONS TO CANDIDATES AND CANDIDATES' CAMPAIGN FUNDS TO THOSE RELATED TO CAMPAIGNS AND OFFICE-HOLDING DUTIES; TO PROHIBIT PERSONAL USE OF CONTRIBUTIONS BY CANDIDATES AND CANDIDATE CAMPAIGN COMMITTEES; AND TO STRENGTHEN REPORTING REQUIREMENTS TO PREVENT VIOLATIONS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 22A of Chapter 163 of the General Statutes is amended by adding a new section to read:

"**§ 163-278.16B. Use of contributions for certain purposes.**

(a) A candidate or candidate campaign committee may use contributions only for the following purposes:

(1) Expenditures resulting from the campaign for public office by the candidate or candidate's campaign committee.

(2) Expenditures resulting from holding public office.

(3) Contributions to an organization described in section 170(c) of the Internal Revenue Code of 1986 (26 U.S.C. § 170(c)), provided that the candidate or the candidate's spouse, children, parents, brothers, or sisters are not employed by the organization.

(4) Contributions to a national, State, or district or county committee of a political party or a caucus of the political party.

(5) Contributions to another candidate or candidate's campaign committee.

(6) To return all or a portion of a contribution to the contributor.

(7) Payment of any penalties against the candidate or candidate's campaign committee for violation of this Article imposed by a board of elections or a court of competent jurisdiction.

(8) Payment to the Escheat Fund established by Chapter 116B of the General Statutes.

(b) As used in this section, the term 'candidate campaign committee' means the same as in G.S. 163-278.38Z(3).

(c) Contributions made to a candidate or candidate campaign committee do not become a part of the personal estate of the individual candidate. A candidate or the candidate who directs the candidate campaign committee may file with the board a written designation of those funds that directs to which of the permitted uses in subsection (a) of this section they shall be paid in the event of the death or incapacity of the candidate. After the payment of permitted outstanding debts of the account, the candidate's filed written designation shall control. If the candidate files no such written designation, the funds after payment of permitted outstanding debts shall be distributed in accordance with subdivision (a)(8) of this section."

SECTION 2. G.S. 163-278.8(e) reads as rewritten:

"(e) All expenditures for media expenses shall be made by a verifiable form of payment. The State Board of Elections shall prescribe methods to ensure an audit trail for every expenditure so that the identity of each payee can be determined. All media expenditures in any amount shall be accounted for and reported individually and ~~separately.~~ separately with specific descriptions to provide a reasonable understanding of the expenditure."

SECTION 3. G.S. 163-278.8(f) reads as rewritten:

"(f) All expenditures for nonmedia expenses (except postage) of more than fifty dollars ($50.00) shall be made by a verifiable form of payment. The State Board of Elections shall prescribe methods to ensure an audit trail for every expenditure so that the identity of each payee can be determined. All expenditures for nonmedia expenses of fifty dollars ($50.00) or less may be made by check or by cash payment. All nonmedia expenditures of more than fifty dollars ($50.00) shall be accounted for and reported individually and ~~separately,~~ separately with a specific description to provide a reasonable understanding of the expenditure, but expenditures of fifty dollars ($50.00) or less may be accounted for and reported in an aggregated amount, but in that case the treasurer shall account for and report that ~~he~~ the treasurer made expenditures of fifty dollars ($50.00) or less each, the amounts, dates, and the purposes for which made. In the case of a nonmedia expenditure required to be accounted for individually and separately with a specific description to provide a reasonable understanding of the expenditure by this subsection, if the expenditure was to an individual, the report shall list the name and address of the individual."

SECTION 4. G.S. 163-278.11(a)(2) reads as rewritten:

"(2) Expenditures. – A list of all expenditures required under G.S. 163-278.8 made by or on behalf of a candidate, political committee, or referendum committee. The statement shall list the name and complete mailing address of each payee, the amount paid, the purpose, and the date such payment was made. The total sum of all expenditures to date shall be plainly exhibited. Forms for required reports shall be prescribed by the Board. In accounting for all

expenditures in accordance with G.S. 163-278.8(e) and G.S. 163-278.8(f), the payee shall be the individual or person to whom the candidate, political committee, or referendum committee is obligated to make the expenditure. If the expenditure is to a financial institution for revolving credit or a reimbursement for a payment to a financial institution for revolving credit, the statement shall also include a specific itemization of the goods and services purchased with the revolving credit. If the obligation is for more than one good or service, the statement shall include a specific itemization of the obligation so as to provide a reasonable understanding of the obligation."

SECTION 5. G.S. 163-278.27(a) reads as rewritten:

"(a) Any individual, candidate, political committee, referendum committee, treasurer, person or media who intentionally violates the applicable provisions of G.S. 163-278.7, 163-278.8, 163-278.9, 163-278.10, 163-278.11, 163-278.12, 163-278.13, 163-278.13B, 163-278.14, 163-278.16, 163-278.16B, 163-278.17, 163-278.18, 163-278.19, 163-278.20, 163-278.39, 163-278.40A, 163-278.40B, 163-278.40C, 163-278.40D or 163-278.40E is guilty of a Class 2 misdemeanor. The statute of limitations shall run from the day the last report is due to be filed with the appropriate board of elections for the election cycle for which the violation occurred."

SECTION 6. Sections 1 and 5 of this act become effective October 1, 2006, and apply to all candidates and candidate campaign committees with active accounts with the State Board of Elections or a county board of elections on or after that date. Sections 2, 3, and 4 of this act become effective January 1, 2007, and apply to all political committees and referendum committees with active accounts with the State Board of Elections or a county board of elections on or after that date. The remainder of this act becomes effective January 1, 2007.

Attachment IV

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative Hackney (Chair) for the Committee on JUDICIARY I.

☒ Senate Committee Substitute for
HB 1845 A BILL TO BE ENTITLED AN ACT TO RESTRICT THE USE OF CONTRIBUTIONS TO CANDIDATES AND CANDIDATES' CAMPAIGN FUNDS TO THOSE RELATED TO CAMPAIGNS AND OFFICE-HOLDING DUTIES; TO PROHIBIT PERSONAL USE OF CONTRIBUTIONS BY CANDIDATES AND CANDIDATE CAMPAIGN COMMITTEES; AND TO STRENGTHEN REPORTING REQUIREMENTS TO PREVENT VIOLATIONS.

☒ With recommendation that the House concur.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

_____ Pursuant to Rule 36(b), the bill/resolution is placed on the Calendar of _____.

Attachment V

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 4

HOUSE BILL 1847

Committee Substitute Favorable 5/24/06
Senate Judiciary I Committee Substitute Adopted 7/6/06
Fourth Edition Engrossed 7/7/06

Short Title: Electioneering Communications. (Public)

Sponsors:

Referred to:

May 10, 2006

A BILL TO BE ENTITLED

AN ACT TO STRENGTHEN REGULATION OF ELECTIONEERING COMMUNICATIONS IN NORTH CAROLINA.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 163-278.80(1) reads as rewritten:

"(1) The term "disclosure date" means either of the following:

a. The first date during any calendar year when an electioneering communication is aired after an entity has ~~made disbursements~~incurred expenses for the direct costs of producing or airing electioneering communications aggregating in excess of ten thousand dollars ($10,000).

b. Any other date during that calendar year by which an entity has ~~made disbursements~~ incurred expenses for the direct costs of producing or airing electioneering communications aggregating in excess of ten thousand dollars ($10,000) since the most recent disclosure date for that calendar year."

SECTION 1.(b) G.S. 163-278.90 reads as rewritten:

"**§ 163-278.90. Definitions.**

As used in this Article, the following terms have the following definitions:

(1) The term "disclosure date" means either of the following:

a. The first date during any calendar year when an electioneering communication is transmitted after an entity has ~~made disbursements~~ incurred expenses for the direct costs of producing or transmitting electioneering communications aggregating in excess of ten thousand dollars ($10,000).

b. Any other date during that calendar year by which an entity has ~~made disbursements~~ incurred expenses for the direct costs of

producing or transmitting electioneering communications aggregating in excess of ten thousand dollars ($10,000) since the most recent disclosure date for that calendar year.

(2) The term "electioneering communication" means any mass mailing or telephone bank that has all the following characteristics:

a. Refers to a clearly identified candidate for a statewide office or the General Assembly.

b. Is made within one of the following time periods:

1. 60 days before a general or special an election for the office sought by the candidate, or

2. 30 days before a primary election or a convention of a political party that has authority to nominate a candidate for the office sought by the candidate.

c. Is targeted to the relevant electorate.

(3) The term "electioneering communication" does not include any of the following:

a. A communication appearing in a news story, commentary, or editorial distributed through any newspaper or periodical, unless that publication is owned or controlled by any political party, political committee, or candidate.

b. A communication that constitutes an expenditure or independent expenditure under Article 22A of this Chapter.

c. A communication that constitutes a candidate debate or forum conducted pursuant to rules adopted by the Board or that solely promotes that debate or forum and is made by or on behalf of the person sponsoring the debate or forum.

d. A communication that is distributed by a corporation solely to its shareholders or employees, or by a labor union or professional association solely to its members.

e. A communication made while the General Assembly is in session which, incidental to advocacy for or against a specific piece of legislation pending before the General Assembly, urges the audience to communicate with a member or members of the General Assembly concerning that piece of legislation.

(4) The term "mass mailing" means any mailing by United States mail or ~~facsimile that is targeted to the relevant electorate and is made by a commercial vendor or made from any commercial list.~~facsimile. Part 1A of Article 22A of this Chapter has its own internal definition of "mass mailing" under the definition of "print media," and that definition does not apply in this Article.

(5) The term "prohibited source" means any corporation, insurance company, labor union, or professional association. The term "prohibited source" does not include an entity that meets all the criteria set forth in G.S. 163-278.19(f).

(5a) The term "race" means a ballot item, as defined in G.S. 163-165(2), in which the voters are to choose between or among candidates.

(6) The term "targeted to the relevant ~~electorate" means a communication which refers to a clearly identified candidate for statewide office or the General Assembly and which:~~electorate" means:

~~a. If transmitted by mail or facsimile in connection with a clearly identified candidate for statewide office, is transmitted to 50,000 or more addresses in the State, by the transmission of identical or substantially similar matter within any 30-day period, or, in connection with a clearly identified candidate for the General Assembly, is transmitted to 5,000 or more addresses in the district, by the transmission of identical or substantially identical matter within any 30-day period.~~

~~b. If transmitted by telephone, in connection with a clearly identified candidate for statewide office, more than 50,000 telephone calls in the State of an identical or substantially similar nature within any 30-day period, or in the case of a clearly identified candidate for the General Assembly, more than 5,000 calls in the district of an identical or substantially similar nature within any 30-day period.~~

a. With respect to a statewide race:

1. Transmitting, by mail or facsimile to a cumulative total of 50,000 or more addresses in the State, items identifying one or more candidates in the same race within any 30-day period; or

2. Making a cumulative total of 50,000 or more telephone calls in the State identifying one or more candidates in the same race within any 30-day period.

b. With respect to a race for the General Assembly:

1. Transmitting, by mail or facsimile to a cumulative total of 2,500 or more addresses in the district, items identifying one or more candidates in the same race within any 30-day period; or

2. Making a cumulative total of 2,500 or more telephone calls in the district identifying one or more candidates in the same race within any 30-day period.

(7) The term "telephone bank" means telephone calls that are targeted to the relevant electorate, except when those telephone calls are made by volunteer workers, whether or not the design of the telephone bank system, development of calling instructions, or training of volunteers was done by paid professionals.

(8) The term "501(c)(4) organization" means either of the following:

a. An organization described in section 501(c)(4) of the Internal Revenue Code of 1986 and exempt from taxation under section 501(a) of that Code.

b. An organization that has submitted an application to the Internal Revenue Service for determination of its status as an organization described in sub-subdivision a. of this subdivision.

(9) Except as otherwise provided in this Article, the definitions in Article 22A of this Chapter apply in this Article."

SECTION 2.(a) G.S. 163-278.81 reads as rewritten:

"**§ 163-278.81. Disclosure of Electioneering Communications.**

(a) Statement Required. – Every individual, committee, association, or any other organization or group of individuals that ~~makes a disbursement~~ incurs an expense for the direct costs of producing ~~and~~ or airing electioneering communications in an aggregate amount in excess of ten thousand dollars ($10,000) during any calendar year shall, within 24 hours of each disclosure date, file with the Board a statement containing the information described in subsection (b) of this section.

(b) Contents of Statement. – Each statement required to be filed by this section shall be made under the penalty of perjury in G.S. 14-209 and shall contain the following information:

(1) The identification of the entity ~~making the disbursement,~~ incurring the expense, of any entity sharing or exercising direction or control over the activities of that entity, and of the custodian of the books and accounts of the entity ~~making the disbursement.~~ incurring the expense.

(2) The principal place of business of the entity ~~making the disbursement~~ incurring the expense if the entity is not an individual.

(3) The amount of each ~~disbursement~~ expense incurred of more than one thousand dollars ($1,000) during the period covered by the statement and the identification of the entity to whom the ~~disbursement was made.~~ expense was incurred.

(4) The elections to which the electioneering communications pertain and the names, if known, of the candidates identified or to be identified.

(5) The names and addresses of all ~~contributors who contributed~~ entities that provided funds or anything of value whatsoever in an aggregate amount of more than one thousand dollars ($1,000) during the period beginning on the first day of the preceding calendar year and ending on the disclosure date to a segregated bank account that consists of funds ~~contributed~~ provided solely by entities other than prohibited sources. Nothing in this subdivision is to be construed as a prohibition on the use of funds in such a segregated account for a purpose other than electioneering communications. If the provider is an individual, the statement shall also contain the principal occupation of the provider. The "principal occupation of the provider" shall mean the same as the "principal occupation of the contributor" in G.S. 163-278.11.

(6) Repealed by Session Laws 2005-430, s. 9(a), effective December 1, 2005, and applicable to all contributions and expenditures made or accepted on or after that date."

SECTION 2.(b) G.S. 163-278.91 reads as rewritten:

"**§ 163-278.91. Disclosure of Electioneering Communications.**

(a) Statement Required. – Every individual, committee, association, or any other organization or group of individuals who ~~makes a disbursement~~ incurs an expense for the direct costs of producing ~~and~~ or transmitting electioneering communications in an aggregate amount in excess of ten thousand dollars ($10,000) during any calendar year shall, within 24 hours of each disclosure date, file with the Board a statement containing the information described in subsection (b) of this section.

(b) Contents of Statement. – Each statement required to be filed by this section shall be made under the penalty of perjury in G.S. 14-209 and shall contain the following information:

(1) The identification of the entity ~~making the disbursement,~~ incurring the expense, of any entity sharing or exercising direction or control over the activities of that entity, and of the custodian of the books and accounts of the entity ~~making the disbursement.~~incurring the expense.

(2) The principal place of business of the entity ~~making the disbursement~~ incurring the expense if the entity is not an individual.

(3) The amount of each ~~disbursement~~ expense incurred of more than one thousand dollars ($1,000) during the period covered by the statement and the identification of the entity to whom the ~~disbursement was made.~~expense was incurred.

(4) The elections to which the electioneering communications pertain and the names, if known, of the candidates identified or to be identified.

(5) The names and addresses of all ~~contributors who contributed~~ entities that provided funds or anything of value whatsoever in an aggregate amount of more than one thousand dollars ($1,000) during the period beginning on the first day of the preceding calendar year and ending on the disclosure date to a segregated bank account that consists of funds ~~contributed~~ provided solely by entities other than prohibited sources. Nothing in this subdivision is to be construed as a prohibition on the use of funds in such a segregated account for a purpose other than electioneering communications. If the provider is an individual, the statement shall also contain the principal occupation of the provider. The "principal occupation of the provider" shall mean the same as the "principal occupation of the contributor" in G.S. 163-278.11.

(6) Repealed by Session Laws 2005-430, s. 9(c), effective December 1, 2005, and applicable to all contributions and expenditures made or accepted on or after that date."

SECTION 3.(a) G.S. 163-278.82(a) reads as rewritten:

"(a) Prohibition. – No prohibited source may make any disbursement for the costs of producing or airing any electioneering communication. No individual, committee, association, or any other organization or group of individuals, including but not limited to, a political organization (as defined in section 527(e)(1) of the Internal Revenue Code of 1986), which has received any ~~payment~~ funds or anything of value whatsoever from a prohibited source may make any disbursement for the costs of producing ~~and~~ or airing any electioneering ~~communication.~~ communication, unless that individual, committee, association, or other organization or group of individuals maintains a segregated bank account that consists of funds provided solely by entities other than prohibited sources. ~~For the purpose of this section, the term "electioneering communication" does not include a communication by a section 501(c)(4) organization or a political organization (as defined in section 527(e)(1) of the Internal Revenue Code of 1986) if the communication is paid for exclusively by funds provided by individuals and the disbursements for costs of producing and airing the communication are paid out of a segregated bank account that consists of funds contributed solely by entities other than prohibited sources directly to that account.~~ For purposes of this section, the term "funds or anything of value whatsoever" shall not include monies paid to an individual, committee, association, or other organization or group of individuals for services rendered or other payment of debt owed. It shall be unlawful for any person or entity to create, establish, or organize more than one political organization (as defined in section 527(c)(1) of the Internal Revenue Code) with the intent to avoid or evade the prohibitions on disbursements for electioneering communications from prohibited sources or the reporting requirements contained in this Article."

SECTION 3.(b) G.S. 163-278.92(a) reads as rewritten:

"(a) Prohibition. – No prohibited source may make any disbursement for the costs of producing or ~~airing~~ transmitting any electioneering communication. No individual, committee, association, or any other organization or group of individuals, including but not limited to, a political organization (as defined in section 527(e)(1) of the Internal Revenue Code of 1986), which has received any ~~payment~~ funds or anything of value whatsoever from a prohibited source may make any disbursement for the costs of producing ~~and airing~~ or transmitting any electioneering ~~communication.~~ communication, unless that individual, committee, association, or other organization or group of individuals maintains a segregated bank account that consists of funds provided solely by entities other than prohibited sources. ~~For the purpose of this section, the term "electioneering communication" does not include a communication by a section 501(c)(4) organization or a political organization (as defined in section 527(e)(1) of the Internal Revenue Code of 1986) if the communication is paid for exclusively by funds provided by individuals and the disbursements for costs of producing and airing the communication are paid out of a segregated bank account that consists of funds contributed solely by entities other than prohibited sources directly to that account.~~ For purposes of this section, the term "funds or anything of value whatsoever" shall not include monies paid to an individual, committee, association, or other organization or group of individuals for services rendered or other payment of debt owed. It shall be unlawful for any person or entity to create, establish, or organize

more than one political organization (as defined in section 527(c)(1) of the Internal Revenue Code) with the intent to avoid or evade the prohibitions on disbursements for electioneering communications from prohibited sources or the reporting requirements contained in this Article."

SECTION 4. 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 5. This act is effective when it becomes law, except that any criminal penalty resulting from this act becomes effective October 1, 2006.

Attachment VI

HOUSE BILL 1847: Electioneering Communications

BILL ANALYSIS

Committee:	House Judiciary I	**Date:**	July 11, 2006
Introduced by:	Reps. Hackney, Howard, Ross	**Summary by:**	R. Erika Churchill
Version:	Fourth Edition		Committee Counsel

SUMMARY: House Bill 1847 would do the following with respect to electioneering communications:

- *Decrease the targeted relevant electorate with respect to legislative races to 2,500 persons within the district, and amend the definition of mass mailing.*
- *Clarify the disclosure date is triggered by the expense being incurred, rather than the payment for the costs being made by the entity producing the electioneering communication.*
- *Require the disclosure of the principal occupation of an entity giving more than $1000 to a group producing or airing an electioneering communication.*
- *Clarify that that any individual, committee, association, or other organization or group of individuals can produce an electioneering communication even if they have taken a contribution from a prohibited source by segregating the funds to prove that the electioneering communication was produced with only allowable source's contributions.*

CURRENT LAW: Electioneering communications are governed by Articles 22E and 22F of Chapter 163 of the General Statutes. Electioneering communications are broken down into two major categories, mass mailings and telephone banks, and broadcast, cable or satellite communications. For either, the electioneering communication is a communication that refers to a clearly identified candidate for statewide office or General Assembly, is made either 30 days before the primary or 60 days before the general election, and is to the targeted relevant electorate. For broadcast, cable or satellite communications, the targeted relevant electorate is defined as 50,000 persons for a statewide office or 7,500 persons within the district for a General Assembly race. For mass mailings and telephone banks, the targeted relevant electorate is defined as 50,000 persons for a statewide office or 5,000 persons within the district for a General Assembly race. Mass mailings are defined as "any mailing by United States mail or facsimile that is targeted to the relevant electorate and is made by a commercial vendor or made from any commercial list." G.S. 163-278.90(4)

If an entity is producing and communicating an electioneering communication, the entity is required to report the expenditures following the first date in a calendar year when that entity has made disbursements in excess of $10,000.

In producing and communicating an electioneering communication, prohibited sources are not allowed to make disbursements for electioneering communications. Prohibited sources are generally corporations, insurance companies, labor unions, and professional associations. No individual, committee, association, or any other organization or group of individuals that has received any payment from a prohibited source may make any disbursement for the costs of producing and airing any electioneering communication. However, if the organization is a section 501(c)(4) organization or a 527 political organization, that organization can make a disbursement for an electioneering communication if they have taken a contribution from a prohibited source if all of the following conditions are met:

- The communication is paid for exclusively by funds provided by individuals
- The disbursements for costs of producing and airing the communication are paid out of a segregated bank account that consists of funds contributed solely by entities other than prohibited sources directly to that account.

BILL ANALYSIS: The bill would:

1. Decrease the targeted relevant electorate with respect to legislative races to 2,500 persons within the district, and restructure that definition for clarity.
2. Amend the definition of mass mailing to delete the requirement that it be made by a commercial vendor or from any commercial list.
3. Clarify the disclosure date is triggered by the expense being incurred, rather than the payment for the costs being made by the entity producing the electioneering communication.
4. Require the disclosure of the principal occupation of an entity giving more than $1000 to a group producing or airing an electioneering communication.
5. Clarify that that any individual, committee, association, or other organization or group of individuals can produce an electioneering communication even if they have taken a contribution from a prohibited source by segregating the funds to prove that the electioneering communication was produced with only allowable source's contributions.

EFFECTIVE DATE: The act would become effective when it becomes law, and any criminal penalties arising out of the changes would not become effective until October 1, 2006.

BACKGROUND: The 2nd edition of House Bill 1847 as passed by the House on May 30, 2006, contained provisions governing training of treasures of political committees. The provisions of the 2nd edition are now part of the 3rd edition of House Bill 1846, which passed second reading in the Senate on July 11, 2006.

H1847e4-SMST

Attachment VII

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative Hackney (Chair) for the Committee on JUDICIARY I.

☒ Senate Committee Substitute for
HB 1847 A BILL TO BE ENTITLED AN ACT TO STRENGTHEN REGULATION OF ELECTIONEERING COMMUNICATIONS IN NORTH CAROLINA.

☒ With recommendation that the House concur.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

_____ Pursuant to Rule 36(b), the bill/resolution is placed on the Calendar of _____.

House Judiciary I Committee

July 18, 2006
10:00 a.m.

Minutes

The House Judiciary I Committee met on Tuesday, July 18, 2006 at 10:00 a.m. during a House recess in Room 1228 of the Legislative Building. Chairman Joe Hackney called the meeting to order and the following members were present: Representatives Alexander, Capps, Goodwin, Hall, Harrison, Insko, Ross, Stam, Stiller and West. A copy of the agenda and visitor registration is attached, (Attachments I and II).

Chairman Hackney introduced newly appointed Representative Larry Hall and welcomed him to the Committee.

The first bill to be considered by the Committee was Senate Bill 1375, AN ACT TO MAKE TECHNICAL CORRECTIONS TO THE NOTARY PUBLIC ACT, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION, AND TO MAKE OTHER CORRECTIONS TO SESSION LAW 2006-59, (Attachment III). Senator Hartsell said that the bill was technical in nature and makes changes to effective dates in the 2005 Notary Act. A bill analysis prepared by Brad Krehely, Staff Counsel, is attached, (Attachment IV).

Representative Ross moved for a favorable report. The motion carried, (Attachment V).

A Senate Committee Substitute for House Bill 1848, AN ACT TO AUTHORIZE THE COLLECTION OF OFFENDER FINES AND FEES ASSESSED BY THE GENERAL COURT OF JUSTICE BY CREDIT CARD, CHARGE CARD, OR DEBIT CARD; TO AUTHORIZE THE USE OF ELECTRONIC FILING IN THE TRIAL COURTS; TIO AUTHORIZE THE DEPARTMENT OF JUSTICE TO PROVIDE THE JUDICIAL DEPARTMENT WITH CRIMINAL BACKGROUND CHECKS FROM THE STATE AND NATIONAL REPOSITORIES OF CRIMINAL HISTORIES; TO ESTABLISH A PERMANENCY MEDIATION PROGRAM; TO AMEND THE LAW PROVIDING FOR FOREIGN LANGUAGE INTERPRETERS IN THE COURTS; TO AUTHORIZE THE ESTABLISHMENT OF CERTAIN POSITIONS WITHIN THE JUDICIAL DEPARTMENT; TO REVISE AND UPDATE THE PROCEDURES AND RESPONSIBILITIES OF THE JUDICIAL STANDARDS COMMISSION AND TO AUTHORIZE SIX ADDITIONAL MEMBERS OF THE COMMISSION; AND TO MAKE TECHNICAL CORRECTIONS AND ADJUSTMENS TO PROVISIONS AFFECTING THE COURTS, (Attachment VI). Chairman Hackney noted that the Senate had placed the original contents of House Bill 1848 into another bill and used the bill number for the Omnibus Courts Act.

Mr. Brad Krehely, Committee Counsel, was recognized to offer a section-by-section explanation of the bill. A bill analysis prepared by Mr. Krehely is attached, (Attachment VII).

Mr. Greg Stahl and Judge Ralph Walker, Administrative Office of the Courts, responded to questions and offered support of the bill.

Representative Stam moved that the Committee recommend that the House do concur in the Senate Committee Substitute. The motion carried, (Attachment VIII).

Representative Ross noted that the original contents of Senate Bill 542 were placed in another bill and that Senate Bill 542 was being used for a Proposed House Committee Substitute, AN ACT TO ALLOW REASONABLE ACCESS TO STATE FACILITIES AND EMPLOYEES FOR CERTAIN EMPLOYEE ASSOCIATIONS, (Attachment IX). The bill would allow for the use of public buildings for the purpose of after hours activities.

Representative Insko asked if there would be a charge for the use of the buildings. Chairman Hackney noted that this issue was left rather vague in the bill.

Representative Stam offered an amendment to remove the words "political subdivisions" from the bill, (Attachment X). He moved adoption of the amendment. The motion carried.

There was discussion regarding the use of school facilities for the purposes of this bill. Representative Insko stated that she would like to check with the School Boards Association.

Representative Ross moved that the amendment be rolled into a new House Committee Substitute, that it be given a favorable report and the original bill an unfavorable report. The motion carried, (Attachment XI). A copy of the new bill is attached, (Attachment XII).

It was decided that the bill would not be reported out until Representative Insko had an opportunity to speak to someone regarding the use of school facilities.

House Bill 2035, AN ACT TO AUTHORIZE SENIOR RESIDENT SUPERIOR COURT JUDGES TO PROVIDE FACILITIES FOR HEARINGS CONDUCTED BY THE OFFICE OF ADMINISTRATIVE HEARINGS, (Attachment XIII), was the next bill to be considered by the Committee. The bill had not been on the meeting notice and Chairman Hackney asked if there was objection to having the bill heard. There was none.

Representative Stiller was recognized to explain the bill. The bill authorizes Senior Resident Superior Court judges to provide facilities for hearings conducted by the Office of Administrative Hearings. The bill is an attempt to allow administrative

hearings procedures to reach out and begin to go into counties and that facilities would be needed to accomplish this. A bill analysis prepared by Brad Krehely, Committee Counsel, is attached, (Attachment XIV).

Mr. Ralph Walker, Administrative Office of the Courts, commented on the bill. He said that several Senior Resident Superior Court judges have commented that they do not control space in the courthouse, are not there much of the time and that allocation of space is primarily a county responsibility. He said that the judges question the effectiveness of their being called on to provide space.

Ms. Karen Cochrane-Brown, Legislative Staff Attorney, said that the language in the bill mirrors language that is currently in the law with relation to the Industrial Commission except for the fact that the Industrial Commission statute is mandatory. She stated that counties were concerned about the idea that in some way they would be mandated to provide space, but are fine with keeping the language as a permissive authority saying that space "may" be provided.

Representative Stam commented on the bill and it was displaced to allow time for an amendment to be drafted.

House Bill 2687, AN ACT TO INCREASE THE PENALTY IN BRUNSWICK COUNTY FOR THE ILLEGAL SALE OF DRUGS IF THE TRANSACTION OCCURS IN OR NEAR A PUBLIC PARK, (Attachment XV). Representative Stiller was recognized for an explanation. He said that the bill came at the request of the Brunswick County Parks and Recreation Department.

Mr. Brad Krehely, Committee Counsel, commented briefly on the bill. A bill analysis prepared by Mr. Krehely is attached, (Attachment XVI).

No action was taken on the bill.

The Committee returned to House Bill 2035. An amendment was offered by Representative Stam, who moved its adoption, (Attachment XVII). Upon vote of the Committee, the amendment was adopted.

Representative Stam moved that the amendment be rolled into a Committee Substitute, that it be given a favorable report and the original bill an unfavorable report. The motion carried, (Attachment XVIII). A copy of the Committee Substitute is attached, (Attachment XIX).

The meeting was adjourned at 11:10 a.m.

Representative Joe Hackney
Chair

Emily Reynolds Freeman
Committee Clerk

Attachment I

HOUSE COMMITTEE ON JUDICIARY I

July 18, 2006
10:00 a.m.

AGENDA

OPENING REMARKS

AGENDA ITEM

House Bill 1848 - Omnibus Courts Act
Representatives Hackney, Howard, Eddins and Ross

Senate Bill 1375 - Notary Public Corrections
Senator Hartsell

ADJOURNMENT

Attachment II

VISITOR REGISTRATION SHEET

House Judiciary I — July 18, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Ozie Stallworth	Secretary of State
Gayle P. Holder	505
[illegible]	BOC
Nancy Ferguson	NC BAR, Chicago Title
James Creekman	First Citizens Bank
Holly Bryan	NCATL
[illegible]	[illegible]
Ben Hall	Revised Statutes Commission
Paul Stam	NCBA
Doug Heron	NC BAR ASSOCIATION
[illegible]	NFIS

VISITOR REGISTRATION SHEET

House Judiciary I — July 18, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Colleen Kochanek	Smith Moore
Cameron Constriano	Daily Bulletin
Marian Foster	NCAHP
BB Hall	Democracy NC

Attachment III

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 2

SENATE BILL 1375

Judiciary II Committee Substitute Adopted 7/11/06

Short Title: Notary Public Corrections. (Public)

Sponsors:

Referred to:

May 16, 2006

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL CORRECTIONS TO THE NOTARY PUBLIC ACT, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION, AND TO MAKE OTHER CORRECTIONS TO SESSION LAW 2006-59.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 10B-20(l) reads as rewritten:

"(l) A notary public required to comply with the provisions of ~~subsection (g)~~ subsection (i) of this section shall prominently post at the notary public's place of business a schedule of fees established by law, which a notary public may charge. The fee schedule shall be written in English and in the non-English language in which the notary services were solicited and shall contain the notice required in subsection (i) of this section, unless the notice is otherwise prominently posted at the notary public's place of business."

SECTION 2. G.S. 10B-68, as enacted in Section 24 of S.L. 2006-59, reads as rewritten:

"**§ 10B-68. Technical defects cured.**

(a) Technical defects, errors, or omissions in a notarial certificate shall not affect the sufficiency, validity, or enforceability of the notarial certificate or the related instrument or document. This subsection applies to notarial certificates made on or after December 1, 2005.

(b) Defects in the commissioning or recommissioning of a notary that are approved by the Department are cured. This subsection applies to commissions and recommissions issued on or after December 1, 2005.

(c) As used in this section, a technical defect includes those cured under G.S. 10B-37(f) and G.S. 10B-67. Other technical defects include the absence of the legible appearance of the notary's name exactly as shown on the notary's commission as required in ~~G.S. 10B-20(b) and defects in the commissioning or recommissioning of the notary that were approved by the Department under this Chapter.~~G.S. 10B-20(b). This subsection applies to notarial certificates made on or after December 1, 2005."

SECTION 3. G.S. 47-41.2, as enacted in Section 31 of S.L. 2006-59, reads as rewritten:

"**§ 47-41.2. Technical defects.**

(a) Technical defects, including technical defects under G.S. 10B-68, and errors or omissions in a form of probate or other notarial certificate, shall not affect the sufficiency, validity, or enforceability of the form of probate or the notarial certificate or the related instrument or document. A register of deeds may not refuse to accept an instrument or document for registration because of technical defects, errors, or omissions in a form of probate or other notarial certificate. This subsection applies to notarial certificates and forms of probate made on or after December 1, 2005.

(b) This section does not apply to the requirements for registration contained in G.S. 47-14(a) and a register of deeds shall not accept for registration an instrument that does not comply with the requirements of G.S. 47-14(a)."

SECTION 4. Section 33 of S.L. 2006-59 reads as rewritten:

"**SECTION 33.** G.S. 10B-11(b)(3) as amended in Section 5 of this act becomes effective July 1, 2006. G.S. 10B-99, as enacted in Section 24 of this act, is effective when this act becomes law. The remainder of this act becomes effective October 1, 2006, and except as otherwise set forth in this act, applies to notarial acts performed on or after that date."

SECTION 5. G.S. 10B-68(a) and (b), as enacted in Section 24 of S.L. 2006-59, and as amended in Section 2 of this act, become effective July 1, 2006. G.S. 47-41.2, as enacted in Section 31 of S.L. 2006-59, and as amended in Section 3 of this act, becomes effective July 1, 2006. Section 1 of this act becomes effective October 1, 2006. The remainder of this act is effective when it becomes law.

Attachment IV

SENATE BILL 1375: Notary Public Corrections

BILL ANALYSIS

Committee:	House Judiciary I	**Date:**	July 17, 2006
Introduced by:	Sen. Hartsell	**Summary by:**	Brad Krehely
Version:	Second Edition		Committee Counsel

SUMMARY: The Second Edition of Senate Bill 1375 amends provisions of S.L. 2006-59 (Notary Act Corrections) to make certain provisions effective December 1, 2005, the date that the 2005 Notary law rewrite became effective. The failure to include these changes in the '06 bill was a drafting oversight. These are conforming changes that have been reviewed by all interested parties who agree they are consistent with the original intent of the '06 bill. Without these conforming changes, much of the curative effect of the '06 corrections to the '05 rewrite will be lost.

BILL ANALYSIS: Section 1 of the bill makes a technical change to the 2005 law as recommended by the General Statutes Commission. It deletes the reference to subsection (g) and substitutes the phrase subsection (i).

Sections 2 and 3 amend the statutes dealing with technical defects. They clarify that

- Technical defects, errors, or omissions do not affect the validity of the notarial certificate and *apply to notarial certificates made on or after December 1, 2005.*
- Defects in the commissioning or recommissioning of a notary approved by the Department are cured and apply to commissions or recommissions *issued on or after December 1, 2005.*

Section 4 makes one section of the 2006 rewrite effective when the act became law (July 3, 2006). This is the "presumption of regularity" section which upholds notarial acts where there has been substantial compliance with the law and no fraud.

EFFECTIVE DATE: G.S. 10B-68(a) and (b), as enacted in Section 24 of S.L. 2006-59, and as amended in Section 2 of this act, become effective July 1, 2006. G.S. 47-41.2, as enacted in Section 31 of S.L. 2006-59, and as amended in Section 3 of this act, becomes effective July 1, 2006. Section 1 of this act becomes effective October 1, 2006. The remainder of this act is effective when it becomes law.

BACKGROUND: The Notary Public Act was enacted in 2005. The 2005 act recodified the then-existing notary law and made extensive changes governing notary commissioning, notarial acts, powers and limitations, fees, signatures and seals, and certification forms. As a result of difficulties and questions that arose regarding the implementation and compliance with the new law from the legal community representing various affected parties including real estate closing attorneys, lending institutions, title insurance companies, registers of deeds, clerks of court, the Division of Motor Vehicles, wills and estate administrators and other people who deal with and rely on a reliable, dependable notary system, the General Assembly was encouraged to reexamine the new law to provide additional clarity.

This session, the General Assembly enacted S.L. 2006-59 to make correction to the 2005 Act.

*S1375e2-SMRN *Kory Goldsmith contributed to the drafting of this summary.*

Attachment V

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative Hackney (Chair) for the Committee on JUDICIARY I.

☒Committee Substitute for
SB 1375 A BILL TO BE ENTITLED AN ACT TO MAKE TECHNICAL CORRECTIONS TO THE NOTARY PUBLIC ACT, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION, AND TO MAKE OTHER CORRECTIONS TO SESSION LAW 2006-59.

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

_____ Pursuant to Rule 36(b), the bill/resolution is placed on the Calendar of _____.

Attachment VI

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 4

HOUSE BILL 1848

Committee Substitute Favorable 5/30/06
Third Edition Engrossed 5/31/06
Senate Judiciary I Committee Substitute Adopted 7/11/06

Short Title: Omnibus Courts Act. (Public)

Sponsors:

Referred to:

May 10, 2006

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE COLLECTION OF OFFENDER FINES AND FEES ASSESSED BY THE GENERAL COURT OF JUSTICE BY CREDIT CARD, CHARGE CARD, OR DEBIT CARD; TO AUTHORIZE THE USE OF ELECTRONIC FILING IN THE TRIAL COURTS; TO AUTHORIZE THE DEPARTMENT OF JUSTICE TO PROVIDE THE JUDICIAL DEPARTMENT WITH CRIMINAL BACKGROUND CHECKS FROM THE STATE AND NATIONAL REPOSITORIES OF CRIMINAL HISTORIES; TO ESTABLISH A PERMANENCY MEDIATION PROGRAM; TO AMEND THE LAW PROVIDING FOR FOREIGN LANGUAGE INTERPRETERS IN THE COURTS; TO AUTHORIZE THE ESTABLISHMENT OF CERTAIN POSITIONS WITHIN THE JUDICIAL DEPARTMENT; TO REVISE AND UPDATE THE PROCEDURES AND RESPONSIBILITIES OF THE JUDICIAL STANDARDS COMMISSION AND TO AUTHORIZE SIX ADDITIONAL MEMBERS OF THE COMMISSION; AND TO MAKE TECHNICAL CORRECTIONS AND ADJUSTMENTS TO PROVISIONS AFFECTING THE COURTS.

The General Assembly of North Carolina enacts:

SECTION 1.(a) Article 28 of Chapter 7A of the General Statutes is amended by adding a new section to read:

"**§ 7A-321. Collection of offender fines and fees assessed by the court.**

The Judicial Department may, in lieu of payment by cash or check, accept payment by credit card, charge card, or debit card for the fines, fees, and costs owed to the courts by offenders."

SECTION 1.(b) G.S. 7A-343 reads as rewritten:

"**§ 7A-343. Duties of Director.**

The Director is the Administrative Officer of the Courts, and his duties include the following:

...

(9b) Enter into contracts with one or more private vendors to provide for the payment of fines, fees, and costs due to the court by credit, charge, or debit cards; such contracts may provide for the assessment of a convenience or transaction fee by the vendor to cover the costs of providing this service;

..."

SECTION 2.(a) G.S. 1A-1, Rule 5(e), reads as rewritten:

"(e) (1) Filing with the court defined. – The filing of pleadings and other papers with the court as required by these rules shall be made by filing them with the clerk of the court, except that the judge may permit the papers to be filed with him, in which event he shall note thereon the filing date and forthwith transmit them to the office of the clerk.

(2) Filing by ~~telefacsimile transmission.~~electronic means. – If, pursuant to G.S. 7A-34 and G.S. 7A-343, the Supreme Court and the Administrative Officer of the Courts establish uniform rules, regulations, costs, procedures and specifications for the filing of pleadings or other court papers by ~~telefacsimile transmission,~~ electronic means, filing may be made by the ~~transmission~~electronic means when, in the manner, and to the extent provided therein."

SECTION 2.(b) G.S. 7A-343(9a) reads as rewritten:

"(9a) Establish and operate systems and services that provide for electronic filing in the court system and further provide electronic transaction processing and access to court information systems pursuant to G.S. 7A-343.2; and".

SECTION 2.(c) Article 7 of Chapter 7A of the General Statutes is amended by adding a new section to read:

"**§ 7A-49.5. Statewide electronic filing in courts.**

(a) The General Assembly finds that the electronic filing of pleadings and other documents required to be filed with the courts may be a more economical, efficient, and satisfactory procedure to handle the volumes of paperwork routinely filed with, handled by, and disseminated by the courts of this State, and therefore authorizes the use of electronic filing in the courts of this State.

(b) The Supreme Court may adopt rules governing this process and associated costs and may supervise its implementation and operation through the Administrative Office of the Courts. The rules adopted under this section shall address the waiver of electronic fees for indigents.

(c) The Administrative Office of the Courts may contract with a vendor to provide electronic filing in the courts, provided that the costs for the hardware and software are not paid using State funds.

(d) Any funds received by the Administrative Office of the Courts from the vendor selected pursuant to subsection (c) of this section, other than applicable statutory court costs, as a result of electronic filing, shall be deposited in the Court Information Technology Fund in accordance with G.S. 7A-343.2."

SECTION 2.(d) G.S. 7A-343.2 reads as rewritten:

"**§ 7A-343.2. Court Information Technology Fund.**

The Court Information Technology Fund is established within the Judicial Department as a nonreverting, interest-bearing special revenue account. Accordingly, revenue in the Fund at the end of a fiscal year does not revert and interest and other investment income earned by the Fund shall be credited to it. All moneys collected by the Director pursuant to G.S. 7A-109(d) and G.S. 7A-49.5 shall be remitted to the State Treasurer and held in this Fund. Moneys in the Fund shall be used to supplement funds otherwise available to the Judicial Department for court information technology and office automation needs. The Director shall report by August 1 and February 1 of each year to the Joint Legislative Commission on Governmental Operations, the Chairs of the Senate and House Appropriations Committees, and the Chairs of the Senate and House Appropriations Subcommittees on Justice and Public Safety on all moneys collected and deposited in the Fund and on the proposed expenditure of those funds collected during the preceding six months."

SECTION 3.(a) Part 2 of Article 4 of Chapter 114 is amended by adding a new section to read:

"**§ 114-19.16. Criminal record checks for the Judicial Department.**

(a) The Department of Justice may provide to the Judicial Department from the State and National Repositories of Criminal Histories the criminal history of any current or prospective employee, volunteer, or contractor of the Judicial Department. The Judicial Department shall provide to the Department of Justice, along with the request, the fingerprints of the current or prospective employee, volunteer, or contractor, a form signed by the current or prospective employee, volunteer, or contractor 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 fingerprints of the current or prospective employee, volunteer, or contractor 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 Judicial Department shall keep all information obtained pursuant to this section confidential.

(b) 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 3.(b) Article 29 of Chapter 7A of the General Statutes is amended by adding a new section to read:

"**§ 7A-349. Criminal history record check; denial of employment, contract, or volunteer opportunity.**

The Judicial Department may deny employment, a contract, or a volunteer opportunity to any person who refuses to consent to a criminal history check authorized under G.S. 114-19.16 and may dismiss a current employee, terminate a contractor, or terminate a volunteer relationship if that employee, contractor, or volunteer refuses to consent to a criminal history record check authorized under G.S. 114-19.16."

SECTION 4.(a) Article 2 of Chapter 7B of the General Statutes is amended by adding a new section to read:

"**§ 7B-202. Permanency mediation.**

(a) The Administrative Office of the Courts shall establish a Permanency Mediation Program to provide statewide and uniform services to resolve issues in cases under this Subchapter in which a juvenile is alleged or has been adjudicated to be abused, neglected, or dependent, or in which a petition or motion to terminate a parent's rights has been filed. Participants in the mediation shall include the parties and their attorneys, including the guardian ad litem and attorney advocate for the child; provided, the court may allow mediation to proceed without the participation of a parent whose identity is unknown, a party who was served and has not made an appearance, or a parent, guardian, or custodian who has not been served despite a diligent attempt to serve the person. Upon a finding of good cause, the court may allow mediation to proceed without the participation of a parent who is unable to participate due to incarceration, illness, or some other cause. Others may participate by agreement of the parties, their attorneys, and the mediator, or by order of the court.

(b) The Administrative Office of the Courts shall establish in phases a statewide Permanency Mediation Program consisting of local district programs to be established in all judicial districts of the State. The Director of the Administrative Office of the Courts is authorized to approve contractual agreements for such services as executed by order of the Chief District Court Judge of a district court district, such contracts to be exempt from competitive bidding procedures under Chapter 143 of the General Statutes. The Administrative Office of the Courts shall promulgate policies and regulations necessary and appropriate for the administration of the program. Any funds appropriated by the General Assembly for the establishment and maintenance of permanency mediation programs under this Article shall be administered by the Administrative Office of the Courts.

(c) Mediation proceedings shall be held in private and shall be confidential. Except as provided otherwise in this section, all verbal or written communications from participants in the mediation to the mediator or between or among the participants in the presence of the mediator are absolutely privileged and inadmissible in court.

(d) Neither the mediator nor any party or other person involved in mediation sessions under this section shall be competent to testify to communications made during or in furtherance of such mediation sessions; provided, there is no confidentiality or privilege as to communications made in furtherance of a crime or fraud. Nothing in this subsection shall be construed as permitting an individual to obtain immunity from prosecution for criminal conduct or as excusing an individual from the reporting requirements of Article 3 of Chapter 7B of the General Statutes or G.S. 108A-102.

(e) Any agreement reached by the parties as a result of the mediation, whether referred to as a "placement agreement," "case plan," or some similar name, shall be reduced to writing, signed by each party, and submitted to the court as soon as practicable. Unless the court finds good reason not to, the court shall incorporate the agreement in a court order, and the agreement shall become enforceable as a court

order. If some or all of the issues referred to mediation are not resolved by mediation, the mediator shall report that fact to the court."

SECTION 4.(b) The Administrative Office of the Courts may use funds available during the 2006-2007 fiscal year to implement the provisions of this section.

SECTION 5.(a) G.S. 7A-314(f) reads as rewritten:

"(f) In ~~a criminal case when a person who~~any case in which the Judicial Department is bearing the costs of representation for a party and that party or a witness for that party does not speak or understand the English ~~language is an indigent defendant, a witness for an indigent defendant, or a witness for the State~~language, and the court appoints a foreign language interpreter to assist that ~~defendant or witness in the case,~~party or witness, the reasonable fee for the interpreter's ~~services, as set by the court, are~~services is payable from funds appropriated to the Administrative Office of the Courts. The appointment and payment shall be made in accordance with G.S. 7A-343(9b)."

SECTION 5.(b) G.S. 7A-343 is amended by adding a new subdivision to read:

"(9b) Prescribe policies and procedures for the appointment and payment of foreign language interpreters in those cases specified in G.S. 7A-314(f). These policies and procedures shall be applied uniformly throughout the General Court of Justice. After consultation with the Joint Legislative Commission on Governmental Operations, the Director may also convert contractual foreign language interpreter positions to permanent State positions when the Director determines that it is more cost-effective to do so."

SECTION 6. G.S. 7A-39 reads as rewritten:

"**§ 7A-39. ~~Adverse weather cancellation~~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.~~Justice. – 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 or period of limitation 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.~~courthouse.

(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.~~the date set forth in the order, and if no date is set forth in the order, then upon the date the order is signed by the Chief Justice.

(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."

SECTION 7.(a) If Senate Bill 1741, 2005 Regular Session, becomes law, then G.S. 7A-133(c), as amended by Section 14.5 of that act, reads as rewritten:

"(c) Each county shall have the numbers of magistrates and additional seats of district court, as set forth in the following table:

County	Magistrates Min	Additional Seats of Court
Camden	~~1~~ 3	
Chowan	~~2~~ 3	
Currituck	~~1~~ 4	
Dare	~~3~~ 6	
Gates	2	
Pasquotank	~~3~~ 5	
Perquimans	~~2~~ 3	
Martin	4	
Beaufort	~~4~~ 5.05	
Tyrrell	~~1~~ 3	
Hyde	~~2~~ 3.5	
Washington	~~3~~ 4	
Pitt	~~10~~ 10.5	Farmville Ayden
Craven	~~7~~ 10	Havelock
Pamlico	~~2~~ 3	
Carteret	~~6~~ 9	

Sampson	~~6~~ 7	
Duplin	8	
Jones	2	
Onslow	~~8~~ 11	
New Hanover	~~6~~ 11	
Pender	~~4~~ 4.8	
Halifax	~~9~~ 12	Roanoke Rapids, Scotland Neck
Northampton	~~5~~ 5.25	
Bertie	~~4~~ 5	
Hertford	~~5~~ 6	
Nash	~~7~~ 9	Rocky Mount
Edgecombe	~~4~~ 7	Rocky Mount
Wilson	~~4~~ 7	
Wayne	~~5~~ 9	Mount Olive
Greene	~~3~~ 4	
Lenoir	~~4~~ 7	La Grange
Granville	~~3~~ 7	
Vance	~~3~~ 6	
Warren	~~3~~ 3.5	
Franklin	~~3~~ 7	
Person	~~3~~ 4	
Caswell	~~2~~ 4	
Wake	~~12~~ 18.5	Apex, Wendell, Fuquay-Varina, Wake Forest
Harnett	~~7~~ 10	Dunn
Johnston	~~10~~ 11	Benson, Clayton, Selma
Lee	~~4~~ 5.5	
Cumberland	~~10~~ 19	
Bladen	~~4~~ 5	
Brunswick	~~4~~ 9	
Columbus	~~6~~ 9.5	Tabor City
Durham	~~8~~ 13	
Alamance	~~8~~ 12	Burlington
Orange	~~4~~ 9	Chapel Hill
Chatham	~~3~~ 6	Siler City
Scotland	~~3~~ 5	
Hoke	~~4~~ 5	

Robeson	~~9~~ 15	Fairmont, Maxton, Pembroke, Red Springs, Rowland, St. Pauls
Rockingham	~~4~~ 9	Reidsville, Eden, Madison
Stokes	~~2~~ 5	
Surry	~~5~~ 9	Mt. Airy
Guilford	~~20~~ 24.4	High Point
Cabarrus	~~5~~ 9	Kannapolis
Montgomery	~~3~~ 5	
Randolph	~~5~~ 10	Liberty
Rowan	~~5~~ 9	
Stanly	~~5~~ 6	
Union	~~4~~ 7	
Anson	~~4~~ 5	
Richmond	~~5~~ 6	Hamlet
Moore	~~5~~ 6.5	Southern Pines
Forsyth	~~3~~ 15	Kernersville
Alexander	~~2~~ 4	
Davidson	~~7~~ 10	Thomasville
Davie	~~2~~ 4	
Iredell	~~4~~ 9	Mooresville
Alleghany	~~1~~ 2	
Ashe	~~3~~ 4	
Wilkes	~~4~~ 6	
Yadkin	~~3~~ 4	
Avery	~~3~~ 4	
Madison	4	
Mitchell	~~3~~ 4	
Watauga	~~4~~ 5	
Yancey	~~2~~ 3	
Burke	~~4~~ 6.75	
Caldwell	~~4~~ 7	
Catawba	~~6~~ 10	Hickory
Mecklenburg	~~15~~ 26.50	
Gaston	~~12~~ 17	
Cleveland	~~5~~ 8	
Lincoln	~~4~~ 6	
Buncombe	~~6~~ 15	

Henderson	~~4~~ 6.5		
McDowell	~~3~~ 4.5		
Polk	~~3~~ 4		
Rutherford	~~6~~ 7		
Transylvania	~~2~~ 4		
Cherokee	~~3~~ 4		
Clay	~~1~~ 2		
Graham	2		
Haywood	~~5~~ 6.75	Canton	
Jackson	~~3~~ 5		
Macon	~~3~~ 3.5		
Swain	~~2.~~ 3.75."		

SECTION 7.(b) G.S. 7A-132 reads as rewritten:

"**§ 7A-132. Judges, district attorneys, full-time assistant district attorneys and magistrates for district court districts.**

Each district court district shall have one or more judges and one district attorney. Each county within each district shall have at least one magistrate.

For each district the General Assembly shall prescribe the numbers of district judges, and the numbers of full-time assistant district attorneys. For each county within each district the General Assembly shall prescribe a minimum ~~and a maximum~~number of magistrates."

SECTION 7.(c) G.S. 7A-171(a) reads as rewritten:

"**§ 7A-171. Numbers; appointment and terms; vacancies.**

(a) The General Assembly shall establish a minimum ~~and a maximum~~ quota of magistrates for each county. In no county shall the minimum quota be less than one. The number of magistrates in a county, ~~within~~ above the minimum quota set by the General Assembly, is determined by the Administrative Office of the Courts after consultation with the chief district court judge for the district in which the county is located."

SECTION 8. Section 4 of S.L. 2006-32 reads as rewritten:

"**SECTION 4.** The ~~Joint Legislative Corrections, Crime Control and Juvenile Justice Oversight Committee and the~~Legislative Research Commission and the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services (LOC) shall study drug treatment courts in North Carolina. The study shall include the following issues in relation to drug treatment courts:

(1) Funding mechanisms;
(2) Target populations;
(3) Interagency collaboration at the State and local levels; and
(4) Any other matter that the Commissions deem appropriate or necessary to provide proper information to the General Assembly on the subject of the study.

The ~~Commissions~~Commission may report ~~their~~its findings and recommendations to the 2007 Regular Session of the 2007 General Assembly."

SECTION 9. If Senate Bill 1741, 2005 Regular Session, becomes law, then Section 14.17 of that act is amended by adding a new subsection to read:

"**SECTION 14.17.(b)** This section applies to persons summoned to serve as jurors on or after August 7, 2006."

SECTION 10. The Administrative Office of Courts, in conjunction with the North Carolina Equal Access to Justice Commission, North Carolina Bar Association, North Carolina Legal Services Planning Council, Legal Aid of North Carolina, Inc., North Carolina Justice Center, and Pisgah Legal Services, Inc., shall study the most effective way to address the increasing numbers of persons who either cannot afford representation or choose to represent themselves in family law matters and in some civil litigation, and report the results of the study to the Joint Appropriations Subcommittee on Justice and Public Safety no later than December 31, 2007.

SECTION 11. Article 30 of Chapter 7A of the General Statutes reads as rewritten:

"Article 30.

"Judicial Standards Commission.

"**§ 7A-374.1. Purpose.**

The purpose of this Article is to provide for the investigation and resolution of inquiries concerning the qualification or conduct of any judge or justice of the General Court of Justice. The procedure for discipline of any judge or justice of the General Court of Justice shall be in accordance with this Article. Nothing in this Article shall affect the impeachment of judges under the North Carolina Constitution, Article IV, Sections 4 and 17.

"**§ 7A-374.2. Definitions.**

Unless the context clearly requires otherwise, the definitions in this section shall apply throughout this Article:

(1) "Censure" means a finding by the Supreme Court, based upon a written recommendation by the Commission, that a judge has willfully engaged in misconduct prejudicial to the administration of justice that brings the judicial office into disrepute, but which does not warrant the suspension of the judge from the judge's judicial duties or the removal of the judge from judicial office. A censure may require that the judge follow a corrective course of action. Unless otherwise ordered by the Supreme Court, the judge shall personally appear in the Supreme Court to receive a censure.

(2) "Commission" means the North Carolina Judicial Standards Commission.

(3) "Incapacity" means any physical, mental, or emotional condition that seriously interferes with the ability of a judge to perform the duties of judicial office.

(4) "Investigation" means the gathering of information with respect to alleged misconduct or disability.

(5) "Judge" means any justice or judge of the General Court of Justice of North Carolina, including any retired justice or judge who is recalled

for service as an emergency judge of any division of the General Court of Justice.

(6) "Letter of caution" means a written action of the Commission that cautions a judge not to engage in certain conduct that violates the Code of Judicial Conduct as adopted by the Supreme Court.

(7) "Public reprimand" means a written action of the Commission issued upon a finding by the Commission that a judge has violated the Code of Judicial Conduct and has engaged in conduct prejudicial to the administration of justice, but that misconduct is minor and does not warrant a recommendation by the Commission that the judge be disciplined by the Supreme Court. A public reprimand may require that the judge follow a corrective course of action.

(8) "Remove" or "removal" means a finding by the Supreme Court, based upon a written recommendation by the Commission, that a judge should be relieved of all duties of the judge's office and disqualified from holding further judicial office.

(9) "Suspend" or "suspension" means a finding by the Supreme Court, based upon a written recommendation by the Commission, that a judge should be relieved of the duties of the judge's office for a period of time, and upon conditions, including those regarding treatment and compensation, as may be specified by the Supreme Court.

"**§ 7A-375. Judicial Standards Commission.**

(a) The Judicial Standards Commission shall consist ~~of:~~of the following residents of North Carolina: one Court of Appeals judge, ~~one~~two superior court ~~judge,~~judges, and ~~one~~two district court ~~judge,~~judges, each appointed by the Chief Justice of the Supreme Court; ~~two~~four members of the State Bar who have actively practiced in the courts of the State for at least 10 years, elected by the State Bar Council; and ~~two~~four citizens who are not judges, active or retired, nor members of the State Bar, ~~appointed by the Governor.~~two appointed by the Governor, and two appointed by the General Assembly in accordance with G.S. 120-121, one upon recommendation of the President Pro Tempore of the Senate and one upon recommendation of the Speaker of the House of Representatives. The Court of Appeals judge shall act as chair of the Commission.

(b) The Court of Appeals judge shall serve at the pleasure of the Chief Justice. Terms of other Commission members shall be for six ~~years, except that, to achieve overlapping of terms, one of the judges, one of the practicing members of the State Bar, and one of the citizens shall be appointed initially for a term of only three years.~~ years. No member who has served a full six-year term is eligible for reappointment. If a member ceases to have the qualifications required for ~~his~~the member's appointment, ~~he~~that person ceases to be a member. Vacancies of members, other than those appointed by the General Assembly, are filled in the same manner as the original appointment, for the remainder of the term. Vacancies of members appointed by the General Assembly are filled as provided under G.S. 120-122. Members who are not judges are entitled to per diem and all members are entitled to reimbursement for travel and subsistence

expenses at the rate applicable to members of State boards and commissions generally, for each day engaged in official business.

(c) If a member of the Commission who is a judge becomes disabled, or becomes a respondent before the Commission, the Chief Justice shall appoint an alternate member to serve during the period of disability or disqualification. The alternate member shall be from the same division of the General Court of Justice as the judge whose place ~~he~~ the alternate member takes. If a member of the Commission who is not a judge becomes disabled, the Governor, if he appointed the disabled member, shall appoint, or the State Bar Council, if it elected the disabled member, shall elect, an alternate member to serve during the period of disability. If a member of the Commission who is not a judge and who was appointed by the General Assembly becomes disabled, an alternate member shall be appointed to serve during the period of disability in the same manner as if there were a vacancy to be filled under G.S. 120-122. In a particular case, if a member ~~disqualifies himself,~~ becomes disqualified, or is successfully challenged for cause, ~~his~~ the member's seat for that case shall be filled by an alternate member selected as provided in this subsection.

(d) A member may serve after expiration of ~~his~~the member's term only to participate until the conclusion of a ~~formal~~ disciplinary proceeding begun before expiration of ~~his~~ the member's term. Such participation shall not prevent ~~his~~the successor from taking office, but the successor may not participate in the proceeding for which ~~his~~the predecessor's term was extended. This subsection shall apply also to any judicial member whose membership on the Commission is automatically terminated by retirement or resignation from judicial office, or expiration of the term of judicial office.

(e) Members of the Commission and its employees are immune from civil suit for all conduct undertaken in the course of their official duties.

(f) The chair of the Commission may employ, if funds are appropriated for that purpose, an executive director, Commission counsel, investigator, and any support staff as may be necessary to assist the Commission in carrying out its duties. With the approval of the Chief Justice, for specific cases, the chair also may employ special counsel or call upon the Attorney General to furnish counsel. In addition, with the approval of the Chief Justice, for specific cases, the chair or executive director also may call upon the Director of the State Bureau of Investigation to furnish an investigator who shall serve under the supervision of the executive director. While performing duties for the Commission, the executive director, counsel, and investigator have authority throughout the State to serve subpoenas or other process issued by the Commission in the same manner and with the same effect as an officer authorized to serve process of the General Court of Justice.

(g) The Commission may adopt, and may amend from time to time, its own rules of procedure for the performance of the duties and responsibilities prescribed by this Article, subject to the approval of the Supreme Court.

"§ 7A-376. ~~Grounds for censure or removal.~~**Grounds for discipline by Commission; censure, suspension, or removal by the Supreme Court.**

(a) The Commission, upon a determination that any judge has engaged in conduct that violates the North Carolina Code of Judicial Conduct as adopted by the

Supreme Court but that is not of such a nature as would warrant a recommendation of censure, suspension, or removal, may issue to the judge a private letter of caution or may issue to the judge a public reprimand.

(b) Upon recommendation of the Commission, the Supreme Court may ~~censure or remove~~censure, suspend, or remove any judge for willful misconduct in office, willful and persistent failure to perform ~~his~~the judge's duties, habitual intemperance, conviction of a crime involving moral turpitude, or conduct prejudicial to the administration of justice that brings the judicial office into disrepute. ~~Upon recommendation of the Commission, the Supreme Court may remove any judge for mental or physical incapacity interfering with the performance of his duties, which is, or is likely to become, permanent.~~A judge who is suspended for any of the foregoing reasons shall receive no compensation during the period of that suspension. A judge who is removed for any of the foregoing reasons shall receive no retirement compensation and is disqualified from holding further judicial office.

(c) Upon recommendation of the Commission, the Supreme Court may suspend, for a period of time the Supreme Court deems necessary, any judge for temporary physical or mental incapacity interfering with the performance of the judge's duties, and may remove any judge for physical or mental incapacity interfering with the performance of the judge's duties which is, or is likely to become, permanent. A judge who is suspended for temporary incapacity shall continue to receive compensation during the period of the suspension. A judge removed for mental or physical incapacity is entitled to retirement compensation if ~~he~~the judge has accumulated the years of creditable service required for incapacity or disability retirement under any provision of State law, but he shall not sit as an emergency justice or judge. ~~A judge removed for other than mental or physical incapacity receives no retirement compensation, and is disqualified from holding further judicial office.~~

"§ 7A-377. ~~**Procedures; employment of executive secretary, special counsel or investigator.**~~**Procedures.**

(a) Any citizen of the State may file a written complaint with the Commission concerning the qualifications or conduct of any justice or judge of the General Court of Justice, and thereupon the Commission shall make such investigation as it deems necessary. The Commission may also make an investigation on its own motion. The Commission ~~is authorized to~~may issue process to compel the attendance of witnesses and the production of evidence, to administer oaths, and to punish for ~~contempt, and to prescribe its own rules of procedure.~~contempt. No justice or judge shall be recommended for ~~censure~~ censure, suspension, or removal unless he has been given a hearing affording due process of law.

(a1) Unless otherwise waived by the justice or judge involved, all papers filed with and proceedings before the Commission, including any ~~preliminary~~ investigation ~~which~~that the Commission may make, are confidential, and no person shall disclose information obtained from Commission proceedings or papers filed with or by the Commission, except as provided herein. Those papers are not subject to disclosure under Chapter 132 of the General Statutes.

(a2) Information submitted to the Commission or its staff, and testimony given in any proceeding before the Commission, shall be absolutely privileged, and no civil action predicated upon that information or testimony may be instituted against any complainant, witness, or his or her counsel.

(a3) If, after an investigation is completed, the Commission concludes that a letter of caution is appropriate, it shall issue to the judge a letter of caution in lieu of any further proceeding in the matter. The issuance of a letter of caution is confidential in accordance with subsection (a1) of this section.

(a4) If, after an investigation is completed, the Commission concludes that a public reprimand is appropriate, the judge shall be served with a copy of the proposed reprimand and shall be allowed 20 days within which to accept the reprimand or to reject it and demand, in writing, that disciplinary proceedings be instituted in accordance with subsection (a5) of this section. A public reprimand, when issued by the Commission and accepted by the respondent judge, is not confidential.

(a5) ~~After the preliminary~~ If, after an investigation is completed, ~~and if~~the Commission concludes that ~~formal~~ disciplinary proceedings should be instituted, the notice and ~~complaint~~statement of charges filed by the Commission, along with the answer and all other pleadings, are not confidential. ~~Formal~~ Disciplinary hearings ordered by the Commission are not confidential, and recommendations of the Commission to the Supreme Court, along with the record filed in support of such recommendations are not confidential. Testimony and other evidence presented to the Commission is privileged in any action for defamation. At least five members of the Commission must concur in any recommendation to ~~censure~~ censure, suspend, or remove any ~~justice or~~ judge. A respondent who is recommended for ~~censure or removal~~censure, suspension, or removal is entitled to a copy of the proposed record to be filed with the Supreme Court, and if ~~he~~the respondent has objections to it, to have the record settled by the ~~Commission.~~Commission's chair. ~~He~~The respondent is also entitled to present a brief and to argue ~~his~~the respondent's case, in person and through counsel, to the Supreme Court. A majority of the members of the Supreme Court voting must concur in any order of ~~censure~~censure, suspension, or removal. The Supreme Court may approve the recommendation, remand for further proceedings, or reject the recommendation. A justice of the Supreme Court or a member of the Commission who is a judge is disqualified from acting in any case in which he is a respondent.

~~(b) The chair of the Commission is authorized to employ an executive secretary to assist the Commission in carrying out its duties. For specific cases, the Commission may also employ special counsel or call upon the Attorney General to furnish counsel. For specific cases, the Commission may also employ an investigator or call upon the Director of the State Bureau of Investigation to furnish an investigator. While performing duties for the Commission such executive secretary, special counsel or investigator shall have authority throughout the State to serve subpoenas or other process issued by the Commission in the same manner and with the same effect as an officer authorized to serve process of the General Court of Justice.~~

(c) The Commission may issue advisory opinions to judges, in accordance with rules and procedures adopted by the Commission.

(d) The Commission has the same power as a trial court of the General Court of Justice to punish for contempt, or for refusal to obey lawful orders or process issued by the Commission.

"§ 7A-378. ~~Censure~~ Censure, suspension, or removal of justice of Supreme Court.

(a) The recommendation of the Judicial Standards Commission for ~~censure~~ censure, suspension, or removal of any justice of the Supreme Court for any grounds provided by G.S. 7A-376 shall be made to, and the record filed with, the Court of Appeals, which shall have and shall proceed under the same authority for ~~censure~~ censure, suspension, or removal of any justice as is granted to the Supreme Court under G.S. 7A-376 and G.S. 7A-377(a) for ~~censure~~ censure, suspension, or removal of any judge.

(b) The proceeding shall be heard by a panel of the Court of Appeals consisting of the Chief Judge, who shall be the presiding judge of the panel, and six other judges, the senior in service, excluding the judge who is chairman of the ~~commission.~~Commission. For good cause, a judge may be excused by a majority of the panel. If the Chief Judge is excused, the presiding judge shall be designated by a majority of the panel. The vacancy created by an excused judge shall be filled by the judge of the court who is next senior in service."

SECTION 12. In order to provide for an orderly transition in membership to the Judicial Standards Commission to the six-year terms specified in G.S. 7A-375(b), as amended by Section 11 of this act, and notwithstanding G.S. 7A-375(b), as amended by Section 11 of this act, the following provisions apply:

(1) The initial terms of the new district court judge and of one new member of the North Carolina Bar appointed to the Commission effective January 1, 2007, shall be three-year terms.

(2) The initial terms of all other new members appointed to the Commission effective January 1, 2007, shall be six-year terms.

(3) The term of the citizen appointed by the Governor to the Commission effective January 1, 2007, shall be a three-year term.

(4) The term for the citizen appointed by the Governor to the Commission effective January 1, 2010, shall be a three-year term.

SECTION 13. Section 2 of this act is effective when it becomes law and applies to all matters filed with the courts on or after the date that the Supreme Court adopts rules for electronic filing as authorized by that section. Section 3 of this act becomes effective October 1, 2006. Sections 4, 7, and 9 of this act become effective July 1, 2006. Sections 11 and 12 become effective January 1, 2007. The remainder of this act is effective when it becomes law.

Attachment VII

HOUSE BILL 1848: Omnibus Courts Act

BILL ANALYSIS

Committee:	House Judiciary I	**Date:**	July 17, 2006
Introduced by:	Reps. Hackney, Howard, Eddins, Ross	**Summary by:**	Brad Krehely
Version:	Fourth Edition		Committee Counsel

SUMMARY: House Bill 1848 would make various changes to the laws concerning the administration of the courts system including authorization to collect fines by credit card, authorize electronic filings in court, permit criminal background checks of Judicial Department employees, establish permanency mediation, amend the foreign language interpreters program, modify the minimum number of magistrates allocated, and to make other changes as recommended by the Administrative Office of the Courts. The bill also makes changes to the statutes governing the Judicial Standards Commission by adding the provisions of House Bill 1417- Revise Judicial Standards Commission to this bill.

BILL ANALYSIS: Section 1 would permit the Judicial Department to accept the payments of fines, fees and costs by credit, charge or debit card through a private third-party vendor so as to allow the State to collect funds without discount or a transaction fee.

Section 2 would permit the filing of pleadings and papers in the courts by electronic means pursuant to uniform rules adopted by the Supreme Court. AOC would be permitted to contract with a vendor to provide electronic filing services. Any funds received from the vendor would be deposited to the Court Information Technology Fund.

Section 3 permits the Judicial Department to require its employees, contractors and volunteers to consent to criminal history background checks as a condition for their relationship with the Judicial Department. This section authorizes the SBI to conduct State and federal fingerprint-based criminal history background checks for the Judicial Department and charge the actual cost.

Section 4 directs the AOC to establish a Permanency Mediation Program to mediate issues arising from a juvenile who is alleged or adjudicated to be abused, neglected, dependent or where a petition for termination of parental rights has been filed. Mediations will be confidential and communications in mediation may not be testified to in court. The court may consider incorporating any mediation agreement into a court order. AOC may use existing funds to implement this program.

Section 5 clarifies AOC's authority to provide foreign language interpreters for indigent defendants and authorizes the AOC to hire permanent staff to serve this purpose when it is more cost-effective to do so.

Section 6 clarifies the authority of the Chief Justice to cancel court sessions and close court offices in the event of adverse weather or other emergency situations.

Section 7 sets the minimum number of magistrates for each county at the current allotment. The minimum/maximum number of magistrates was eliminated in SB 1741. This section also makes conforming changes to delete references to maximum numbers of magistrates from various statutes.

Section 8 eliminates the requirement that the Joint Legislative Corrections, Crime Control and Juvenile Justice Oversight Committee study drug treatment courts in North Carolina as enacted earlier this session.

Section 9 amends the Budget Bill by changing the effective date for the budget provision that increases juror fees to August 7, 2006. That provision increased a juror's fees from $12 per day to $20 per day for the 2nd through 5th day, and $40 per day after five days. In the Budget Bill, SB 1741, this provision was effective July 1, 2006. This must be changed to August 7, 2006 because the budget authorizing these fee increases will not be certified until sometime after jurors have already been paid in July at the old rate.

Section 10 directs the Administrative Office of the Courts and other groups to study the most effective way to address the increasing numbers of persons who either cannot afford representation or choose to represent themselves in family law matters and in some civil litigation, and to report the results of the study to the Joint Appropriations Subcommittee on Justice and Public Safety no later than December 31, 2007.

Section 11 amends the statutes governing the Judicial Standards Commission in the following ways:

- **In new G.S. 7A-374.1:** Sets out the purpose of the Judicial Standards Commission Article: "to provide for the investigation and resolution of inquires concerning the qualification or conduct of any judge or justice."
- **In new G.S. 7A-374.2:** Provides definitions of the following terms used in the Article: Commission, Judge, Incapacity, Investigation, Letter of caution, Public reprimand, Censure, Suspension, and Removal.
- **In amended G.S. 7A-375:**

  --expands the Commission from 7 to 13 members, provides for staggering of terms, and requires members to be residents of the State.

  --provides that two of the new members of the Commission shall be appointed by the General Assembly, one upon the recommendation of the Speaker of the House of Representatives and one upon the recommendation of the President Pro Tempore of the Senate.

  --provides that the Court of Appeals Judge on the Commission serves at the pleasure of the Chief Justice.

  --provides a mechanism for appointing an alternate member if a member appointed by the General Assembly becomes disabled.

  --provides that the members of the Commission and its employees are immune from civil suit for conduct undertaken in the course of their official duties.

  --reenacts existing law providing that the chair of the Commission may employ, if funds are appropriated for this purpose, an executive director, counsel, investigator, and support staff. In addition, with the approval of the Chief Justice, for specific cases, the chair may employ special counsel and ask the SBI to furnish an investigator. Also allows executive director, counsel or investigator to serve subpoenas and other process.

  --reenacts existing law providing that the Commission may adopt rules of procedure, subject to Supreme Court approval.

- **In amended G.S. 7A-376**:

  --expands possible disciplinary action to include suspension, private letters of caution, and public reprimands.

  --provides that judges suspended for misconduct would not receive compensation during a period of suspension, and, if removed, would be disqualified from holding another judicial office and would not be eligible for retirement compensation.

  --clarifies that judges suspended for temporary physical or mental incapacity shall continue to receive compensation.

- **In amended G.S. 7A-377:**

  --specifies that no person shall disclose information obtained from Commission proceedings or papers, and that Commission papers are not subject to disclosure under the State public records laws (Chapter 132).

--provides that information submitted to the Commission or its staff is privileged, and no civil action may be predicated upon it.

--authorizes Commission issuance of confidential letters of caution.

--authorizes Commission issuance of public reprimands.

--provides that the Commission may issue advisory opinions to judges.

--provides that the Commission may punish for contempt, and refusal to obey lawful orders or process of the Commission.

- **In amended G.S. 7A-378:**

--provides for suspension, as well as the currently authorized censure and removal, of justices of the Supreme Court.

Section 12 establishes a procedure for the orderly incorporation of new members of the Judicial Standards Commission in order to implement staggered terms.

EFFECTIVE DATE: Section 2 of this act is effective when it becomes law and applies to all matters filed with the courts on or after the date that the Supreme Court adopts rules for electronic filing as authorized by that section. Section 3 of this act becomes effective October 1, 2006. Sections 4, 7, and 9 of this act become effective July 1, 2006. Sections 11 and 12 become effective January 1, 2007. The remainder of this act is effective when it becomes law.

*H1848e4-SMRN *Walker Reagan, Hal Pell, Giles Perry, and Robin Johnson contributed to the drafting of this summary.*

Attachment VIII

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative Hackney (Chair) for the Committee on JUDICIARY I.

☒ Senate Committee Substitute for
HB 1848 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE THE COLLECTION OF OFFENDER FINES AND FEES ASSESSED BY THE GENERAL COURT OF JUSTICE BY CREDIT CARD, CHARGE CARD, OR DEBIT CARD; TO AUTHORIZE THE USE OF ELECTRONIC FILING IN THE TRIAL COURTS; TO AUTHORIZE THE DEPARTMENT OF JUSTICE TO PROVIDE THE JUDICIAL DEPARTMENT WITH CRIMINAL BACKGROUND CHECKS FROM THE STATE AND NATIONAL REPOSITORIES OF CRIMINAL HISTORIES; TO ESTABLISH A PERMANENCY MEDIATION PROGRAM; TO AMEND THE LAW PROVIDING FOR FOREIGN LANGUAGE INTERPRETERS IN THE COURTS; TO AUTHORIZE THE ESTABLISHMENT OF CERTAIN POSITIONS WITHIN THE JUDICIAL DEPARTMENT; TO REVISE AND UPDATE THE PROCEDURES AND RESPONSIBILITIES OF THE JUDICIAL STANDARDS COMMISSION AND TO AUTHORIZE SIX ADDITIONAL MEMBERS OF THE COMMISSION; AND TO MAKE TECHNICAL CORRECTIONS AND ADJUSTMENTS TO PROVISIONS AFFECTING THE COURTS.

☒ With recommendation that the House concur.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

_____ Pursuant to Rule 36(b), the bill/resolution is placed on the Calendar of _____.

Attachment IX

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 542

Judiciary I Committee Substitute Adopted 4/11/05

PROPOSED HOUSE COMMITTEE SUBSTITUTE S542-CSSA-38 [v.1]

7/18/2006 9:59:07 AM

Short Title: Access to State Facilities. (Public)

Sponsors:

Referred to:

March 15, 2005

A BILL TO BE ENTITLED

AN ACT TO ALLOW REASONABLE ACCESS TO STATE FACILITIES AND EMPLOYEES FOR CERTAIN EMPLOYEE ASSOCIATIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S.143-3.3 is amended by adding a new subsection to read:

"(g1) Reasonable Access to State Facilities and Employees for Certain Employee Associations Allowed. – All State political subdivisions, institutions, departments, bureaus, agencies or commissions, and all of the State's local boards of education and community colleges, shall permit representatives of a domiciled employees' association that has at least 40,000 members, the majority of whom are current State employees, reasonable access to its facilities and employees for the purposes of membership recruitment, member consultation and to offer member benefits, including insurance products."

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

Attachment X

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE _____

S. B. No. 542 Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE ✓

(Rep.) Sen.) Stam

1 moves to amend the bill on page 1, line 7

2 ( ) WHICH CHANGES THE TITLE

3 by deleting the words "political subdivisions,".

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SIGNED Stam

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

Attachment XI

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative Hackney (Chair) for the Committee on JUDICIARY I.

☒ Senate Committee Substitute for
SB 542 A BILL TO BE ENTITLED AN ACT TO AMEND STATE LAW REGARDING THE DETERMINATION OF AGGRAVATING FACTORS IN A CRIMINAL CASE TO CONFORM WITH THE UNITED STATES SUPREME COURT DECISION IN BLAKELY V. WASHINGTON.

☒ With a favorable report as to House committee substitute bill, which changes the title, unfavorable as to Senate committee substitute bill.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

_____ Pursuant to Rule 36(b), the (House/Senate) committee substitute bill/(joint) resolution (No._____) is placed on the Calendar of _____. (The original bill resolution No._____) is placed on the Unfavorable Calendar.

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

Attachment XII

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 542

Judiciary I Committee Substitute Adopted 4/11/05

PROPOSED HOUSE COMMITTEE SUBSTITUTE S542-PCS55527-SA-38

Short Title: Access to State Facilities. (Public)

Sponsors:

Referred to:

March 15, 2005

A BILL TO BE ENTITLED

AN ACT TO ALLOW REASONABLE ACCESS TO STATE FACILITIES AND EMPLOYEES FOR CERTAIN EMPLOYEE ASSOCIATIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-3.3 is amended by adding a new subsection to read:

"(g1) Reasonable Access to State Facilities and Employees for Certain Employee Associations Allowed. – All State institutions, departments, bureaus, agencies, or commissions, and all of the State's local boards of education and community colleges, shall permit representatives of a domiciled employees' association that has at least 40,000 members, the majority of whom are current State employees, reasonable access to its facilities and employees for the purposes of membership recruitment, member consultation, and to offer member benefits, including insurance products."

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

Attachment XIII

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 1

HOUSE BILL 2035*

Short Title:	OAH Hearing Facilities.	(Public)
Sponsors:	Representatives Stiller, Goodwin (Primary Sponsors); Alexander and Faison.	
Referred to:	Judiciary I.	

May 17, 2006

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE SENIOR RESIDENT SUPERIOR COURT JUDGES TO PROVIDE FACILITIES FOR HEARINGS CONDUCTED BY THE OFFICE OF ADMINISTRATIVE HEARINGS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 150B-24 reads as rewritten:

"**§ 150B-24. Venue of hearing.**

(a) The hearing of a contested case shall be conducted:

(1) In the county in this State in which any person whose property or rights are the subject matter of the hearing maintains his residence;

(2) In the county where the agency maintains its principal office if the property or rights that are the subject matter of the hearing do not affect any person or if the subject matter of the hearing is the property or rights of residents of more than one county; or

(3) In any county determined by the administrative law judge in his discretion to promote the ends of justice or better serve the convenience of witnesses.

(b) Any person whose property or rights are the subject matter of the hearing waives his objection to venue by proceeding in the hearing.

(c) To the extent practicable, the senior resident superior court judge may provide suitable facilities for the conduct of hearings under this Article in the county or counties within the judge's district at the time that a hearing is scheduled therein. The senior resident superior court judge may, to the extent the judge determines necessary and practicable, provide or arrange for security at hearings upon the request of an administrative law judge."

SECTION 2. This act becomes effective October 1, 2006.

Attachment XIV

HOUSE BILL 2035:
OAH Hearing Facilities

BILL ANALYSIS

Committee:	House Judiciary I	**Date:**	July 18, 2006
Introduced by:	Reps. Stiller, Goodwin	**Summary by:**	Brad Krehely
Version:	First Edition		Committee Counsel

SUMMARY: House Bill 2035 authorizes Senior Resident Superior Court judges to provide facilities for hearings conducted by the Office of Administrative Hearings.

BILL ANALYSIS: This bill amends the statute dealing with venue of hearings, G.S. 150B-24, to permit the senior resident superior court judge to provide facilities for hearings in the county or counties within the judge's district. The senior resident superior court judge, to the extent practicable, may provide or arrange for security upon the request of an administrative law judge.

EFFECTIVE DATE: This act becomes effective October 1, 2006.

H2035e1-SMRN

Attachment XV

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 1

HOUSE BILL 2687

Short Title:	Sale of Drugs Near Parks/Increase Penalty.	(Local)
Sponsors:	Representatives Stiller; Capps, Frye, Justice, Kiser, and Wray.	
Referred to:	Local Government II.	

May 25, 2006

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE PENALTY IN BRUNSWICK COUNTY FOR THE ILLEGAL SALE OF DRUGS IF THE TRANSACTION OCCURS IN OR NEAR A PUBLIC PARK.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 90-95(e) is amended by adding a new subdivision to read:

"(11) Any person 21 years of age or older who commits an offense under G.S. 90-95(a)(1) on property that is a public park or within 300 feet of the boundary of real property that is a public park shall be punished as a Class E felon. For purposes of this subdivision, the transfer of less than five grams of marijuana for no remuneration shall not constitute a delivery in violation of G.S. 90-95(a)(1)."

SECTION 2. This act applies only to Brunswick County.

SECTION 3. This act becomes effective December 1, 2006, and applies to offenses committed on or after that date.

Attachment XVI

HOUSE BILL 2687:
Sale of Drugs Near Parks/Increase Penalty

BILL ANALYSIS

Committee:	House Judiciary I	**Date:**	July 18, 2006
Introduced by:	Rep. Stiller	**Summary by:**	Brad Krehely Committee Counsel
Version:	First Edition		

SUMMARY: House Bill 2687 changes the drug laws as they apply to parks in Brunswick County.

CURRENT LAW: G.S. 90-95 (a)(1) prohibits the manufacture, sale, delivery, or the possession with intenet to manufacture, sell, or delivery, of a controlled substance. A violation of G.S. 90-95 (a)(1) is a Class G. H, or I felony, except for manufacture of methamphetamine, which is a Class C felony.

BILL ANALYSIS: House Bill 2687 makes a violation of G.S. 90-95(a)(1) a Class E felony, if the offense is committed by a person 21 years of age or older on property that is a public park or within 300 feet of a public park in Brunswick County.

EFFECTIVE DATE: This act becomes effective December 1, 2006, and applies to offenses committed on or after that date.

*H2687e1-SMRN *Giles Perry contributed to this summary.*

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT Attachment XVII

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 2035 DATE July 18, 2006

S. B. No. _____ Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
) Stam
Sen.)

moves to amend the bill on page 1, line 21
( ) WHICH CHANGES THE TITLE
by inserting the words "and security" between the words "facilities" and "for";

and on page 1, lines 22-25, by rewriting the lines to read:

"counties within the judge's district at the time that a hearing is scheduled therein.".

SIGNED Stam

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

Attachment XVIII

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative Hackney (Chair) for the Committee on JUDICIARY I.

☐ Committee Substitute for
HB 2035 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE SENIOR RESIDENT SUPERIOR COURT JUDGES TO PROVIDE FACILITIES FOR HEARINGS CONDUCTED BY THE OFFICE OF ADMINISTRATIVE HEARINGS.

☒ With a favorable report as to the committee substitute bill, unfavorable as to the original bill.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

_____ Pursuant to Rule 36(b), the (House/Senate) committee substitute bill/(joint) resolution (No._____) is placed on the Calendar of _____. (The original bill resolution No._____) is placed on the Unfavorable Calendar.

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

Attachment XIX

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

H 2

HOUSE BILL 2035*
Committee Substitute Favorable 7/18/06

Short Title: OAH Hearing Facilities. (Public)

Sponsors:

Referred to:

May 17, 2006

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE SENIOR RESIDENT SUPERIOR COURT JUDGES TO PROVIDE FACILITIES FOR HEARINGS CONDUCTED BY THE OFFICE OF ADMINISTRATIVE HEARINGS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 150B-24 reads as rewritten:

"**§ 150B-24. Venue of hearing.**

(a) The hearing of a contested case shall be conducted:

(1) In the county in this State in which any person whose property or rights are the subject matter of the hearing maintains his residence;

(2) In the county where the agency maintains its principal office if the property or rights that are the subject matter of the hearing do not affect any person or if the subject matter of the hearing is the property or rights of residents of more than one county; or

(3) In any county determined by the administrative law judge in his discretion to promote the ends of justice or better serve the convenience of witnesses.

(b) Any person whose property or rights are the subject matter of the hearing waives his objection to venue by proceeding in the hearing.

(c) To the extent practicable, the senior resident superior court judge may provide suitable facilities and security for the conduct of hearings under this Article in the county or counties within the judge's district at the time that a hearing is scheduled therein."

SECTION 2. This act becomes effective October 1, 2006.

House Judiciary I Committee

July 19, 2006
6:15 p.m.

Minutes

The House Judiciary I Committee met on Wednesday, July 19, 2006 at 6:15 p.m. during a House recess in Room 1228 of the Legislative Building. Chairman Joe Hackney called the meeting to order and the following members were present: Representatives Alexander, Blust, Capps, Goodwin, Hall, Harrison, Ross, Stam, Stiller and West. A copy of the agenda and visitor registration is attached, (Attachments I and II).

Before the Committee for recommendation regarding concurrence was the Proposed Senate Committee Substitute for House Bill 1843, AN ACT TO ESTABLISH THE STATE GOVERNMENT ETHICS ACT, TO CREATE THE STATE ETHICS COMMISSION, TO ESTABLISH ETHICAL STANDARDS FOR CERTAIN STATE PUBLIC OFFICERS, STATE EMPLOYEES, AND APPOINTEES TO NONADVISORY STATE BOARDS AND COMMISSIONS, TO REQUIRE PUBLIC DISCLOSURE OF ECONOMIC INTERESTS BY CERTAIN PERSONS IN THE EXECUTIVE, LEGISLATIVE, AND JUDICIAL BRANCHES, TO AMEND THE LOBBYING LAWS, AND TO MAKE CONFORMING CHANGES, (Attachment III). The bill came to the committee along with two unengrossed amendments that had been adopted on the floor of the Senate earlier in the afternoon. Those amendments are attached to the minutes, (Attachments IV and V).

Mr. Walker Reagan, Research Division, and Ms. Erika Churchill, Committee Counsel, were recognized to explain changes that were made in the Senate Committee Substitute. A bill analysis prepared by Mr. Reagan and Ms. Churchill offers a detailed explanation of the bill, (Attachment VI).

Considerable discussion occurred throughout the explanation, and the Committee identified areas of contention that they would like to address. There was considerable discussion regarding definitions in the bill. Additional discussion regarded inclusion of the judicial branch under the Ethics Commission, statements of economic interest, and the appointment and composition of the Ethics Commission

Representative Ross moved that the Committee recommend that the House do not concur in the Senate Committee Substitute. Upon a unanimous vote, the motion carried, (Attachment VII).

Chairman Hackney announced that conferees would be appointed at a later time.

Representative Joe Hackney
Chair

Emily Reynolds Freeman
Committee Clerk

Attachment I

HOUSE COMMITTEE ON JUDICIARY I

July 19, 2006
6:15 p.m.

AGENDA

OPENING REMARKS

AGENDA ITEM

House Bill 1843 – State Government Ethics Act

ADJOURNMENT

Attachment II

VISITOR REGISTRATION SHEET

House Judiciary I — July 19, 2006 — P.M.

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Crystal Hopson	Covenant
Tony Adams	NCAA
Paul Pulley	NCATL
[illegible]	Public School [illegible]
Steve Wall	DENR
Dave Ingram	WSJ
[illegible]	[illegible]
[illegible]	[illegible]
Cam Cavers	BHMHC
K Wright	BCBSNC

VISITOR REGISTRATION SHEET

House Judiciary I — July 19, 2006 — P.M.

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Boyd Cauble	City of Charlotte
Michael Houser	NCAE
John Mabry	Gov Strategies
Sara M	NC DOT
Jeff Mixon	Civitas
Louisa Warren	NCCLP
Rob Thompson	NCPSRA
Rob Schofield	NCCNP
Bob Phillips	CCNC
Jack Cozort	Womble
Doug Heard	NC Bar Assoc.

VISITOR REGISTRATION SHEET

House Judiciary I — July 19, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Becki Gray	Civitas
Kevin Leonard	NCSR
Chase Foster	NCVCE
[illegible]	Insider
Paula Wolf	NCLU-NC
Sarah Schmidt	NC Justice Center
Lee Holz	NCLH
Mark Fleming	University System
Kevin Fitzgerald	UNC

Attachment III

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 1843

Committee Substitute Favorable 5/16/06
Third Edition Engrossed 5/18/06
Senate Judiciary I Committee Substitute Adopted 7/18/06
PROPOSED SENATE COMMITTEE SUBSTITUTE H1843-PCS60873-ST-127

Short Title: State Government Ethics Act - 1. (Public)

Sponsors:

Referred to:

May 10, 2006

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE STATE GOVERNMENT ETHICS ACT, TO CREATE THE STATE ETHICS COMMISSION, TO ESTABLISH ETHICAL STANDARDS FOR CERTAIN STATE PUBLIC OFFICERS, STATE EMPLOYEES, AND APPOINTEES TO NONADVISORY STATE BOARDS AND COMMISSIONS, TO REQUIRE PUBLIC DISCLOSURE OF ECONOMIC INTERESTS BY CERTAIN PERSONS IN THE EXECUTIVE, LEGISLATIVE, AND JUDICIAL BRANCHES, TO AMEND THE LOBBYING LAWS, AND TO MAKE CONFORMING CHANGES.

The General Assembly of North Carolina enacts:

PART I. ENACT THE STATE GOVERNMENT ETHICS ACT.

SECTION 1. The General Statutes are amended by adding a new Chapter to read:

"**Chapter 138A.**

"**State Government Ethics Act.**

"Article 1.

"General Provisions.

"**§ 138A-1. Title.**

This Chapter shall be known and may be cited as the 'State Government Ethics Act'.

"**§ 138A-2. Purpose.**

The people of North Carolina entrust public power to elected and appointed officials for the purpose of furthering the public, not private or personal, interest. To maintain the public trust, it is essential that government function honestly and fairly, free from all forms of impropriety, threats, favoritism, and undue influence. Elected and appointed

officials must maintain and exercise the highest standards of duty to the public in carrying out the responsibilities and functions of their positions. Acceptance of authority granted by the people to elected and appointed officials imposes a commitment of fidelity to the public interest, and the power so entrusted shall not be used to advance narrow interests for oneself or others. Self-interest, partiality, and prejudice have no place in decision making for the public good. Public officials must exercise their duties responsibly with skillful judgment and energetic dedication. Public officials must exercise discretion with sensitive information pertaining to public and private persons and activities. To maintain the integrity of North Carolina's State government, those citizens entrusted with authority must exercise it for the good of the public and treat every citizen with courtesy, attentiveness, and respect. Because many public officials serve on a part-time basis, it is inevitable that conflicts of interest and appearances of conflicts will occur. Often these conflicts are unintentional and slight, but at every turn those public officials who represent the people of this State must ensure that it is the interests of the people, and not their own, that are being served. Officials should be prepared to remove themselves immediately from decisions, votes, or processes where a conflict of interest exists. The State is committed to the responsible exercise of authority by persons of honor and goodwill in government, by adopting a stronger procedure to prevent the occurrence of conflicts of interest in government and to resolve conflicts when they do occur.

"**§ 138A-3. Definitions.**

The following definitions apply in this Chapter:

(1) Board. – Any State board, commission, council, committee, task force, authority, or similar public body, however denominated, created by statute or executive order, except for those public bodies that have only advisory authority, as determined and designated by the Commission.

(2) Business. – Any of the following for profit:

a. Association.
b. Corporation.
c. Enterprise.
d. Joint venture.
e. Organization.
f. Partnership.
g. Proprietorship.
h. Vested trust.
i. Every other business interest, including ownership or use of land for income.

(3) Business associate. – A partner, or member or manager of a limited liability company.

(4) Business with which associated. – A business in which the person or any member of the person's immediate family does any of the following:

a. Is an employee.

b. Holds a position as an associate, director, officer, business associate, or proprietor, irrespective of the amount of compensation received or the amount of the interest owned.

c. Owns a legal, equitable, or beneficial interest of ten thousand dollars ($10,000) or more or five percent (5%), whichever is less, in the business.

For purposes of this subdivision, the term 'business' shall not include a widely held investment fund, including a mutual fund, regulated investment company, or pension or deferred compensation plan, if all of the following apply:

a. The person or a member of the person's immediate family neither exercises nor has the ability to exercise control over the financial interests held by the fund.

b. The fund is publicly traded, or the fund's assets are widely diversified.

(5) Commission. – The State Ethics Commission.

(6) Committee. – The Legislative Ethics Committee as created in Part 3 of Article 14 of Chapter 120 of the General Statutes.

(7) Compensation. – Any money, thing of value, or economic benefit conferred on or received by any person in return for services rendered or to be rendered by that person or another. This term does not include campaign contributions properly received and, if applicable, reported as required by Article 22A of Chapter 163 of the General Statutes.

(8) Confidential information. – Information defined as confidential by the General Statutes.

(9) Constitutional officers of the State. – Officers whose offices are established by Article III of the North Carolina Constitution.

(10) Contract. – Any agreement, including sales and conveyances of real and personal property, and agreements for the performance of services.

New (11) Covered person. – A legislator, public servant, or judicial officer, as identified by the Commission under G.S. 138A-11.

(12) Economic interest. – Matters involving a business with which the person is associated or a nonprofit corporation or organization with which the person is associated.

(13) Employing entity. – For public servants, any of the following bodies of State government of which the public servant is an employee or a member, or over which the public servant exercises supervision: agencies, authorities, boards, commissions, committees, councils, departments, offices, institutions and their subdivisions, and constitutional offices of the State. For legislators, it is the house of which the legislator is a member. For judicial employees, it is the Chief Justice.

(14) Extended family. – Spouse, lineal descendant, lineal ascendant, sibling, spouse's lineal ascendant, spouse's lineal descendant, spouse's sibling, and the spouse of any of these persons.

(15) Filing person. – A person required to file a statement of economic interest under G. S. 138A-22.

(16) Gift. – Anything of monetary value given or received without valuable consideration by or from a lobbyist, lobbyist principal, or a person described under G.S. 138A-32(d)(1), (2), or (3). The following shall not be considered gifts under this subdivision:

a. Anything for which fair market value, or face value if shown, is paid by the covered person or legislative employee.

b. Commercially available loans made on terms not more favorable than generally available to the general public in the normal course of business if not made for the purpose of lobbying.

c. Contractual arrangements or commercial relationships or arrangements made in the normal course of business if not made for the purpose of lobbying.

d. Academic or athletic scholarships based on the same criteria as applied to the public.

e. Campaign contributions properly received and reported as required under Article 22A of Chapter 163 of the General Statutes.

f. Anything of value given or received as part of a business, civic, religious, fraternal, personal, or commercial relationship not related to the person's public service or position and not made for the purpose of lobbying.

(17) Honorarium. – Payment for services for which fees are not legally or traditionally required.

(18) Immediate family. – An unemancipated child of the covered person residing in the household and the covered person's spouse, if not legally separated. A member of a covered person's extended family shall also be considered a member of the immediate family if actually residing in the covered person's household.

(19) Judicial employee. – The director and assistant director of the Administrative Office of the Courts and any other person, designated by the Chief Justice, employed in the Judicial Department whose annual compensation from the State is sixty thousand dollars ($60,000) or more.

(20) Judicial officer. – Justice or judge of the General Court of Justice, district attorney, clerk of court, or any person elected or appointed to any of these positions prior to taking office.

(21) Legislative action. – As the term is defined in G.S. 120C-100.

(22) Legislative employee. – As the term is defined in G.S. 120C-100.

(23) Legislator. – A member or presiding officer of the General Assembly, or a person elected or appointed a member or presiding officer of the General Assembly before taking office.

(24) Lobbying. – As the term is defined in G.S. 120C-100.

(25) Nonprofit corporation or organization with which associated. – 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 family is a director, officer, governing board member, employee, or independent contractor as of December 31 of the preceding year.

(26) Official action. – Any decision, including administration, approval, disapproval, preparation, recommendation, the rendering of advice, and investigation, made or contemplated in any proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, investigation, charge, or rule making.

(27) Participate. – To take part in, influence, or attempt to influence, including acting through an agent or proxy.

(28) Political party. – Either of the two largest political parties in the State based on statewide voter registration at the applicable time.

(29) Person. – Any individual, firm, partnership, committee, association, corporation, business, or any other organization or group of persons acting together.

(30) Public event. – Any of the following:

a. An organized gathering of individuals open to the general public to which tickets may or may not be issued or sold and to which all legislators or legislative employees are invited to attend.

b. An organized gathering of a governmental body, the gathering of which is subject to the open meetings law, and to which a legislator or legislative employee is invited to attend along with the entire membership of the House of Representatives, Senate, a committee, a standing subcommittee, a county legislative delegation, a municipal legislative delegation, a joint committee, or a legislative caucus.

c. An organized gathering of a person to which a legislator or legislative employee is invited along with the entire membership of the House of Representatives, Senate, a committee, a standing subcommittee, a county legislative delegation, a municipal legislative delegation, a joint committee, or a legislative caucus and to which at least 10 individuals, other than the legislator or legislative employee, or the spouse of the legislator or legislative employee, actually attend, or to which all shareholders, employees, board

members, officers, members, or subscribers of the person who are located in a specific North Carolina office or county are notified and invited to attend.

d. An organized gathering of individuals open to the general public to which tickets may or may not be issued or sold and to which at least 10 public servants are invited to attend.

e. An organized gathering of a governmental body, the gathering of which is subject to the open meetings law, and to which at least 10 public servants are invited to attend.

f. An organized gathering of a person to which at least 10 public servants are invited to attend and to which at least 10 individuals, other than the public servant, or the public servant's spouse, actually attend, or to which all shareholders, employees, board members, officers, members, or subscribers of the person who are located in a specific North Carolina office or county are notified and invited to attend.

(31) Public servants. – All of the following:

a. Constitutional officers of the State and persons elected or appointed as constitutional officers of the State prior to taking office.

b. Employees of the Office of the Governor.

c. Heads of all principal State departments, as set forth in G.S. 143B-6, who are appointed by the Governor.

d. The chief deputy and chief administrative assistant of each person designated under sub-subdivision a. or c. of this subdivision.

e. Confidential assistants and secretaries as defined in G.S. 126-5(c)(2), to persons designated under sub-subdivision a., c., or d. of this subdivision.

f. Employees in exempt positions designated in accordance with G.S. 126-5(d)(1), (2), or (2a) and confidential secretaries to these individuals.

g. Any other employees or appointees in the principal State departments as may be designated by the Governor to the extent that the designation does not conflict with the State Personnel Act.

h. Judicial employees.

i. All voting members of boards, including ex officio members and members serving by executive, legislative, or judicial branch appointment.

j. For The University of North Carolina, the voting members of the Board of Governors of The University of North Carolina, the president, the vice-presidents, and the chancellors, the

vice-chancellors, and voting members of the boards of trustees of the constituent institutions.

k. For the Community College System, the voting members of the State Board of Community Colleges, the President and the chief financial officer of the Community College System, the president, chief financial officer, and chief administrative officer of each community college, and voting members of the boards of trustees of each community college.

l. Members of the Commission.

m. Persons under contract with the State working in or against a position included under this subdivision.

(32) Vested trust. – A trust, annuity, or other funds held by a trustee or other third party for the benefit of the covered person or a member of the covered person's immediate family. A vested trust shall not include a widely held investment fund, including a mutual fund, regulated investment company, or pension or deferred compensation plan, if:

a. The covered person or a member of the covered person's immediate family neither exercises nor has the ability to exercise control over the financial interests held by the fund; and

b. The fund is publicly traded, or the fund's assets are widely diversified.

"**§§ 138A-4 and 138A-5: [Reserved]**

"Article 2.

"State Ethics Commission.

"**§ 138A-6. State Ethics Commission established.**

There is established the State Ethics Commission.

"**§ 138A-7. Membership.**

(a) The Commission shall consist of eight members. Four members shall be appointed by the Governor, of whom no more than two shall be of the same political party. Four members shall be appointed by the General Assembly, two upon the recommendation of the Speaker of the House of Representatives, neither of whom may be of the same political party, and two upon the recommendation of the President Pro Tempore of the Senate, neither of whom may be of the same political party. Members shall serve for four-year terms, beginning January 1, 2007, except for the initial terms that shall be as follows:

(1) Two members appointed by the Governor shall serve an initial term of one year.

(2) Two members appointed by the General Assembly, one upon the recommendation of the Speaker of the House of Representatives and one upon the recommendation of the President Pro Tempore of the Senate, shall serve initial terms of two years.

(3) Two members appointed by the Governor shall serve initial terms of three years.

(4) Two members appointed by the General Assembly, one upon the recommendation of the Speaker of the House of Representatives and one member upon the recommendation of the President Pro Tempore of the Senate, shall serve initial terms of four years.

(b) Members shall be removed from the Commission only for misfeasance, malfeasance, or nonfeasance as determined by the Governor.

(c) Vacancies in appointments made by the Governor shall be filled by the Governor for the remainder of any unfulfilled term. Vacancies in appointments made by the General Assembly shall be filled in accordance with G.S. 120-122 for the remainder of any unfulfilled term.

(d) No member while serving on the Commission or employee while employed by the Commission shall:

(1) Hold or be a candidate for any other office or place of trust or profit under the United States, the State, or a political subdivision of the State.

(2) Hold office in any political party above the precinct level.

(3) Participate in or contribute to the political campaign of any covered person or any candidate for a public office as a covered person over which the Commission would have jurisdiction or authority.

(4) Otherwise be an employee of the State, a community college, or a local school system, or serve as a member of any other State board.

(e) The Governor shall annually appoint a member of the Commission to serve as chair of the Commission. The Commission shall elect a vice-chair annually from its membership. The vice-chair shall act as the chair in the chair's absence or if there is a vacancy in that position.

(f) Members of the Commission shall receive no compensation for service on the Commission but shall be reimbursed for subsistence, travel, and convention registration fees as provided under G.S. 138-5 or 138-7, as applicable.

"**§ 138A-8. Meetings and quorum.**

The Commission shall meet at least quarterly and at other times as called by its chair; in the case of a vacancy in the chair, by the vice-chair; or by four of its members. Five members of the Commission constitute a quorum.

"**§ 138A-9. Staff and offices.**

The Commission may employ professional and clerical staff, including an executive director. The Commission shall be located within the Department of Administration for administrative purposes only, but shall exercise all of its powers, including the power to employ, direct, and supervise all personnel, independently of the Secretary of Administration, and is subject to the direction and supervision of the Secretary of Administration only with respect to the management functions of coordinating and reporting.

"**§ 138A-10. Powers and duties.**

(a) In addition to other powers and duties specified in this Chapter, the Commission shall:

(1) Provide reasonable assistance to covered persons in complying with this Chapter.

(2) Develop readily understandable forms, policies, and procedures to accomplish the purposes of the Chapter.

(3) Identify and publish the names of persons subject to this Chapter as covered persons and legislative employees under G.S. 138A-11.

(4) Receive and review all statements of economic interests filed with the Commission by prospective and actual covered persons and evaluate whether (i) the statements conform to the law and the rules of the Commission, and (ii) the financial interests and other information reported reveals actual or potential conflicts of interest.

New (5) Investigate alleged violations against judicial officers and legislators in accordance with G.S. 138A-12.

(6) Investigate alleged violations against public servants in accordance with G.S. 138A-12.

(7) Render advisory opinions in accordance with G.S. 138A-13.

(8) Initiate and maintain oversight of ethics educational programs for public servants and their staffs, and legislators and legislative employees, consistent with G.S. 138A-14.

(9) Conduct a continuing study of governmental ethics in the State and propose changes to the General Assembly in the government process and the law as are conducive to promoting and continuing high ethical behavior by governmental officers and employees.

(10) Adopt rules to implement this Chapter, including those establishing ethical standards and guidelines to be employed and adhered to by public servants and legislative employees in attending to and performing their duties.

(11) Report annually to the General Assembly and the Governor on the Commission's activities and generally on the subject of public disclosure, ethics, and conflicts of interest, including recommendations for administrative and legislative action, as the Commission deems appropriate.

(12) Publish annually statistics on complaints filed with or considered by the Commission, including the number of complaints filed, the number of complaints referred under G.S. 138A-12(b), the number of complaints dismissed under G.S. 138A-12(c)(4), the number of complaints dismissed under G.S. 138A-12(g), the number of complaints referred for criminal prosecution under G.S. 138A-12, the number of complaints dismissed under G.S. 138A-12(i), the number of complaints referred for appropriate action under G.S. 138A-12(i) or G.S. 138A-12(l)(3), and the number of complaints pending action by the Commission.

New

(13) Perform other duties as may be necessary to accomplish the purposes of this Chapter.

(b) The Commission may authorize the Executive Director and other staff of the Commission to evaluate statements of economic interest on behalf of the Commission as authorized under subdivision (a)(4) of this section.

(c) In adopting rules under this Chapter, the Commission is exempt from the requirements of Article 2A of Chapter 150B of the General Statutes. Prior to adoption of rules, the Committee shall:

(1) Publish the proposed rules in the North Carolina Register at least 30 days prior to the adoption of the rule.

(2) Submit the rule and a notice of public hearing to the Codifier of Rules, and the Codifier of Rules shall publish the proposed rule and the notice of public hearing on the Internet to be posted within five business days.

(3) Notify persons on the mailing list maintained in accordance with G.S. 150B-21.2(d) and any other interested parties of its intent to adopt a rule and of the public hearing.

(4) Accept written comments on the proposed rule for at least 15 business days prior to adoption of the rule.

(5) Hold at least one public hearing on the proposed rule no less than five days after the rule and notice have been published.

A rule adopted under this section becomes effective the first day of the month following the month the final rule is submitted to the Codifier of Rules for entry into the North Carolina Administrative Code.

"**§ 138A-11. Identify and publish names of covered persons and legislative employees.**

The Commission shall identify and publish at least quarterly a listing of the names and positions of all persons subject to this Chapter as covered persons or legislative employees. This listing may be published electronically on a public Internet Web site maintained by the Commission.

"**§ 138A-12. Investigations by the Commission.**

(a) Jurisdiction. – The Commission may receive complaints alleging unethical conduct by covered persons and legislative employees and shall investigate complaints alleging unethical conduct by covered persons and legislative employees as set forth in this section.

(b) Institution of Proceedings. – On its own motion, in response to a signed and sworn complaint of any individual filed with the Commission, or upon the written request of any public servant or any person responsible for the hiring, appointing, or supervising of a public servant, the Commission shall conduct an investigation into any of the following:

(1) The application or alleged violation of this Chapter.

(2) The application or alleged violation of rules adopted in accordance with G.S. 138A-10.

(3) For legislators, the application of alleged violations of Part 1 of Article 14 of Chapter 120 of the General Statutes.

(4) An alleged violation of the criminal law by a covered person in the performance of that individual's official duties.

(5) An alleged violation of G.S. 126-14.

Allegations of violations of the Code of Judicial Conduct shall be referred to the Judicial Standards Commission without investigation.

(c) Complaint. –

(1) A sworn complaint filed under this Chapter shall state the name, address, and telephone number of the person filing the complaint, the name and job title or appointive position of the person against whom the complaint is filed, and a concise statement of the nature of the complaint and specific facts indicating that a violation of this Chapter or Chapter 120 of the General Statutes has occurred, the date the alleged violation occurred, and either (i) that the contents of the complaint are within the knowledge of the individual verifying the complaint, or (ii) the basis upon which the individual verifying the complaint believes the allegations to be true.

(2) Except as provided in subsection (d) of this section, a complaint filed under this Chapter must be filed within one year of the date the complainant knew or should have known of the conduct upon which the complaint is based.

(3) The Commission may decline to accept, refer, or investigate any complaint that does not meet all of the requirements set forth in subdivision (1) of this subsection, or the Commission may, in its sole discretion, request additional information to be provided by the complainant within a specified period of time of no less than seven business days.

(4) In addition to subdivision (3) of this subsection, the Commission may decline to accept, refer, or investigate a complaint if it determines that any of the following apply:

a. The complaint is frivolous or brought in bad faith.

b. The individuals and conduct complained of have already been the subject of a prior complaint.

c. The conduct complained of is primarily a matter more appropriately and adequately addressed and handled by other federal, State, or local agencies or authorities, including law enforcement authorities. If other agencies or authorities are conducting an investigation of the same actions or conduct involved in a complaint filed under this section, the Commission may stay its complaint investigation pending final resolution of the other investigation.

(5) The Commission shall send a copy of the complaint to the covered person who is the subject of the complaint within 30 days of the filing.

(d) Investigation of Complaints by the Commission. – The Commission shall investigate all complaints properly before the Commission in a timely manner. The

Commission shall initiate an investigation of a complaint within 60 days of the filing of the complaint. The Commission is authorized to initiate investigations upon request of any member of the Commission if there is reason to believe that a covered person or legislative employee has or may have violated this Chapter. There is no time limit on Commission-initiated complaint investigations under this section. In determining whether there is reason to believe that a violation has or may have occurred, a member of the Commission may take general notice of available information even if not formally provided to the Commission in the form of a complaint. The Commission may utilize the services of a hired investigator when conducting investigations.

(e) Investigation by the Commission of Matters Other Than Complaints. – The Commission may investigate matters concerning covered persons or legislative employees other than complaints properly before the Commission under subsection (b) of this section. For any investigation initiated under this subsection, the Commission may take any action it deems necessary or appropriate to further compliance with this Chapter, including the initiation of a complaint, the issuance of an advisory opinion under G.S. 138A-13, or referral to appropriate law enforcement or other authorities pursuant to subdivision (l)(1) of this section.

(f) Covered Person and Legislative Employees Cooperation With Investigation. – Covered persons and legislative employees shall promptly and fully cooperate with the Commission in any Commission-related investigation. Failure to cooperate fully with the Commission in any investigation shall be grounds for sanctions as set forth in G.S. 138A-45.

(g) Dismissal of Complaint After Preliminary Inquiry. – If the Commission determines at the end of its preliminary inquiry that (i) the individual who is the subject of the complaint is not a covered person or legislative employee subject to the Commission's jurisdiction and authority under this Chapter, or (ii) the complaint does not allege facts sufficient to constitute a violation of this Chapter, the Commission shall dismiss the complaint.

(h) Commission Investigations. – If at the end of its preliminary inquiry, the Commission determines to proceed with further investigation into the conduct of a covered person or legislative employee, the Commission shall provide written notice to the individual who filed the complaint and the covered person or legislative employee as to the fact of the investigation and the charges against the covered person or legislative employee. The covered person or legislative employee shall be given an opportunity to file a written response with the Commission.

(i) Action on Investigations. – The Commission shall investigate complaints to the extent necessary to either dismiss the complaint for lack of probable cause of a violation under this section, or:

(1) For public servants and legislative employees, decide to proceed with a hearing under subsection (j) of this section.

(2) For legislators, refer the complaint to the Committee.

(3) For judicial officers, refer the complaint to the Judicial Standards Commission for complaints against justices and judges, or to the senior resident superior court judge of the district or county for

complaints against district attorneys, or to the chief district court judge for the district or county for complaints against clerks of court.

(j) Hearing. –

(1) The Commission shall give full and fair consideration to all complaints received against a public servant or legislative employee. If the Commission determines that the complaint cannot be resolved without a hearing, or if the public servant or legislative employee requests a hearing, a hearing shall be held.

(2) The Commission shall send a notice of the hearing to the complainant, and the public servant or legislative employee. The notice shall contain the time and place for a hearing on the matter, which shall begin no less than 30 days and no more than 90 days after the date of the notice.

(3) The Commission shall make available to the public servant or legislative employee prior to a hearing all relevant information collected by the Commission in connection with its investigation of a complaint.

(4) At any hearing held by the Commission:

a. Oral evidence shall be taken only on oath or affirmation.

b. The hearing shall be held in closed session unless the public servant or legislative employee requests that the hearing be held in open session. In any event, the deliberations by the Commission on a complaint may be held in closed session.

c. The public servant or legislative employee being investigated shall have the right to present evidence, call and examine witnesses, cross-examine witnesses, introduce exhibits, and be represented by counsel.

(k) Settlement of Investigations. – The public servant or legislative employee who is the subject of the complaint and the staff of the Commission may meet by mutual consent before the hearing to discuss the possibility of settlement of the investigation or the stipulation of any issues, facts, or matters of law. Any proposed settlement of the investigation is subject to the approval of the Commission.

(l) Disposition of Investigations. – Except as permitted under subsections (g) and (i) of this section, after hearing, the Commission shall dispose of the matter in one or more of the following ways:

(1) If the Commission finds substantial evidence of an alleged violation of a criminal statute, the Commission shall refer the matter to the Attorney General for investigation and referral to the district attorney for possible prosecution.

(2) If the Commission finds that the alleged violation is not established by clear and convincing evidence, the Commission shall dismiss the complaint.

(3) If the Commission finds that the alleged violation of this Chapter is established by clear and convincing evidence, the Commission shall do one or more of the following:

a. Issue a private admonishment to the public servant or legislative employee and notify the employing entity, if applicable.
b. Refer the matter for appropriate action to the Governor and the employing entity that appointed or employed the public servant or of which the public servant is a member.
c. Refer the matter for appropriate action to the Chief Justice for judicial employees.
d. Refer the matter to the Principal Clerks of the House of Representatives and Senate of the General Assembly for constitutional officers of the State.
e. Refer the matter to the Legislative Services Commission for legislative employees.

(m) Notice of Dismissal. – Upon the dismissal of a complaint under this section, the Commission shall provide written notice of the dismissal to the individual who filed the complaint and the person against whom the complaint was filed. The Commission shall forward copies of complaints and notices of dismissal of complaints against legislators to the Committee, and against judicial officers to the Judicial Standards Commission for complaints against justices and judges, and the senior resident superior court judge of the district or county for complaints against district attorneys, or the chief district court judge of the district or county for complaints against clerks of court.

(n) Findings and Record. – The Commission shall render a written report of a violation of this Chapter made pursuant to complaints or the Commission's investigation. When a matter is referred under subsection (i) or (l) of this section, the Commission's report shall include detailed results of its investigation in support of the Commission's finding of a violation of this Chapter.

(o) Confidentiality. – Complaints and responses filed with the Commission and reports and other investigative documents and records of the Commission connected to an investigation under this section shall be confidential and not matters of public record, except when the covered person or legislative employee under inquiry requests in writing that the records and findings be made public prior to the time the employing entity imposes sanctions. At such time as public sanctions are imposed on a covered person, the complaint, response, and Commission's report to the employing entity shall be made public.

(p) Recommendations of Sanctions. – After referring a matter under subsection (l) of this section, if requested by the entity to which the matter was referred, the Commission may recommend sanctions or issue rulings as it deems necessary or appropriate to protect the public interest and ensure compliance with this Chapter. In recommending appropriate sanctions, the Commission may consider the following factors:

(1) The public servant's or legislative employee's prior experience in an agency or on a board and prior opportunities to learn the ethical standards for public servant or legislative employee as set forth in Article 4 of this Chapter, including those dealing with conflicts of interest.

(2) The number of ethics violations.
(3) The severity of the ethics violations.
(4) Whether the ethics violations involve the public servant's or legislative employee's financial interests or arise from an appearance of conflict of interest.
(5) Whether the ethics violations were inadvertent or intentional.
(6) Whether the public servant or legislative employee knew or should have known that the improper conduct was a violation of this Chapter.
(7) Whether the public servant or legislative employee has previously been advised or warned by the Commission.
(8) Whether the conduct or situation giving rise to the ethics violation was pointed out to the public servant in the Commission's Statement of Economic Interest evaluation letter issued under G.S. 138A-24(c).
(9) The public servant's or legislative employee's motivation or reason for the improper conduct or actions, including whether the action was for personal financial gain versus protection of the public interest.

In making recommendations under this subsection, if the Commission determines, after proper review and investigation, that sanctions are appropriate, the Commission may recommend any action it deems necessary to properly address and rectify any violation of this Chapter by a public servant or legislative employee, including removal of the public servant or legislative employee from the public servant's or legislative employee's State position. Nothing in this subsection is intended, and shall not be construed, to give the Commission any independent civil, criminal, or administrative investigative or enforcement authority over covered persons, or other State employees or appointees.

(q) Authority of Employing Entity. – Any action or failure to act by the Commission under this Chapter, except G.S. 138A-13, shall not limit any authority of any of the applicable employing entity to discipline the covered person or legislative employee.

(r) Continuing Jurisdiction. – The Commission shall have continuing jurisdiction to continue to investigate possible criminal violations of this Chapter for a period of one year following the date a person who was formerly a public servant or legislative employee ceases to be a public servant or legislative employee for any investigation that commenced prior to the date the public servant or legislative employee ceases to be a public servant or legislative employee.

(s) Subpoena Authority. – The Commission may petition the Superior Court of Wake County for the approval to issue subpoenas and subpoenas duces tecum as necessary to conduct investigations of alleged violations of this Chapter. The court shall authorize subpoenas under this subsection when the court determines the subpoenas are necessary for the enforcement of this Chapter. Subpoenas issued under this subsection shall be enforceable by the court through contempt powers. Venue shall be with the Superior Court of Wake County for any person covered by this Chapter, and personal jurisdiction may be asserted under G.S. 1-75.4.

(t) Reports. – The number of complaints referred under this section shall be reported under G.S. 138A-10(a)(11).

(u) Concurrent Jurisdiction. – Nothing in this section shall limit the jurisdiction of the Committee or the Judicial Standards Commission with regards to legislative or judicial misconduct, and jurisdiction under this section shall be concurrent with the jurisdiction of the Committee and the Judicial Standards Commission.

"**§ 138A-13. Advisory opinions.**

(a) At the request of any public servant or legislative employee, any individual who is responsible for the supervision or appointment of a person who is a public servant or legislative employee, legal counsel for any public servant, any ethics liaison under G.S. 138A-14, or any member of the Commission, the Commission shall render advisory opinions on specific questions involving the meaning and application of this Chapter and the public servant's or legislative employee's compliance therewith. The request shall be in writing, electronic or otherwise, and relate prospectively to real or reasonably anticipated fact settings or circumstances. The Commission shall issue advisory opinions having prospective application only. Reliance upon a requested written advisory opinion on a specific matter shall immunize the public servant or legislative employee, on that matter, from both of the following:

(1) Investigation by the Commission.

(2) Any adverse action by the employing entity.

(b) At the request of a legislator, the Commission shall render advisory opinions on specific questions involving the meaning and application of this Chapter and Part 1 of Article 14 of Chapter 120 of the General Statutes, and the legislator's compliance therewith. The request shall be in writing, electronic or otherwise, and relate prospectively to real or reasonably anticipated fact settings or circumstances. The Commission shall issue advisory opinions having prospective application only. Except as provided in this subsection, reliance upon a requested written advisory opinion on a specific matter shall immunize the legislator, on that matter, from both of the following:

(1) Investigation by the Committee.

(2) Any adverse action by the house of which the legislator is a member.

Any advisory opinion issued to a legislator under this subsection shall immediately be delivered to the chairs of the Committee. The immunity granted under this subsection shall not apply after the time the Committee modifies or overturns the advisory opinion of the Commission in accordance with G.S. 120-104.

(c) Staff to the Commission may issue advisory opinions under rules adopted by the Commission.

(d) The Commission shall interpret this Chapter by rules, and these interpretations are binding on all covered persons and legislative employees upon publication.

(e) The Commission shall publish its advisory opinions at least once a year. These advisory opinions shall be edited for publication purposes as necessary to protect the identities of the individuals requesting opinions.

(f) Except as provided under subsection (e) of this section, requests for advisory opinions, and advisory opinions issued under this section, are confidential and not public records.

(g) This section shall not apply to judicial officers.

"**§ 138A-14. Ethics education program.**

(a) The Commission shall develop and implement an ethics education and awareness program designed to instill in all covered persons, except judicial officers, and their immediate staffs, and legislative employees, a keen and continuing awareness of their ethical obligations and a sensitivity to situations that might result in real or potential conflicts of interest or appearances of conflicts of interest.

(b) The Commission shall make basic ethics education and awareness presentations to all public servants and their immediate staffs, upon their election, appointment, or hiring, and shall offer periodic refresher presentations as the Commission deems appropriate. Every public servant and the immediate staff of every public servant, shall participate in an ethics presentation approved by the Commission within six months of the person's election, reelection, appointment, or hiring, and shall attend refresher ethics education presentations at least every two years thereafter in a manner as the Commission deems appropriate.

(c) The Commission shall make basic ethics education and awareness presentations to all legislators and legislative employees upon their election, reelection, appointment, or employment and shall offer periodic refresher presentations as the Commission deems appropriate. Every legislator and legislative employee shall participate in an ethics presentation approved by the Commission within three months of the person's election, reelection, appointment, or employment in a manner as the Commission deems appropriate.

(d) Upon request, the Commission shall assist each agency in developing in-house education programs and procedures necessary or desirable to meet the agency's particular needs for ethics education, conflict identification, and conflict avoidance.

(e) Each agency head shall designate an ethics liaison who shall maintain active communication with the Commission on all agency ethical issues. The ethics liaison shall continuously assess and advise the Commission of any issues or conduct which might reasonably be expected to result in a conflict of interest and seek advice and rulings from the Commission as to their appropriate resolution.

(f) The Commission shall publish a newsletter containing summaries of the Commission's opinions, policies, procedures, and interpretive bulletins as issued from time to time. The newsletter shall be distributed to all covered persons and legislative employees. Publication under this subsection may be done electronically.

(g) The Commission shall assemble and maintain a collection of relevant State laws, rules, and regulations that set forth ethical standards applicable to covered persons. This collection shall be made available electronically as resource material to public servants, and ethics liaisons, upon request.

(h) As used in this section, "immediate staff" means those individuals who report directly to the public servant.

(i) This section shall not apply to judicial officers.

"§ 138A-15. Duties of heads of State agencies.

(a) The head of each State agency, including the chair of each board subject to this Chapter, shall take an active role in furthering ethics in public service and ensuring compliance with this Chapter. The head of each State agency and the chair of each board shall make a conscientious, good-faith effort to assist public servants within the agency or on the board in monitoring their personal, financial, and professional affairs to avoid taking any action that results in a conflict of interest or the appearance of a conflict.

(b) The head of each State agency, including the chair of each board subject to this Chapter, shall maintain familiarity with and stay knowledgeable of the reports, opinions, newsletters, and other communications from the Commission regarding ethics in general and the interpretation and enforcement of this Chapter. The head of each State agency and the chair of each board shall also maintain familiarity with and stay knowledgeable of the Commission's reports, evaluations, opinions, or findings regarding individual public servants in that person's agency or on that person's board, or under that person's supervision or control, including all reports, evaluations, opinions, or findings pertaining to actual or potential conflicts of interest.

(c) When an actual or potential conflict of interest is cited by the Commission under G.S. 138A-24(c) with regard to a public servant sitting on a board, the conflict shall be recorded in the minutes of the applicable board and duly brought to the attention of the membership by the board's chair as often as necessary to remind all members of the conflict and to help ensure compliance with this Chapter.

(d) The head of each State agency, including the chair of each board subject to this Chapter, shall periodically remind public servants under that person's authority of the public servant's duties to the public under the ethical standards and rules of conduct in this Chapter, including the duty of each public servant to continually monitor, evaluate, and manage the public servant's personal, financial, and professional affairs to ensure the absence of conflicts of interest or appearances of conflict.

(e) At the beginning of any official meeting of a board, the chair shall remind all members of their duty to avoid conflicts of interest and appearances of conflict under this Chapter. The chair also shall inquire as to whether there is any known conflict of interest or appearance of conflict with respect to any matters coming before the board at that time.

(f) The head of each State agency, including the chair of each board subject to this Chapter, shall ensure that legal counsel employed by or assigned to their agency or board are familiar with the provisions of this Chapter, including the Ethical Standards for Covered Persons set forth in Article 4 of this Chapter, and are available to advise public servants on the ethical considerations involved in carrying out their public duties in the best interest of the public. Legal counsel so engaged may consult with the Commission, seek the Commission's assistance or advice, and refer public servants and others to the Commission as appropriate.

(g) Taking into consideration the individual autonomy, needs, and circumstances of each agency and board, the head of each State agency, including the chair of each board subject to this Chapter, shall consider the need for the development and

implementation of in-house educational programs, procedures, or policies tailored to meet the agency's or board's particular needs for ethics education, conflict identification, and conflict avoidance. This includes the periodic presentation to all agency heads, their chief deputies or assistants, other public servants under their supervision or control, and members of boards, of the basic ethics education and awareness presentation outlined in G.S. 138A-14 and any other workshop or seminar program the agency head or board chair deems necessary in implementing this Chapter. Agency heads and board chairs may request reasonable assistance from the Commission in complying with the requirements of this subsection.

(h) As soon as reasonably practicable after the designation, hiring, or promotion of their chief deputies, assistants, or other public servants under their supervision or control, or learning of the appointment or election of other public servants to a board covered under this Chapter, all agency heads and board chairs shall (i) notify the Commission of such designation, hiring, promotion, appointment, or election and (ii) provide these public servants with copies of this Chapter and all applicable financial disclosure forms, if these materials and forms have not been previously provided to these public servants in connection with their designation, hiring, promotion, appointment, or election. In order to avoid duplication of effort, agency heads and board chairs shall coordinate this effort with the Commission's staff.

"**§§ 138A-16 through 20: [Reserved]**

"Article 3.

"Public Disclosure of Economic Interests.

"**§ 138A-21. Purpose.**

The purpose of disclosure of the financial and personal interests by covered persons is to assist covered persons and those persons who appoint, elect, hire, supervise, or advise them identify and avoid conflicts of interest and potential conflicts of interest between the covered person's private interests and the covered person's public duties. It is critical to this process that current and prospective covered persons examine, evaluate, and disclose those personal and financial interests that could be or cause a conflict of interest or potential conflict of interest between the covered person's private interests and the covered person's public duties. Covered persons must take an active, thorough, and conscientious role in the disclosure and review process, including having a complete knowledge of how the covered person's public position or duties might impact the covered person's private interests. Covered persons have an affirmative duty to provide any and all information that a reasonable person would conclude is necessary to carry out the purposes of this Chapter and to fully disclose any conflict of interest or potential conflict of interest between the covered person's public and private interests, but the disclosure, review, and evaluation process is not intended to result in the disclosure of unnecessary or irrelevant personal information.

"**§ 138A-22. Statement of economic interest; filing required.**

(a) Every covered person subject to this Chapter who is elected, appointed, or employed, including one appointed to fill a vacancy in elective office, except for public servants included under G.S. 138A-3(31)b., e., f., or g. whose annual compensation from the State is less than sixty thousand dollars ($60,000), shall file a statement of

economic interest with the Commission prior to the covered person's initial appointment, election, or employment and no later than March 15th of every year thereafter, except as otherwise filed under subsection (c) of this section. A prospective covered person required to file a statement under this Chapter shall not be appointed, employed, or receive a certificate of election, prior to submission by the Commission of the Commission's evaluation of the statement in accordance with this Article. The requirement for an annual filing under this subsection also shall apply to covered persons whose terms have expired but who continue to serve until the person's replacement is appointed. Once a statement of economic interest is properly completed and filed under this Article, the statement of economic interest does not need to be supplemented or refiled prior to the next due date set forth in this subsection.

(b) Notwithstanding subsection (a) of this section, persons hired by, and appointees of, constitutional officers of the State may file a statement of economic interest within 30 days after their appointments or employment when the appointment or employment is made during the first 60 days of the constitutional officer's initial term in that constitutional office.

(c) Notwithstanding subsection (a) of this section, public servants, under G.S. 138A-3(31)j. and k., who have submitted a statement of economic interest under subsection (a) of this section, may be hired, appointed, or elected provisionally prior to submission by the Commission of the Commission's evaluation of the statement in accordance with this Article, subject to dismissal or removal based on the Commission's evaluation.

(d) A candidate for an office subject to this Article shall file the statement of economic interest at the same place and in the same manner as the notice of candidacy for that office is required to be filed under G.S. 163-106, within 10 days of the filing deadline for the office the candidate seeks. A person who is nominated under G.S. 163-114 after the primary and before the general election, and a person who qualifies under G.S. 163-122 as an unaffiliated candidate in a general election, shall file a statement of economic interest with the county board of elections of each county in the senatorial or representative district. A person nominated under G.S. 163-114 shall file the statement within three days following the person's nomination, or not later than the day preceding the general election, whichever occurs first. A person seeking to qualify as an unaffiliated candidate under G.S. 163-122 shall file the statement of economic interest with the petition filed under that section. A person seeking to have write-in votes counted for the person in a general election shall file a statement of economic interest at the same time the candidate files a declaration of intent under G.S. 163-123. A candidate of a new party chosen by convention shall file a statement of economic interest at the same time that the president of the convention certifies the names of its candidates to the State Board of Elections under G.S. 163-98.

(e) The State Board of Elections shall provide for notification of the statement of economic interest requirements of this Article to be given to any candidate filing for nomination or election to those offices subject to this Article at the time of the filing of candidacy.

(f) Within 10 days of the filing deadline for office of a covered person, the executive director of the State Board of Elections shall send to the State Ethics Commission a list of the names and addresses of all candidates who have filed as candidates for offices as a covered person. A county board of election shall forward any statements of economic interest filed with the board under this section to the State Board of Elections. The executive director of the State Board of Elections shall forward a certified copy of the statements of economic interest to the Commission for evaluation upon its filing with the State Board of Elections under this section.

(g) The Commission shall issue forms to be used for the statement of economic interest and shall revise the forms from time to time as necessary to carry out the purposes of this Chapter. Except as otherwise set forth in this section and in G.S. 138A-15(h), upon notification by the employing entity, the Commission shall furnish to all other covered persons the appropriate forms needed to comply with this Article.

"**§ 138A-23. Statements of economic interest as public records.**

The statements of economic interest filed by prospective public servants under this Article for appointed or employed positions and written evaluations by the Commission of these statements are not public records until the prospective public servant is appointed or employed by the State. All other statements of economic interest and all other written evaluations by the Commission of those statements are public records.

"**§ 138A-24. Contents of statement.**

(a) Any statement of economic interest filed under this Article shall be on a form prescribed by the Commission and sworn to by the filing person. Answers must be provided to all questions. The form shall include the following information about the filing person and the filing person's immediate family:

(1) The name, home address, occupation, employer, and business of the person.

(2) A list of each asset and liability included in this subdivision of whatever nature (including legal, equitable, or beneficial interest) with a value of at least ten thousand dollars ($10,000) owned by the filing person and the filing person's immediate family. This list shall include the following:

a. All real estate located in the State owned wholly or in part by the filing person or the filing person's spouse, including descriptions adequate to determine the location by city and county of each parcel.

b. Real estate that is currently leased or rented to or from the State.

c. Personal property sold to or bought from the State within the preceding two years.

d. Personal property currently leased or rented to or from the State.

e. The name of each publicly owned company.

f. The name of each nonpublicly owned company or business entity, including interests in partnerships, limited partnerships,

joint ventures, limited liability companies, limited liability partnerships, and closely held corporations.

g. For each company or business entity listed under sub-subdivision f. of this subdivision, if known, a list of any other companies or business entities in which the company or business entity owns securities or equity interests exceeding a value of ten thousand dollars ($10,000).

h. For any company or business entity listed under sub-subdivisions f. and g. of this subdivision, list any company or business entity that has any material business dealings, contracts, or other involvement with the State, including a brief description of the business activity.

i. For a vested trust created, established, or controlled by the filing person of which the filing person or the members of the filing person's immediate family are the beneficiaries, the name and address of the trustee, a description of the trust, and the filing person's relationship to the trust.

j. A list of all liabilities, excluding indebtedness on the filing person's personal residence, by type of creditor and debtor.

k. A list of each source (not specific amounts) of income received during the previous year by business or industry type, including salary or wages, professional fees, honoraria, interest, dividends, capital gains, and business income.

l. A list of all nonpublicly owned businesses of which the person is an officer, employee, director, business associate, or owner. The list also shall indicate whether each nonpublicly owned business does business with or is regulated by the State, and the nature of the business done with the State.

m. A list of 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 family is a director, officer, governing board member, employee, or independent contractor as of December 31 of the preceding year, including a list of which of those nonprofit corporations or organizations do business with the State or receive State funds, and a brief description of the nature of the business, if known, or which with due diligence could reasonably be known.

n. An indication of whether the filing person, the filing person's employer, a member of the filing person's immediate family, or the immediate family member's employer is licensed or regulated by, or has a business relationship with, the board or employing entity with which the filing person is or will be

associated. This sub-subdivision does not apply to a legislator or a judicial officer.

o. A list of all gifts, and the sources of the gifts, of a value of more than two hundred dollars ($200.00) received during the 12 months preceding the reporting period under subsection (d) of this section from sources other than the person's extended family. The list required by this sub-subdivision shall not apply to gifts received by the filing person prior to the time the person filed as a candidate for office, as defined in G.S. 138A-22, or was appointed or employed as a covered person.

Lobbyist permitted gift

(3) If the filing person is a practicing attorney, an indication of whether the filing person, or the law firm with which the filing person is affiliated, earned legal fees during the past year in excess of ten thousand dollars ($10,000) from any of the following categories of legal representation:

a. Administrative law.
b. Admiralty.
c. Corporate law.
d. Criminal law.
e. Decedents' estates.
f. Environmental law.
g. Insurance law.
h. Labor law.
i. Local government law.
j. Negligence or other tort litigation.
k. Real property law.
l. Securities law.
m. Taxation.
n. Utilities regulation.

(4) Except for a filing person in compliance under subdivision (3) of this subsection, if the filing person is a licensed professional or provides consulting services, either individually or as a member of a professional association, a list of categories of business and the nature of services rendered, for which payment for services were charged or paid during the past year in excess of ten thousand dollars ($10,000).

New

(5) A list of the public servant's or the public servant's immediate family's memberships or other affiliations with, including offices held in, societies, organizations, or advocacy groups, pertaining to subject matter areas over which the public servant's agency or board may have jurisdiction. This subdivision does not apply to a legislator, a judicial officer, or that person's immediate family.

(6) A list of any felony convictions of the filing person.

(7) Any other information that is necessary either to carry out the purposes of this Chapter or to fully disclose any conflict of interest or potential

conflict of interest. If the filing person believes a potential for conflict exists, the filing person has a duty to inquire of the Commission as to that potential conflict. If the filing person believes a potential for conflict exists, the filing person has a duty to inquire of the Commission as to that potential conflict. If a filing person is uncertain of whether particular information is necessary, then the filing person shall consult the Commission for guidance.

(b) The Supreme Court, Legislative Ethics Committee, constitutional officers of the State, heads of principal departments, the Board of Governors of The University of North Carolina, State Board of Community Colleges, other boards, and the appointing authority or employing entity may require a filing person to file supplemental information in conjunction with the filing of that person's statement of economic interest. These supplemental filings requirements shall be filed with the Commission and included on the forms to be filed with the Commission. The Commission shall evaluate the supplemental forms as part of the statement of economic interest. The failure to file supplemental forms shall be subject to the provisions of G.S. 138A-25.

(c) Each statement of economic interest shall contain sworn certification by the filing person that the filing person has read the statement and that, to the best of the filing person's knowledge and belief, the statement is true, correct, and complete. The filing person's sworn certification also shall provide that the filing person has not transferred, and will not transfer, any asset, interest, or other property for the purpose of concealing it from disclosure while retaining an equitable interest therein.

(d) All information provided in the statement of economic interest shall be current as of the last day of December of the year preceding the date the statement of economic interest was due.

(e) The Commission shall prepare a written evaluation of each statement of economic interest relative to conflicts of interest and potential conflicts of interest. The Commission shall submit the evaluation to all of the following:

(1) The filing person who submitted the statement.

(2) The head of the agency in which the filing person serves.

(3) The Governor for gubernatorial appointees and employees in agencies under the Governor's authority.

(4) The Chief Justice for judicial officers and judicial employees.

(5) The appointing or hiring authority for those public servants not under the Governor's authority.

(6) The State Board of Elections for those filing persons who are elected.

"**§ 138A-25. Failure to file.**

(a) Within 30 days after the date due under G.S. 138A-22, the Commission shall notify persons who have failed to file or persons whose statement has been deemed incomplete. For a person currently serving as a covered person, the Commission shall notify the person that if the statement of economic interest is not filed or completed within 30 days of receipt of the notice of failure to file or complete, the filing person shall be subject to a fine as provided for in this section.

(b) Any filing person who fails to file or complete a statement of economic interest within 30 days of the receipt of the notice, required under subsection (a) of this section, shall be subject to a fine of two hundred fifty dollars ($250.00), to be imposed by the Commission.

(c) Failure by any filing person to file or complete a statement of economic interest within 60 days of the receipt of the notice, required under subsection (a) of this section, shall be deemed to be a violation of this Chapter and shall be grounds for disciplinary action under G.S. 138A-45.

"**§ 138A-26. Concealing or failing to disclose material information.**

A filing person who knowingly conceals or fails to disclose information that is required to be disclosed on a statement of economic interest under this Article shall be guilty of a Class 1 misdemeanor and shall be subject to disciplinary action under G.S. 138A-45.

"**§ 138A-27. Penalty for false or misleading information.**

A filing person who provides false or misleading information on a statement of economic interest as required under this Article knowing that the information is false or misleading is guilty of a Class H felony and shall be subject to disciplinary action under G.S. 138A-45.

"**§§ 138A-28 through 30: [Reserved]**

"Article 4.

"Ethical Standards for Covered Persons.

"**§ 138A-31. Use of public position for private gain.**

(a) Except as permitted under G.S. 138A-38, a covered person or legislative employee shall not knowingly use the covered person's or legislative employee's public position in an official action or legislative action that will result in financial benefit, direct or indirect, to the covered person or legislative employee, a member of the covered person's or legislative employee's extended family, or business with which the covered person or legislative employee is associated. The performance of usual and customary duties associated with the public position or the advancement of public policy goals or constituent services, without compensation, shall not constitute the use of public position for financial benefit. This subsection shall not apply to financial or other benefits derived by a covered person or legislative employee that the covered person or legislative employee would enjoy to an extent no greater than that which other citizens of the State would or could enjoy, or that are so remote, tenuous, insignificant, or speculative that a reasonable person would conclude under the circumstances that the covered person's or legislative employee's ability to protect the public interest and perform the covered person's or legislative employee's official duties would not be compromised.

(b) A covered person shall not mention or permit another person to mention the covered person's public position in nongovernmental advertising that advances the private interest of the covered person or others. The prohibition in this subsection shall not apply to political advertising, news stories, news articles, the inclusion of a covered person's position in a directory or biographical listing, or the charitable solicitation for a nonprofit business entity qualifying under 26 U.S.C. § 501(c)(3). Disclosure of a

covered person's position to an existing or prospective customer, supplier, or client is not considered advertising for purposes of this subsection when the disclosure could reasonably be considered material by the customer, supplier, or client.

(c) Notwithstanding G.S. 163-278.16A, no covered person shall use or permit the use of State funds for any advertisement or public service announcement in a newspaper, on radio, television, or the Internet, that contains that covered person's name, picture, or voice, except in case of State or national emergency and only if the announcement is reasonably necessary to the covered person's official function. This subsection shall not apply to fund-raising on behalf of and aired on public radio or public television.

"**§ 138A-32. Gifts.**

(a) A covered person or a legislative employee shall not knowingly, directly or indirectly, ask, accept, demand, exact, solicit, seek, assign, receive, or agree to receive anything of value for the covered person or legislative employee, or for another person, in return for being influenced in the discharge of the covered person's or legislative employee's official responsibilities, other than that which is received by the covered person or the legislative employee from the State for acting in the covered person's or legislative employee's official capacity.

(b) A covered person may not solicit for a charitable purpose any gift from any subordinate State employee. This subsection shall not apply to generic written solicitations to all members of a class of subordinates. Nothing in this subsection shall prohibit a covered person from serving as the honorary head of the State Employees Combined Campaign.

(c) No public servant, legislator, or legislative employee shall knowingly accept a gift, directly or indirectly, from a lobbyist or lobbyist principal as defined in G.S. 120C-100.

(d) No public servant shall knowingly accept a gift, directly or indirectly, from a person whom the public servant knows or has reason to know any of the following:

(1) Is doing or is seeking to do business of any kind with the public servant's employing entity.

(2) Is engaged in activities that are regulated or controlled by the public servant's employing entity.

(3) Has financial interests that may be substantially and materially affected, in a manner distinguishable from the public generally, by the performance or nonperformance of the public servant's official duties.

(e) Subsections (c) and (d) of this section shall not apply to any of the following:

(1) Food and beverages for immediate consumption in connection with public events where the food and beverages are generally provided to other attendees.

(2) Lodging, transportation, entertainment and recreation provided in connection with a public event by a chamber of commerce qualifying under 26 U.S.C. § 501(c)(6) to which all legislators are invited when all the things of monetary value are provided within the geographic area represented by the chamber of commerce.

(3) Informational materials relevant to the duties of the covered person or legislative employee.

(4) Reasonable actual expenses for food, registration, travel, and lodging of the covered person or legislative employee for a meeting at which the covered person or legislative employee participates in a panel or speaking engagement at the meeting related to the covered person's or legislative employee's duties and when expenses are incurred on the actual day of participation in the engagement or incurred within a 24-hour time period before or after the engagement. Reasonable travel expenses necessary to attend the meeting and payments for registration and lodging for the 24-hour time periods may be paid in advance. Nothing in this subdivision shall prevent a covered person or legislative employee from arriving before or staying beyond the 24-hour time period at his or her own expense.

New (5) Entertainment or recreation provided in connection with a public event sponsored by a charitable organization as defined under G.S. 1-539.11.

(6) Food, beverages, other items, and entertainment received by a public servant in connection with a state, national, or regional organization in which the person's agency is a member or the public servant is a member or participant by virtue of the person's public position, provided the food, beverages, other items, or entertainment are made available to other attendees and the entertainment is of an incidental character. or groups of attendees

(7) Food, beverages, other items, and entertainment received by a legislator or legislative employee in connection with a state, regional, or national legislative organization of which the General Assembly is a member or the legislator or legislative employee is a member or participant by virtue of the person's legislative position, provided the food, beverages, other items, or entertainment are made available to other attendees and the entertainment is of an incidental character.

(8) Food, beverages, other items, and entertainment received in connection with an educational conference or meeting, provided the food, beverages, other items, or entertainment are made available to other attendees and the entertainment is incidental to the principal agenda of the conference or meeting.

(9) A plaque or similar nonmonetary memento recognizing individual services in a field or specialty or to a charitable cause.

(10) Gifts accepted on behalf of the State for the benefit of the State.

(11) Anything generally made available or distributed to the general public or all other State employees, by lobbyists or lobbyist's principals.

(12) Gifts from the covered person's or legislative employee's extended family, or a member of the same household of the covered person or legislative employee.

(13) Gifts given to a public servant not otherwise subject to an exception under this subsection, where the gift is food and beverages, transportation, lodging, entertainment or related expenses associated with the public business of industry recruitment, promotion of international trade, or the promotion of travel and tourism, and the public servant is responsible for conducting the business on behalf of the State, provided all the following conditions apply:

a. The public servant did not solicit the gift, and the public servant did not accept the gift in exchange for the performance of the public servant's official duties.

b. The public servant reports electronically to the Commission within 30 days of receipt of the gift or of the date set for disclosure of public records under G.S. 132-6(d), if applicable. The report shall include a description and value of the gift and a description how the gift contributed to the public business of industry recruitment, promotion of international trade, or the promotion of travel and tourism. This report shall be posted to the Commission's public Web site.

c. A tangible gift, other than food or beverages, not otherwise subject to an exception under this subsection shall be turned over as State property to the Department of Commerce within 30 days of receipt, except as permitted under subsection (f) of this section.

(14) Gifts of personal property valued at less than one hundred dollars ($100.00) given to a public servant in the commission of the public servant's official duties if the gift is given to the public servant as a personal gift in another country as part of an overseas trade mission, and the giving and receiving of such personal gifts is considered a customary protocol in the other country.

(f) A prohibited gift that would constitute an expense appropriate for reimbursement by the public servant's employing entity if it had been incurred by the public servant personally shall be considered a gift accepted by or donated to the State, provided the public servant has been approved by the public servant's employing entity to accept or receive such things of value on behalf of the State. The fact that the employing entity's reimbursement rate for the type of expense is less than the value of a particular gift shall not render the gift prohibited.

(g) A prohibited gift shall be declined, returned, paid for at fair market value, or accepted and donated immediately to the State. Perishable food items of reasonable costs, received as gifts, shall be donated to charity, destroyed, or provided for consumption among the members and staff of the employing entity or the public.

(h) A covered person or legislative employee shall not accept an honorarium from a source other than the employing entity for conducting any activity where any of the following apply:

(1) The employing entity reimburses the covered person or legislative employee for travel, subsistence, and registration expenses.
(2) The employing entity's work time or resources are used.
(3) The activity would be considered official duty or would bear a reasonably close relationship to the covered person's or legislative employee's official duties.

An outside source may reimburse the employing entity for actual expenses incurred by a covered person or legislative employee in conducting an activity within the duties of the covered person or legislative employee, or may pay a fee to the employing entity, in lieu of an honorarium, for the services of the covered person or legislative employee. An honorarium permissible under this subsection shall not be considered a gift for purposes of subsection (c) of this section.

(i) Acceptance or solicitation of a gift in compliance with this section without corrupt intent shall not constitute a violation of the statutes related to bribery or solicitation of bribery under G.S. 14-217, 14-218, or 120-86.

"**§ 138A-33. Other compensation.**

A public servant or legislative employee shall not solicit or receive personal financial gain, other than that received by the public servant or legislative employee from the State, or with the approval of the employing entity, for acting in the public servant's or legislative employee's official capacity, or for advice or assistance given in the course of carrying out the public servant's or legislative employee's duties.

"**§ 138A-34. Use of information for private gain.**

A public servant or legislative employee shall not use or disclose nonpublic information gained in the course of, or by reason of, the public servant's or legislative employee's official responsibilities in a way that would affect a personal financial interest of the public servant or legislative employee, a member of the public servant's or legislative employees' extended family, or a person with whom or business with which the public servant or legislative employee is associated. A public servant or legislative employee shall not improperly use or disclose any confidential information not a public record.

"**§ 138A-35. Other rules of conduct.**

(a) A public servant shall make a due and diligent effort before taking any action, including voting or participating in discussions with other public servants on a board on which the public servant also serves, to determine whether the public servant has a conflict of interest. If the public servant is unable to determine whether or not a conflict of interest may exist, the public servant has a duty to inquire of the Commission as to that conflict.

(b) A public servant shall continually monitor, evaluate, and manage the public servant's personal, financial, and professional affairs to ensure the absence of conflicts of interest.

(c) A public servant shall obey all other civil laws, administrative requirements, and criminal statutes governing conduct of State government applicable to appointees and employees.

"**§ 138A-36. Public servant participation in official actions.**

(a) Except as permitted by subsection (d) of this section and under G.S. 138A-38, no public servant acting in that capacity, authorized to perform an official action requiring the exercise of discretion, shall knowingly participate in an official action by the employing entity if the public servant, a member of the public servant's extended family, or a business with which the public servant is associated, has an economic interest in, or a reasonably foreseeable benefit from, the matter under consideration, which would impair the public servant's independence of judgment or from which it could reasonably be inferred that the interest or benefit would influence the public servant's participation in the official action. A potential benefit includes a detriment to a business competitor of (i) the public servant, (ii) a member of the public servant's extended family, or (iii) a business with which the public servant is associated.

(b) A public servant described in subsection (a) of this section shall abstain from taking any verbal or written action in furtherance of the official action. The public servant shall submit in writing to the employing entity the reasons for the abstention. When the employing entity is a board, the abstention shall be recorded in the employing entity's minutes.

(c) A public servant shall take appropriate steps, under the particular circumstances and considering the type of proceeding involved, to remove himself or herself, to the extent necessary to protect the public interest and comply with this Chapter, from any proceeding in which the public servant's impartiality might reasonably be questioned due to the public servant's familial, personal, or financial relationship with a participant in the proceeding. A participant includes (i) an owner, shareholder, business associate, employee, agent, officer, or director of a business, organization, or group involved in the proceeding, or (ii) an organization or group that has petitioned for rule making or has some specific, unique, and substantial interest in the proceeding. Proceedings include quasi-judicial proceedings and quasi-legislative proceedings. A personal relationship includes one in a leadership or policy-making position in a business, organization, or group.

(d) If a public servant is uncertain whether the relationship described in subsection (c) of this section justifies removing the public servant from the proceeding under subsection (c) of this section, the public servant shall disclose the relationship to the person presiding over the proceeding and seek appropriate guidance. The presiding officer, in consultation with legal counsel if necessary, shall then determine the extent to which the public servant will be permitted to participate. If the affected public servant is the person presiding, then the vice-chair or any other substitute presiding officer shall make the determination. A good-faith determination under this subsection of the allowable degree of participation by a public servant is presumptively valid and only subject to review under G.S. 138A-12 upon a clear and convincing showing of mistake, fraud, abuse of discretion, or willful disregard of this Chapter.

"**§ 138A-37. Legislator participation in official actions.**

(a) Except as permitted under G.S. 138A-38, no legislator shall knowingly participate in a legislative action if the legislator, a member of the legislator's extended family, the legislator's client, or a business with which the legislator is associated, has an economic interest in, or may reasonably and foreseeably benefit from the action, if

after considering whether the legislator's judgment would be substantially influenced by the interest and considering the need for the legislator's particular contribution, including special knowledge of the subject matter to the effective functioning of the legislature, the legislator concludes that an actual economic interest does exist which would impair the legislator's independence of judgment. A potential benefit includes a detriment to a business competitor of (i) the legislator, (ii) a member of the legislator's extended family, or (iii) a business with which the legislator is associated. The legislator shall submit in writing to the principal clerk of the house of which the legislator is a member the reasons for the abstention from participation in the legislative matter.

(b) If the legislator has a material doubt as to whether the legislator should act, the legislator may submit the question for an advisory opinion to the State Ethics Commission in accordance with G.S. 138A-13 or the Legislative Ethics Committee in accordance with G.S. 120-104.

"**§ 138A-38. Permitted participation exception.**

Notwithstanding G.S. 138A-36 and G.S. 138A-37, a covered person may participate in an official action or legislative action under any of the following circumstances except as specifically limited:

(1) The only interest or reasonably foreseeable benefit that accrues to the covered person, the covered person's extended family, or business with which the covered person is associated as a member of a profession, occupation, or general class, is no greater than that which could reasonably be foreseen to accrue to all members of that profession, occupation, or general class.

(2) Where an official or legislative action affects or would affect the covered person's compensation and allowances as a covered person.

(3) Before the covered person participated in the official or legislative action, the covered person requested and received from the Commission a written advisory opinion that authorized the participation. In authorizing the participation under this subsection, the Commission shall consider the need for the legislator's particular contribution, such as special knowledge of the subject matter, to the effective functioning of the General Assembly.

(4) Before participating in an official action, a public servant made full written disclosure to the public servant's employing entity which then made a written determination that the interest or benefit would neither impair the public servant's independence of judgment nor influence the public servant's participation in the official action. The employing entity shall file a copy of that written determination with the Commission.

(5) When action is ministerial only and does not require the exercise of discretion.

(6) When a public or legislative body records in its minutes that it cannot obtain a quorum in order to take the official or legislative action because the covered person is disqualified from acting under this

section, the covered person may be counted for purposes of a quorum, but shall otherwise abstain from taking any further action.

(7) When a public servant notifies, in writing, the Commission that the public servant judicial employee, or someone whom the public servant appoints to act in the public servant's stead, or both, are the only individuals having legal authority to take an official action, and the public servant discloses in writing the circumstances and nature of the conflict of interest.

"**§ 138A-39. Disqualification to serve.**

(a) Within 30 days of notice of the Commission's determination that a public servant has a disqualifying conflict of interest, the public servant shall eliminate the interest that constitutes the disqualifying conflict of interest or resign from the public position.

(b) Failure by a public servant to comply with subsection (a) of this section is a violation of this Chapter for purposes of G.S. 138A-45.

(c) A decision under this section shall be considered a final decision for contested case purposes under Article 3 of Chapter 150B of the General Statutes.

(d) As used in this section, a disqualifying conflict of interest is a conflict of interest of such significance that the conflict of interest would prevent a public servant from fulfilling a substantial function or portion of the public servant's public duties.

"**§ 138A-40. Employment and supervision of members of covered person's extended family.**

A covered person or legislative employee shall not cause the employment, appointment, promotion, transfer, or advancement of an extended family member of the covered person to a State office, or a position to which the covered person supervises or manages, except for positions at the General Assembly as permitted by the Legislative Services Commission. A public servant or legislative employee shall not supervise, manage, or participate in an action relating to the discipline of a member of the public servant's extended family, except as specifically authorized by the public servant's employing entity.

"**§ 138A-41. Other ethics standards.**

Nothing in this Chapter shall prevent the Supreme Court, the Legislative Ethics Committee, the Legislative Services Commission, constitutional officers of the State, heads of principal departments, the Board of Governors of The University of North Carolina, State Board of Community Colleges, or other boards from adopting additional or supplemental ethics standards applicable to that public agency's operations.

"**§§ 138A-42 through 44: [Reserved]**

"Article 5.

"Violation Consequences.

"**§ 138A-45. Violation consequences.**

(a) Violation of this Chapter by any covered person or legislative employee is grounds for disciplinary action. Except as specifically provided in Article 3 of this Chapter and for perjury under G.S. 138A-12 and G.S. 138A-24, no criminal penalty shall attach for any violation of this Chapter.

(b) The willful failure of any public servant serving on a board to comply with this Chapter is misfeasance, malfeasance, or nonfeasance. In the event of misfeasance, malfeasance, or nonfeasance, the offending public servant serving on a board is subject to removal from the board of which the public servant is a member. For appointees of the Governor and members of the Council of State, the appointing authority may remove the offending public servant. For appointees of the Speaker of the House of Representatives or of the General Assembly made by the House of Representatives upon the recommendation of the Speaker of the House of Representatives, the Speaker of the House of Representatives may remove the offending public servant. For appointees of the President Pro Tempore of the Senate or of the General Assembly made by the Senate upon the recommendation of the President Pro Tempore of the Senate, the President Pro Tempore of the Senate may remove the offending public servant. For public servants elected to a board by either the Senate or House of Representatives, the electing house of the General Assembly shall exercise the discretion of whether to remove the offending public servant. For all other appointees, the Commission shall exercise the discretion of whether to remove the offending public servant.

(c) The willful failure of any public servant serving as a State employee to comply with this Chapter is a violation of a written work order, thereby permitting disciplinary action as allowed by the law, including termination from employment. For employees of State departments headed by a member of the Council of State, the appropriate member of the Council of State shall make all final decisions on the manner in which the offending public servant shall be disciplined. For public servants who are judicial employees, the Chief Justice shall make all final decisions on the matter in which the offending judicial employee shall be disciplined. For legislative employees, the Legislative Services Commission shall make or refer to the hiring authority all final decisions on the matter in which the offending legislative employee shall be disciplined. For public servants appointed or elected for The University of North Carolina or the Community Colleges System, the appointing or electing authority shall make all final decisions on the matter in which the offending public servant shall be disciplined. For all other public servants serving as a State employee, the Governor shall make all final decisions on the manner in which the offending public servant shall be disciplined.

(d) The willful failure of any constitutional officer of the State to comply with this Chapter is malfeasance in office for purposes of G.S. 123-5.

(e) The willful failure of a legislator to comply with this Chapter is grounds for sanctions under G.S. 120-103.1.

(f) Nothing in this Chapter affects the power of the State to prosecute any person for any violation of the criminal law.

(g) The State Ethics Commission may seek to enjoin violations of G.S. 138A-34."

SECTION 2.(a) G.S. 150B-1(d) is amended by adding a new subdivision to read:

"(14) The State Ethics Commission."

PART II. AMEND LEGISLATIVE ETHICS ACT.

SECTION 3. Article 7 of Chapter 120 of the General Statutes is amended by adding the following new section to read:

"**§ 120-32.6. Certain employment authority.**

G.S. 114-2.3 and G.S. 147-17 shall not apply to the General Assembly."

SECTION 4. G.S. 120-85, 120-87(b), 120-88, and Part II of Article 14 of Chapter 120 of the General Statutes are repealed.

SECTION 5. Part 1 of Article 14 of Chapter 120 is amended by adding a new section to read:

"**§ 120-85.1. Definitions.**

As used in this Article, the following terms mean:

(1) Business with which associated. – As defined in G.S. 138A-3.

(2) Confidential information. – As defined in G.S. 138A-3.

(3) Economic interest. – As defined in G.S. 138A-3.

(4) Immediate family. – As defined in G.S. 138A-3.

(5) Legislator. – A member or presiding officer of the General Assembly.

(6) Nonprofit corporation or organization with which associated. – As defined in G.S. 138A-3.

(7) Vested trust. – As defined in G.S. 138A-3."

SECTION 6. G.S. 120-86 reads as rewritten:

"**§ 120-86. Bribery, etc.**

(a) No person shall offer or give to a legislator or a member of a legislator's immediate ~~household,~~family, or to a business with which the legislator is associated, and no legislator shall solicit or receive, anything of monetary value, including a gift, favor or service or a promise of future employment, based on any understanding that the legislator's vote, official actions or judgment would be influenced thereby, or where it could reasonably be inferred that the thing of value would influence the legislator in the discharge of the legislator's duties.

(b) It shall be unlawful for the partner, client, customer, or employer of a legislator or the agent of that partner, client, customer, or employer, directly or indirectly, to threaten economically that legislator with the intent to influence the legislator in the discharge of the legislator's duties.

(b1) It shall be unlawful for any person, directly or indirectly, to threaten economically another person in order to compel the threatened person to attempt to influence a legislator in the discharge of the legislator's duties.

(c) It shall be unethical for a legislator to contact the partner, client, customer, or employer of another legislator if the purpose of the contact is to cause the partner, client, customer, or employer, directly or indirectly, to threaten economically that legislator with the intent to influence that legislator in the discharge of the legislator's duties.

~~(d) For the purposes of this section, the term "legislator" also includes any person who has been elected or appointed to the General Assembly but who has not yet taken the oath of office.~~

(e) Violation of subsection (a), (b), or (b1) is a Class F felony. Violation of subsection (c) is not a crime but is punishable under ~~G.S. 120-103.~~G.S. 120-103.1."

SECTION 7. G.S. 120-99(a) reads as rewritten:

"(a) The Legislative Ethics Committee is created ~~to~~ and shall consist of ~~ten~~ twelve members, ~~five~~ six Senators appointed by the President Pro Tempore of the Senate, among them – ~~two~~ three from a list of ~~four~~ six submitted by the Majority Leader and ~~two~~ three from a list of ~~four~~ six submitted by the Minority Leader, and ~~five~~ six members of the House of Representatives appointed by the Speaker of the House, among them – ~~two~~ three from a list of ~~four~~ six submitted by the Majority Leader and ~~two~~ three from a list of ~~four~~ six submitted by the Minority Leader."

SECTION 8. G.S. 120-99(c) is repealed.

SECTION 9. G.S. 120-101 reads as rewritten:

"**§ 120-101. Quorum; expenses of members.**

(a) ~~Six~~ Eight members constitute a quorum of the Committee. A vacancy on the Committee does not impair the right of the remaining members to exercise all the powers of the Committee.

(b) The members of the Committee, while serving on the business of the Committee, are performing legislative duties and are entitled to the subsistence and travel allowances to which members of the General Assembly are entitled when performing legislative duties."

SECTION 10. G.S. 120-102 reads as rewritten:

"**§ 120-102. Powers and duties of Committee.**

(a) In addition to the other powers and duties specified in this Article, the Committee ~~has the following powers and duties~~may:

~~(1) To prescribe forms for the statements of economic interest and other reports required by this Article, and to furnish these forms to persons who are required to file statements or reports.~~

~~(2) To receive and file any information voluntarily supplied that exceeds the requirements of this Article.~~

~~(3) To organize in a reasonable manner statements and reports filed with it and to make these statements and reports available for public inspection and copying during regular office hours. Copying facilities shall be made available at a charge not to exceed actual cost.~~

~~(4) To preserve statements and reports filed with the Committee for a period of 10 years from the date of receipt. At the end of the 10 year period, these documents shall be destroyed.~~

(5) ~~To prepare a list of ethical principles and guidelines to be used by each legislator in determining his role in supporting or opposing specific types of legislation, and to advise each General Assembly committee of specific danger areas where conflict of interest may exist and to suggest rules of conduct that should be adhered to by committee members in order to avoid conflict.~~Prepare a list of ethical principles and guidelines to be used by legislators and legislative employees to identify potential conflicts of interest and prohibited behavior, and to suggest rules of conduct that shall be adhered to by legislators and legislative employees.

(5a) Advise each General Assembly committee of specific danger areas where conflicts of interest may exist and to suggest rules of conduct that should be adhered to by committee members in order to avoid conflict.

(6) ~~To advise~~Advise General Assembly members or render written opinions if so requested by the member about questions of ethics or possible points of conflict and suggested standards of conduct of members upon ethical points raised.

(6a) Review, modify or overrule advisory opinions issued to legislators by the State Ethics Commission under G.S. 138A-13.

(7) ~~To propose~~Propose rules of legislative ethics and conduct. The rules, when adopted by the House of Representatives and the Senate, shall be the standards adopted for that term.

(8) Upon receipt of information that a legislator owes money to the State and is delinquent in making repayment of such obligation, ~~to~~ investigate and dispose of the matter according to the terms of this Article.

(9) Investigate alleged violations in accordance with G.S. 120-103.1 and hire separate legal counsel, through the Legislative Services Commission, for these purposes.

(10) Adopt rules to implement this Article.

(11) Perform other duties as may be necessary to accomplish the purposes of this Article.

(b) 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. Notwithstanding any other law, every State agency, local governmental agency, and units and subdivisions thereof shall make available to the Committee any documents, records, data, statements or other information, except tax returns or information relating thereto, which the Committee designates as being necessary for the exercise of its powers and duties."

SECTION 11. G.S. 120-103 is repealed.

SECTION 12. Part III of Article 14 of Chapter 120 is amended by adding a new section to read:

"**§ 120-103.1. Investigations by the Committee.**

(a) Institution of Proceedings. – On its own motion, or upon receipt of a referral of a complaint from the State Ethics Commission under Chapter 138A of the General Statutes, the Committee shall conduct an investigation into any of the following:

(1) The application or alleged violation of Chapter 138A of the General Statutes and Part 1 of this Article.

(2) The application or alleged violation of rules adopted in accordance with G.S. 120-102.

(3) The alleged violation of the criminal law by a legislator while acting in the legislator's official capacity as a participant in the lawmaking process.

(b) Complaint. –

(1) The Committee may, in its sole discretion, request additional information to be provided by the complainant within a specified period of time of no less than seven business days.

(2) The Committee may decline to accept or further investigate a complaint if it determines that any of the following apply:

a. The complaint is frivolous or brought in bad faith.

b. The individuals and conduct complained of have already been the subject of a prior complaint.

c. The conduct complained of is primarily a matter more appropriately and adequately addressed and handled by other federal, State, or local agencies or authorities, including law enforcement authorities. If other agencies or authorities are conducting an investigation of the same actions or conduct involved in a complaint filed under this section, the Committee may stay its complaint investigation pending final resolution of the other investigation.

(3) The Committee shall send a notice of the initiation of an investigation under this section to the legislator who is the subject of the complaint within 10 days of the date of the decision to initiate the investigation.

(c) Investigation of Complaints by the Committee. – The Committee shall investigate all complaints properly before the Committee in a timely manner. Within 60 days of the referral of the complaint with the Committee, the Committee shall refer the complaint for hearing in accordance with subsection (i) of this section, initiate an investigation of a complaint or dismiss the complaint, or the complaint shall then become a public record. In determining whether there is reason to believe that a violation has or may have occurred, a member of the Committee can take general notice of available information even if not formally provided to the Committee in the form of a complaint. The Committee may utilize the services of a hired investigator when conducting investigations.

(d) On a referral from the State Ethics Commission, the Committee may:

(1) Make recommendations to the house in which the legislator who is the subject of the complaint is a member without further investigation.

(2) Conduct further investigations and hearings under this section.

(e) Investigation by the Committee of Matters Other Than Complaints. – The Committee may investigate matters other than complaints properly before the Committee under subsection (a) of this section. For any investigation initiated under this subsection, the Committee may take any action it deems necessary or appropriate to further compliance with this Article, including the initiation of a complaint, the issuance of an advisory opinion under G.S. 120-104, or referral to appropriate law enforcement or other authorities pursuant to subsection (j)(2) of this section.

(f) Legislator Cooperation with Investigation. – Legislators shall promptly and fully cooperate with the Committee in any Committee-related investigation. Failure to cooperate fully with the Committee in any investigation shall be grounds for sanctions under this section.

(g) Dismissal of Complaint after Preliminary Inquiry. – If the Committee determines at the end of its preliminary inquiry that the complaint does not allege facts sufficient to constitute a violation of matters over which the Committee has jurisdiction as set forth in subsection (a) of this section, the Committee shall dismiss the complaint and provide written notice of the dismissal to the individual who filed the complaint and the legislator against whom the complaint was filed.

(h) Notice. – If at the end of its preliminary inquiry the Committee determines to proceed with further investigation into the conduct of a legislator, the Committee shall provide written notice to the individual who filed the complaint and the legislator as to the fact of the investigation and the charges against the legislator. The legislator shall be given an opportunity to file a written response with the Committee.

(i) Hearing. –

(1) The Committee shall give full and fair consideration to all complaints and responses received. If the Committee determines that the complaint cannot be resolved without a hearing, or if the legislator requests a public hearing, a hearing shall be held.

(2) The Committee shall send a notice of the hearing to the complainant and the legislator. The notice shall contain the time and place for a hearing on the matter, which shall begin no less than 30 days and no more than 90 days after the date of the notice.

(3) At any hearing held by the Committee:

a. Oral evidence shall be taken only on oath or affirmation.

b. The hearing shall be held in closed session unless the legislator requests that the hearing be held in open session. In any event, the deliberations by the Committee on a complaint may be held in closed session.

c. The legislator being investigated shall have the right to present evidence, call and examine witnesses, cross-examine witnesses, introduce exhibits, and be represented by counsel.

(j) Disposition of Investigations. – Except as permitted under subsection (g) of this section, after the hearing the Committee shall dispose of a matter before the Committee under this section, in any of the following ways:

(1) If the Committee finds that the alleged violation is not established by clear and convincing evidence, the Committee shall dismiss the complaint.

(2) If the Committee finds that the alleged violation is established by clear and convincing evidence, the Committee shall do one or more of the following:

a. Issue a public or private admonishment to the legislator.

b. Refer the matter to the Attorney General for investigation and referral to the district attorney for possible prosecution or the appropriate house for appropriate action, or both, if the Committee finds substantial evidence of a violation of a criminal statute.

c. Refer the matter to the appropriate house for appropriate action, which may include censure and expulsion, if the Committee finds substantial evidence of a violation of this Article or other unethical activities.

(3) If the Committee issues an admonishment as provided in subdivision (2)a. of this subsection, the legislator affected may, upon written request to the Committee, have the matter referred as provided under subdivision (2)c. of this subsection.

(k) Effect of Dismissal or Private Admonishment. – In the case of a dismissal or private admonishment, the Committee shall retain its records or findings in confidence, unless the legislator under inquiry requests in writing that the records and findings be made public. If the Committee later finds that a legislator's subsequent unethical activities were similar to and the subject of an earlier private admonishment, then the Committee may make public the earlier admonishment and the records and findings related to it.

(l) Confidentiality. – Except as provided under subsection (c) of this section, the complaint, response, records and findings of the Committee shall be confidential and not matters of public record, except when the legislator under inquiry requests in writing that the complaint, response, records and findings be made public prior to the time the Committee recommends sanctions. At such time as the Committee recommends sanctions to the house of which the legislator is a member, the complaint, response and Committee's report to the house shall be made public.

(m) Any action or lack of action by the Committee under this section shall not limit the right of each house of the General Assembly to discipline or to expel its members."

SECTION 13. G.S 120-104 reads as rewritten:

"**§ 120-104. Advisory opinions.**

(a) At the request of any member of the General Assembly, the Committee shall render advisory opinions on specific questions involving legislative ethics. ~~These advisory opinions, edited as necessary to protect the identity of the legislator requesting the opinion, shall be published periodically by the Committee.~~

(b) The Committee shall accept and review advisory opinions issued to legislators by the State Ethics Commission under G.S. 138A-13. The Committee may modify or overrule the advisory opinions issued to legislators by the State Ethics Commission and the opinion of the Committee shall control. The Committee shall provide the Commission with the advisory opinion modified or overruled by the Committee, and the Commission shall publish the Committee's opinion under G.S. 138A-13(e). The failure of the Committee to modify or overrule an advisory opinion issued to a legislator by the State Ethics Commission shall constitute ratification

of the State Ethics Commission's advisory opinion for purposes of the immunity granted under G.S. 138A-13(a).

(c) Staff to the Committee may issue informal, nonbinding advisory opinions under rules adopted by the Committee.

(d) The Committee may interpret Chapter 138A of the General Statutes as it applies to legislators by rules, and these interpretations are binding on all legislators upon publication.

(e) The Committee shall publish its advisory opinions issued separately from the State Ethics Commission at least once a year. These advisory opinions shall be edited for publication purposes as necessary to protect the identities of the individuals requesting opinions.

(f) Except as provided under subsection (e) of this section, requests for advisory opinions, advisory opinions issued under this section, and advisory opinions received from the State Ethics Commission, are confidential and not matters of public record."

SECTION 14. G.S. 120-105 reads as rewritten:

"**§ 120-105. Continuing study of ethical questions.**

The Committee shall conduct continuing studies of questions of legislative ethics including revisions and improvements of this Article as well as ~~sections to cover the administrative branch of government and~~ Chapter 138A of the General Statutes. The Committee shall report to the General Assembly from time to time recommendations for amendments to the statutes and legislative rules which the Committee deems desirable in promoting, maintaining and effectuating high standards of ethics in the legislative branch of State government."

SECTION 15. G.S. 143B-350 reads as rewritten:

"**§ 143B-350. Board of Transportation – organization; powers and duties, etc.**

...

(i) Disclosure of Contributions. – Any person serving on the Board of Transportation or as Secretary of Transportation on December 1, 1998, shall disclose on that date any contributions the person or the person's immediate family made to the political campaign of the appointing Governor in the two years preceding December 1, 1998. A person appointed to the Board of Transportation and a person appointed as Secretary of Transportation after December 1, 1998, shall disclose at the time the appointment of the person is officially made public any contributions the person or the person's immediate family made to the political campaign of the appointing Governor in the two years preceding the date of appointment. The term "immediate family", as used in this subsection, means a person's spouse, children, parents, brothers, and sisters. Disclosure forms shall be filed with the ~~Governor or the Governor's designee and in a manner as prescribed by the Governor.~~ State Ethics Commission as a supplemental filing to the Statement of Economic Interest filed under Article 3 of Chapter 138A. Disclosure forms shall not be a public record under the provisions of Chapter 132 of the General Statutes until such time as the appointment of the person filing the statement is officially made public.

(j) Disclosure of Campaign Fund-Raising. – A person appointed to the Board of Transportation on or after January 1, 2001, and a person appointed as Secretary of

Transportation on or after January 1, 2001, shall disclose at the time the appointment of the person is officially made public any contributions the person personally acquired in the two years prior to appointment for: any political campaign for a statewide or legislative elected office in North Carolina; any political party executive committee or political committee acting on behalf of a candidate for statewide or legislative office. Disclosure forms shall be filed with the ~~Governor or the Governor's designee and in a manner as prescribed by the Governor.~~State Ethics Commission as a supplemental filing to the Statement of Economic Interest filed under Article 3 of Chapter 138A. Disclosure forms shall not be a public record under the provisions of Chapter 132 of the General Statutes until such time as the appointment of the person filing the statement is officially made public.

(k) Ethics Policy. – The Board shall adopt by December 1, 1998, a code of ethics applicable to members of the Board, including the Secretary. Any code of ethics adopted by the Board shall be supplemental to ~~any other code of ethics that may be applicable to members of the Board or to the Secretary.~~the provisions of Chapter 138A of the General Statutes. A code of ethics adopted pursuant to this subsection ~~shall:~~shall include

~~(1)~~ ~~Include~~ a prohibition against a member taking action as a Board member when a conflict of interest, or the appearance of a conflict of interest, exists. The ethics policy adopted pursuant to this subsection shall specify that a conflict of interest exists when the use of the Board member's position, or any official action taken by the Board member, would result in financial benefit, direct or indirect, to the Board member, a member of the Board member's immediate family, or an individual with whom, or business with which, the Board member is associated. The ethics policy adopted pursuant to this subsection shall specify that an appearance of a conflict of interest exists when a reasonable person would conclude from the circumstances that the Board member's ability to protect the public interest, or perform public duties, would be compromised by personal interest, even in the absence of an actual conflict of interest. The performance of usual and customary duties associated with the public position or the advancement of public policy goals or constituent services, without compensation, shall not constitute the use of the Board member's position for financial benefit. The conflict of interest provision of the ethics policy adopted pursuant to this subsection shall not apply to financial or other benefits derived by a Board member that the Board member would enjoy to an extent no greater than that which other citizens of the State would or could enjoy.

~~(2)~~ ~~Require the filing of a statement of economic interest. The statement of economic interest shall include a listing of the appointee's legal, equitable, or beneficial interest in real estate holdings in the State, and a statement of the appointee's financial interest in any business related to the State's transportation system. The statement of economic interest~~

~~shall be filed with the Governor, or the Governor's designee, and in a manner as prescribed by the Governor.~~

~~(3) Require the filing of a statement of association. The statement of association shall include a statement of the appointee's membership or other affiliation with, including offices held, in societies, organizations, or advocacy groups pertaining to the State's transportation system. The statement of association shall be filed with the Governor, or the Governor's designee, and in a manner as prescribed by the Governor.~~

~~Board members and the Secretary serving on December 1, 1998, shall file the statement of economic interest and statement of association on that date. Board members and the Secretary appointed after December 1, 1998, shall file the statement of economic interest and statement of association at the time the appointment of the person is officially made public. The statement of economic interest and the statement of association shall not be a public record under the provisions of Chapter 132 of the General Statutes until the appointment of the person filing the statement is officially made public.~~

(l) Additional Requirements for Disclosure Statements. – All disclosure statements required under subsections (i), (j), and (k) of this section must be sworn written statements.

(m) Ethics and Board Duties Education. – The Board shall institute by January 1, 1999, and conduct annually an education program on ethics and on the duties and responsibilities of Board members. The training session shall be comprehensive in ~~nature~~ nature, conducted in conjunction with the State Ethics Commission, and shall include input from the Institute of Government, ~~the North Carolina Board of Ethics,~~ the Attorney General's Office, the University of North Carolina Highway Safety Research Center, and senior career employees of the various divisions of the Department. This program shall include an initial orientation for new members of the Board and continuing education programs for Board members at least once each year.

...."

PART III. AMEND LOBBYING LAWS.

SECTION 16.(a) G.S. 120-47.7B, as enacted by S.L. 2005-456, is effective when this act becomes law.

SECTION 16.(b) G.S. 120-47.7B is repealed effective January 1, 2007.

SECTION 17. Article 9A of Chapter 120 of the General Statutes is repealed.

SECTION 18. The General Statutes are amended by adding a new Chapter to read:

"**Chapter 120C.**

"**Lobbying.**

"Article 1.

"General Provisions.

"**§ 120C-100. Definitions.**

(a) As used in this Article, the following terms mean:

(1) Designated individual. – A legislator, legislative employee, or public servant.

(2) Executive action. – The preparation, research, drafting, development, consideration, modification, amendment, adoption, approval, tabling, postponement, defeat, or rejection of a policy, guideline, request for proposal, procedure, regulation, or rule by a public servant purporting to act in an official capacity. This term does not include any of the following:

a. Present, prior, or possible proceedings of a contested case hearing under Chapter 150B of the General Statutes, of a judicial nature, or of a quasi-judicial nature.

b. A public servant's communication with a person or another person on that person's behalf with respect to any of the following:

1. Applying for a permit, license, determination of eligibility, or certification.

2. Making an inquiry about or asserting a benefit, claim, right, obligation, duty, entitlement, payment, or penalty.

3. Making an inquiry about or responding to a request for proposal made under Chapter 143 of the General Statutes.

c. Internal administrative functions, including those functions exempted from the definition of 'rule' in G.S. 150B-2(8a).

d. Ministerial functions.

e. A public servant's communication with a person or another person on that person's behalf with respect to public comments made at an open meeting or submitted as written comment, on a proposed executive action in response to a request for public comment, provided identity of the person on whose behalf the comments are made is disclosed as part of the public participation and no reportable expenditure is made.

(3) In session. – One of the following:

a. The General Assembly is in extra session from the date the General Assembly convenes until the General Assembly:

1. Adjourns sine die.

2. Recesses or adjourns for more than 10 days.

b. The General Assembly is in regular session from the date set by law or resolution that the General Assembly convenes until the General Assembly:

1. Adjourns sine die.

2. Recesses or adjourns for more than 10 days.

(4) Legislative action. – The preparation, research, drafting, introduction, consideration, modification, amendment, approval, passage, enactment, tabling, postponement, defeat, or rejection of a bill,

resolution, amendment, motion, report, nomination, appointment, or other matter, whether or not the matter is identified by an official title, general title, or other specific reference, by a legislator or legislative employee acting or purporting to act in an official capacity. It also includes the consideration of any bill by the Governor for the Governor's approval or veto under Article II, Section 22(1) of the Constitution or for the Governor to allow the bill to become law under Article II, Section 22(7) of the Constitution.

(5) Legislative employee. – Employees and officers of the General Assembly.

(6) Liaison personnel. – Any State employee or officer whose principal duties, in practice or as set forth in that person's job description, include lobbying designated individuals.

(7) Legislator. – As defined in G.S. 138A-3.

(8) Lobbying. – Any of the following:

a. Influencing or attempting to influence legislative or executive action, or both, through direct communication or activities with a designated individual or that person's immediate family.

b. Developing goodwill through communications or activities, including the building of relationships, with a designated individual or that person's immediate family with the intention of influencing current or future legislative or executive action, or both.

The term "lobbying" does not include communications, activities, or monies spent as part of a business, civic, religious, fraternal, personal, or commercial relationship which is not connected to legislative or executive action, or both.

(9) Lobbyist. – An individual who engages in lobbying and meets any of the following criteria:

a. Is employed by a person for the intended purpose of lobbying.

b. Is employed by a person and a significant part of that individual's duties include lobbying. For purposes of this sub-subdivision, a significant part of an individual's duties is deemed to be any portion of more than five calendar days in a calendar year.

c. Represents another person, but is not directly employed by that person, and receives compensation for the purpose of lobbying. For the purposes of this sub-subdivision, the term compensation shall not include reimbursement of actual travel and subsistence.

d. Contracts for economic consideration for the purpose of lobbying.

The term "lobbyist" shall not include individuals who are specifically exempted from this Chapter by G.S. 120C-700 or registered as liaison personnel under Article 5 of this Chapter.

(10) Lobbyist principal and principal. – The person on whose behalf the lobbyist lobbies. In the case where a lobbyist is compensated by a law firm, consulting firm, or other entity retained by a person for lobbying, the principal is the person whose interests the lobbyist represents in lobbying. In the case of a lobbyist employed or retained by an association or other organization, the lobbyist's principal is the association or other organization, not the individual members of the association or other organization.

(11) News medium. – Media providers whose sole purpose is to report events and that does not involve research or advocacy.

(12) Reportable expenditure. – Any of the following that directly or indirectly is made to, at the request of, for the benefit of, or on the behalf of a designated individual or that individual's immediate family member:

a. Any advance, contribution, conveyance, deposit, distribution, payment, gift, retainer, fee, salary, honorarium, reimbursement, loan, pledge or thing of value greater than ten dollars ($10.00) per designated individual per single calendar day.

b. A contract, agreement, promise or other obligation whether or not legally enforceable.

(13) Solicitation of others. – The petition or request of the general public to influence legislative or executive action, or both by a lobbyist, lobbyists' principal or other person, except communication between the lobbyist, lobbyist's principal or other person and the lobbyist's principal's or other person's stockholders, employees, board members, officers, members, subscribers, or other persons who have affirmatively assented to receive the lobbyist's principal's or other person's regular publications or notices.

(b) Except as otherwise defined in this section, the definitions in Article 1 of Chapter 138A of the General Statutes apply in this Chapter.

"**§ 120C-101. Rules and forms.**

(a) The Secretary of State shall adopt any rules, orders, forms, and definitions as are necessary to carry out the provisions of this Chapter. The Secretary of State may appoint a council to advise the Secretary in adopting rules under this section.

(b) The Secretary of State shall adopt rules to protect from disclosure all confidential information under Chapter 132 of the General Statutes related to economic development initiatives or to industrial or business recruitment activities. The information shall remain confidential until the State, a unit of local government or the business has announced a commitment by the business to expand or locate a specific project in this State or a final decision not to do so and the business has communicated

that commitment or decision to the State or local government agency involved with the project.

"**§ 120C-102. Advisory opinions.**

(a) At the request of any person affected by this Chapter, the Secretary of State shall render advisory opinions on specific questions involving the meaning and application of this Chapter and that person's compliance therewith. The request shall be in writing and relate to real or reasonably anticipated fact settings or circumstances. The Secretary of State shall issue advisory opinions having prospective application only. Reliance upon a requested written advisory opinion on a specific matter shall immunize the designated individual, lobbyist, lobbyist's principal, or other person requesting that written advisory opinion, from both of the following:

(1) Investigation by the Secretary of State.

(2) Any adverse action by the employing entity.

(b) Staff to the Secretary of State may issue advisory opinions under rules adopted by the Secretary of State.

(c) The Secretary of State shall publish its advisory opinions at least once a year, edited as necessary to protect the identities of the individuals requesting opinions.

(d) Except as provided under subsection (c) of this section, requests for advisory opinions and advisory opinions issued pursuant to this section are confidential and not matters of public record.

"**§ 120C-103. Lobbying education program.**

(a) The Secretary of State shall develop and implement a lobbying education and awareness program designed to instill in all designated individuals, lobbyists, and lobbyists' principals a keen and continuing awareness of their obligations and sensitivity to situations that might result in real or potential violation of this Chapter or other related laws. The Secretary of State shall make basic lobbying education and awareness presentations to all designated individuals upon their election, appointment, or hiring and shall offer periodic refresher presentations as the Secretary of State deems appropriate. Every designated individual shall participate in a lobbying presentation approved by the Secretary of State within six months of the person's election, appointment, or hiring and shall attend refresher lobbying education presentations at least every two years thereafter in a manner the Secretary of State deems appropriate. Upon request, the Secretary of State shall assist each agency in developing in-house education programs and procedures necessary or desirable to meet the agency's particular needs for lobbying education.

(b) The Secretary of State shall publish a newsletter containing summaries of the Secretary's opinions, policies, procedures, and interpretive bulletins as issued from time to time, but no less than once per year. The newsletter shall be distributed to all designated individuals, lobbyists, and lobbyists' principals. Publication under this subsection may be done electronically.

(c) The Secretary of State shall assemble and maintain a collection of relevant State laws, rules, and regulations that set forth lobbying standards applicable to designated individuals. The collection of laws, rules, and regulations shall be made

available electronically as resource material to designated individuals, lobbyists, and lobbyists' principals upon request.

"**§ 120C-104. Chapter applies to candidates for certain offices.**

For purposes of this Chapter, the term 'legislator' as defined in G.S. 120C-100(7) and the term 'public servant' as defined in G.S. 138A-3(31)a. shall include a person having filed a notice of candidacy for such office under G.S. 163-106 or Article 11 of Chapter 163 of the General Statutes.

"Article 2.

"Registration.

"**§ 120C-200. Lobbyist registration procedure.**

(a) A lobbyist shall file a separate registration statement for each principal the lobbyist represents with the Secretary of State before engaging in any lobbying. It shall be unlawful for a person to lobby without registering within one business day of engaging in any lobbying as defined in G.S. 120C-100(8) unless exempted by this Chapter.

(b) The form of the registration shall be prescribed by the Secretary of State and shall include the registrant's full name, firm, complete address and telephone number; the registrant's place of business; the full name, complete address and telephone number of each principal the lobbyist represents; and a general description of the matters on which the registrant expects to act as a lobbyist.

(c) Each lobbyist shall file an amended registration form with the Secretary of State no later than 10 business days after any change in the information supplied in the lobbyist's last registration under subsection (b) of this section. Each supplementary registration shall include a complete statement of the information that has changed.

(d) Each registration statement of a lobbyist required under this Chapter shall be effective from the date of filing until January 1 of the following year. The lobbyist shall file a new registration statement after that date, and the applicable fee shall be due and payable.

(e) Each lobbyist shall identify himself or herself as a lobbyist prior to engaging in lobbying communications or activities with a designated individual. The lobbyist shall also disclose the identity of the lobbyist's principal connected to that lobbying communication or activity.

"**§ 120C-201. Lobbyist's registration fee.**

(a) Except as provided for in subsection (b) of this section, a fee of one hundred dollars ($100.00) is due and payable to the Secretary of State at the time of each lobbyist registration. Fees so collected shall be deposited in the General Fund of the State. The Secretary of State shall allow fees required under this section to be paid electronically but shall not require the fees to be paid electronically.

(b) The Secretary of State shall adopt rules providing for a waiver or reduction of the fees required by this section for lobbyists registering to represent persons who have been granted nonprofit status under 26 U.S.C. § 501(c)(3).

"**§ 120C-202-205: Reserved for future codification.**

"**§ 120C-206. Lobbyist's principal's authorization.**

(a) A written authorization signed by the lobbyist's principal authorizing the lobbyist to represent the principal shall be filed with the Secretary of State within 10 business days after the lobbyist's registration.

(b) The form of the authorization shall be prescribed by the Secretary of State and shall include the lobbyist's principal's full name, complete address and telephone number, name and title of the official signing for the lobbyist's principal, and the name of each lobbyist registered to represent that principal.

(c) An amended authorization shall be filed with the Secretary of State no later than 10 business days after any change in the information on the principal's authorization. Each supplementary authorization shall include a complete statement of the information that has changed.

"**§ 120C-207. Lobbyist's principal's fees.**

(a) Except as provided for in subsection (b) of this section, a fee of one hundred dollars ($100.00) is due and payable to the Secretary of State at the time the principal's first authorization statement is filed each calendar year for a lobbyist. Fees so collected shall be deposited in the General Fund of the State. The Secretary of State shall allow fees required under this section to be paid electronically but shall not require the fees to be paid electronically.

(b) The Secretary of State shall adopt rules providing for a waiver or reduction of the fees required by this section for lobbyist's principals that have been granted nonprofit status under 26 U.S.C. § 501(c)(3).

"**§ 120C-208-210: Reserved for future codification.**

"**§ 120C-215. Other persons required to register.**

(a) A person incurring an expense for solicitation of others as defined in G.S. 120C-100(13) shall register and report under this Chapter when the expense is one of the following:

(1) Media costs exceeding a total of one thousand dollars ($1000) during any 90-day period.

(2) Mailing costs exceeding a total of five hundred dollars ($500.00) during any 90-day period.

(3) Conferences, meetings, or other similar events exceeding a total of five hundred dollars ($500.00) during any 90-day period.

(b) A person required to register and report under this section shall be referred to as a 'solicitor' for purposes of this Chapter.

"**§ 120C-216-219: Reserved for future codification.**

"**§ 120C-220. Publication and availability of registrations.**

(a) The Secretary of State shall make available as soon as practicable the registrations of the lobbyists in an electronic, searchable format.

(b) The Secretary of State shall make available as soon as practicable the authorizations of the lobbyists' principals in an electronic, searchable format.

(c) The Secretary of State shall make available as soon as practicable the registrations of other persons required by this Chapter to file a registration in an electronic, searchable format.

(d) Within 20 days after the convening of each session of the General Assembly, the Secretary of State shall furnish each designated individual and the State Legislative Library a list of all persons who have registered as lobbyists and whom they represent. A supplemental list of lobbyists shall be furnished periodically every 20 days while the General Assembly is in session and every 60 days thereafter. For each special session of the General Assembly, a supplemental list of lobbyists shall be furnished to the State Legislative Library.

(e) All lists required by this section may be furnished electronically.

"Article 3.

"Prohibitions and Restrictions.

"**§ 120C-300. Contingency fees prohibited.**

(a) No person shall act as a lobbyist for compensation that is dependent upon the result or outcome of any legislative or executive action.

(b) This section shall not apply to a person doing business with the State who is engaged in sales with respect to that business with the State whose regular compensation agreement includes commissions based on those sales.

(c) Any compensation paid to a lobbyist in violation of this section is subject to forfeiture and shall be paid into the Civil Penalty and Forfeiture Fund.

"**§ 120C-301. Election influence prohibited.**

(a) No person shall attempt to influence the action of any designated individual by the promise of financial support of the designated individual's candidacy, or by threat of financial support in opposition to the designated individual's candidacy in any future election.

(b) No lobbyist, lobbyist's principal, or other person required to register under this Chapter shall attempt to influence the action of any designated individual by the promise of financial support of the designated individual's candidacy, or by threat of financial support in opposition to the designated individual's candidacy in any future election.

"**§ 120C-302. Campaign contributions prohibition.**

No lobbyist or lobbyist's principal may make a contribution as defined in G.S. 163-278.6 to a candidate or candidate campaign committee as defined in G.S. 163-278.38Z when that candidate meets any of the following criteria:

(1) Is a legislator as defined in G.S. 120C-100.

(2) Is a public servant as defined in G.S. 138A-3(31)a.

"**§ 120C-303. Gifts by lobbyists and lobbyist's principals prohibited.**

(a) Except as provided in subsection (b) of this section, no lobbyist or lobbyist's principal may directly or indirectly give a gift to a designated individual.

(b) Subsection (a) of this section shall not apply to gifts as described in G.S. 138A-32(e).

(c) The offering or giving of a gift in compliance with this Chapter without corrupt intent shall not constitute a violation of the statutes related to bribery or solicitation of bribery under G.S. 14-217, 14-218, or 120-86, but shall be subject to civil fines under G.S. 120C-601(b).

"**§ 120C-304. Restrictions.**

(a) No legislator or former legislator and no public servant or former public servant as defined in G.S. 138A-3(31)a. may register as a lobbyist under this Chapter within six months after the end of the term to which the member was elected or appointed.

(b) No person serving as a public servant as defined in G.S. 138A-3(31)c. may register as a lobbyist under this Chapter within one year after separation from employment or leaving office.

(c) No individual registered as a lobbyist under this Chapter shall serve as a campaign treasurer as defined in G.S. 163-278.6(19) or an assistant campaign treasurer for a political committee for the election of a member of the General Assembly or a Constitutional officer of the State.

(d) A lobbyist shall not be eligible for appointment by a State official to any body created under the laws of this State within 60 days after the expiration of the lobbyist's registration. Nothing herein shall be construed to prohibit appointment by any unit of local government.

(e) Any appointment or registration made in violation of this section shall be void.

"**§ 120C-305. Prohibition on the use of cash or credit of the lobbyist.**

No lobbyist or another acting on the lobbyist's behalf shall permit a designated individual, or that person's immediate family member, to use the cash or credit of the lobbyist for the purpose of lobbying unless the lobbyist is in attendance at the time of the reportable expenditure.

"Article 4.

"Reporting.

"**§ 120C-400. Reporting of reportable expenditures.**

For purposes of this Chapter, all reportable expenditures, as defined in G.S. 120C-100(12), made for the purpose of lobbying shall be reported, including the following:

(1) Reportable expenditures benefiting or made on behalf of a designated individual, or those persons' immediate family members, in the regular course of that individual's employment.

(2) Contractual arrangements or direct business relationships between a lobbyist or lobbyist's principal and a designated individual, or that person's immediate family member, in effect during the reporting period or the previous 12 months.

(3) Reportable expenditures reimbursed to a lobbyist in the ordinary course of business by the lobbyist's principal or other employer.

(4) Reportable expenditures for gifts exempted by Article 3 of this Chapter.

"**§ 120C-401. Reporting generally.**

(a) Reports shall be filed whether or not reportable expenditures are made and shall be due 10 business days after the end of the reporting period.

(b) Each report shall set forth the fair market value or face value if shown, date, a description of the reportable expenditure, name and address of the payee, or beneficiary,

and name of any designated individual, or that person's immediate family member connected with the reportable expenditure. When more than 15 designated individuals benefit from a reportable expenditure, no names of individuals need be reported provided that the report identifies the approximate number of designated individuals benefiting and the basis for their selection, including the name of the legislative body, committee, caucus, or other group whose membership list is a matter of public record in accordance with G.S. 132-1 or including a description of the group that clearly distinguishes its purpose or composition from the general membership of the General Assembly. The approximate number of immediate family members of designated individuals who benefited from the reportable expenditure shall be listed separately.

(c) Reportable expenditures shall be reported using the following categories:

(1) Transportation and lodging.

(2) Entertainment.

(3) Food and beverages.

(4) Meetings and events.

(5) Gifts.

(6) Other reportable expenditures.

(d) Each report shall be in the form prescribed by the Secretary of State, which may include electronic reports.

(e) When any report as required by this Article is not filed, the Secretary of State shall send a certified or registered letter advising the lobbyist, lobbyist's principal, or other person required to report of the delinquency and the penalties provided by law. Within 20 days of the receipt of the letter, the report shall be delivered or posted by United States mail to the Secretary of State together with a late filing fee in an amount equal to the late filing fee under G.S. 163-278.34(a)(2). Filing of the required report and payment of the additional fee within the time extended shall constitute compliance with this section.

(f) Failure to file a required report in one of the manners prescribed in this section shall void any and all registrations of the lobbyist, lobbyist's principal, or solicitor. No lobbyist, lobbyist's principal, or solicitor may register or reregister until full compliance with this section has occurred.

(g) Appeal of a decision by the Secretary of State under this section shall be in accordance with Article 3 of Chapter 150B of the General Statutes.

(h) The Secretary of State may adopt rules to facilitate complete and timely disclosure of required reporting, including additional categories of information, and to protect the addresses of payees under protective order issued pursuant to Chapter 50B of the General Statutes or participating in the Address Confidentiality Program pursuant to Chapter 15C of the General Statutes. The Secretary of State shall not impose any penalties or late filing fees upon a lobbyist, lobbyist's principal, or solicitor for subsequent failures to comply with the requirements of this section if the Secretary of State failed to provide the required notification under subsection (e) of this section.

"**§ 120C-402. Lobbyist's reports.**

(a) Each lobbyist shall file quarterly reports under oath with the Secretary of State with respect to each lobbyist's principal.

(b) The report shall include all of the following:
(1) All reportable expenditures made for the purpose of lobbying during the reporting period.
(2) Solicitation of others when such solicitation involves:
a. Media costs which exceed a cost of one thousand dollars ($1000) during the reporting period.
b. Mailing costs which exceed a cost of five hundred dollars ($500.00) during the reporting period.
c. Conferences, meetings, or other similar events, which exceed a cost of five hundred dollars ($500.00) during the reporting period.
(3) Reportable expenditures reimbursed by the lobbyist's principal, or another person on the lobbyist's principal's behalf.

(c) In addition to the reports required by this section, each lobbyist incurring reportable expenditures in any month while the General Assembly is in session with respect to lobbying legislators and legislative employees shall file a monthly reportable expenditure report. The monthly reportable expenditure report shall contain information required by this section with respect to all lobbying of legislators and legislative employees, and is due within 10 business days after the end of the month. The information on the monthly reportable expenditure report shall also be included in each quarterly report required by subsection (a) of this section.

"**§ 120C-403. Lobbyist's principal's reports.**

(a) Each lobbyist's principal shall file quarterly reports under oath with the Secretary of State with respect to each lobbyist's principal.

(b) The report shall be filed whether or not reportable expenditures are made, shall be due 10 business days after the end of the reporting period, and shall include all of the following:
(1) All reportable expenditures made for the purpose of lobbying during the reporting period.
(2) Solicitation of others when such solicitation involves:
a. Media costs which exceed a cost of one thousand dollars ($1000) during the reporting period.
b. Mailing costs which exceed a cost of five hundred dollars ($500.00) during the reporting period.
c. Conferences or other similar events, which exceed a cost of five hundred dollars ($500.00) during the reporting period.
(3) Compensation paid to all lobbyists during the quarter. If a lobbyist is a full-time employee of the principal, or is compensated by means of an annual fee or retainer, the principal shall estimate and report the portion of the salary, fee, or retainer that compensates for lobbying.
(4) Reportable expenditures reimbursed or paid to lobbyists for lobbying that are not reported on the lobbyist's report, with an itemized description of those reportable expenditures.

(c) In addition to the reports required by this section, each lobbyist principal incurring reportable expenditures in any month while the General Assembly is in session with respect to lobbying legislators and legislative employees shall file a monthly reportable expenditure report. The monthly reportable expenditure report shall contain information required by this section with respect to all lobbying of legislators and legislative employees, and is due within 10 business days after the end of the month. The information on the monthly report shall also be included in each quarterly report required by subsection (a) of this section.

"**§ 120C-404. Solicitor's reports.**

(a) Each solicitor shall file quarterly reports under oath with the Secretary of State.

(b) The report shall include all of the following:

(1) All reportable expenditures made for the purpose of lobbying during the reporting period.

(2) Solicitation of others when such solicitation involves:

a. Media costs which exceed a cost of one thousand dollars ($1000) during the reporting period.

b. Mailing costs which exceed a cost of five hundred dollars ($500.00) during the reporting period.

c. Conferences, meetings, or other similar events, which exceed a cost of five hundred dollars ($500.00) during the reporting period.

"**§ 120C-405. Report availability.**

(a) All reports filed under this Chapter shall be open to public inspection upon filing.

(b) The Secretary of State shall coordinate with the State Board of Elections to create a searchable Web-based database of reports filed under this Chapter and reports filed under Subchapter VIII of Chapter 163 of the General Statutes.

"Article 5.

"Liaison Personnel.

"**§ 120C-500. Liaison personnel.**

(a) All agencies and constitutional officers of the State, including all boards, commissions, departments, divisions, councils, constituent institutions of The University of North Carolina and other units of government in the executive branch, except local units of government, shall designate liaison personnel to lobby legislators and legislative employees.

(b) No State funds may be used to contract with persons who are not employed by the State to lobby legislators and legislative employees.

(c) No more than two persons may be designated as liaison personnel for each agency and constitutional officers of the State, including all boards, commissions, departments, divisions, councils, constituent institutions of The University of North Carolina, and other units of government in the executive branch.

"**§ 120C-501. Applicability of chapter on liaison personnel.**

(a) Except as otherwise provided in this section, this Chapter shall not apply to liaison personnel.

(b) The registration under G.S. 120C-200 shall apply to liaison personnel.

(c) The reports required by G.S. 120C-402 shall be completed and filed as required by that section.

"Article 6.

"Violations and Enforcement.

"§ 120C-600. Powers and duties of the Secretary of State.

(a) The Secretary of State shall perform systematic reviews of reports required to be filed under this Chapter on a regular basis to assure complete and timely disclosure of reportable expenditures.

(b) The Secretary of State may petition the Superior Court of Wake County for the approval to issue subpoenas and subpoenas duces tecum as necessary to conduct investigations of violations of this Chapter. The court shall authorize subpoenas under this subsection when the court determines they are necessary for the enforcement of this Chapter. Subpoenas issued under this subsection shall be enforceable by the court through contempt powers. Venue shall be with the Superior Court of Wake County for any nonresident person, or that person's agent, who makes a reportable expenditure under this Chapter, and personal jurisdiction may be asserted under G.S. 1-75.4.

(c) Complaints of violations of this Chapter and all other records accumulated in conjunction with the investigation of these complaints shall be considered records of criminal investigations under G.S. 132-1.4.

"§ 120C-601. Punishment for violation.

(a) Whoever willfully violates any provision of Article 2 or Article 3 of this Chapter shall be guilty of a Class 1 misdemeanor, except as provided in those Articles. In addition, no lobbyist who is convicted of a violation of the provisions of this Chapter shall in any way act as a lobbyist for a period of two years from the date of conviction.

(b) In addition to the criminal penalties set forth in this section, the Secretary of State may levy civil fines for a violation of any provision of this Chapter up to five thousand dollars ($5,000) per violation.

"§ 120C-602. Enforcement by Attorney General.

(a) The Secretary of State may investigate complaints of violations of this Chapter and shall report apparent violations of this Article to the Attorney General. The Attorney General shall, upon complaint, make an appropriate investigation thereof, and the Attorney General shall forward a copy of the investigation to the district attorney of the prosecutorial district as defined in G.S. 7A-60 of which Wake County is a part, who shall prosecute any person who violates any provisions of this Chapter.

(b) Complaints of violations of this Chapter involving the Secretary of State or any member of the Department of the Secretary of State shall be referred to the Attorney General for investigation. Any portion of the complaint not involving alleged violations of this Chapter by the Secretary of State or any member of the Department of the Secretary of State shall remain with the Secretary of State for investigation. The Attorney General shall, upon receipt of a complaint, make an appropriate investigation thereof, and the Attorney General shall forward a copy of the investigation to the district

attorney of the prosecutorial district as defined in G.S. 7A-60 of which Wake County is a part, who shall prosecute any person who violates any provisions of this Chapter.

(c) Complaints of violations of this Chapter involving the Attorney General or any member of the Department of Justice shall be investigated by the Secretary of State and any apparent violations reported to the district attorney of that prosecutorial district as defined in G.S. 7A-60 of which Wake County is a part. The district attorney of that prosecutorial district shall, upon receipt of the Secretary of State's report, prosecute any person who violates any provisions of this Chapter.

"Article 7.

"Exemptions.

"§ 120C-700. Persons exempted from this Chapter.

Except as otherwise provided in Article 8, the provisions of this Chapter shall not be construed to apply to any of the following lobbying activities:

(1) An individual solely engaged in expressing a personal opinion or stating facts or recommendations on legislative action or executive action to a designated individual and not acting as a lobbyist.

(2) A person appearing before a committee, commission, board, council, or other collective body whose membership includes one or more designated individuals at the invitation or request of the committee or a member thereof and who engages in no further activities as a lobbyist with respect to the legislative or executive action for which that person appeared.

(3) A duly elected or appointed official or employee of the State, the United States, a county, municipality, school district, or other governmental agency, when appearing solely in connection with matters pertaining to the office and public duties.

(4) A person performing professional services in drafting bills, or in advising and rendering opinions to clients, or to designated individuals on behalf of clients, as to the construction and effect of proposed or pending legislative or executive action where the professional services are not otherwise connected with the legislative or executive action.

(5) A person who owns, publishes, or is an employee of any news medium while engaged in the acquisition or dissemination of news on behalf of that news medium.

(6) Designated individuals while acting in their official capacity.

(7) A person responding to inquiries from a designated individual and who engages in no further activities as a lobbyist in connection with that inquiry.

(8) A person who is a political committee as defined in G.S. 163-278.6(14)a. or b., that person's employee, or that person's contracted service provider.

"Article 8.

"Miscellaneous.

"**§ 120C-800. Reportable expenditures made by persons exempted or not covered by this Chapter.**

(a) If a designated individual accepts a reportable expenditure made for the purpose of lobbying with a total value of over two hundred dollars ($200.00) per calendar quarter from a person or group of persons acting together, exempted or not otherwise covered by this Chapter, the person, or group of persons, making the reportable expenditure shall report the date, a description of the reportable expenditure, the name and address of the person, or group of persons, making the reportable expenditure, the name of the designated individual accepting the reportable expenditure, and the estimated fair market value, or face value if shown, of the reportable expenditure.

(b) If the person making the reportable expenditure in subsection (a) of this section is outside North Carolina, and the designated individual accepting the reportable expenditure is also outside North Carolina at the time the designated individual accepts the reportable expenditure, then the designated individual accepting the reportable expenditure shall be responsible for filing the report or reporting the information in the designated individual's statement of economic interest in accordance with G.S. 138A-24(a)(2).

(c) If a designated individual accepts a scholarship valued over two hundred dollars ($200.00) from a person, or group of persons, acting together, exempted or not covered by this Chapter, the person, or group of persons, granting the scholarship shall report the date of the scholarship, a description of the event involved, the name and address of the person, or group of persons, granting the scholarship, the name of the designated individual accepting the scholarship, and the estimated fair market value.

(d) If the person granting the scholarship in subsection (c) of this section is outside North Carolina, the designated individual accepting the scholarship shall be responsible for filing the report or reporting the information in the designated individual's statement of economic interest in accordance with G.S. 138A-24(a)(2).

(e) This section shall not apply to any of the following:

(1) Lawful campaign contributions properly received and reported as required under Article 22A of Chapter 163 of the General Statutes.

(2) Any gift from an extended family member to a designated individual.

(3) Gifts associated primarily with the designated individual's or that person's immediate family member's employment.

(4) Gifts, other than food, beverages, travel, and lodging, which are received from a person who is a citizen of a country other than the United States or a state other than North Carolina and given during a ceremonial presentation or as a custom.

(5) A thing of value that is paid for by the State.

(f) Reports required by this section shall be filed within 10 business days after the end of the quarter in which the reportable expenditure was made, with the Secretary of State in a manner prescribed by the Secretary of State, which may include electronic reports. If the designated individual is required to file a statement of economic interest

under G.S. 138A-24, then that designated individual may opt to report any information required by this section in the statement of economic interest.

(g) For purposes of this section, the term 'scholarship' shall mean a grant-in-aid to attend a conference, meeting or other similar event."

SECTION 19. Sections 2 and 3 of S.L. 2005-456 are repealed.

SECTION 20. G.S. 120-86.1 reads as rewritten:

"**§ 120-86.1. Personnel-related action unethical.**

It shall be unethical for a legislator to take, promise, or threaten any legislative action, as defined in ~~G.S. 120-47.1(4),~~ G.S. 120C-100(4), for the purpose of influencing or in retaliation for any action regarding State employee hirings, promotions, grievances, or disciplinary actions subject to Chapter 126 of the General Statutes."

SECTION 21. G.S. 163-278.13B(a)(1) reads as rewritten:

"(1) "Limited contributor" means a lobbyist registered ~~pursuant to Article 9A of Chapter 120~~ under Chapter 120C of the General Statutes, that lobbyist's agent, that lobbyist's principal as defined in ~~G.S. 120-47.1(7),~~ G.S. 120C-100(10) or a political committee that employs or contracts with or whose parent entity employs or contracts with a lobbyist registered ~~pursuant to Article 9A of Chapter 120~~under Chapter 120C of the General Statutes."

SECTION 22. Effective September 1, 2008, The Revisor of Statutes shall change the term "Secretary of State" to "State Ethics Commission" wherever it appears in Chapter 120C of the General Statutes. Effective September 1, 2008, all personnel and associated funding of those personnel employed with the Secretary of State with respect to Chapter 120C of the General Statutes shall be transferred to the State Ethics Commission.

SECTION 23. The authority, powers, duties and functions, records, personnel, property, unexpended balances of appropriations, allocations, or other funds, including the functions of budgeting and purchasing, of the North Carolina Board of Ethics of the Office of the Governor are transferred to the State Ethics Commission created in Section 1 of this act. The Director of the Budget shall resolve any disputes arising out of this transfer.

SECTION 24.(a) Persons holding covered positions on January 1, 2007, shall file statements of economic interest under Article 3 of Chapter 138A of the General Statutes by March 15, 2007.

SECTION 24.(b) Public servants holding positions on January 1, 2007, shall participate in ethics education presentations under G.S. 138A-14 on or before January 1, 2008.

SECTION 25. If any section or provision of this act is declared unconstitutional or invalid by the courts, it does not affect the validity of this act as a whole or any part other than the part so declared to be unconstitutional or invalid. If G.S. 120C-302 as enacted by Section 18 of this act is declared unconstitutional or invalid by the courts, it shall be repealed.

SECTION 26. Sections 4 through 15 and Sections 17 through 22 of this act become effective January 1, 2007, and G.S. 120C-304, as enacted by Section 18 of this

act, applies to appointments made on or after that date. Sections 16, 25, and 26 of this act are effective when the act becomes law. The remainder of this act becomes effective October 1, 2006, and applies to covered persons and legislative employees on or after January 1, 2007, to acts and conflicts of interest that arise on or after January 1, 2007, and to offenses committed on or after January 1, 2007. Prosecutions for offenses or ethics violations committed before January 1, 2007, are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.

Attachment IV

Substitute Amendment for Amendment #2

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1843

AMENDMENT NO. 3
(to be filled in by Principal Clerk)

H1843-AST-187 [v.3]

Date 7-19 ,2006

Comm. Sub. [YES]
Amends Title [NO]
Third Edition

ADOPTED

Senator Clodfelter

moves to amend the bill on page 49, lines 30-34 by rewriting those lines to read:

"(a) No lobbyist or lobbyist's principal may make a contribution as defined in G.S. 163-278.6 to a candidate or candidate campaign committee as defined in G.S. 163-278.38Z when that candidate meets any of the following criteria:

(1) Is a legislator as defined in G.S. 120C-100.

(2) Is a public servant as defined in G.S. 138A-3(31)a.

(b) No lobbyist or lobbyist's principal shall deliver any contribution made by another to a candidate or candidate campaign committee as defined in G.S. 163-278.38Z when that candidate meets any of the following criteria:

(1) Is a legislator as defined in G.S. 120C-100.

(2) Is a public servant as defined in G.S. 138A-3(31)a.".

SIGNED Daniel G. Clodfelter
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED V 42-6 FAILED _____ TABLED _____

7-19-06 Janet Pruitt

Attachment V

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1843

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

H1843-AST-185 [v.2]

Date 7-19 ,2006

Comm. Sub. [YES]
Amends Title [NO]
H1843-CSRU-104

ADOPTED

Senator Clodfelter

moves to amend the bill on page 54, lines 5-6 by inserting the following between those lines:

"(d) G.S. 120C-303 shall apply to liaison personnel.".

SIGNED _____
Amendment Sponsor

SIGNED _____ (Floor Amendment)
~~Committee Chair if Senate Committee Amendment~~

ADOPTED √ 47-0 FAILED _____ TABLED _____

7-19-06
Janet Pruitt

ADOPTED

Attachment VI

HOUSE BILL 1843:
State Government Ethics Act.

BILL ANALYSIS

Committee:	Senate Floor	**Date:**	July 18, 2006
Introduced by:	Reps. Hackney, Howard, Brubaker, Luebke	**Summary by:**	O. Walker Reagan and Erika Churchill, Staff Attorneys
Version:	PCS to Fourth Edition H1843-PCS60873-ST-127		

SUMMARY: ***The Senate Finance Committee Substitute for House Bill 1843 creates an independent ethics commission to oversee the administration of certain ethics laws that apply to the executive branch, the legislative branch, and the judicial branch. The bill codifies Executive Order No. One, modifies the existing Legislative Ethics Act by substantially conforming ethics laws applicable to legislators to those applicable to the executive branch, and requires judicial officials to file statements of economic interest with the independent commission and be subject to investigations for ethics violations. Part III of the bill amends the lobbying laws as follows:***

1. ***Bans certain gifts by lobbyists and lobbyists' principals to covered persons (legislators, legislative employees, and executive branch officers).***
2. ***Expands coverage of the lobbying laws to additional executive branch officers and employees, with a combined single registration, fee, regulation, and reporting periods for both legislative and executive branch lobbying.***
3. ***Prohibits campaign contributions by registered lobbyists and lobbyist's principals.***
4. ***Permits the issuance of advisory opinions and requires lobbying education programs.***

CURRENT LAW:

Executive Branch. - Ethics in the executive branch is primarily regulated by Executive Order No. One (Order) issued by the Governor. Under the Governor's limited authority, the Governor has made the order applicable to appointees of the Governor, and offered the services of the State Ethics Board (created by the Order) to members of the Council of State, the Speaker and President Pro Tempore for their appointees to boards and commissions, and to the UNC Board of Governors. The Order requires covered officials to file statements of economic interests (SEI) annually, establishes rules of conduct for covered officials, authorizes the Board to issue advisory ethics opinions, investigate ethics complaints, and conduct ethics education programs. Enforcement of the Board's recommendations is left to the discretion of the appointing or hiring authority. Records of the Board are public, including SEI filed by perspective appointees prior to their appointment. False statements made on SEI are not subject to the penalty of perjury. The Governor has no authority to require other constitutional officers of the State to participate under the Order or make the order applicable to appointees of boards and commissions made by persons other than the Governor, including the General Assembly.

Legislative Branch. - The current Legislative Ethics Act, enacted in 1975, consists of three Parts. Part 1 - The Code of Legislative Ethics - defines certain conduct involving legislators that would be either criminal or unethical conduct, and conflicts of interest for legislators. Part 2 governs legislator's SEI. Part 3 establishes the Legislative Ethics Committee and defines the powers and authority of the Committee for overseeing the SEI process, issuing ethics advisory opinions, and conducting investigations of alleged unethical conduct.

Judicial Branch. - Article IV of the Constitution establishes the Judicial Branch to include all justices and judges of the General Court of Justice, magistrates, clerks of court, district attorneys and the Administrative Office of the Courts. The responsibility for ethics in the judicial branch is given to the NC Supreme Court that has authority to prescribe standards of judicial conduct in the Code of Judicial Conduct. The Judicial Standards Commission, made up of judges, private attorneys, and non-lawyer private citizens, is established to receive and investigate complaints of judicial misconduct, and report to the Supreme Court for disciplinary action, including censure or remove a judge for certain judicial misconduct.

Lobbying Law. – Until January 1, 2007, a person paid to influence legislative action (action on a specific bill, resolution, amendment, etc.) is required to register as a lobbyist with the Secretary of State and report at the end of each regular session, any expenditures in excess of $25 spent on lobbying legislators. Expenditures spent for the general goodwill of legislators not tied to specific legislative action do not need to be reported, nor do expenditures spent on legislative staff or legislators' family members. There is no limitation on the types or amount of expenditures that a lobbyist can spend on a legislator for lobbying purposes. Every principal who hires the services of a lobbyist also has to file reports on expenditures that the principal made for lobbying, including the amount of compensation paid to lobbyists. Exempt from the lobbying laws are persons who lobby on their own behalf, persons appearing before the General Assembly at the General Assembly's request, elected and appointed local government officials and employees lobbying on behalf of their local governments, State agency legislative liaison personnel, and members of the General Assembly. Violation of this law is punished as a Class 1 misdemeanor.

BILL ANALYSIS: The Senate Finance Committee Substitute for House Bill 1843 does the following:

ARTICLE 1 sets out the purpose of the Act and the applicable definitions.

G.S. 138A-3 sets out the following definitions used in the Chapter:

Board - Any non-advisory State branch board, commission, council, committee, task force, authority, or similar body created by statute or executive order.

Covered Person – Legislator, public servant (defined below), justices, judges, district attorneys, and clerks of court,

Extended Family – Spouse, lineal descendants and ascendants, sibling, and lineal descendants and ascendants, and sibling of the spouse of the covered person, and the spouses of these persons.

Gift – Anything of monetary value given or received without valuable considerations by or from a lobbyist or lobbyist principal, or other defined person doing business with a specific State agency. Excluded from the definition of a gift are things for which fair market value or face value is paid, normal commercial loans and business relationships not for the purpose of lobbying, normal academic and athletic scholarships, lawful campaign contributions, and things given or received as part of a business, civic, religious, fraternal, personal, or commercial relationship not related to public service and not for the purpose of lobbying.

Judicial employees – The director and assistant director of the Administrative Office of the Courts and any other employees of the Judicial Department designated by the Chief Justice earning more than $60,000 per year from the State.

Public event – An organized gathering of individuals open to the general public or to which at least 10 other persons, not the covered public official, or all persons associated with the sponsor in a specific office or county, are invited to attend, and to which at least ten public servants or a recognized group of legislators are invited to attend.

Public servants – All Council of State members, heads of all principal State departments, chief deputies and administrative assistants, confidential assistants and secretaries, employees of the Office of the Governor, persons designated as exempt from the State Personnel Act by the Governor, Council of State or department heads, judicial employees, voting members of all boards (defined) whether appointed by the executive, legislative, or judicial branch, the UNC Board of Governors, the UNC president and vice-presidents, chancellors, vice-chancellors, members of UNC boards of trustees, members of the State Board of Community Colleges, President and chief financial officer of the Community College System, presidents, chief financial officers and trustees of local community colleges, and contract employees filling any of these positions.

ARTICLE 2 establishes the State Ethics Commission as an independent, bipartisan commission of eight members, 4 appointed by the Governor, of which no more than 2 may be of the same political party, 4 appointed

by the General Assembly, 2 each on the recommendation of the President Pro Tempore and the Speaker, of which no more than 1 each may be of the same political party. While serving on the Commission, no member may hold or be a candidate for public office, hold office in a political party above the precinct level, participate in or contribute to a political campaign for a public servant the Commission oversees, or otherwise be an employee of the State, a community college or local public school system, or a member of any other State board.

The Commission would have the power to employ staff, review statements of economic interest, render advisory opinions, investigate ethics complaints, oversee ethics education programs, and advise the General Assembly on ethics matters.

G.S. 138A-12 sets out the authority of the Commission to conduct ethics investigations of alleged violations of the ethics laws, rules, or the criminal law in the performance of official duties committed by covered persons and legislative employees. After investigation and before hearing, complaints received against legislators and judicial officers are to be referred to the Legislative Ethics Committee, the Judicial Standards Commission, the senior resident superior court judge in the county or district for district attorneys, or to the chief district court judge of the county or district for clerks of court. As to complaints against public servants and legislative employees, after a hearing, the Commission can dismiss the complaint, refer criminal matters to the Attorney General and the district attorney, issue a private admonishment, or refer the matter to the employing entity for possible sanctions. Complaints, responses and the Commission's reports of its investigation are not public records until the employing authority imposes public sanctions. Hearings are generally held in closed session. The Commission has subpoena authority when authorized by the court.

G.S. 138A-13 grants the Commission authority to issue advisory opinions to legislators, public servants and legislative employees. A person who seeks an opinion is immunized from sanctions when he or she acts in accordance with an advisory opinion. Requests for advisory opinions and advisory opinions are confidential and not public records, but annual summaries of advisory opinions are to be published and made available to the public. Opinions given to legislators are sent to the Legislative Ethics Committee to be modified or overturned.

G.S. 138A-14 sets out the requirement for the Commission to provide for mandatory ethics education programs for all public servants and judicial employees and their immediate staffs (individuals who report directly to the public servant), and legislators and legislative staff.

G.S. 138A-15 sets out the ethics duties of heads of State agencies. Agency heads, including board chairs, are required to take an active role in promoting ethics in their areas of responsibility. They are expected to remain knowledgeable of ethics laws, remind public servants of their ethical obligations, remind their fellow public servants about conflicts of interests and appearances of conflicts of interests, and arrange and promote in-house ethics education programs.

ARTICLE 3 sets out the requirements for filing statements of economic interests.

G.S. 138A-22 requires all judicial officials (justices, judges, district attorneys, clerks of court), public servants, except employees earning $60,000 or less, and legislators to file statements of economic interest (SEI) prior to their initial appointment, election, or employment and no later than March 15th of every year thereafter. An exception is made for appointees of newly elected constitutional officers, who have 30 days from the date of appointment or employment to file, when the appointment or employment is done within the first 60 days of the initial term in office. This section sets forth the requirement and procedure for candidates for judgeships and the Council of State to follow for filing their SEI, in the same manner as is required for candidates for the General Assembly.

G.S. 138A-23 makes statements of economic interest public records when filed, except SEI's of perspective appointees or employees do not become public until the person is appointed or employed.

G.S. 138A-24 sets out the contents of the Statement of Economic Interest (SEI). Included in the information to be reported are assets in excess of $10,000 in real estate holdings, personal property leased, sold or bought, to or from the State, publicly owned companies, non-publicly owned companies, vested trusts, indebtedness by type of lender, sources of income, businesses in which the filing person is an officer, employee, director, business associate, or owner, gifts from lobbyists or lobbyist's principals in excess of $200 during the preceding 12 months other than from extended family members. The statement also requires lists of memberships and associations in organizations over which the public servant's agency or board has jurisdiction, and felony convictions. Statements of economic interest must be sworn, and false statements would be subject to penalty of perjury. The Commission is to evaluate each statement and issue an opinion on the existence or lack of conflicts of interests and potential conflicts of interests.

G.S. 138A-25 requires the Commission to notify every filing person who fails to file or complete his or her required SEI within 30 days of the due date. Any filing person currently in office who fails to file or complete the SEI within 30 days of the receipt of the late notice is subject to a $250 fine. Any filing person currently in office who fails to file or complete the SEI within 60 days of receipt of the late notice shall be subject to disciplinary action under Article 5.

G.S. 138A-26 makes it a Class 1 misdemeanor for a filing person to knowingly conceal or fail to disclose required information on a SEI.

G.S. 138A-27 makes it a Class H felony for a filing person to provide false or misleading information on a SEI knowing the information to be false or misleading.

ARTICLE 4 establishes ethical standards for covered persons.

G.S. 138A-31 prohibits covered persons from using their public position for personal financial gain for themselves, their extended families, or a business with which they are associated, or from using their governmental title for non-governmental advertising that advances the private interest of the public servant or others. Use of the public servant's title is permitted for political advertising, charitable solicitations and other limited purposes. A covered person is prohibited from using State funds for advertising or public service announcements that contains the covered person's name, picture or voice except in the case of national emergencies.

G.S. 138A-32 restricts gifts that public servant, legislator or legislative employee can accept. It prohibits accepting gifts in return for being influenced in their official duties. It prohibits soliciting charitable gifts from subordinate State employees. It prohibits covered persons and legislative employees from accepting gifts from lobbyists, lobbyist principals, or other people doing business with the public servant's agency. Excepted from the gift restrictions are meals and beverages for immediate consumption in connection with public events; lodging, transportation, entertainment and recreation provided to all legislators in connection with a public event by a chamber of commerce; informational materials related to the covered person's duties; expenses associated with a speech or panel related to the covered person's public duties; food, beverages and entertainment related to an organization to which the public servant or the legislator or the that person's agency belongs; food, beverages and entertainment received at an educational conference or meeting; a plaque or nonmonetary recognition memento; gifts accepted on behalf of the State; anything made available to the general public or all State employees by lobbyists or lobbyist's principals; things of monetary value associated with travel and tourism and industry recruitment under certain conditions; gifts of less than $100 received in a foreign country as part of a trade mission; and gifts from extended family members.

This section also specifies that a gift accepted or solicited in compliance with this section without corrupt intent shall not constitute bribery.

G.S. 138A-33 prohibits public servants and legislative employees from receiving additional compensation, other than salary, for carrying out their duties.

G.S. 138A-34 prohibits public servants and legislative employees from using information gained in their official positions for personal financial gain.

G.S. 138A-35 requires public servants to use due diligence to determine if they have a conflict of interest and to continually monitor their situation to assure the avoidance of conflicts.

G.S. 138A-36 defines conflicts of interest for public servants. A conflict of interest occurs when the person, his or her extended family, or a business with which he or she is associated, has an economic interest in, or would benefit from, the matter under consideration, and the public servant's independence of judgment would be influenced by the interest. When a conflict exists, the public servant must abstain from participation. If the public servant is unclear if a conflict exists, the public official is required to seek guidance.

G.S. 138A-37 defines conflicts of interest for legislators. A legislator should not act on a legislative matter if the legislator has an economic interest in the matter being considered that would be substantially influence the legislator's independence of judgment on the matter.

G.S. 138A-38 sets out numerous exceptions to the restrictions in G.S. 138A-36 and 37, primarily involving situations where the benefit is no greater to the covered person than to the public in general, or when the covered person has received an ethics opinion that no conflict exists.

G.S. 138A-39 establishes a process where a public servant can be forced to remove a disqualifying conflict of interest or be required to resign. A disqualifying conflict of interest occurs when a conflict of interest is found to prevent the public servant from fulfilling a substantial function or portion of his or her public duties.

G.S. 138A-40 prohibits a covered person or legislative employee from hiring or supervising a member of his or her extended family, except for legislators as permitted by the Legislative Services Commission, or specifically authorized by the public servant's employing entity.

G.S. 138A-41 permits individual State agencies to adopt more stringent ethical standards in addition to the provisions of this Act.

ARTICLE 5 sets out the sanctions for violation of the Act. Willful violations by board members constitute malfeasance, misfeasance, and nonfeasance subjecting the person to removal from the board. Willful violations by State employees constitute a violation of a written work order which could lead to being fired. Willful violations by members of the Council of State constitute grounds for impeachment. Willful violations by legislators subject them to sanctions by the house of which they are a member.

SECTION 2 exempts the Commission from the rulemaking provisions of Chapter 150B, The Administrative Procedure Act, but G.S. 138A-10(c) sets up a separate rulemaking process for the Commission.

SECTION 3 through 14 make conforming changes to the Legislative Ethics Act to reflect duties given to the State Ethics Commission with regards to legislative ethics including the filing of statements of economic interests, ethics education, advisory opinions and receipt of ethics complaints. **Section 7** expands the Legislative Ethics Committee from 10 to 12 members and requires equal partisan representation in each house on the Committee. **Section 12** recodifies the law authorizing the Committee to conduct ethics investigations consistent with the authority given to the State Ethics Commission to investigate complaints against public servants and judicial employees. **Section 13** amends the authority

of the Committee with regards to advisory opinions by giving the Committee authority to modify or override advisory opinions give to legislators by the State Ethics Commission.

SECTION 15 modifies the Department of Transportation ethics laws to conform to the changes made in Section 1 of the bill for other executive branch public officials.

SECTION 18 does the following:

- Prohibits lobbyist from giving gifts to legislators, legislative employees and public servants except as permitted under G.S. 138A-32 (summarized above).
- Makes developing goodwill part of the definition of lobbying.
- Defines "reportable expenditure" for reporting purposes to include anything of value over $10.
- Applies lobbying laws to certain persons in the Executive branch and to legislative employees.
- Prohibits a legislator or former legislator or member, or former member, of the Council of State from being employed as a lobbyist within 6 months after the expiration of the term for which the person was elected or appointed to serve.
- Prohibits the head of a cabinet department from being employed as a lobbyist within one year after separation from employment or leaving office, whichever is later.
- Prohibits a lobbyist from serving as a campaign treasurer for a legislative or Council of State campaign.
- Prohibits a lobbyist from being appointed to any State board, authority, commission, etc. within 60 days of that representation.
- Prohibits a lobbyist from allowing a covered person (legislator, executive branch officer, or judicial employee), legislative employee, or that person's immediate family member to use the lobbyist's cash or credit for the purpose of lobbying without the lobbyist being present at the time of the expenditure.
- Allows the Secretary of State's office to treat investigations of lobbying violations as criminal investigations, meaning the investigation information may not be released as a public record.
- Combines legislative and executive lobbying registrations and regulations into one, and places them in a separate chapter.
- Defines a covered person for lobbying purposes is the same as under the State Government Ethics Act, Chapter 138A.
- Treats solicitation of others to lobby as a separate item from direct and indirect lobbying, requiring for registration and reporting purposes.
- Requires lobbying expenditures by liaison personnel to be reported the same as lobbying expenditures by lobbyists.
- Makes the registration period for a lobbyist and lobbyist's principal is one year.
- Clarifies that the lobbyist must file a separate registration for each principal the lobbyist represents, and that a fee of $100 is paid for each registration.
- Requires quarterly reporting of lobbying expenditures, with increased reporting to monthly for legislative lobbying while the General Assembly is in session, if there is a lobbying expenditure made during that month.
- Increases the details of lobbying expenditure reports to include the fair market value or face value if shown, date, a description of the lobbying expenditure, name and address of the payee or beneficiary, name of any covered person benefiting from the lobbying expenditure (or legislative employee or those person's immediate family members)
- Grants to the Secretary of State rulemaking authority to facilitate disclosure of lobbying expenditures, including the format of the report and additional categories.
- Bans all campaign contributions to General Assembly and Council of State races by lobbyists and lobbyist's principals.
- Requires registration by persons incurring expenses for solicitation of others to lobby in the following amounts:

  - Over $1,000 for media costs in a calendar quarter.
  - Over $1,000 for mailing costs in a calendar quarter.
  - Over $500 for conference or similar events in a calendar quarter.
- Requires expenditures of $200 made for the purpose of lobbying from persons not required to register and report as lobbyists or lobbyist's principals or more to be reported. If the person giving the gift is in North Carolina, that person shall make the report. If the person giving the gift is outside North Carolina, the person accepting the gift shall make the report. Certain exceptions apply, and persons filing a statement of economic interest may fulfill reporting requirements on the statement of economic interest.
- Authorizes the Secretary of State to issue advisory opinions on issues arising under the lobbying law.
- Requires continuing lobbying education programs for legislators, legislative employees, executive branch officers, lobbyists and lobbyists' principals.

SECTION 22 transfers the lobbying regulation from the Secretary of State to the State Ethics Commission effective September 1, 2008.

SECTION 23 transfers the assets and personnel of the State Ethics Board to the State Ethics Commission effective October 1, 2006.

EFFECTIVE DATE: Most of the lobbying portions of the bill become effective January 1, 2007. Most of the remainder of the bill becomes effective October 1, 2006, and applies to covered persons and legislative employees on or after January 1, 2007, and to acts and conflicts of interest that arise on or after January 1, 2007. The conforming changes become effective January 1, 2007.

Erika Churchill, counsel to the House Judiciary I Committee, substantially contributed to this summary.

H1843e3-SMRU-PCS80685-RU-1004

Attachment VII

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative Hackney (Chair) for the Committee on JUDICIARY I.

☒ Senate Committee Substitute for
HB 1843 A BILL TO BE ENTITLED AN ACT TO ESTABLISH THE STATE GOVERNMENT ETHICS ACT, TO CREATE THE STATE ETHICS COMMISSION, TO ESTABLISH ETHICAL STANDARDS FOR CERTAIN STATE PUBLIC OFFICERS, STATE EMPLOYEES, AND APPOINTEES TO NONADVISORY STATE BOARDS AND COMMISSIONS, TO REQUIRE PUBLIC DISCLOSURE OF ECONOMIC INTERESTS BY CERTAIN PERSONS IN THE EXECUTIVE, LEGISLATIVE, AND JUDICIAL BRANCHES, TO AMEND THE LOBBYING LAWS, AND TO MAKE CONFORMING CHANGES.

☒ With recommendation that the House do not concur.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

_____ Pursuant to Rule 36(b), the bill/resolution is placed on the Calendar of _____.

_____ On motion of Representative_____, Committee Amendment No.(s) ___ is/are adopted by EV (_____).

House Judiciary I Committee

July 25, 2006
10:00 a.m.

Minutes

The House Judiciary I Committee met on Tuesday, July 25, 2006 at 10:00 a.m. in Room 1228 of the Legislative Building. Chairman Joe Hackney called the meeting to order and the following members were present: Representatives Capps, Goodwin, Hall, Harrison, Ross, Stam, Stiller and West. A copy of the agenda and visitor registration is attached, (Attachments I and II).

For consideration by the Committee was Senate Bill 1523, AN ACT TO MAKE TECHNICAL CORRECTIONS AND CONFORMING CHANGES TO THE GENERAL STATUTES AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION, (Attachment III). Chairman Hackney stated that the 2006 Technical Corrections bill would be considered, and that the 2005 Technical Correctional bill was is conference. He further stated the budget technical corrections bill was being considered by the Appropriations Committee. Chairman Hackney said that the Technical Corrections bill contains agreed items between the House and Senate. He said that there were some requested items that were not included that were either not technical or were substantive in a way that seemed more than a tiny substantive change. He said that the standard that he and Senator Clodfelter attempted to follow for the bill is: signed off on by the House; signed off on by the Senate; truly technical; or "tiny" substantive.

A Proposed House Committee Substitute was distributed, (Attachment IV). Representative Ross moved its adoption for the purpose of discussion. The motion carried.

Mr. Walker Reagan, Staff Attorney, was recognized and offered a section-by-section explanation of the bill. A bill analysis identifying the technical corrections changes is attached, (Attachment V).

Representative Harrison was recognized to offer an amendment, (Attachment VI). Chairman Hackney noted that this provision had been agreed to, but had not been included in the Proposed Committee Substitute because it was originally thought that it would have made the bill a three-day bill. He said that the amendment keeps the non-Finance part of the provision that had been agreed to and keeps out the Finance part. He said that the amendment which would add a new section, addresses the number of days for which a deposit or other payment toward a manufactured home must be returned to the buyer if the buyer cancels the purchase. Representative Harrison moved adopted of the amendment. The motion carried.

Representative Ross offered an amendment, (Attachment VII). The amendment addressed the Lottery Commission and would change the language on page 5, lines 18

and 19 to read: "Commissioners may be removed by the appointing authority for cause" rather than "Commissioners serve at the pleasure of the appointing authority." Upon a motion by Representative Ross, the motion carried and the amendment was adopted.

Representative Stam offered an amendment to line 41 on page 29, (Attachment VIII), to change the effective date for each reference in the Eminent Domain Restrictions bill (House Bill 1965) from September 1, 2006 to August 15, 2006. He moved adoption and his motion carried.

Representative Goodwin offered an amendment, (Attachment IX), that directs an inadvertent language repeal from the Displaced Homemakers Act that was passed the previous year, where the language was repealed that said that one could get benefits from displaced homemakers after the loss of benefits and for two years after. Chairman Hackney said that the "two years after" part had been dropped at that time. He stated that the amendment would return the "two years after" to the Displaced Homemaker statute. Upon a motion for adoption by Representative Goodwin, the amendment was adopted.

Representative Ross offered a technical amendment, (Attachment X), to delete lines 33 and 34 on page 31. She moved adoption and the motion carried.

Representative Ross offered an amendment, (Attachment XI). Jeff Hudson, Research Division, was recognized to explain the amendment. He said that the amendment would make a conforming change to a bill that was passed the previous week and was on the governor's desk regarding for hire blanket coastal recreation fishing license so that licenses may be issued to the vessel rather than the boat captain. Chairman Hackney stated that the amendment was strictly conforming and had not fiscal impact. Upon a motion for adoption by Representative Ross, the amendment was adopted.

Representative Stam moved that the amendments be rolled into a new Proposed House Committee Substitute, that it be given a favorable report and the Senate Committee Substitute bill an unfavorable report. The motion carried, (Attachment XII). A copy of the new House Committee Substitute is attached, (Attachment XIII).

The meeting was adjourned at 11:00 a. m.

Representative Joe Hackney
Chair

Emily Reynolds Freeman
Committee Clerk

Attachment I

HOUSE COMMITTEE ON JUDICIARY I

July 25, 2006
10:00 a.m.

AGENDA

OPENING REMARKS

AGENDA ITEM

Senate Bill 1523 – 2006 Technical Corrections Act
Senator Hartsell

ADJOURNMENT

Attachment II

VISITOR REGISTRATION SHEET

House Judiciary I — **Name of Committee**

July 25, 2006 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Suzanne Bradley	SCANC
Doris Watkins	SCANC
DAVID BARNES	Poyner + Spruill
Chris Hayes	Citizens
[illegible]	NCAJ
Colleen Kochanek	Smith Moore
Paula A Wolf	ACLU-NC; El Pueblo
Dwight Allen	Smith Anderson
Lu Hodge	NCCU
Steve Woodson	NC Farm Bureau
John Hoomani	NCDOL

VISITOR REGISTRATION SHEET

House Judiciary I — July 25, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Thom Mansfield	NC Medical Board
Chris Fitzsimon	NC Policy Watch
Joe Sawicki	NCCUA
Frank W. Folger	Helms Mullis & Wicker
Tom Coley	CWA
[illegible]	NCNU - RANC
Elizabeth Dalton	NCRMA
M Bunter	N + R
[illegible]	NCPMA
[illegible]	NCFPC
[illegible]	SEANC

VISITOR REGISTRATION SHEET

House Judiciary I — July 25, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jeb Alley	Alley Associating
Hugh Tilson	NCHA
Ann Lore	Duke
Jeff Covay	RPA, PA
Jeff Mann	
Steve Keene	Med Society
Patrick Boffin	Alley Associates, Inc.
Dave Simpson	CAGC
Andy Romanet	NCLM
Ed Turlington	Banner
Andrew Meehan	NCAEC

VISITOR REGISTRATION SHEET

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
ANTHONY ALLEN	NCACC
Kara Gunn	Smith Anderson
Jami Fitzgerald	NCFPC
[illegible]	Consultant
Molly Pyor	NCSBA
Alex Sewell	NCSR
Rita Johnson	SBE
Hang Wilson	SBE
Eric Sands	Edmisten & Webb
Holly Bryan	NCAR
Wendy Kelly	HMW

VISITOR REGISTRATION SHEET

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Rick Zechini	NC Assn of Realtors
Doug Heron	NC Bar Assn
Eddie Caldwell	NC Sheriffs' Assn.
Kevin Leonard	WCSR
Mark Fleming	? University
Wayne Boodee	DOT
Michael Houser	NCAE
[illegible]	NCLM
Cam Cover	BPM/HL
[illegible]	NCICU
[illegible]	NCACC

VISITOR REGISTRATION SHEET

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
[illegible]	NCDHHS
Barbara Conley	BCBS
Stacy Flannery	NCIRPA
Jim Stegall	U.C.P.S.
Hope Carmichael	Attorney - Raleigh
Henry Jones	Attorney - Raleigh
Dana Simpson	Smith Anderson
Lindsay Pennington	DCPA
Paul Fach	NCBA
Sherine Davis	Electricities
Rob Schofield	NCCNP

VISITOR REGISTRATION SHEET

Name of Committee | Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
P. Bay Hall	General Statutes Com
Jennifer Haigwood	NCDOT
Ben Tuttle	Rep. Hackney's office
Johanna Reese	DOT
Mildred Spearman	NC Dept of Correction
ASHLEY WHITE	NC CCPS
Tracy Kimbrell	Parker Poe
Rebekah Gonzalez	ACLU-NC
BRAD Lovin	NC manufactured Housing Assn
Christine Cramer	Duke Energy
Ken Howell	Gov's office
Anne Barkema	NCEL
[illegible]	News & Record
[illegible]	UNC

Attachment III

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

S 2

SENATE BILL 1523*
Judiciary I Committee Substitute Adopted 7/6/06

Short Title: 2006 Technical Corrections Act. (Public)

Sponsors:

Referred to:

May 18, 2006

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. 9-10(b) reads as rewritten:

"(b) All summons served personally or by mail under this section or under G.S. 9-11 shall inform the prospective juror that persons ~~65~~72 years of age or older are entitled to establish in writing exemption from jury service for good cause, shall contain a statement for claiming such exemption and stating the cause and a place for the prospective juror's signature, and shall state the mailing address of the clerk of superior court and the date by which such request for exemption must be received."

SECTION 2.(a) G.S. 10B-20(1) reads as rewritten:

"(l) A notary public required to comply with the provisions of ~~subsection (g)~~subsection (i) of this section shall prominently post at the notary public's place of business a schedule of fees established by law, which a notary public may charge. The fee schedule shall be written in English and in the non-English language in which the notary services were solicited and shall contain the notice required in subsection (i) of this section, unless the notice is otherwise prominently posted at the notary public's place of business."

SECTION 2.(b) G.S. 10B-106(d) reads as rewritten:

"(d) An electronic form shall be used by an electronic notary in registering with the Secretary and it shall include, at least all of the following:

(1) The applicant's full legal name and the name to be used for commissioning, excluding nicknames.

(2) The state and county of commissioning of the registrant.

(3) The expiration date of the registrant's notary commission.

(4) Proof of successful completion of the course of instruction on electronic notarization as required by this Article.
(5) A description of the technology the registrant will use to create an electronic signature in performing official acts.
(6) If the device used to create the registrant's electronic signature was issued or registered through a licensed certification authority, the name of that authority, the source of the license, the starting and expiration dates of the device's term of registration, and any revocations, annulments, or other premature terminations of any registered device of the registrant that was due to misuse or compromise of the device, with the date, cause, and nature of each termination explained in detail.
(7) The e-mail address of the registrant.

The information contained in a registration under this section is a public record as defined in G.S. 132-1, except for information contained in ~~subsection (7),~~ subdivision (7) of this subsection, which shall be considered confidential information and shall not be subject to disclosure except as provided in Chapter 132 of the General Statutes or as provided by rule."

SECTION 3. G.S. 15A-615(a) reads as rewritten:

"(a) After a finding of probable cause pursuant to the provisions of Article 30 of Chapter 15A of the General Statutes or indictment for an offense that involves nonconsensual vaginal, anal, or oral ~~intercourse,~~ intercourse; an offense that involves vaginal, anal, or oral intercourse with a child 12 years old or ~~less,~~less; or an offense under G.S. 14-202.1 that involves vaginal, anal, or oral intercourse with a child less than 16 years ~~old.~~old; the victim or the parent, guardian, or guardian ad litem of a minor victim may request that a defendant be tested for the following sexually transmitted infections:

(1) Chlamydia;
(2) Gonorrhea;
(3) Hepatitis B;
(3a) Herpes;
(4) HIV; and
(5) Syphilis.

In the case of herpes, the defendant, pursuant to the provisions of this section, shall be examined for oral and genital herpetic lesions and, if a suggestive but nondiagnostic lesion is present, a culture for herpes shall be performed."

SECTION 4. G.S. 41-47(c) reads as rewritten:

"(c) A registering entity is discharged from all claims to a security by the estate, creditors, heirs, or devisees of a deceased owner if it registers a transfer of a security in accordance with G.S. 41-46 and does so in good faith reliance (i) on the registration, (ii) on this Article, and (iii) on information provided to it by affidavit of the personal representative of the deceased owner, or by the surviving beneficiary or by the surviving beneficiary's representatives, or other information available to the registering entity. The protections of this Article do not extend to a reregistration or payment made after a registering entity has received written ~~notice~~ notice, addressed to the registering entity,

from any claimant to any interest in the security objecting to implementation of a registration in beneficiary form. No other notice or other information available to the registering entity affects its right to protection under this Article."

SECTION 5. G.S. 45-37(a) reads as rewritten:

"(a) Subject to the provisions of G.S. 45-36.9(a) and G.S. 45-73 relating to security instruments which secure future advances, any security instrument intended to secure the payment of money or the performance of any other obligation registered as required by law may be satisfied of record and thereby discharged and released of record in the following manner:

(1) Security instruments satisfied of record prior to October 1, 2005, pursuant to this subdivision as it was in effect prior to October 1, 2005, shall be deemed satisfied of record, discharged, and released.

...

(5) Security instruments satisfied of record prior to October 1, 2005, pursuant to this subdivision as it was in effect prior to October 1, 2005, shall be deemed satisfied of record, discharged, and released.

(6) Security instruments satisfied of record prior to October 1, 2005, pursuant to this subdivision as it was in effect prior to October 1, 2005, shall be deemed satisfied of record, discharged, and released.

..."

SECTION 6. G.S. 45-38 reads as rewritten:

"**§ 45-38. Recording of foreclosure.**

In case of foreclosure of any deed of trust, or mortgage, the trustee, mortgagee, or the trustee's or mortgagee's attorney shall record a notice of foreclosure that includes the date when, and the person to whom, a conveyance was made by reason of the foreclosure. In the event the entire obligation secured by a mortgage or deed of trust is satisfied by a sale of only a part of the property embraced within the terms of the mortgage or deed of trust, the trustee, mortgagee, or the trustee's or mortgagee's attorney shall indicate in the notice of foreclosure which property was sold.

A notice of foreclosure shall consist of a separate instrument, or that part of the original deed of trust or mortgage rerecorded, reciting the information required hereinabove, the names of the original parties to the original instrument foreclosed, and the recording data for the instrument foreclosed. A notice of ~~forfeiture~~foreclosure shall be indexed by the register of deeds in accordance with ~~G.S. 161.14.1.~~G.S. 161-14.1."

SECTION 7.(a) G.S. 47C-3-116(e) reads as rewritten:

"(e) A judgment, decree, or order in any action brought under this section shall include costs and reasonable attorneys' fees for the prevailing party. If the unit owner does not contest the collection of debt and enforcement of a lien after the expiration of the 15-day period following notice as required in subsection (e1) of this section, then reasonable attorneys' fees shall not exceed one thousand two hundred dollars ($1,200), not including costs or expenses incurred. The collection of debt and enforcement of a lien remain uncontested as long as the unit owner does not dispute, contest, or raise any objection, defense, offset, or counterclaim as to the amount or validity of the debt and lien asserted or the association's right to collect the debt and enforce the lien as provided

in this section. The attorneys' fee limitation in this subsection shall not apply to judicial foreclosures or proceedings authorized under subsection (d) of this section or ~~G.S. 47F-4-117.~~G.S. 47C-4-117."

SECTION 7.(b) G.S. 47C-3-121(2)b. reads as rewritten:

"b. For restrictions registered on or after October 1, 2005, the restriction shall be written on the first page of the instrument or conveyance in print that is in boldface type, capital letters, and no smaller than the largest print used elsewhere in the instrument or conveyance. The restriction shall be construed to regulate or prohibit the display of political signs only if the restriction specifically states: **"THIS DOCUMENT REGULATES OR PROHIBITS THE DISPLAY OF ~~THE~~ POLITICAL SIGNS"**."

SECTION 8.(a) G.S. 47F-1-102(c) reads as rewritten:

"(c) Notwithstanding the provisions of subsection (a) of this section, G.S. 47F-3-102(1) through (6) and (11) through (17) (Powers of owners' association), G.S. 47F-3-103(f) (Executive board members and officers), G.S. 47F-3-107(a), (b), and (c) (Upkeep of planned community; responsibility and assessments for damages), G.S. 47F-3-107.1 (Procedures for fines and suspension of planned community privileges or services), G.S. 47F-3-108 (Meetings), G.S. 47F-3-115 (Assessments for common expenses), G.S. 47F-3-116 (Lien for assessments), G.S. 47F-3-118 (Association records), and ~~G.S. 47C-3-121~~ G.S. 47F-3-121 (American and State flags and political sign displays) apply to all planned communities created in this State before January 1, 1999, unless the articles of incorporation or the declaration expressly provides to the contrary, and G.S. 47F-3-120 (Declaration limits on attorneys' fees) applies to all planned communities created in this State before January 1, 1999. These sections apply only with respect to events and circumstances occurring on or after January 1, 1999, and do not invalidate existing provisions of the declaration, bylaws, or plats and plans of those planned communities. G.S. 47F-1-103 (Definitions) also applies to all planned communities created in this State before January 1, 1999, to the extent necessary in construing any of the preceding sections."

SECTION 8.(b) G.S. 47F-3-121(2)b. reads as rewritten:

"b. For restrictions registered on or after October 1, 2005, the restriction shall be written on the first page of the instrument or conveyance in print that is in boldface type, capital letters, and no smaller than the largest print used elsewhere in the instrument or conveyance. The restriction shall be construed to regulate or prohibit the display of political signs only if the restriction specifically states: **"THIS DOCUMENT REGULATES OR PROHIBITS THE DISPLAY OF ~~THE~~ POLITICAL SIGNS"**."

SECTION 9.(a) G.S. 55-11-04(b) reads as rewritten:

"(b) If a merger is consummated without approval of the subsidiary corporation's shareholders, the ~~parent~~ surviving corporation shall, within 10 days after the effective

date of the merger, notify each shareholder of the subsidiary corporation as of the effective date of the merger, that the merger has become effective."

SECTION 9.(b) G.S. 55-11-05(d) reads as rewritten:

"(d) In the case of a merger ~~or share exchange~~ pursuant to G.S. 55-11-07 or ~~G.S. 55-11-09,~~a share exchange pursuant to G.S. 55-11-07, references in subsections (a) and ~~(b)~~(a1) of this section to "corporation" shall include a domestic corporation, a domestic nonprofit corporation, a foreign corporation, and a foreign nonprofit corporation as applicable."

SECTION 9.(c) G.S. 55A-11-06(c) reads as rewritten:

"(c) This section does not limit the power of a foreign corporation to acquire all or part of the ~~shares~~ memberships of one or more classes ~~or series~~ of a domestic nonprofit corporation through a voluntary exchange or otherwise."

SECTION 9.(d) G.S. 57C-9A-02(a2) reads as rewritten:

"(a2) The provisions of the plan of conversion, other than the provisions required by subdivisions (1) and ~~(2)~~(1a) of subsection (a) of this section, may be made dependent on facts objectively ascertainable outside the plan of conversion if the plan of conversion sets forth the manner in which the facts will operate upon the affected provisions. The facts may include any of the following:

(1) Statistical or market indices, market prices of any security or group of securities, interest rates, currency exchange rates, or similar economic or financial data.

(2) A determination or action by the converting business entity or by any other person, group, or body.

(3) The terms of, or actions taken under, an agreement to which the converting business entity is a party, or any other agreement or document."

SECTION 10. G.S. 58-47-140 reads as rewritten:

"**§ 58-47-140. Other provisions of this Chapter.**

The following provisions of this Chapter apply to workers' compensation self-insurance groups that are subject to this Article:

G.S. 58-1-10, 58-2-45, 58-2-50, 58-2-70, 58-2-100, 58-2-105, 58-2-155, 58-2-161, 58-2-180, 58-2-185, 58-2-190, 58-2-200, 58-3-71, 58-3-81, 58-3-100, 58-3-120, 58-6-25, 58-7-21, 58-7-26, 58-7-30, 58-7-33, 58-7-73, and Articles 13, 19, 30, 33, 34, and 63 of this ~~Chapter apply to groups.~~Chapter."

SECTION 11. G.S. 90-270.67 reads as rewritten:

"**§ 90-270.67. Definitions.**

As used in this Article, unless the context clearly requires a different meaning:

(1) Accrediting body. – The Accrediting Council for Occupational Therapy Education.

(1a) Board. – The North Carolina Board of Occupational Therapy.

(1b) Examining body. – The National Board for Certification in Occupational Therapy.

(2) Occupational therapist. – An individual licensed in good standing to practice occupational therapy as defined in this Article.

(3) Occupational therapy assistant. – An individual licensed in good standing to assist in the practice of occupational therapy under this Article, who performs activities commensurate with his or her education and training under the supervision of a licensed occupational therapist.

(4) ~~"Occupational therapy" means a~~Occupational therapy. – A health care profession providing evaluation, treatment and consultation to help individuals achieve a maximum level of independence by developing skills and abilities interfered with by disease, emotional disorder, physical injury, the aging process, or impaired development. Occupational therapists use purposeful activities and specially designed orthotic and prosthetic devices to reduce specific impairments and to help individuals achieve independence at home and in the work place.

(5) Person. – Any individual, partnership, unincorporated organization, or corporate body, except that only an individual may be licensed under this Article."

SECTION 12. G.S. 90B-9 reads as rewritten:

"**§ 90B-9. Renewal of certificates and licenses.**

(a) All certificates and licenses shall be effective upon date of issuance by the Board, and shall be renewed on or before the second June 30 thereafter.

(b) All certificates and licenses issued hereunder shall be renewed at the times and in the manner provided by this section. At least 45 days prior to expiration of each certificate or license, the Board shall mail a notice and application for renewal to the certificate holder or licensee. Prior to the expiration date, the application shall be returned properly completed, together with a renewal fee established by the Board pursuant to ~~G.S. 90B-6.2(a)(5)~~G.S. 90B-6.2(a)(4) and evidence of completion of the continuing education requirements established by the Board pursuant to G.S. 90B-6(g), upon receipt of which the Board shall renew the certificate or license. If a certificate or license is not renewed on or before the expiration date, an additional fee shall be charged for late renewal as provided in ~~G.S. 90B-6.2(a)(6).~~G.S. 90B-6.2(a)(5).

(c) A certificate or license issued under this Chapter shall be automatically suspended for failure to renew for a period of more than 60 days after the renewal date. The Board may reinstate a certificate or license suspended under this subsection upon payment of a reinstatement fee as provided in ~~G.S. 90B-6.2(a)(7)~~G.S. 90B-6.2(a)(6) and may require that the applicant file a new application, furnish new supervisory reports or references or otherwise update his or her credentials, or submit to examination for reinstatement. The Board shall have exclusive jurisdiction to investigate alleged violations of this Chapter by any person whose certificate or license has been suspended under this subsection and, upon proof of any violation of this Chapter, the Board may take disciplinary action as provided in G.S. 90B-11.

(d) Any person certified or licensed and desiring to retire temporarily from the practice of social work shall send written notice thereof to the Board. Upon receipt of such notice, his or her name shall be placed upon the nonpracticing list and he or she

shall not be subject to payment of renewal fees while temporarily retired. In order to reinstate certification or licensure, the person shall apply to the Board by making a request for reinstatement and paying the appropriate fee as provided in G.S. 90B-6.2."

SECTION 13. G.S. 113-133.1(e) reads as rewritten:

"(e) Because of strong community interest expressed in their retention, the local acts or portions of local acts listed in this section are not repealed. The following local acts are retained to the extent they apply to the county for which listed:

Alleghany: Session Laws 1951, Chapter 665; Session Laws 1977, Chapter 526; Session Laws 1979, Chapter 556.

Anson: Former G.S. 113-111, as amended by Session Laws 1955, Chapter 286.

Ashe: Former G.S. 113-111; Session Laws 1951, Chapter 665.

Avery: Former G.S. 113-122.

Beaufort: Session Laws 1947, Chapter 466, as amended by Session Laws 1979, Chapter 219; Session Laws 1957, Chapter 1364; Session Laws 1971, Chapter 173.

Bertie: Session Laws 1955, Chapter 1376; Session Laws 1975, Chapter 287.

Bladen: Public-Local Laws 1933, Chapter 550, Section 2 (as it pertains to fox season); Session Laws 1961, Chapter 348 (as it applies to Bladen residents fishing in Robeson County); Session Laws 1961, Chapter 1023; Session Laws 1971, Chapter 384.

Brunswick: Session Laws 1975, Chapter 218.

Buncombe: Public-Local Laws 1933, Chapter 308.

Burke: Public-Local Laws 1921, Chapter 454; Public-Local Laws 1921 (Extra Session), Chapter 213, Section 3 (with respect to fox seasons); Public-Local Laws 1933, Chapter 422, Section 3; Session Laws 1965, Chapter 608, as amended by Session Laws 1977, Chapter 68; Session Laws 1977, Chapter 636.

Caldwell: Former G.S. 113-122; Session Laws 1965, Chapter 608, as amended by Session Laws 1977, Chapter 68; Session Laws 1977, Chapter 636; Session Laws 1979, Chapter 507.

Camden: Session Laws 1955, Chapter 362 (to the extent it applies to inland fishing waters); Session Laws 1967, Chapter 441.

Carteret: Session Laws 1955, Chapter 1036; Session Laws 1977, Chapter 695.

Caswell: Public-Local Laws 1933, Chapter 311; Public-Local Laws 1937, Chapter 411.

Catawba: Former G.S. 113-111, as amended by Session Laws 1955, Chapter 1037.

Chatham: Public-Local Laws 1937 Chapter 236; Session Laws 1963, Chapter 271.

Chowan: Session Laws 1979, Chapter 184; Session Laws 1979, Chapter 582.

Cleveland: Public Laws 1907, Chapter 388; Session Laws 1951, Chapter 1101; Session Laws 1979, Chapter 587.

Columbus: Session Laws 1951, Chapter 492, as amended by Session Laws 1955, Chapter 506.

Craven: Session Laws 1971, Chapter 273, as amended by Session Laws 1971, Chapter 629.

Cumberland: Session Laws 1975, Chapter 748; Session Laws 1977, Chapter 471.

Dare: Session Laws 1973, Chapter 259.

Davie: Former G.S. 113-111, as amended by Session Laws 1947, Chapter 333.

Duplin: Session Laws 1965, Chapter 774; Session Laws 1973 (Second Session 1974), Chapter 1266; Session Laws 1979, Chapter 466.

Edgecombe: Session Laws 1961, Chapter 408.

Gates: Session Laws 1959, Chapter 298; Session Laws 1975, Chapter 269; Session Laws 1975, Chapter 748.

Granville: Session Laws 1963, Chapter 670.

Greene: Session Laws 1975, Chapter 219; Session Laws 1979, Chapter 360.

Halifax: Public-Local Laws 1925, Chapter 571, Section 3 (with respect to fox-hunting seasons); Session Laws 1947, Chapter 954; Session Laws 1955, Chapter 1376.

~~Harnett: Former G.S. 113-111, as modified by Session Laws 1977, Chapter 636.~~

Haywood: Former G.S. 113-111, as modified by Session Laws 1963, Chapter 322.

Henderson: Former G.S. 113-111.

Hertford: Session Laws 1959, Chapter 298; Session Laws 1975, Chapter 269; Session Laws 1975, Chapter 748; Session Laws 1977, Chapter 67.

Hoke: Session Laws 1963, Chapter 267.

Hyde: Public-Local Laws 1929, Chapter 354, Section 1 (as it relates to foxes); Session Laws 1951, Chapter 932.

Iredell: Session Laws 1979, Chapter 577.

Jackson: Session Laws 1965, Chapter 765; Session Laws 1971, Chapter 424.

Johnston: Session Laws 1975, Chapter 342.

Jones: Session Laws 1979, Chapter 441.

Lee: Session Laws 1963, Chapter 271; Session Laws 1977, Chapter 636.

Lenoir: Session Laws 1979, Chapter 441.

Lincoln: Public-Local Laws 1925, Chapter 449, Sections 1 and 2; Session Laws 1955, Chapter 878.

Madison: Public-Local Laws 1925, Chapter 418, Section 4; Session Laws 1951, Chapter 1040.

Martin: Session Laws 1955, Chapter 1376; Session Laws 1977, Chapter 636.

Mitchell: Session Laws 1965, Chapter 608, as amended by Session Laws 1977, Chapter 68.

Montgomery: Session Laws 1977 (Second Session 1978), Chapter 1142.

Nash: Session Laws 1961, Chapter 408.

New Hanover: Session Laws 1971, Chapter 559; Session Laws 1975, Chapter 95.

Northampton: Session Laws 1955, Chapter 1376; Session Laws 1975, Chapter 269; Session Laws 1975, Chapter 748; Session Laws 1977, Chapter 67; Session Laws 1979, Chapter 548.

Orange: Public-Local Laws 1913, Chapter 547.

Pamlico: Session Laws 1977, Chapter 636.

Pender: Session Laws 1961, Chapter 333; Session Laws 1967, Chapter 229; Session Laws 1969, Chapter 258, as amended by Session Laws 1973, Chapter 420; Session Laws 1977, Chapter 585, as amended by Session Laws 1985, Chapter 421; Session Laws 1977, Chapter 805; Session Laws 1979, Chapter 546.

Perquimans: Former G.S. 113-111; Session Laws 1973, Chapter 160; Session Laws 1973, Chapter 264; Session Laws 1979, Chapter 582.

Polk: Session Laws 1975, Chapter 397; Session Laws 1975, Chapter 269, as amended by Session Laws 1977, Chapter 167.

Randolph: Public-Local Laws 1941, Chapter 246; Session Laws 1947, Chapter 920.

Robeson: Public-Local Laws 1924 (Extra Session), Chapter 92; Session Laws 1961, Chapter 348.

Rockingham: Former G.S. 113-111; Public-Local Laws 1933, Chapter 310.

Rowan: Session Laws 1975, Chapter 269, as amended by Session Laws 1977, Chapter 106, and Session Laws 1977, Chapter 500; Session Laws 1979, Chapter 556.

Rutherford: Session Laws 1973, Chapter 114; Session Laws 1975, Chapter 397.

Sampson: Session Laws 1979, Chapter 373.

Scotland: Session Laws 1959, Chapter 1143; Session Laws 1977, Chapter 436.

Stokes: Former G.S. 113-111; Public-Local Laws 1933, Chapter 310; Session Laws 1979, Chapter 556.

Surry: Public-Local Laws 1925, Chapter 474, Section 6 (as it pertains to fox seasons); Session Laws 1975, Chapter 269, as amended by Session Laws 1977, Chapter 167.

Swain: Public-Local Laws 1935, Chapter 52; Session Laws 1953, Chapter 270; Session Laws 1965, Chapter 765.

Transylvania: Public Laws 1935, Chapter 107, Section 2, as amended by Public Laws 1935, Chapter 238.

Tyrrell: Former G.S. 113-111; Session Laws 1953, Chapter 685.

Wake: Session Laws 1973 (Second Session 1974), Chapter 1382.

Washington: Session Laws 1947, Chapter 620.

Wayne: Session Laws 1975, Chapter 269; Session Laws 1975, Chapter 342, as amended by Session Laws 1977, Chapter 43; Session Laws 1975, Chapter 343, as amended by Session Laws 1977, Chapter 45; Session Laws 1977, Chapter 695.

Wilkes: Former G.S. 113-111, as amended by Session Laws 1971, Chapter 385; Session Laws 1951, Chapter 665; Session Laws 1973, Chapter 106; Session Laws 1979, Chapter 507.

Yadkin: Former G.S. 113-111, as amended by Session Laws 1953, Chapter 199; Session Laws 1979, Chapter 507.

Yancey: Session Laws 1965, Chapter 522."

SECTION 14. G.S. 113-270.3(d) reads as rewritten:

"(d) Any individual who possesses any of the lifetime sportsman licenses established by G.S. 113-270.1D(b) may engage in specially regulated activities without the licenses required by subdivisions (1), (2), (3), and (5) of subsection (b) of this section. Any individual possessing an annual sportsman license established by G.S. 113-270.1D(a) or a lifetime or annual comprehensive hunting license established by G.S.113-270.2(c)(2) or (5) may engage in specially regulated activities without the licenses required by subdivisions ~~(1) and (3)~~(1), (3), and (5) of subsection (b) of this section."

SECTION 15. G.S. 115C-499.3(a) reads as rewritten:

"(a) Subject to the amount of net income available under G.S. 18C- 164(b)(2), a scholarship awarded under this Article to a student at an eligible postsecondary institution shall be based upon the enrollment status and expected family contribution of the student and shall not exceed four thousand dollars ($4,000) per academic year, including any federal Pell Grant, to be used for the costs of attendance as defined for federal Title IV programs."

SECTION 16.(a) G.S. 120-4.21(c), as it applies to members retiring before September 1, 2005, reads as rewritten:

"(c) Limitations applicable to members retiring before September 1, 2005. – In no event shall any member receive a service retirement allowance greater than seventy-five percent (75%) of his "highest annual salary"."

SECTION 16.(b) G.S. 120-4.21(c), as it applies to members retiring on or after September 1, 2005, is recodified as G.S. 120-4.21(d) and reads as rewritten:

"(d) Limitations applicable to members retiring on or after September 1, 2005. – In no event shall any member receive a service retirement allowance greater than seventy-five percent (75%) of the member's "highest annual salary" nor shall a member receive any service retirement allowance whatsoever while employed in a position that makes the member a contributing member of either the Teachers' and State Employees' Retirement System or the Consolidated Judicial Retirement System. If the member should become a member of either of these systems, payment of the member's service retirement allowance shall be suspended until the member withdraws from membership in that system."

SECTION 17.(a) G.S. 130A-309.10 (f)(7) reads as rewritten:

"(7) Whole scrap tires, as provided in G.S. 130A-309.58(b). The prohibition ~~of the disposal of~~on disposal of whole scrap tires in landfills applies to all whole pneumatic rubber coverings, but does not apply to whole solid rubber coverings."

SECTION 17.(b) This section is effective October 1, 2009.

SECTION 18.(a) G.S. 135-3(8)c. reads as rewritten:

"c. 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%).

~~in full-time capacity that exceeds fifty percent (50%) of the applicable workweek.~~"

SECTION 18.(b) This section is effective June 30, 2007.

SECTION 19. The catch line of G.S. 158-33 reads as rewritten:

"**§ 158-33. Creation of ~~Global TransPark Development Zone.~~North Carolina's Eastern Region.**"

SECTION 20.(a) The introductory language of Section 5 of S.L. 2005-123 reads as rewritten:

"**SECTION 5.** G.S. 47-46.1 and G.S. 47-46.2 read~~reads~~ as rewritten:".

SECTION 20.(b) This section is effective October 1, 2005.

SECTION 21. S.L. 2005-123 is amended by adding a new section to read:

"**SECTION 9.1.** The Revisor of Statutes shall cause to be printed at the appropriate locations in the General Statutes all relevant portions of the official comments to the Uniform Residential Mortgage Satisfaction Act and all explanatory comments of the drafters of this act as the Revisor deems appropriate."

SECTION 22. Section 3 of S.L. 2005-127 reads as rewritten:

"**SECTION 3.** This act is effective when it becomes law. For each water and sewer authority organized under Article 1 of Chapter ~~162~~162A of the General Statutes, Section 2 of this act applies on the first day of the fiscal year of the authority that begins on or after the date this act becomes effective."

SECTION 23. Section 1 of S.L. 2005-133 reads as rewritten:

"**SECTION 1.** Under the Occupational Safety and Health Act of North Carolina, the name of the Safety and Health Review Board is changed to the North Carolina Occupational Safety and Health Review Commission. The Revisor of Statutes is authorized to substitute the term "Commission" for the term "Board" wherever that term appears in the General Statutes in relation to the Act. The Revisor of Statutes is also authorized to insert the words "North Carolina Occupational" in front of the phrase "Safety and Health Review Commission" wherever that phrase appears in the General Statutes in relation to the Act."

SECTION 24.(a) Section 7(a) of S.L. 2005-192 is codified as G.S. 36C-11-1106 and reads as rewritten:

"**§ 36C-11-1106. Application to existing relationships.**

(a) ~~Section 2 of this act becomes effective January 1, 2006, and except~~Except as otherwise provided in ~~Chapter 36C of the General Statutes, as enacted by Section 2 of this act,~~this Chapter, this Chapter applies to (i) all trusts created before, on, or after ~~that date;~~January 1, 2006; (ii) all judicial proceedings concerning trusts commenced on or after ~~that date;~~January 1, 2006; and (iii) judicial proceedings concerning trusts commenced before ~~that date~~January 1, 2006, unless the court finds that application of a

particular provision of ~~Chapter 36C of the General Statutes~~this Chapter would substantially interfere with the effective conduct of the judicial proceedings or prejudice the rights of the parties, in which case the particular provision of ~~Chapter 36C of the General Statutes~~this Chapter does not apply and the superseded law applies.

(b) Except as otherwise provided in ~~Chapter 36C of the General Statutes, as enacted by Section 2 of this act,~~this Chapter, any rule of construction or presumption provided in ~~Chapter 36C of the General Statutes~~ this Chapter applies to trust instruments executed before ~~the effective date of Section 2 of this act~~ January 1, 2006, unless there is a clear indication of a contrary intent in the terms of the trust or unless application of that rule of construction or presumption would impair substantial rights of a beneficiary. Except as otherwise provided in ~~Chapter 36C of the General Statutes, as enacted by Section 2 of this act,~~ this Chapter, an act done before ~~the effective date of Section 2 of this act~~January 1, 2006, is not affected by ~~Chapter 36C of the General Statutes.~~this Chapter. If a right is acquired, extinguished, or barred upon the expiration of a prescribed period that has commenced to run under any other statute before ~~the effective date of Section 2 of this act,~~January 1, 2006, that statute continues to apply to the right even if it has been repealed or superseded."

SECTION 24.(b) Section 7(b) of S.L. 2005-192 reads as rewritten:

"**SECTION 7.(b)** ~~Section 1 and Sections 3 through 5~~Sections 1 through 5 of this act become effective January 1, 2006. The remainder of this act is effective when it becomes law."

SECTION 24.(c) The Revisor of Statutes is authorized to cause to be printed along with G.S. 36C-11-1106, as enacted by this section, all relevant portions of the Official Commentary to this section of the Uniform Trust Code and all explanatory comments of the drafters as the Revisor deems appropriate.

SECTION 25. Section 7 of S.L. 2005-351 reads as rewritten:

"**SECTION 7.** This act becomes effective October 1, 2005, and applies to powers of attorney created ~~before and~~ on, before, or after that date."

SECTION 26. S.L. 2006-11 is amended by adding a new section to read:

"**SECTION 2.1.** The Revisor of Statutes shall cause to be printed along with G.S. 25-9-705, as amended by this act, all explanatory comments of the drafters of this act as the Revisor deems appropriate."

SECTION 27. This act is effective when it becomes law.

Attachment IV

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 1523*

Judiciary I Committee Substitute Adopted 7/6/06

PROPOSED HOUSE COMMITTEE SUBSTITUTE S1523-CSRN-19 [v.13]

7/25/2006 9:47:54 AM

Short Title: 2006 Technical Corrections Act. (Public)

Sponsors:

Referred to:

May 18, 2006

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 CHANGES AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION

SECTION 1. G.S. 10B-106(d) reads as rewritten:

"(d) An electronic form shall be used by an electronic notary in registering with the Secretary and it shall include, at least all of the following:

(1) The applicant's full legal name and the name to be used for commissioning, excluding nicknames.

(2) The state and county of commissioning of the registrant.

(3) The expiration date of the registrant's notary commission.

(4) Proof of successful completion of the course of instruction on electronic notarization as required by this Article.

(5) A description of the technology the registrant will use to create an electronic signature in performing official acts.

(6) If the device used to create the registrant's electronic signature was issued or registered through a licensed certification authority, the name of that authority, the source of the license, the starting and expiration dates of the device's term of registration, and any revocations, annulments, or other premature terminations of any registered device of the registrant that was due to misuse or compromise of the device, with the date, cause, and nature of each termination explained in detail.

(7) The e-mail address of the registrant.

The information contained in a registration under this section is a public record as defined in G.S. 132-1, except for information contained in ~~subsection (7),~~ subdivision (7) of this subsection, which shall be considered confidential information and shall not be subject to disclosure except as provided in Chapter 132 of the General Statutes or as provided by rule."

SECTION 2. G.S. 45-37(a) reads as rewritten:

"(a) Subject to the provisions of G.S. 45-36.9(a) and G.S. 45-73 relating to security instruments which secure future advances, any security instrument intended to secure the payment of money or the performance of any other obligation registered as required by law may be satisfied of record and thereby discharged and released of record in the following manner:

(1) Security instruments satisfied of record prior to October 1, 2005, pursuant to this subdivision as it was in effect prior to October 1, 2005, shall be deemed satisfied of record, discharged, and released.

...

(5) Security instruments satisfied of record prior to October 1, 2005, pursuant to this subdivision as it was in effect prior to October 1, 2005, shall be deemed satisfied of record, discharged, and released.

(6) Security instruments satisfied of record prior to October 1, 2005, pursuant to this subdivision as it was in effect prior to October 1, 2005, shall be deemed satisfied of record, discharged, and released.

...."

SECTION 3. If Senate Bill 1479, 2005 Regular Session, becomes law, Sections 1 and 2 of this act are repealed.

PART II. OTHER CHANGES

SECTION 4.(a) G.S. 14-72(b) reads as rewritten:

"(b) The crime of larceny is a felony, without regard to the value of the property in question, if the larceny ~~is:~~is any of the following:

(1) From the ~~person; or~~ person.

(2) Committed pursuant to a violation of G.S. 14-51, 14-53, ~~14-54~~14-54, 14-54.1, or ~~14-57; or~~14-57.

(3) Of any explosive or incendiary device or substance. As used in this section, the phrase "explosive or incendiary device or substance" shall include any explosive or incendiary grenade or bomb; any dynamite, blasting powder, nitroglycerin, TNT, or other high explosive; or any device, ingredient for such device, or type or quantity of substance primarily useful for large-scale destruction of property by explosive or incendiary action or lethal injury to persons by explosive or incendiary action. This definition shall not include fireworks; or any form, type, or quantity of gasoline, butane gas, natural gas, or any other substance having explosive or incendiary properties but serving a legitimate nondestructive or nonlethal use in the form, type, or quantity stolen.

(4) Of any firearm. As used in this section, the term "firearm" shall include any instrument used in the propulsion of a shot, shell or bullet by the action of gunpowder or any other explosive substance within it. A "firearm," which at the time of theft is not capable of being fired, shall be included within this definition if it can be made to work. This definition shall not include air rifles or air pistols.

(5) Of any record or paper in the custody of the North Carolina State Archives as defined by G.S. 121-2(7) and 121-2(8)."

SECTION 4.(b) This section becomes effective December 1, 2006, and applies to acts committed on or after that date.

SECTION 5.(a) G.S. 14-269(b) reads as rewritten:

"(b) This prohibition shall not apply to the following persons:

(1) Officers and enlisted personnel of the armed forces of the United States when in discharge of their official duties as such and acting under orders requiring them to carry arms and weapons;

(2) Civil and law enforcement officers of the United States;

(3) Officers and soldiers of the militia and the national guard when called into actual service;

(4) Officers of the State, or of any ~~county, city, or town,~~ county, city, town, or company police agency charged with the execution of the laws of the State, when acting in the discharge of their official duties;

(5) Sworn law-enforcement officers, when off-duty, provided that an officer does not carry a concealed weapon while consuming alcohol or an unlawful controlled substance or while alcohol or an unlawful controlled substance remains in the officer's body."

SECTION 5.(b) G.S. 74E-6(c) reads as rewritten:

"(c) All Company Police. – Company police officers, while in the performance of their duties of employment, have the same powers as municipal and county police officers to make arrests for both felonies and misdemeanors and to charge for infractions on any of the following:

(1) Real property owned by or in the possession and control of their employer.

(2) Real property owned by or in the possession and control of a person who has contracted with the employer to provide on-site company police security personnel services for the property.

(3) Any other real property while in continuous and immediate pursuit of a person for an offense committed upon property described in subdivisions (1) or (2) of this subsection.

Company police officers shall have, if duly authorized by the superior officer in charge, the authority to carry concealed weapons pursuant to and in conformity with ~~G.S. 14-269(b)(5).~~G.S. 14-269(b)(4) and (5)."

SECTION 5.(c) This section becomes effective October 1, 2006.

SECTION 6. G.S. 14-306.1A, as enacted by Section 4 of S.L. 2006-6, is amended by adding a new subsection to read:

"(f) Machines described in G.S. 14-306(b)(1) are excluded from this section."

SECTION 7.(a) G.S. 14-409.11 reads as rewritten:

"**§ 14-409.11. "Antique firearm" defined.**

(a) The term "antique firearm" means any of the following:

(1) Any firearm(including any firearm with a matchlock, flintlock, percussion cap, or similar type of ignition system) manufactured on or before 1898.

(2) Any replica of any firearm described in subdivision (1) of this section if the replica meets one of the following:

a. Is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition.

b. Uses rimfire or conventional centerfire fixed ammunition which is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade.

(3) Any muzzle loading rifle, muzzle loading shotgun, or muzzle loading pistol, which is designed to use black powder substitute, and which cannot use fixed ammunition.

(b) For purposes of this section, the term "antique firearm" shall not include any weapon which:

(1) Incorporates a firearm frame or receiver.

(2) Is converted into a muzzle loading weapon.

(3) Is a muzzle loading weapon that can be readily converted to fire fixed ammunition by replacing the barrel, bolt, breechblock, or any combination thereof.

~~The term "antique firearm" means any firearm manufactured in or before 1898 (including any matchlock, flintlock, percussion cap, or similar early type of ignition system) or replica thereof, whether actually manufactured before or after the year 1898; and also any firearm using fixed ammunition manufactured in or before 1898, for which ammunition is no longer manufactured in the United States and is not readily available in the ordinary channels of commercial trade.~~"

SECTION 7.(b) G.S. 14-415.1(a) 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 firearm 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. This section does not apply to an antique firearm, as defined in G.S. 14-409.11.

Every person violating the provisions of this section shall be punished as a Class G felon."

SECTION 8.(a) G.S. 18C-130(a) reads as rewritten:

"(a) The Commission shall determine the ~~type~~ types of lottery games that may be used in the Lottery. Games may include instant lotteries, online games, games played on

computer terminals or other devices, and other games traditional to a lottery or that have been conducted by any other state government-operated lottery."

SECTION 8.(b) G.S. 18C-131(e) reads as rewritten:

"(e) It shall be a defense for the person who sold a ticket or share in violation of subsection (d) of this section if the person does either of the following:

(1) Shows that the purchaser produced a valid drivers license, a special identification card issued under G.S. 20-37.7, a military identification card, or a passport, showing the purchaser to be at least 18 years old and bearing a physical description of the person named on the card that reasonably describes the purchaser.

(2) Produces evidence of other facts that reasonably indicated at the time of sale that the purchaser was at least 18 years old."

SECTION 8.(c) G.S. 18C-111(a) reads as rewritten:

"(a) The Commission shall consist of nine members, five of whom shall be appointed by the Governor, two of whom shall be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, and two of whom shall be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives. Commissioners serve at the pleasure of the appointing authority. The Governor shall select the chair of the Commission from among its membership, who shall serve at the pleasure of the Governor."

SECTION 8.(d) G.S. 18C-151(e) reads as rewritten:

"(e) After entering into a contract with a lottery contractor, the Commission shall require the lottery contractor to periodically update the information required to be disclosed under ~~G.S. 18C-149.~~ G.S. 18C-152(c). Any contract with a lottery contractor who does not periodically update the required disclosures may be terminated by the Commission."

SECTION 8.(e) G.S. 18C-164(a) reads as rewritten:

"(a) The funds remaining in the North Carolina State Lottery Fund after receipt of all revenues to the Lottery Fund and after accrual of all obligations of the Commission for prizes and expenses shall be considered to be the net revenues of the North Carolina State Lottery Fund. The net revenues of the North Carolina State Lottery Fund shall be transferred ~~periodically~~ quarterly by the tenth business day following the end of the quarter to the Education Lottery Fund, which shall be created in the State treasury."

SECTION 8.(f) G.S. 105-163.2B reads as rewritten:

"**§ 105-163.2B. North Carolina State Lottery Commission must withhold taxes.**

The North Carolina State Lottery Commission, established by Chapter 18C of the General Statutes, must deduct and withhold State income taxes from the payment of winnings ~~that are reportable to the Internal Revenue Service under section 3406 of the Code.~~ in an amount of six hundred dollars ($600.00) or more. The amount of taxes to be withheld is seven percent (7%) of the winnings. The Commission must file a ~~return and~~ return, pay the withheld ~~taxes~~ taxes, and report the amount withheld in the time and manner required under G.S. 105-163.6 as if the winnings were wages. The taxes the Commission withholds are held in trust for the Secretary."

SECTION 8.(g) G.S. 114-19.16 reads as rewritten:

"§ 114-19.16. Criminal record checks for the North Carolina State Lottery Commission and its Director.

The Department of Justice may provide to the North Carolina State Lottery Commission and to its Director from the State and National Repositories of Criminal Histories the criminal history of any prospective employee of the Commission and any prospective lottery vendor. The North Carolina State Lottery Commission or its Director shall provide to the Department of Justice, along with the request, the fingerprints of the prospective employee of the Commission, or of the prospective lottery vendor, a form signed by the prospective employee of the Commission, or of the prospective vendor 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 fingerprints of the prospective employee of the Commission, or prospective lottery vendor, 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 North Carolina State Lottery Commission and its Director shall remit any fingerprint information retained by the Commission to alcohol law enforcement agents appointed under Article 5 of Chapter 18B of the General Statutes and shall keep all information obtained pursuant to this section confidential. The Department of Justice shall charge a reasonable fee only for conducting the checks of the ~~national~~ criminal history records authorized by this section."

SECTION 8.(h) G.S. 115C-499.1(3) reads as rewritten:

"(3) Eligible postsecondary institution. – A school that is:

a. A constituent institution of The University of North Carolina as defined in G.S. 116-2(4);

b. A community college as defined in G.S. 115D-2(2); or

c. A nonpublic postsecondary institution as defined in G.S. 116-22(1) or ~~116-43.5(a)(1).~~ G.S. 116-43.5(a)(1)."

SECTION 8.(i) G.S. 115C-546.2(d)(2) reads as rewritten:

"(2) A sum equal to thirty-five percent (35%) of those monies transferred in accordance with G.S. 18C-164 shall be allocated to those local school administrative units located in whole or part in counties in which the effective county tax rate as a percentage of the ~~effective~~ State average effective tax rate is greater than one hundred percent (100%), with the following definitions applying to this subdivision:

a. "Effective county tax rate" means the actual county tax rate for the previous fiscal year multiplied by a three-year weighted average of the most recent annual sales assessment ratio studies.

b. "State average effective tax rate" means the average effective county tax rates for all counties.

c. "Sales assessment ratio studies" means sales assessment ratio studies performed by the Department of Revenue under G.S. 105-289(h)."

SECTION 8.(j) S.L. 2005-276 is amended by adding a new section to read:

"**SECTION 31.1(jj)** If House Bill 1023, 2005 Regular Session, becomes law, then that act is amended by adding a new section to read:

'**SECTION 10.4.** Section 10.3 of this act is effective for taxable years beginning on or after January 1, 2005.'"

SECTION 8.(k) S.L. 2005-344 is amended by adding a new section to read:

"**SECTION 2.1.** The State Education Assistance Authority shall report annually to the Joint Legislative Commission on Governmental Operations regarding the use of the funds allocated to the Authority under this act."

SECTION 8.(l) Section 12 of S.L. 2005-344 reads as rewritten:

"**SECTION 12.** The first security audit required under ~~G.S. 18C-123(a)~~G.S. 18C-122(a) shall be conducted at the beginning of the first calendar year after the effective date of this act. The first audit required under ~~G.S. 18C-123(d)~~G.S. 18C-122(d) shall be conducted at the end of the first fiscal year after the effective date of this act."

SECTION 9. G.S. 20-157(f) reads as rewritten:

"(f) When an authorized emergency vehicle as described in subsection (a) of this section or any public service vehicle 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 or public service 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 and be prepared to stop until completely past the authorized emergency vehicle or public service 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.

For purposes of this section, "public service vehicle" means a vehicle that has been called to the scene by a motorist or a law enforcement officer, is being used to assist motorists or law enforcement officers with wrecked or disabled vehicles, and is operating an amber-colored flashing light authorized by G.S. 20-130.2. Violation of this subsection shall be negligence per se."

SECTION 10.(a) G.S. 20-171.19 is amended by adding a new subsection to read:

"(a1) Notwithstanding subsection (a) of this section, any person employed by a supplier of retail electric service, while engaged in power line inspection, may operate an all-terrain vehicle while wearing both of the following:

(1) Head protection approved by the Occupational Safety and Health Administration and equipped with a chin strap, and conforming to the standards applicable to suppliers of retail electric service.

(2) Electric industry standard eye protection approved by the Occupational Safety and Health Administration and conforming to the standards applicable to suppliers of retail electric service."

SECTION 10.(b) This section becomes effective December 1, 2006, and applies to acts committed on or after that date.

SECTION 11.(a) G.S. 20-217(g) reads as rewritten:

"(g) Any person who willfully violates subsection (a) of this section and ~~willfully~~ strikes any person causing serious bodily injury to that person shall be guilty of a Class I felony."

SECTION 11.(b) This section becomes effective December 1, 2006, and applies to acts committed on or after that date.

SECTION 12. G.S. 20-288(g), as enacted by Section 2.3 of S.L. 2006-105, reads as rewritten:

"(g) A corporate surety may refuse to renew a surety bond furnished pursuant to this section by giving or mailing written notice of nonrenewal to the license holder and to the Commissioner not less than 30 days prior to the premium anniversary date of the surety bond. The notice must be given or mailed by certified mail to the license holder at its last known address. ~~Cancellation~~ Nonrenewal of the surety bond shall not affect any liability incurred or accrued prior to the premium anniversary date of the surety bond."

SECTION 13.(a) G.S. 36C-2-206 reads as rewritten:

"**§ 36C-2-206. Representation of parties.**

(a) ~~In~~ Notwithstanding any other applicable rule of the Rules of Civil Procedure or provision of Chapter 1 of the General Statutes, in any trust ~~proceeding or action,~~proceeding, whether brought before the clerk of superior court or in the superior court division of the General Court of Justice, the parties shall be represented as provided in Article 3 of this Chapter. ~~the following rules apply notwithstanding any other applicable Rule of Civil Procedure or provision of Chapter 1 of the General Statutes:~~

~~(1) Parties shall be represented as provided in Article 3 of this Chapter.~~

(b) ~~(2)~~ In the case of any party represented by another as provided in ~~subdivision (1)~~ subsection (a) of this section, service of process shall be made by serving such representative."

SECTION 13.(b) G.S. 36C-4-408 reads as rewritten:

"**§ 36C-4-408. Trust for care of animal.**

(a) Subject to this section, a trust for the care of one or more designated domestic or pet animals alive at the time of creation of the trust is valid.

(b) Except as expressly provided otherwise in the trust instrument, no portion of the principal or income may be converted to the use of the trustee or to any use other than for the benefit of the designated animal or animals.

(c) The trust terminates at the death of the animal or last surviving animal. Upon termination, the trustee shall transfer the unexpended trust property in the following order:

(1) As directed in the trust ~~instrument;~~instrument.

(2) If the trust was created in a preresiduary clause in the ~~transferor's~~settlor's will or in a codicil to the ~~transferor's~~settlor's will, under the residuary clause in the ~~transferor's will;~~settlor's will.

(3) If no taker is produced by the application of subdivision (1) or (2) of this subsection, to ~~the transferor or the transferor's heirs~~ the settlor, if then living, otherwise to the settlor's heirs determined as of the date of the ~~transferor's~~settlor's death under Chapter 29 of the General Statutes.

(d) The intended use of the principal or income can be enforced by a person designated for that purpose in the trust instrument or, if none, by a person appointed by the clerk of superior court having jurisdiction over the ~~decedent's estate~~ trust upon application to the clerk of superior court by a person.

(e) Except as ordered by the clerk of superior court or required by the trust instrument, no filing, report, registration, periodic accounting, separate maintenance of funds, appointment, bond, or fee is required by reason of the existence of the fiduciary relationship of the trustee.

(f) A governing instrument shall be liberally construed to bring the transfer within this section, to presume against the merely precatory or honorary nature of the disposition, and to carry out the general intent of the ~~transferor.~~settlor. Extrinsic evidence is admissible in determining the ~~transferor's~~settlor's intent.

(g) The clerk of superior court may reduce the amount of the property transferred, if the clerk of superior court determines that the amount substantially exceeds the amount required for the intended use. The amount of the reduction, if any, passes as unexpended trust property under subsection (c) of this section.

(h) If no trustee is designated or if no designated trustee agrees to serve or is able to serve, the clerk of superior court must name a trustee. The clerk of superior court may order the transfer of the property to another trustee, if required to assure that the intended use is carried out and if no successor trustee is designated in the trust instrument or if no designated successor trustee agrees to serve or is able to serve. The clerk of superior court may also make other orders and determinations as are advisable to carry out the intent of the ~~transferor~~ settlor and the purpose of this section."

SECTION 13.(c) G.S. 36C-4-410(c) is repealed.

SECTION 13.(d) G.S. 36C-4-411(e) is repealed.

SECTION 13.(e) G.S. 36C-4-412(c) is repealed.

SECTION 13.(f) G.S. 36C-4-414(d) is repealed.

SECTION 13.(g) G.S. 36C-4-416 reads as rewritten:

"**§ 36C-4-416. Modification to achieve settlor's tax objectives.**

To achieve a settlor's tax objectives, the court may modify the terms of a trust in a manner that is not contrary to the settlor's probable intention. The court may provide that the modification has retroactive effect. ~~Jurisdiction of a proceeding brought under this section shall be as provided in G.S. 36C-2-203.~~"

SECTION 13.(h) G.S. 36C-4-417(a) reads as rewritten:

"(a) Unless otherwise provided in the trust instrument, ~~after notice to the qualified beneficiaries,~~ a trustee ~~may:~~may do any of the following:

(1) Consolidate the assets of more than one trust and administer the assets as one trust under the terms of one of the trusts if the terms of the trusts are substantially similar and the beneficiaries of the trusts are ~~identical; or~~identical.

(2) Divide one trust into two or more separate trusts if the new trusts provide in the aggregate for the same succession of interests and beneficiaries as are provided in the original trust."

SECTION 13.(i) G.S. 36C-4-419 reads as rewritten:

"**§ 36C-4-419. Effect of inalienable interest on modification or termination.**

The court, in exercising its discretion to modify or terminate an irrevocable trust under G.S. 36C-4-411, 36C-4-412, or ~~36C-4-413~~ 36C-4-414 shall consider provisions making the interest of a beneficiary inalienable, including those described in Article 5, but the court is not precluded from the exercise of that discretion solely because of such provisions."

SECTION 13.(j) G.S. 36C-7-701(b) reads as rewritten:

"(b) A person designated as trustee who has not yet accepted the trusteeship may reject the trusteeship. A designated trustee who does not accept the trusteeship within ~~a reasonable time,~~ 120 days after written notice to accept the trusteeship is provided, ~~after receiving written notice of the trusteeship~~ is considered to have rejected the trusteeship."

SECTION 13.(k) G.S. 36C-8-815 reads as rewritten:

"**§ 36C-8-815. General powers of trustee.**

(a) A trustee, without authorization by the court, may ~~exercise:~~exercise any of the following:

(1) Powers conferred by the terms of the ~~trust; or~~ trust.

(2) Except as limited by the terms of the trust:

a. All powers over the trust property that an unmarried competent owner has over individually owned property;

b. Any other powers appropriate to achieve the proper investment, management, administration, or distribution of the trust property; and

c. Any other powers conferred by this Chapter.

(b) ~~The exercise of a power is subject to the fiduciary duties prescribed by this Article.~~No provision of this section shall relieve a trustee of the fiduciary duties under this Article."

SECTION 13.(l) G.S. 6-21.5 reads as rewritten:

"**§ 6-21.5. Attorney's fees in nonjusticiable cases.**

In any ~~civil action or special proceeding~~ civil action, special proceeding, or estate or trust proceeding, the court, upon motion of the prevailing party, may award a reasonable attorney's fee to the prevailing party if the court finds that there was a complete absence of a justiciable issue of either law or fact raised by the losing party in any pleading. The filing of a general denial or the granting of any preliminary motion, such as a motion for judgment on the pleadings pursuant to G.S. 1A-1, Rule 12, a motion to dismiss pursuant to G.S. 1A-1, Rule 12(b)(6), a motion for a directed verdict pursuant to G.S. 1A-1, Rule 50, or a motion for summary judgment pursuant to G.S. 1A-1, Rule 56, is not in itself a sufficient reason for the court to award attorney's fees, but may be evidence to support the court's decision to make such an award. A party who advances a claim or defense supported by a good faith argument for an extension, modification, or reversal of law may not be required under this section to pay attorney's fees. The court shall make findings of fact and conclusions of law to support its award of attorney's fees under this section."

SECTION 13.(m) G.S. 32-55 reads as rewritten:

"**§ 32-55. Notice.**

(a) The trustee shall give written notice to all beneficiaries of each proposed payment of compensation if the annual amount of compensation exceeds four-tenths of one percent (4/10 of 1%) of the principal value of the assets of the trust on the last day of the trust accounting year. The notice shall contain a statement that the beneficiaries have 20 days from when notice is given to file a proceeding for review of the reasonableness of the compensation with the clerk of superior court in accordance with ~~Article 3 of Chapter 36A~~ Article 2 of Chapter 36C of the General Statutes."

SECTION 13.(n) G.S. 32-57(a) reads as rewritten:

"(a) The trustee or any beneficiary may initiate a proceeding under ~~Article 3 of Chapter 36A~~ Article 2 of Chapter 36C of the General Statutes for review of the reasonableness of any compensation or expense reimbursement and for the approval or denial of the payment of compensation or expense reimbursement. A beneficiary may initiate a proceeding even though the 20-day period referred to in G.S. 32-56(2) has expired."

SECTION 13.(o) G.S. 32-71(a) reads as rewritten:

"(a) In acquiring, investing, reinvesting, exchanging, retaining, selling, and managing property for the benefit of another, a fiduciary shall observe the standard of judgment and care under the circumstances then prevailing, which an ordinarily prudent person of discretion and intelligence, who is a fiduciary of the property of others, would observe as such fiduciary; and if the fiduciary has special skills or is named a fiduciary on the basis of representations of special skills or expertise, he is under a duty to use those skills. This subsection and subsection (b) of this section do not apply to trusts governed by ~~Article 15 of this Chapter.~~ Article 9 of Chapter 36C of the General Statutes."

SECTION 13.(p) G.S. 37A-2-202(b) reads as rewritten:

"(b) In determining a beneficiary's share of net income, the following rules apply:

(1) The beneficiary is entitled to receive a portion of the net income equal to the beneficiary's fractional interest in the undistributed principal

assets immediately before the distribution date, including assets that later may be sold to meet principal obligations.

(2) The beneficiary's fractional interest in the undistributed principal assets shall be calculated without regard to property specifically given to a beneficiary and property required to pay pecuniary amounts not in ~~trust.~~trust to which G.S. 37A-2-201(3) applies.

(3) The beneficiary's fractional interest in the undistributed principal assets shall be calculated on the basis of the aggregate value of those assets as of the distribution date without reducing the value by any unpaid principal obligation

(4) The distribution date for purposes of this section may be the date as of which the fiduciary calculates the value of the assets if that date is reasonably near the date on which assets are actually distributed."

SECTION 13.(q) G.S. 53-163.5(d) reads as rewritten:

"(d) Such bank or trust company may invest the funds held by it in any fiduciary capacity in one or more common trust funds, provided that (i) such investment is not prohibited by the instrument, judgment, decree or order creating such fiduciary relationship or amendment ~~thereof; (ii) in the case of co-fiduciaries the written consent of the co-fiduciary is obtained by the bank or trust company; and (iii)~~ thereof, and (ii) ~~that~~ the bank has no interest in the assets of the common trust fund other than as a fiduciary."

SECTION 13.(r) The Revisor of Statutes is authorized to cause to be printed any amendments to the explanatory comments of the drafters of S.L. 2005-192 that are prepared by the drafters of this section, as the Revisor deems appropriate.

SECTION 13.(s). This section becomes effective October 1, 2006, and applies to (i) all trusts created before, on, or after that date; (ii) all judicial proceedings concerning trusts commenced on or after that date; and (iii) all judicial proceedings concerning trusts commenced before that date unless the court finds that application of a particular provision of this act would substantially interfere with the effective conduct of the judicial proceedings or prejudice the rights of the parties, in which case the law as it existed on September 30, 2006, shall apply.

SECTION 14.(a) G.S. 53B-2(3) reads as rewritten:

"(3) "Financial record" means an original of, a copy of, or information derived from, a record held by a financial institution pertaining to a customer's relationship with the financial institution and identified with or identifiable with the customer. Financial record shall not include forged or counterfeit financial instruments or records relating to an account established under a fictitious name or another person's name without proper authorization."

SECTION 14.(b) G.S. 53B-4 reads as rewritten:

"**§ 53B-4. Access to financial records.**

Notwithstanding any other provision of law, no government authority may have access to a customer's financial record held by a financial institution unless the financial

record is described with reasonable specificity and access is sought pursuant ~~to:~~to any of the following:

(1) Customer authorization that meets the requirements of the Right to Financial Privacy Act § 1104, 12 U.S.C. § 3404, provided, however, a customer authorization received by a State agency or a county department of social services for the purpose of determining eligibility for the programs of public assistance under Chapter 108A of the General Statutes, or for purposes of a government inquiry concerning these same programs of public assistance, cannot be revoked and shall remain valid for 12 months unless a shorter period is specified in the authorization, or a customer authorization that is given by a licensed attorney with respect to an account in which the attorney holds funds as a ~~fiduciary;~~fiduciary.

(2) Authorization under G.S. 105-251, 105-251.1, or ~~105-258;~~105-258.

(3) Search warrant as provided in Article 11 of Chapter 15A of the General ~~Statutes;~~Statutes.

(4) Statutory authority of a supervisory agency to examine or have access to financial records in the exercise of its supervisory, regulatory, or monetary functions with respect to a financial ~~institution;~~institution.

(5) The authority granted under G.S. 116B-72 and G.S. ~~116B-75;~~116B-75.

(6) Examination and review by the State Auditor or his authorized representative under G.S. 147-64.6(c)(9) or G.S. ~~147-64.7(a);~~147-64.7(a).

(7) Request by a government authority authorized to buy and sell student loan notes under Article 23 of Chapter 116 of the General Statutes for financial records relating to insured student ~~loans;~~loans.

(8) Pending litigation to which the government authority and the customer are ~~parties;~~parties.

(9) Subpoena or court order in connection with a grand jury ~~proceeding;~~proceeding.

(10) A writ of execution under Article 28 of Chapter 1 of the General ~~Statutes; or~~Statutes.

(11) Other court order or administrative or judicial subpoena authorized by law if the requirements of G.S. 53B-5 are met.

(12) The authority granted to the Attorney General under Chapter 75 of the General Statutes.

As used in this section, the term "reasonable specificity" means that degree of specificity reasonable under all the circumstances, and, with respect to requests under G.S. 116B-72 and G.S. 116B-75, may include designation by general type or class."

SECTION 14.(c) This section becomes effective October 1, 2006, and applies to acts committed on or after that date.

SECTION 15. G.S. 62-182.1 reads as rewritten:

"**§ 62-182.1. Access to dedicated public right-of-way.**

When any map or plat of a subdivision, recorded as provided in G.S. 47-30 and G.S. 136-102.6, reflects the dedication of a public street or other public right-of-way, the dedicated public street or public right-of-way shall, upon recordation of the map or plat, become immediately available for use by any public ~~utility~~ utility, telephone membership corporation organized under G.S. 117-30, or cable television system to install, maintain, and operate lines, cables, or facilities for the provision of service to the public. No public ~~utility~~ utility, telephone membership corporation organized under G.S. 117-30, or cable television system shall place or erect any line, cable, or facility in, over, or upon a street or right-of-way in a subdivision that is intended to become a public street or public right-of-way, until a map or plat of the subdivision has been recorded as provided in G.S. 47-30 and G.S. 136-102.6, and except in accordance with procedures established by the Department of Transportation, Division of Highways, for accommodating utilities or cable television systems on highway rights-of-way. Upon recordation of a map or plat of a subdivision as provided in G.S. 47-30 and G.S. 136-102.6, no liability shall attach to the developer of the property as a result of any activity of a public ~~utility~~ utility, telephone membership corporation organized under G.S. 117-30, or cable television system occurring in the dedicated public street or public right-of-way. Nothing in this section shall relieve the developer of the property of responsibilities under G.S. 136-102.6."

SECTION 16.(a) G.S. 90-85.46(2)b. reads as rewritten:

"b. A program established by a person or entity holding a valid pharmacy permit pursuant to G.S. 90-85.21 or ~~G.S. 90-85.21(a)~~G.S. 90-85.21A to evaluate the quality of pharmacy services and alleged medication errors and incidents and make recommendations to improve the quality of pharmacy services."

SECTION 16.(b) G.S. 90-85.47(a) reads as rewritten:

"(a) Every person or entity holding a valid pharmacy permit pursuant to G.S. 90-85.21 or ~~G.S. 90-85.21(a),~~G.S. 90-85.21A, shall establish or participate in a pharmacy quality assurance program as defined under G.S. 90-85.46(2), to evaluate the following:

(1) The quality of the practice of pharmacy.
(2) The cause of alleged medication errors and incidents.
(3) Pharmaceutical care outcomes.
(4) Possible improvements for the practice of pharmacy.
(5) Methods to reduce alleged medication errors and incidents."

SECTION 17. G.S. 93E-1-7(a) reads as rewritten:

"(a) Trainee registrations, licenses, and certificates issued under this Chapter shall expire on the 30th day of June of every year and shall become invalid after that date unless renewed prior to the expiration date by filing an application with and paying to the Executive Director of the Board the fee of two hundred dollars ($200.00). As a prerequisite to the renewal of a trainee registration or a real estate appraiser license or certificate, the trainee registration holder, the licensee, or the certificate holder must satisfy any continuing education requirements that may be prescribed by the Board

under subsection (b) of this ~~section; provided, however, that members~~ section. The members of the General Assembly are exempt from this requirement and any education program regarding trainee supervision during their term of office. The Board may adopt rules establishing a system of trainee registration, license, and certificate renewal in which trainee registrations, licenses, and certificates expire annually with varying expiration dates."

SECTION 18. G.S. 95-25.3(g) is repealed.

SECTION 19. G.S. 97-19.1, as amended by Section 1 of S.L. 2006-26, reads as rewritten:

"**§ 97-19.1. Truck, tractor, or truck tractor trailer driver's status as employee or independent contractor.**

(a) An individual in the interstate or intrastate carrier industry who operates a truck, tractor, or truck tractor trailer licensed by a governmental motor vehicle regulatory agency may be an employee or an independent contractor under this Article dependent upon the application of the common law test for determining employment status.

Any principal contractor, intermediate contractor, or subcontractor, irrespective of whether such contractor regularly employs three or more employees, who contracts with an individual in the interstate or intrastate carrier industry who operates a truck, tractor, or truck tractor trailer licensed by ~~a governmental motor vehicle regulatory agency~~ the United States. Department of Transportation and who has not secured the payment of compensation in the manner provided for employers set forth in G.S. 97-93 for himself personally and for his employees and subcontractors, if any, shall be liable as an employer under this Article for the payment of compensation and other benefits on account of the injury or death of the independent contractor and his employees or subcontractors due to an accident arising out of and in the course of the performance of the work covered by such contract.

(b) Notwithstanding subsection (a) of this section, a principal contractor, intermediate contractor, or subcontractor shall not be liable as an employer under this Article for the payment of compensation on account of the injury or death of the independent contractor if the principal contractor, intermediate contractor, or subcontractor (i) contracts with an independent contractor ~~that~~ who is an individual licensed by ~~a governmental motor vehicle regulatory agency~~ the United States Department of Transportation and (ii) the independent contractor personally is operating the vehicle solely pursuant to that license.

(c) The principal contractor, intermediate contractor, or subcontractor may insure any and all of his independent contractors and their employees or subcontractors in a blanket policy, and when insured, the independent contractors, subcontractors, and employees will be entitled to compensation benefits under the blanket policy.

A principal contractor, intermediate contractor, or subcontractor may include in the governing contract with an independent contractor in the interstate or intrastate carrier industry who operates a truck, tractor, or truck tractor trailer licensed by a governmental motor vehicle regulatory agency an agreement for the independent contractor to

reimburse the cost of covering that independent contractor under the principal contractor's, intermediate contractor's, or subcontractor's coverage of his business."

SECTION 20. G.S. 105A-2(6) reads as rewritten:

"**§ 105A-2. Definitions.**

The following definitions apply in this Chapter:

...

(6) Local agency. – Any of the following:

a. A county, to the extent it is not considered a State agency.

b. A municipality.

c. A water and sewer authority created under Article 1 of Chapter 162A of the General Statutes.

d. A regional joint agency created by interlocal agreement under Article 20 of Chapter 160A of the General Statutes between two or more counties, cities, or both.

e. A public health authority created under Part 1B of Article 2 of Chapter 130A of the General ~~Statutes.~~Statutes or other authorizing legislation.

f. A metropolitan sewerage district created under Article 5 of Chapter 162A of the General Statutes.

g. A sanitary district created under Part 2 of Article 2 of Chapter 130A of the General Statutes.

...".

SECTION 21. G.S. 115D-20(3) reads as rewritten:

"(3) To purchase any land, easement, or right-of-way which shall be necessary for the proper operation of the institution, upon approval of the State Board of Community Colleges, and if necessary, to acquire land by condemnation in the same manner and under the same procedures as provided in General Statutes Chapter 40A. For the purpose of condemnation, the determination by the trustees as to the location and amount of land to be taken and the necessity therefor shall be conclusive."

SECTION 22. G.S. 120-36.2 reads as rewritten:

"**§ 120-36.2. Organization.**

(a) The Legislative Services Commission shall ~~elect~~appoint a Director of Fiscal Research, who shall serve at the pleasure of the Commission. The Director of Fiscal Research shall be responsible to the Legislative Services Officer in the performance of his duties.

(b) The Director of Fiscal Research ~~shall appoint and may remove, after consultation with the Legislative Services Officer and subject in each case to the approval of the Commission, the professional and clerical employees of the Division. He~~ shall assign the duties and supervise and direct the activities of the employees of the Division.

(c) The Director and employees of the Division shall receive salaries that shall be fixed by the Commission, shall receive the travel and subsistence allowances fixed by G.S. 138-6 and 138-7, and shall be entitled to the other benefits available to State employees."

SECTION 23. G.S. 122C-142, as amended by S.L. 2006-142, reads as rewritten:

"**§ 122C-142. Contract for services.**

(a) When the area authority contracts with persons for the provision of services, it shall use the standard contract adopted by the Secretary and shall assure that these contracted services meet the requirements of applicable State statutes and the rules of the Commission and the Secretary. However, an area authority or county program may amend the contract to comply with any court-imposed duty or responsibility. An area authority or county program that is operating under a Medicaid waiver may amend the contract subject to the approval of the Secretary. Terms of the standard contract shall require the area authority to monitor the contract to assure that rules and State statutes are met. It shall also place an obligation upon the entity providing services to provide to the area authority timely data regarding the clients being served, the services provided, and the client outcomes. The Secretary may also monitor contracted services to assure that rules and State statutes are met."

SECTION 24.(a) G.S. 128-1.1 is amended to add a new subsection to read:

"(c1) Where authorized by federal law, any State or local law enforcement agency may authorize its law enforcement officers to also perform the functions of an officer under 8 U.S.C. § 1357(g) if the agency has a Memorandum of Agreement or Memorandum of Understanding for that purpose with a federal agency. State and local law enforcement officers authorized under this provision are authorized to hold any office or position with the applicable federal agency required to perform the described functions."

SECTION 24.(b) This section becomes effective January 1, 2006, and any actions taken between that date and the date this section becomes law that would have been proper if this section had been then in effect are in all respects validated and confirmed, and no office shall be considered to have been vacated.

SECTION 25. G.S. 143B-131.2 reads as rewritten:

"**§ 143B-131.2. Roanoke Island Commission – Purpose, powers, and duties.**

(a) The Commission is created to combine various existing entities in the spirit of cooperation for a cohesive body to protect, preserve, develop, and interpret the historical and cultural assets of Roanoke Island. The Commission is further created to operate and administer the Elizabeth II State Historic Site and Visitor Center, the Elizabeth II, Ice Plant Island, and all other properties under the administration of the Department of Cultural Resources located on Roanoke Island having historical significance to the State of North Carolina, Dare County, or the Town of Manteo, except as otherwise determined by the Commission.

(b) The Commission shall have the following powers and duties:

(1) To advise the Secretary of Transportation and adopt rules on matters pertaining to, affecting, and encouraging restoration, preservation, and enhancement of the appearance, maintenance, and aesthetic quality of U.S. Highway 64/264 and the U.S. 64/264 Bypass ~~and N.C. 400 travel corridors~~ travel corridor on Roanoke Island and the grounds on Roanoke Island Festival Park.

(2) To operate the Elizabeth II State Historic Site and Visitor Center and the Elizabeth II as permanent memorials commemorating the Roanoke Voyages, 1584-1587.

(3) To supervise the development of Ice Plant Island and to manage future facilities.

(4) To advise the Secretary of the Department of Cultural Resources on matters pertinent to historical and cultural events on Roanoke Island.

(5) With the assistance of the Department of Cultural Resources, to identify, preserve, and protect properties located on Roanoke Island having historical significance to the State of North Carolina, Dare County, or the Town of Manteo consistent with applicable State laws and rules.

(6) To establish and collect a charge for admission to any property or event operated by the Commission.

(7) To solicit and accept gifts, grants, and donations.

(8) To cooperate with the Secretary and Department of Cultural Resources, the Secretary and Department of Transportation, the Secretary and Department of Environment and Natural Resources, and other governmental agencies, officials, and entities, and provide them with assistance and advice.

(9) To adopt and enforce such bylaws, rules, and guidelines that the Commission deems to be reasonably necessary in order to carry out its powers and duties. Chapter 150B of the General Statutes does not apply to the adoption of rules by the Commission.

(10) To establish and maintain a separate fund composed of moneys which may come into its hands from gifts, donations, grants, or bequests, which funds will be used by the Commission for purposes of carrying out its duties and purposes herein set forth. The Commission may also establish a reserve fund to be maintained and used for contingencies and emergencies. Funds appropriated to the Commission may be transferred to the Friends of Elizabeth II, Inc., a private, nonprofit corporation. The Friends of Elizabeth II, Inc., shall use the funds transferred to it to carry out the purposes of this Part.

(11) By cooperative arrangement with other agencies, groups, individuals, and other entities, to coordinate and schedule historical and cultural events on Roanoke Island.

(12) Make recommendations to the Secretary of Cultural Resources concerning personnel and budgetary matters.

(13) To acquire real and personal property by purchase, gift, bequest, devise, and exchange.

(14) To administer the Roanoke Island Commission Fund and the Roanoke Island Commission Endowment Fund as provided in G.S. 143B-131.8.

(15) To procure supplies, services, and property as appropriate and to enter into contracts, leases, or other legal agreements to carry out the purposes of this Part and

duties of the Commission. The provisions of G.S. 143-129 and Article 3 of Chapter 143 of the General Statutes do not apply to purchases by the Roanoke Island Commission of equipment, supplies, and services.

SECTION 26.(a) G.S. 153A-340(b)(2) reads as rewritten:

"(2) Except as provided in G.S. 106-743.4 for farms that are subject to a conservation agreement under G.S. 106-743.2, bona fide farm purposes include the production and activities relating or incidental to the production of crops, fruits, vegetables, ornamental and flowering plants, dairy, livestock, poultry, and all other forms of agricultural products as defined in G.S. 106-581.1 having a domestic or foreign market. For purposes of this subdivision, the production of a nonfarm product that the Department of Agriculture and Consumer Services recognizes as a "Goodness Grows in North Carolina" product that is produced on a farm subject to a conservation agreement under G.S. 106-743.2 is a bona fide farm purpose."

SECTION 26.(b) This section is effective January 1, 2007.

SECTION 27.(a) G.S. 153A-376(f) reads as rewritten:

"(f) All program income from Economic Development Grants from the Small Cities Community Development Block Grant Program may be retained by recipient "economically distressed counties", as defined in ~~G.S. 143B-437A~~G.S. 143B-437.01 for the purposes of creating local economic development revolving loan funds. Such program income derived through the use by counties of Small Cities Community Development Block Grant money includes but is not limited to: (i) payment of principal and interest on loans made by the county using Community Development Block Grant Funds; (ii) proceeds from the lease or disposition of real property acquired with Community Development Block Grant Funds; and (iii) any late fees associated with loan or lease payments in (i) and (ii) above. The local economic development revolving loan fund set up by the county shall fund only those activities eligible under Title I of the federal Housing and Community Development Act of 1974, as amended (P.L. 93-383), and shall meet at least one of the three national objectives of the Housing and Community Development Act. Any expiration of ~~G.S. 143B-437A~~G.S. 143B-437.01 or G.S. 105-129.3 shall not affect this subsection as to designations of economically distressed counties made prior to its expiration."

SECTION 27.(b) G.S. 160A-456(e1) reads as rewritten:

"(e1) All program income from Economic Development Grants from the Small Cities Community Development Block Grant Program may be retained by recipient cities in "economically distressed counties", as defined in ~~G.S. 143B-437A,~~G.S. 143B-437.01 for the purposes of creating local economic development revolving loan funds. Such program income derived through the use by cities of Small Cities Community Development Block Grant money includes but is not limited to: (i) payment of principal and interest on loans made by the county using Community Development Block Grant Funds; (ii) proceeds from the lease or disposition of real property acquired with Community Development Block Grant Funds; and (iii) any late fees associated with loan or lease payments in (i) and (ii) above. The

local economic development revolving loan fund set up by the city shall fund only those activities eligible under Title I of the federal Housing and Community Development Act of 1974, as amended (P.L. 93-383), and shall meet at least one of the three national objectives of the Housing and Community Development Act. Any expiration of ~~G.S. 143B-437A~~G.S. 143B-437.01 or G.S. 105-129.3 shall not affect this subsection as to designations of economically distressed counties made prior to its expiration."

SECTION 28. G.S. 160A-383 reads as rewritten:

"Zoning regulations shall be made in accordance with a comprehensive plan. ~~Prior to~~When adopting or rejecting any zoning amendment, the governing board shall ~~adopt~~also approve a statement describing whether its action is consistent with an adopted comprehensive plan and any other officially adopted plan that is applicable, and briefly explaining why the board considers the action taken to be reasonable and in the public interest. That statement is not subject to judicial review.

The planning board shall advise and comment on whether the proposed amendment is consistent with any comprehensive plan that has been adopted and any other officially adopted plan that is applicable. The planning board shall provide a written recommendation to the governing board that addresses plan consistency and other matters as deemed appropriate by the planning board, but a comment by the planning board that a proposed amendment is inconsistent with the comprehensive plan shall not preclude consideration or approval of the proposed amendment by the governing board.

Zoning regulations shall be designed to promote the public health, safety, and general welfare. To that end, the regulations may address, among other things, the following public purposes: to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to lessen congestion in the streets; to secure safety from fire, panic, and dangers; and to facilitate the efficient and adequate provision of transportation, water, sewerage, schools, parks, and other public requirements. The regulations shall be made with reasonable consideration, among other things, as to the character of the district and its peculiar suitability for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout such city."

SECTION 29.(a) G.S. 163-278.83 reads as rewritten:

"**§ 163-278.83. Penalties.**

Except as otherwise provided in this Article, a violation of this Article is a Class 2 misdemeanor. The State Board of Elections has the same authority to compel from any ~~organization~~ individual, committee, association, or any other organization or group of individuals covered by this Article the disclosures required by this Article that the Board has to compel ~~from a political committee~~ the disclosures required by Article 22A of this Chapter. The civil penalties and remedies in G.S. 163-278.34 shall apply to violations of this Article, and where those provisions apply to violations involving contributions and expenditures they shall apply in the same manner to payments and disbursements in violation of G.S. 163-278.82."

SECTION 29.(b) G.S. 163-278.93 reads as rewritten:

"**§ 163-278.93. Penalties.**

Except as otherwise provided in this Article, a violation of this Article is a Class 2 misdemeanor. The State Board of Elections has the same authority to compel from any ~~organization~~ individual, committee, association, or any other organization or group of individuals covered by this Article the disclosures required by this Article that the Board has to compel ~~from a political committee~~ the disclosures required by Article 22A of this Chapter. The civil penalties and remedies in G.S. 163-278.34 shall apply to violations of this Article, and where those provisions apply to violations involving contributions and expenditures they shall apply in the same manner to payments and disbursements in violation of G.S. 163-278.92."

SECTION 29.(c) If House Bill 966 of the 2005 General Assembly becomes law, G.S. 163-278.102 reads as rewritten:

"**§ 163-278.102. Penalties.**

The State Board of Elections has the same authority to compel from any ~~organization~~ individual, committee, association, or any other organization or group of individuals covered by this Article the disclosures required by this Article that the Board has to compel ~~from a political committee~~ the disclosures required by Article 22A of this Chapter. The civil penalties and remedies in G.S. 163-278.34 shall apply to violations of this Article."

SECTION 29.(d) If House Bill 966 of the 2005 General Assembly becomes law, G.S. 163-278.102 reads as rewritten:

"**§ 163-278.112. Penalties.**

The State Board of Elections has the same authority to compel from any ~~organization~~ individual, committee, association, or any other organization or group of individuals covered by this Article the disclosures required by this Article that the Board has to compel ~~from a political committee~~ the disclosures required by Article 22A of this Chapter. The civil penalties and remedies in G.S. 163-278.34 shall apply to violations of this Article."

SECTION 29.(e) If House Bill 966 of the 2005 General Assembly becomes law, G.S. 163-278.100(4) as enacted by that law reads as rewritten:

"(4) The term "targeted to the relevant electorate" means a communication which refers to a clearly identified candidate for statewide office or the General Assembly and which can be received by 50,000 or more individuals in the State in the case of a candidacy for statewide office and ~~2,500~~ 7,500 or more individuals in the district in the case of a candidacy for General Assembly."

SECTION 30. Section 2.18 of S.L. 2004-158 reads as rewritten:

"**SECTION 2.18.(a)** Jack Olsen of Moore County is appointed to the State Judicial Council for a term expiring on ~~December 31, 2007.~~December 31, 2006.

SECTION 2.18.(b) Effective January 1, 2005, Dumont Clarke of Mecklenburg County is appointed to the State Judicial Council for a term expiring on ~~December 31, 2009.~~December 31, 2008."

SECTION 31.(a) Section 3.(c) of S.L. 2005-190 reads as rewritten:

"**SECTION 3.(c) Nutrient management strategy.** – The Environmental Management Commission shall develop a nutrient management strategy for drinking

water supply reservoirs to which this section applies by 1 July ~~2008.~~2009. The nutrient management strategy shall be based on a calibrated nutrient response model that meets the requirement of G.S. 143-215.1(c5). The nutrient management strategy shall include specific mandatory measures to achieve the reduction goals. The Commission shall consider the cost of the proposed measures in relation to the effectiveness of the measures. These measures could include, but are not limited to, buffers, erosion and sedimentation control requirements, post-construction stormwater management, agricultural nutrient reduction measures, the addition of nutrient removal treatment processes to point source permitted wastewater treatment plants, the removal of point source discharging wastewater treatments through regionalization and conversion to non-discharge treatment technologies, and any other measures that the Commission determines to be necessary to meet the nutrient reduction goals. To the extent that one or more other State programs already mandate any of these measures, the nutrient management strategy shall incorporate the mandated measures and any extension of those measures and any additional measures that may be necessary to achieve the nutrient reduction goals. In making a nutrient loading allocation to a permit holder, the Commission shall, to the extent allowed by federal and State law, give consideration to all voluntary efforts taken by the permit holder to protect water quality prior to the development of the nutrient management strategy."

SECTION 31.(b) Section 3.(e) of S.L. 2005-190 reads as rewritten:

"**SECTION 3.(e) Implementation; rulemaking.** – The Environmental Management Commission shall adopt permanent rules to implement the nutrient management strategies required by this section by 1 July ~~2008.~~2009. The rules shall require that reductions in nutrient loading from all sources begin no later than five years after the rules become effective."

SECTION 31.(c) Section 4 of S.L. 2005-190 reads as rewritten:

"**SECTION 4. Other drinking water supply reservoirs.** – The Environmental Management Commission shall not make any new or increased nutrient loading allocation to any person who is required to obtain a permit under G.S. 143-215 for an individual wastewater discharge directly or indirectly into any drinking water supply reservoir for which the Division of Water Quality of the Department of Environment and Natural Resources has prepared or updated a calibrated nutrient response model since 1 July 2002 until permanent rules adopted by the Commission to implement the nutrient management strategy for that reservoir become effective. The Commission shall report its progress in developing and implementing nutrient management strategies for reservoirs to which this section applies to the Environmental Review Commission by 1 April ~~2006.~~ of each year beginning 1 April 2006."

SECTION 32. Section 2.3 of S.L. 2005-421 reads as rewritten:

"**SECTION 2.3.** Dr. Paul Rush of Scotland County is appointed to the North Carolina Board of Athletic Trainer Examiners for a term expiring on June 30, ~~2008.~~2007."

SECTION 33.(a) The lead-in language of Section 6 of S.L. 2006-6 reads as rewritten:

"**SECTION 6.** ~~G.S. 147-12(14)~~G.S. 147-12(a)(14) reads as rewritten:".

SECTION 33.(b) This section becomes effective June 6, 2006.

SECTION 34. The introductory language of Section 3.(o) of S.L. 2006-69 reads as rewritten:

"**SECTION 3.(o)** The catch line to Part 13A of Article 3 of Chapter 143B of the General Statutes reads as rewritten:".

SECTION 35. The title of S.L. 2006-85 is amended to read: "AN ACT TO PROVIDE MEMBERSHIP GUIDELINES FOR THE JACKSON COUNTY AIRPORT AUTHORITY AND TO PROVIDE FOR THE FILLING OF VACANCIES IN THE AIRPORT AUTHORITY."

SECTION 36. Section 1 of S.L. 2006-89 reads as rewritten:

"**SECTION 1.** The transfer of real property by the High Point Alcoholic Beverage Control Board located at Lot B of the property of The Mitchell Company as described in Book ~~5584,~~5548, pages 0182 to 0184, per plats thereof recorded in the Office of the Register of Deeds for Guilford County, North Carolina, in 2002, and 910 Greensboro Road, High Point, North Carolina, as described in Book 6389, pages 0107 to 0109 and recorded in the Office of the Register of Deeds for Guilford County, North Carolina, in 2005, shall not be deemed invalid for failure to follow the procedures for the sale of real property outlined in Article 12 of Chapter 160A."

SECTION 37. Section 4.1 of S.L. 2006-113 reads as rewritten:

"**SECTION 4.1.** Part III of this act becomes effective December 1, 2006, and applies to offenses committed on or after that date. ~~This~~ The remainder of this act becomes effective December 1, 2006, and applies to actions commenced on or after that date."

SECTION 38. Section 3(a) of S.L. 2006-126 reads as rewritten:

"**SECTION 3.(a)** The maximum building height on any building within the corporate limits of the City of Hendersonville shall not exceed 64 feet. For purposes of this section, building height shall mean the vertical distance measured from the average grade to the highest point of the coping of a flat roof, to the deck line of a mansard roof, or to the mean height level between the eaves and ridge of a gable, hip, or gambrel roof. The height limitation created by this subsection does not apply to spires, belfries, cupolas, antennas, water tanks, ventilators, chimneys, or other appurtenances usually required to be placed above the roof level and not intended for human occupancy. No variance to this subsection may be granted. This subsection does not apply to hospitals, churches, cultural performing arts centers, government buildings, or buildings erected prior to the effective date of this section."

SECTION 39. If House Bill 767, 2005 Regular Session, becomes law, then G.S. 157-29(b), as amended by that act, reads as rewritten:

"(b) In the operation or management of housing projects, portions of projects, or other housing assistance programs for persons of low income, an authority shall at all times observe the following duties with respect to rentals and tenant selection:

(1) It may rent or lease dwelling accommodations set aside for persons of low income only to persons who lack the amount of income that is necessary (as determined by the housing authority undertaking the

project) to enable them, without financial assistance, to live in decent, safe, and sanitary dwellings, without overcrowding; and

(2) It may rent or lease dwelling accommodations to persons of low income only at rentals within the financial reach of such persons.

(3a) It shall comply with the following targeting requirements:

a. Not less than forty percent (40%) of the families admitted to its public housing program from its waiting list in its fiscal year shall be extremely low-income families with incomes at or below thirty percent (30%) of the area median income. For purposes of this section, this shall be known as the "basic targeting requirement".

b. To the extent provided in ~~subdivision (4a) of this subsection,~~ subsubdivisions c and d of this subdivision, the admission of extremely low-income families to its ~~section 8~~ Section 8 voucher program during the same fiscal year shall be credited against the basic targeting requirement. For purposes of this section,~~"section 8"~~ "Section 8" refers to ~~section 8~~ Section 8 of the U.S. Housing Act of 1937 as amended.

c. If admissions of extremely low-income families to its ~~section 8~~ Section 8 voucher program during its fiscal year ~~exceeds~~ exceed the seventy-five percent (75%) ~~of the~~ minimum targeting requirement for its ~~section 8~~ Section 8 voucher program, the excess shall be credited against its basic targeting requirement for the same fiscal year.

d. The fiscal year credit for ~~section 8~~ Section 8 voucher program admissions that exceeded the minimum ~~section 8~~ Section 8 voucher program targeting requirement shall not exceed the lower of any of the following:

1. Ten percent (10%) of its waiting list admissions during its fiscal year.
2. Ten percent (10%) of waiting list admissions to its ~~section 8~~ Section 8 tenant-based assistance program during its fiscal year.
3. The number of qualifying low-income families who, during the fiscal year, commence occupancy of its public housing units that are located in census tracts with a poverty rate of thirty percent (30%) or more. For purposes of this sub-sub-subdivision, qualifying low-income family means a low-income family other than an extremely low-income family.

(4a) Its targeting requirement for tenant-based assistance shall ensure that not less than seventy-five percent (75%) of the families admitted to its tenant-based voucher program from its waiting list during its fiscal

year shall be extremely low-income families with incomes at or below thirty percent (30%) of the area median income."

SECTION 40.(a) If House Bill 914, 2005 Regular Session, becomes law, effective July 1, 2007, G.S. 143B-426.39A, 143B-426.39B, and 143B-426.39C, as enacted by Section 9 of House Bill 914, are recodified as G.S. 143B-426.39D, 143B-426.39E, and 143B-426.39F. The Codifier is authorized to change the references to G.S. 143B-426.39A, 143B-426.39B, and 143B-426.39C in G.S. 143B-426.39, 53-245(b), 62A-22(d), 96-6, 147-9.3, G.S. 174-9.4 as amended by Sections 8, 17, 19, 23, 112, and 113 of House Bill 914, to the correct recodified statutory references.

SECTION 40.(b) If House Bill 914, 2005 Regular Session, becomes law, effective July 1, 2007, the same amendment to G.S. 143-3.3(g), made by Section 6.35 of S.L. 2005-276, is also made to 143B-426.39D(g) as enacted by Section 9 of House Bill 914 and recodified by Section 6.19(a) of this section.

SECTION 40.(c) If House Bill 914, 2005 Regular Session, becomes law, effective July 1, 2007, G.S. 143B-426.39(6) reads as rewritten:

"(6) Prescribe, develop, operate, and maintain a uniform payroll system, in accordance with ~~G.S. 143-3.2 and G.S. 143-34.1,~~ G.S. 143B-426.39E and G.S. 143C-6-6 for all State agencies. This uniform payroll system shall be designed to assure compliance with all legal and constitutional requirements. When the State Controller finds it expedient to do so because of a State agency's size and location, the State Controller may authorize a State agency to operate its own payroll system. Any State agency authorized by the State Controller to operate its own payroll system shall comply with the requirements adopted by the State Controller."

SECTION 40.(d) To reflect the provisions of G.S. 143-16.6 which was enacted in Section 34.1(d) of S.L. 2005-276, if House Bill 914, 2005 Regular Session becomes law, then effective July 1, 2007, Article 9 of Chapter 143C as enacted by Section 3 of House Bill 914, 2005 Regular Session is amended by adding a new section to read:

"**§ 143C-9-3A. Assignment to the State of rights to tobacco manufacturer escrow funds.**

A tobacco product manufacturer that elects to place funds into escrow pursuant to G.S. 66-291(a)(2) may make an assignment of its interest in the funds to the benefit of the State. The assignment applies to all funds, and any earnings and appreciation, that are in the escrow account at the time of the assignment or are subsequently deposited into the escrow account and are not released under the provisions of subdivision (1) or (2) of G.S. 66-291(b) at any time on or before the expiration of 10 years from the date of assignment. The assignment is irrevocable and shall include any reversionary interest in the escrow account and the funds therein that would otherwise belong to the tobacco manufacturer, including the right to receive the escrowed funds pursuant to G.S. 66-291(b)(3).

An assignment of rights executed pursuant to this section shall be in writing and shall be signed by a duly authorized representative of the tobacco product manufacturer

making the assignment. An assignment is effective upon delivery to the Attorney General and the financial institution where the escrow account is maintained."

SECTION 40.(e) If a final judgment by a court of competent jurisdiction declares that G.S. 143C-9-3A, as enacted by subsection (d) of this section, is invalid or unenforceable, then the statute is repealed, and any assignment made under it is void. If, as a result of a final judgment, it is determined that G.S. 143C-9-3A as enacted by subsection (b) of this section, would subject payments to this State by participating manufacturers under the Master Settlement Agreement, as defined in G.S. 66-290, to a Non-Participating Manufacturer Adjustment under Section IX of that Agreement, then G.S. 143C-9-3A is repealed, and any assignment made under it is void.

SECTION 40.(f) If House Bill 914, 2005 Regular Session becomes law, then effective July 1, 2007, Article 9 of Chapter 143C as enacted by Section 3 of House Bill 914, 2005 Regular Session is amended by adding a new section to read:

"**§ 143C-3B. JDIG Reserve Fund.**

(a) The State Controller shall establish a reserve in the General Fund to be known as the JDIG Reserve. Funds from the JDIG Reserve shall not be expended or transferred except in accordance with G.S. 143B-437.63.

(b) It is the intent of the General Assembly to appropriate funds annually to the JDIG Reserve established in this section in amounts sufficient to meet the anticipated cash requirements for each fiscal year of the Job Development Investment Grant Program established pursuant to G.S. 143B-437.52."

SECTION 40.(g) If House Bill 914, 2005 Regular Session becomes law, then effective July 1, 2007, G.S. 143C-3-1 as enacted by Section 2 of House Bill 914, 2005 Regular Session reads as rewritten:

"**§ 143C-3-1. Budget estimate for the legislative branch.**

The Legislative ~~Administrative~~ Services Officer shall give the Director an estimate of the financial needs of the legislative branch for the upcoming fiscal period in accordance with the schedule prescribed by the Director. The estimates for the legislative branch shall be approved and certified by the President Pro Tempore of the Senate and the Speaker of the House of Representatives. The estimates shall be itemized in accordance with the accounting classifications adopted by the Controller. The Director shall include the estimates in the budget the Director submits to the General Assembly. The Director may recommend changes to these estimates in the budget submitted to the General Assembly."

SECTION 40.(h) If House Bill 914, 2005 Regular Session becomes law, then effective July 1, 2007, G.S. 143C-1-1(b) as enacted by Section 2 of House Bill 914, 2005 Regular Session reads as rewritten:

"(b) The provisions of this Chapter shall apply to every State agency and to every non-State entity that receives or expends any State funds. No State agency or non-State entity shall expend any State funds except in accordance with an act of appropriation and the requirements of this Chapter. The provisions of Chapter 120 of the General Statutes shall continue to apply to the General Assembly and to control its expenditures and in the event of a conflict with this Chapter, the provisions of Chapter 120 of the

General Statutes shall control. Nothing in this Chapter abrogates or diminishes the inherent power of the legislative, executive, or judicial branch."

SECTION 40.(i) If Senate Bill 198, 2005 Regular Session, becomes law, this section is repealed.

SECTION 41. If House Bill 1231, 2005 Regular Session, becomes law, then G.S. 75-38(d), as enacted by House Bill 1231, reads as rewritten:

"(d) A "triggering event" means the declaration of a state of emergency pursuant to G.S. ~~166A-8,~~166A-8 or Article 36A of Chapter 14 of the General Statutes, the proclamation of a state of disaster pursuant to ~~Article 36A of Chapter 14 of the General Statutes~~, G.S. 166A-6, or a finding of abnormal market disruption pursuant to G.S. 75-38(e)."

SECTION 42. If House Bill 1327, 2005 Regular Session, becomes law, then G.S. 114-19.16 as enacted by that act is recodifed as G.S. 114-19.18. If House Bill 1848, 2005 Regular Session, become law, then G.S. 114-19.16 as enacted by that act, is recodifed as G.S. 114-19.19.

SECTION 43. If both House Bill 1827 and House Bill 2882, 2005 Regular Session, become law, then Section 3 of House Bill 1827 is repealed.

SECTION 44.(a) If House Bill 1848, 2005 Regular Session, becomes law, Section 8 of the bill reads as rewritten:

"**SECTION 8.** Section 4 of S.L. 2006-32 reads as rewritten:

"**SECTION 4.** The Legislative Research Commission ~~and the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services (LOC)~~ shall study drug treatment courts in North Carolina. The study shall include the following issues in relation to drug treatment courts:

(1) Funding mechanisms;
(2) Target populations;
(3) Interagency collaboration at the State and local levels; and
(4) Any other matter that the Commissions deem appropriate or necessary to provide proper information to the General Assembly on the subject of the study.

The Commission may report its findings and recommendations to the 2007 Regular Session of the 2007 General Assembly."

SECTION 44.(b) If House Bill 1848, 2005 Regular Session, becomes law, Section 12 of the bill reads as rewritten:

"**SECTION 12.** In order to provide for an orderly transition in membership to the Judicial Standards Commission to the six-year terms specified in G.S. 7A-375(b), as amended by Section 11 of this act, and notwithstanding G.S. 7A-375(b), as amended by Section 11 of this act, the following provisions apply:

(1) The initial terms of the new district court judge ~~and~~ of one new member of the North Carolina ~~Bar~~ Bar, and of one citizen upon recommendation of the Speaker of the House of Representatives, appointed to the Commission effective January 1, 2007, shall be ~~three~~ two-year terms.

(2) The initial terms of all other new members appointed to the Commission effective January 1, 2007, shall be ~~six~~ five-year terms.

~~(3) The term of the citizen appointed by the Governor to the Commission effective January 1, 2007, shall be a three-year term.~~

~~(4) The term for the citizen appointed by the Governor to the Commission effective January 1, 2010, shall be a three-year term.~~"

SECTION 45.(a) If House Bill 1895, 2005 General Assembly, becomes law, then, G.S. 58-50-245(17), reads as rewritten:

"(17) "Insurer" means any entity that provides health insurance coverage in this State. For the purposes of this Part, insurer includes:

a. An insurance company;

b. A hospital or medical service corporation;

c. A health maintenance organization;

d. A multiple employer welfare arrangement;

e. A third-party administrator or claims processor;

f. An administrative service organization; and

g. Any other nongovernmental entity providing a health benefit plan subject to State insurance ~~regulation; and~~ regulation."

SECTION 45.(b) If House Bill 1895, 2005 General Assembly, becomes law, then, G.S. 58-50-250(b)(2) reads as rewritten:

"(2) Two members of the general public who are not employed by or affiliated with an insurance company or plan, group hospital, or other health care provider, and can reasonably be expected to qualify for coverage in the Pool. Members of the general public include individuals whose only affiliation with health insurance or health care coverage is as a covered member. The two members of the general public shall be appointed by the General Assembly, as follows:

a. One member upon the recommendation of the President Pro Tempore of the Senate.

b. One member upon the recommendation of the Speaker of the House of Representatives."

SECTION 45.(c) If House Bill 1895, 2005 General Assembly, becomes law, then, G.S. 58-50-255(a) reads as rewritten:

"(a) The Executive Director, in collaboration with the Board, shall select through a competitive bidding process one or more authorized insurers or a third-party administrator to administer the Pool. The Executive Director shall evaluate bids submitted based on criteria established by the Board. The criteria shall allow for the comparison of information about each bidding administrator and selection of a Pool Administrator based on at least the following:

(1) Proven ability to handle health insurance coverage to individuals.

(2) Efficiency and timeliness of the claim processing procedures.

(3) Estimated total charges for administering the Pool.

(4) Ability to apply effective cost containment programs and procedures and to administer the Pool in a cost-efficient manner.

(5) Financial condition and stability.

If a member of the Board has submitted a bid to be selected by the Board as Pool Administrator, that bidding member of the Board shall not participate in the selection process or in the Board's final decision on the selection of the Administrator."

SECTION 45.(d) If House Bill 1895, 2005 General Assembly becomes law, then G.S. 58-50-300, reads as rewritten:

"**§ 58-50-300. Audit.**

An audit of the Pool shall be conducted annually under the oversight of the State Auditor. The cost of the audit shall be reimbursed to the State Auditor from the Reserve for the North Carolina Health Insurance Risk Pool."

SECTION 46.(a) If House Bill 1896, 2005 Regular Session, becomes law, then Section 19(e) of House Bill 1896 is rewritten to read:

"**SECTION 19.(e)** Section 19.(a) becomes effective December 1, 2006, and applies to all offenses committed on or after that date and to all individuals who move into this State on or after that date. The remainder of this section becomes effective December 1, 2006, and applies to all applications for a drivers license, learner's permit, instruction permit, or special identification card submitted on or after that date."

SECTION 46.(b) If House Bill 1896, 2005 Regular Session, becomes law, then G.S. 14-208.12A as enacted by Section 10(a) of that act reads as rewritten:

"**§ 14-208.12A. Request for termination of registration requirement.**

(a) A person required to register under this Part ~~who has served his or her sentence~~ may petition the superior court in the district where the person resides to terminate the registration requirement 10 years from the date of initial county registration if the person has not been convicted of a subsequent offense requiring registration under this Article."

SECTION 46.(c) If House Bill 1896, 2005 Regular Session, becomes law, then the first sentence of G.S. 20-9(i) as enacted by Section 19.(c) of that act reads as rewritten:

"(i) The Division shall not issue a drivers license to an applicant ~~from another state~~ who has resided in this State for less than 12 months until the Division has searched the National Sex Offender Public Registry to determine if the person is currently registered as a sex offender in another state."

SECTION 46.(d) If House Bill 1896, 2005 Regular Session, becomes law, then G.S. 20-37.7(b1) as enacted by Section 19.(d) of that act reads as rewritten:

"(b1) Search National Sex Offender Public Registry. – The Division shall not issue a special identification card to an applicant ~~from another state~~ who has resided in this State for less than 12 months until the Division has searched the National Sex Offender Public Registry to determine if the person is currently registered as a sex offender in another state."

SECTION 47. If House Bill 1965, 2005 Regular Session becomes law, every reference in that act to July 1, 2006 is changed to September 1, 2006.

SECTION 48.(a) G.S. 163-127.1, as enacted by Section 1 of S.L. 2006-155, reads as rewritten:

"**§ 163-127.1. Definitions.**

As used in this Article, the following terms mean:

(1) Board. – State Board of Elections.

(2) Candidate. – A person having filed a notice of candidacy under ~~Article 10 of Chapter 163 of the General Statutes or having filed a petition under Article 11 of Chapter 163 of the General Statutes.~~the appropriate statute for any elective office in this State.

(3) Challenger. – Any qualified voter registered in the same district as the office for which the candidate has filed or petitioned.

(4) Office. – The elected office for which the candidate has filed or petitioned."

SECTION 48.(b) This section becomes effective on January 1, 2007.

SECTION 49. If House Bill 2762, 2005 Regular Session becomes law, then G.S. 166-5(c1)(26) as enacted by that act is recodified as G.S. 126-5(c1)(27).

SECTION 50.(a) If House Bill 2873, 2005 Regular Session, becomes law then G.S. 87-88(i), as amended by Section 3 of House Bill 2873, reads as rewritten:

"(i) Chlorination of the Well. – Upon completion of the well construction and pump installation, all water-supply wells installed for the purpose of obtaining groundwater for human consumption ~~and all private drinking water wells~~ shall be sterilized in accordance with standards for sterilization of drinking water wells established by the U.S. Public Health Service."

SECTION 50.(b) If House Bill 2873, 2005 Regular Session, becomes law then G.S. 87-97, as enacted by Section 4 of House Bill 2873, is amended by adding a new subsection to read:

"(f1) Chlorination of the Well. – Upon completion of construction of a private drinking water well, the well shall be sterilized in accordance with the standards of drinking water wells established by the United States Public Health Service."

SECTION 50.(c) If House Bill 2873, 2005 Regular Session, becomes law then G.S. 87-97(g), as enacted by Section 4 of House Bill 2873, reads as rewritten:

"(g) Certificate of Completion. – Upon completion of construction of a private drinking water well or repair of a private drinking water well for which a permit is required under this section, the local health department shall inspect the well to determine whether it was constructed or repaired in compliance with the construction permit or repair permit. If the local health department determines that the private drinking water well has been constructed or repaired in accordance with the requirements of the construction permit or repair permit, the construction and repair requirements of this Article, and rules adopted pursuant to this Article, the local health department shall issue a certificate of completion. No person shall place a private drinking water well into service without first having obtained a certificate of completion. No person shall return a private drinking water well that has undergone repair to service without first having obtained a certificate of completion."

SECTION 51. If House Bill 2873, 2005 Regular Session, becomes law then G.S. 87-97(h), as enacted by Section 4 of House Bill 2873, reads as rewritten:

"(h) Drinking Water Testing. – Within 30 days after it issues a certificate of completion for a newly constructed private drinking water well, the local health

department shall test the water obtained from the ~~well~~ well, or ensure that the water obtained from the well has been sampled and tested by a certified laboratory, in accordance with rules adopted by the Commission for Health Services. The water shall be tested for the following parameters: arsenic, barium, cadmium, chromium, copper, fluoride, lead, iron, magnesium, manganese, mercury, nitrates, nitrites, selenium, silver, sodium, zinc, pH, and bacterial indicators."

SECTION 52.(a) If Senate Bill 602, 2005 Regular Session, becomes law, then G.S. 47-14(a), as amended by Section 40.(c), of that bill, reads as rewritten:

"(a) The register of deeds shall not accept for registration any instrument that requires proof or acknowledgement unless the execution of the instrument by one or more signers appears to have been proved or acknowledged before an officer with the apparent authority to take proofs or acknowledgements, and the said proof or acknowledgement includes the officer's signature, commission expiration date, and official seal, if required. The register of deeds shall accept an instrument for registration that does not require proof or acknowledgement if the instrument otherwise satisfies the requirements of G.S. 161-14. Any document previously recorded or any certified copy of any document previously recorded may be rerecorded, regardless of whether it has been changed or altered, or it is being rerecorded pursuant to G.S. 47-36.1. The register of deeds shall not be required to verify or make inquiry concerning (i) the legal sufficiency of any proof or acknowledgement, (ii) the authority of any officer who took a proof or acknowledgement, (iii) the legal sufficiency of any document presented for registration, or (iv) upon presentation of the original document for re-recording, whether the original document has been changed or altered."

SECTION 52.(b) If Senate Bill 602, 2005 Regular Session, becomes law, then Section 40.(d), as enacted in the bill, reads as rewritten:

"**SECTION 40.(d)** Subsection (a) of this section becomes effective October 1, 2006. ~~This~~ The remainder of this section becomes effective October 1, 2005."

SECTION 53. If Senate Bill 951, of the 2005 Regular Session, becomes law, then G.S. 160A-49.3(a2), as enacted by that act, reads as rewritten:

"(a2) Firms shall ~~fill~~ file notice of provision of solid waste collection service with the city clerk of all cities located in the firm's collection area or within five miles thereof."

SECTION 54. If Senate Bill 1431, 2005 Regular Session, becomes law, then Sec. 35(a)(1)a. as enacted in Section 5 of the act, reads as rewritten:

SECTION 55.(a) If Senate Bill 2009, 2005 Regular Session becomes law then, G.S. 115C-531(i), as enacted by Senate Bill 2009 reads as rewritten:

"(i) Lien Laws Not Affected. – ~~The provisions of Article 2 of Chapter 44A of the General Statutes apply to any real property, improvement to the real property, and rights that flow with the real property that is subject to a capital lease under this section. Real property that is subject to a capital lease under this section is subject to liens and foreclosure actions in the same manner and to the same extent as if the property were owned in fee simple by a private entity.~~All laws relating to liens on private property apply to private property interests in a capital lease project undertaken under this section."

SECTION 55.(b) If Senate Bill 2009, 2005 Regular Session becomes law then, G.S.115C-532(d) , as enacted by Senate Bill 2009, reads as rewritten:

"(d) Additional Requirements Regarding Design Services. – Required design and engineering services shall be performed by an ~~engineer,~~engineer or licensed architect, to the extent permitted under G.S. 83A-13(b), or a licensed architect. Specifications for any new school building shall be consistent with the requirements of G.S. 143-128(a). All applicable requirements for the review or approval of design and specifications for school buildings by the Department of Public Instruction and the Department of Insurance apply to school buildings constructed, repaired, or renovated under a capital lease authorized under this section."

SECTION 56 . The Enrolling Clerk may file with the Secretary of State a corrected copy of Resolution 2006-10, changing the name "Hernadez" to "Hernandez", and may correct the copies in the legislative database.

PART III. EFFECTIVE DATE

SECTION 57. Except as otherwise provided, this act is effective when it becomes law.

Attachment V

SENATE BILL 1523:
2006 Technical Corrections Act

BILL ANALYSIS

Committee:	House Judiciary I	**Date:**	July 24, 2006
Introduced by:	Rep. Ross	**Summary by:**	Kory Goldsmith
Version:	PCS to Second Edition S1523-CSRN-19		Staff Attorney

BILL ANALYSIS:

Section 1 -3. Technical changes recommended by the General Statutes Commission.

Section 4 makes a conforming change to add G.S. 14-54.1 (breaking or entering a religious building) to a list of felony larcenies. GS 14-54.1 is already a felony.

Small Substan. Change

Section 5 amends G.S. 14-269(b) and G.S. 74E-6(c) to allow company police to carry concealed weapons while on duty, with permission, without having to obtain a concealed carry permit.

Section 6 amends G.S. 14-306.1A as enacted in Sec. 4 of S.L. 2006-6 (Phase-out Video Poker) to clarify that the ban on video poker machines does not extend to games that do not emit or produce any receipt, token or other form or record that could be redeemed or exchanged for cash or a cash equivalent.

Section 7 amends G.S. 14-409.11 and G.S. 14-415.1 to conform law to federal law regarding antique firearms.

Section 8 makes technical corrections to the Lottery law.

Section 9 amends G.S. 20-157(f), the "move over" law, to make conforming changes.

Section 10 amends G.S. 20-171.19 to create an exemption to the ATV helmet law for employees of electric utilities. It requires them to wear the safety helmets that are currently in use by that industry.

Section 11 amends G.S. 20-217(g) (penalty for passing a stopped school bus) to clarify that the requirement that the act be willful modifies passing a stopped school bus, not the subsequent striking of another person.

Section 12 clarifies the statute dealing with nonrenewal of surety bonds required for sellers of motor vehicles to ensure that nonrenewal of the bond does not affect liability of the surety for the bond prior to the premium anniversary date of the surety bond.

Section 13 makes various technical changes to the laws of trusts and estates enacted in 2005:

Subsection (a) amends G.S. 36C-2-206 to make the language consistent with the statutory definition of "proceeding," which includes an action.

Subsection (b) amends G.S. 36C-4-408 to substitute the reference to "settlor" in place of "transferor". Subsection (d) is also revised to substitute the word "trust" for "decedent's estate".

Subsections (c)-(f) repeal multiple citations to Article 2 (proceedings before the clerk of court) that appear in Article 4 (proceedings in superior court). These citations have been misleading as they were interpreted to mean that the procedural provisions of Article 2 applied to actions under Article 4.

Subsection (g) amends the section related to modifications to achieve the settlor's tax objectives.

Subsection (h) amends G.S. 36C-4-417(a) to delete the requirement of notice to the qualified beneficiaries which was not required under prior law brought forward in G.S. 36C-4-417.

Subsection (i) amends G.S. 36C-4-419 to correct a reference.

Subsection (j) amends G.S. 36C-7-701(b) to clarify when the 120-day time period given to a trustee to accept a trusteeship begins to run.

Subsection (k) amends G.S. 36C-8-815 to clarify that (1) a trustee's power includes both those in the instrument and other powers usually given by trustees, *except* where the instrument limits those powers; and (2) that although the trustee must exercise all powers in accordance with his fiduciary duty, third parties may rely on trustee without confirming that trustee exercised powers in accordance with fiduciary duty.

Subsection (l) amends G.S. 6-21.5 to make clear that the statute applies to an estate or trust proceeding which would include any proceeding brought under the Uniform Trust Code.

Subsections (m), (n) and (o) correct citations.
Subsection (p) corrects a technical error.
Subsection (q) conforms the provision with Chapter 36C, the NC Uniform Trust Code.

Subsection (r) authorizes the Revisor of Statutes to make conforming changes to the commentary.

Section 14 amends G.S. 53B-2(3) and G.S. 53B-4 respectively (the Financial Privacy Act) to: (1) exclude from the definition of "financial record" forged or counterfeit instruments or records related to an account under a fictitious name or created under another person's name without that person's permission; and (2) allow the Attorney General access to a customer's financial records held by a financial institution under Chapter 75.

Section 15 amends G.S. 62-182.1 (Access to dedicated public right-of-way) to include telephone membership corporations among the public utilities that would have access to a public right-of-way for purposes of installing infrastructure. Under G.S. 62-180, any entity that is authorized to provide telephone service is authorized to install infrastructure. As currently written, G.S. 62-182.1 would not cover a telephone memberships corporation because they are not included in the definition of a "public utility" under Chapter 62.

Section 16 corrects citations error in Pharmacy Statutes G.S. 90-85.46(2)(b) and G.S. 90-85.47(a).

Section 17 amends G.S. 93E-1-7(a) to exempt members of the General Assembly from taking a 4-hour trainee supervision course prior to supervising a new appraiser trainee.

Section 18 repeals G.S. 95-25.3(g) which cross-references a statute that was repealed in 2003 regarding Wage and Hour law.

Section 19 amends G.S. 97-19.1, the law governing workers compensation exemption for truck drivers by deleting the phrase "licensed by a governmental motor vehicle regulatory agency" and substituting the phrase "licensed by the U.S. Department of Transportation". This clarifies the workers' compensation exemption for an independent contractor requires an individual to be licensed by U.S. DOT and "personally" operate the vehicle solely pursuant to the individual's U.S. DOT license. The change narrows the type of license applicable to this statute.

Section 20 amends G.S. 105A-2(6)e. to include public health authorities created under law other than Part 1B of Article 2 of Chapter 130A to use the debt set-off provisions. This alternative method was used by Cabarrus County to create its public health authority.

Section 21 makes a grammatical correction to G.S. 115D-20(3) regarding the authority of a board of trustees of a community college to acquire land by condemnation.

Section 22 amends G.S. 120-36.2 to allow the Legislative Services Commission to appoint, rather than elect, the Director of the Fiscal Research Division.

Section 23 amends G.S. 122C-142 (Strengthen LME/State MH/DD/SAS) to allow Local Management Entities for residential mental health treatment facilities that have a Medicaid waiver to modify the standard contracts subject to the approval of the Secretary of DHHS.

Section 24 amends 128-1.1 to allow state law enforcement officers to enforce certain federally laws under a memorandum agreement with the federal agency.

Section 25 deletes an incorrect reference to a highway that no longer exists.

Section 26 amends G.S. 153A-340(b)(2) regarding the zoning authority of municipalities by including timber in the definition for "agricultural products".

Section 27(a) and (b) amend G.S. 153A-376 and 160-456 (regarding community development programs and activities) to correct a incorrect citation.

Section 28 amends G.S. 160A-383 to allow the governing board to adopt a brief statement regarding whether any changes to zoning regulations are consistent with an adopted comprehensive plan and why the board considers the action to be reasonable and in the public interest.

Section 29 amends various sections in Chapter 163 to clarify that the State Board of Elections may use the same remedies to enforce those statutes that they may use to enforce the regular campaign finance act.

Section 30 corrects by one year the terms of two members of the State Judicial Council appointed by the Speaker..

Section 31 amends S.L. 2005-190 to delay by one year the date by which the Environmental Management Commission (EMC) must develop and adopt rule to implement a nutrient management strategy for Falls Lake. It also requires annual reports on the EMC's progress on developing and implementing nutrient management strategies for other drinking water reservoirs.

Section 32 amends S.L. 2005-421 to correct a term of an appointment made by the President Pro Tempore..

Section 33 corrects an incorrect citation in the lead-in language to Sec. 6 of S.L. 2006-6 (Phase-out Video Poker). This section becomes effective June 6, 2006.

Section 34 corrects an incomplete citation in the lead-in language to Section 3.(o) of House Bill 1908 which has been ratified but has not yet been signed by the Governor.

Section 35 makes a technical change to the title of S.L. 2006-85 to list the correct airport authority (Jackson County Airport authority, instead of Macon-Jackson Regional Airport Authority).

Section 36 corrects an error in the deed book page number in S.L. 2006-89 (City of High Point ABC Board).

Section 37 corrects an effective date provision in S.L. 2006-113 (HB2098 – Protection of Animals).

Section 38 amends S.L. 2006-126 (a local act) to exclude hospitals, churches, cultural performing arts centers and governmental buildings from height limits that may be adopted by referendum for Hendersonville.

Section 39 amends 157-29(b) as enacted in HB767 to correct typographical, drafting and grammatical errors.

Section 40 reenacts Executive Budget Act amendments from the 2005 Session that were inadvertently repealed by House Bill 914.

Section 41 modifies G.S. 75-38(d), if enacted in House Bill 1231, so that the correct statutory references match with the declaration of a state of emergency, the proclamation of a state of disaster, and a finding of abnormal market disruption in the definition of a "triggering event."

Section 42 corrects some codification errors in HB 1327 (Criminal Record Checks/Psychology Practice Act) and HB 1848 (Omnibus Courts Act).

Section 43 repeals Section 3 of House Bill 1827 previously enacted in Section 2 of House Bill 2882.

Section 44(a) directs the Legislative Research Commission to study drug treatment courts. **Subsection (b)** provides for a smoother transition to 6 year terms for members of the Judicial Standards Commission.

Section 45 makes technical and clarifying changes to HB1895, The High Risk Insurance Pool. **Subsection (a)** corrects a grammatical error. **Subsection (b)** clarifies that certain appointments are made by the General Assembly upon the recommendation of the Speaker and the President Pro Tempore. **Subsection (c)** enacts a conflict of interest provision that was in earlier versions of the bill and inadvertently omitted from the final version.

Section 46 amends HB1896 (Sex Offender Registration Changes) to correct the effective date and make other clarifying changes.

Section 47 changes every reference in House Bill 1965 (Eminent Domain Restrictions) from July 1, 2006 is changed to September 1, 2006.

Section 48 would amend the Candidate Challenge bill (HB 2188) to make clear that the new procedure applies to all candidates for public office. The act unintentionally limited the procedure to certain candidates.

Section 49 recodifies G.S. 126-5(c1)(26) to be G.S. 126-5(c1)(27) because G.S. 126-5(c1)(26) was already enacted in a previous bill.

Section 50 subsections (a) and (b) amends HB 2873 (Safe Drinking Water/Private Wells) which includes a requirement that newly constructed private drinking water wells be chlorinated. HB 2873 modifies the requirement for water supply wells that serve public water systems to include a reference to private drinking water wells. Sections 50.(a) and 50.(b) deletes the cross reference and add the chlorination requirement as a new subsection to the new G.S. 87-97 that establishes the private drinking water well program. **Subsection (c)** clarifies that that the local health department must verify that the construction or repair of a private drinking water well was completed in compliance with the construction and repair requirements of Article 7 of the General Statutes (North Carolina Well Construction Act) before issuing a certificate of completion.

Section 51 amends HB 2873 (Safe Drinking Water/Private Wells) to allow the drinking water testing to be conducted by a certified laboratory under rules adopted by the Health Services Commission.

Section 52 amends a provision amended in SB 602 (2005 Technical Corrections) for the Mortgage Satisfaction Act to allow a document that has been changed or altered to be rerecorded under G.S. 47-36.1. It also provides that a register of deeds is not required to verify whether, upon presentation of an

original document, that the document has been changed or altered. Also changes a retroactive effective date to make it prospective.

Section 53 amends SB951 (Public-Private Solid Waste Collection) to fix a typographical error.

Section 54(a) amends SB 2009 (Public School Public/Private Partnerships) to clarify that quality-based selection criteria for design services apply to public schools constructed pursuant to a build-to-suit capital lease. It also rewrites a sentence to place the modifying phrase on the correct word. **Subsection (b)** clarifies that existing lien laws with respect to private property are maintained, but no additional rights are granted.

Section 54 amends G.S. 115C-531(i) as enacted by Senate Bill 2009 by rewriting the subsection to include liens on private as well as real property and to clarify that all current law relating to liens on private property also applies to capital leases under the section.

Section 55 allows the Enrolling Clerk to correct a typographical error in a Joint Resolution.

EFFECTIVE DATE:

Except as otherwise provided, this act is effective when it becomes law.

S1523e2-SMRC-CSRN-19

Attachment VI

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1523*

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

S1523-ARK-80 [v.2]

Date July 25, ,2006

Comm. Sub. [YES]
Amends Title [NO]
Second Edition

Representative Harrison

moves to amend the bill on page _____, between lines _____and_____, by inserting the following:

"SECTION _____. G.S. 143-143.21A(d) reads as rewritten:

'(d) The dealer shall return the deposit or other payment toward or payment for the purchase price to the buyer if the buyer cancels the purchase before midnight of the third business day after the date the buyer signed the purchase agreement or if any of the material terms of the purchase agreement are changed by the dealer. To make the cancellation effective, the buyer shall give the dealer written notice of the buyer's cancellation of the purchase. The dealer shall return the deposit or other payment toward or payment for the purchase price to the buyer within ~~fifteen~~ seven business ~~days~~ days, or fifteen business days when payment is by personal check, after receipt of the notice of cancellation or within three business days of any change by the dealer of the purchase agreement. For purposes of this section, "business day" means any day except Sunday and legal holidays. Each time the dealer gives the buyer a new set of financing terms, unless the financing terms are more favorable to the buyer, the buyer shall be given another three-day cancellation period. The dealer shall not commence setup procedures until after the final three-day cancellation period has expired.'"

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1523*

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

S1523-ARK-80 [v.2]

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

SHIELDS BUSINESS FORMS, RALEIGH, NC 27603

PLEASE PRESS HARD - 5 COPIES Attachment VII

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE _____

S. B. No. _____ Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
) _____
Sen.)

moves to amend the bill on page 5, line 5 18 and 19

( ) WHICH CHANGES THE TITLE

by rewriting the underlined language to read: "Commissioners may be removed by the appointing authority for cause."

Attachment VIII

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 7-25-06

S. B. No. 1523 Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE ✓

(Rep.) Sen.) Stam

1 moves to amend the bill on page 29, line 41

2 ( ) WHICH CHANGES THE TITLE

3 by _____

4 deleting "September 1, 2006." and substituting

5 _____

6 "August 15, 2006."

7 _____

8 _____

9 _____

10 _____

11 _____

12 _____

13 _____

14 _____

15 _____

16 _____

17 _____

18 _____

19 _____

SIGNED Stam

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE

Attachment IX

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1523*

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

S1523-ASH-13 [v.1]

Date _____,2006

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

Goodwin

moves to amend the bill on page , lines , by inserting between the lines a new section to read:

"**SECTION 19B.** S.L. 2006-66 is amended by inserting a new section to read:

'**SECTION 17.7.** G.S. 143B-394.4(4) reads as rewritten:

"(4) "Displaced homemaker" means an individual who:

a. Has worked in his or her own household and has provided unpaid household services; and

b. Is unable to secure gainful employment due to the lack of required training, age, or experience; or is unemployed, or underemployed; and

c. Has been dependent on the income of another household member but is no longer adequately supported by that income, or is receiving support but is within two years of losing the support, or has been supported by public assistance as the parent of minor children ~~and is no longer eligible.~~ but is no longer eligible, or is within two years of losing the eligibility.""

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1523*

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

S1523-ASH-13 [v.1]

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

Attachment X

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE July 25, 2006

S. B. No. 1523 Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE ✓

(Rep.) Ross
Sen.)

moves to amend the bill on page 31, line 5 33-34

( ) WHICH CHANGES THE TITLE

by deleting the lines and renumbering the sections accordingly.

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

Attachment XI

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1523*

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

S1523-ARN-19 [v.1]

Date _____,2006

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

Representative _____

If Senate Bill 1587, 2005 Regular session becomes law, then G.S. 113-174.3(a), as amended by Senate Bill 1557, reads as rewritten

moves to amend the bill on page

SECTION .5 ~~G.S. 113-174.3(a) reads as rewritten~~:

"(a) License. – A person who operates a for hire boat may purchase a For Hire Blanket CRFL issued by the Division. A For Hire Blanket CRFL authorizes all individuals on the for hire boat who do not hold a license issued under this Article or Article 25A of this Chapter to engage in recreational fishing in coastal fishing waters that are not joint fishing waters. A For Hire Blanket CRFL does not authorize individuals to engage in recreational fishing in joint fishing waters or inland fishing waters. This license is valid for a period of one year from the date of issuance. The fee for a For Hire Blanket CRFL is:

(1) Two hundred fifty dollars ($250.00) for a vessel ~~captained by an individual who holds a certification from the United States Coast Guard to~~ that will carry six or fewer passengers.

(2) Three hundred fifty dollars ($350.00) for a vessel ~~captained by an individual who holds a certification from the United States Coast Guard to~~ that will carry greater than six passengers."

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1523*

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

S1523-ARN-19 [v.1]

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

Attachment XII

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative Hackney (Chair) for the Committee on JUDICIARY I.

☒ Senate Committee Substitute for
SB 1523 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.

☒ With a favorable report as to House committee substitute bill, which changes the title, unfavorable as to Senate committee substitute bill.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

_____ Pursuant to Rule 36(b), the (House/Senate) committee substitute bill/(joint) resolution (No._____) is placed on the Calendar of _____. (The original bill resolution No._____) is placed on the Unfavorable Calendar.

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

Attachment XIII

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 1523*

Judiciary I Committee Substitute Adopted 7/6/06

PROPOSED HOUSE COMMITTEE SUBSTITUTE S1523-PCS85495-RN-19

Short Title: 2006 Technical Corrections Act. (Public)

Sponsors:

Referred to:

May 18, 2006

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 CHANGES AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION

SECTION 1. G.S. 10B-106(d) reads as rewritten:

"(d) An electronic form shall be used by an electronic notary in registering with the Secretary and it shall include, at least all of the following:

(1) The applicant's full legal name and the name to be used for commissioning, excluding nicknames.

(2) The state and county of commissioning of the registrant.

(3) The expiration date of the registrant's notary commission.

(4) Proof of successful completion of the course of instruction on electronic notarization as required by this Article.

(5) A description of the technology the registrant will use to create an electronic signature in performing official acts.

(6) If the device used to create the registrant's electronic signature was issued or registered through a licensed certification authority, the name of that authority, the source of the license, the starting and expiration dates of the device's term of registration, and any revocations, annulments, or other premature terminations of any registered device of the registrant that was due to misuse or compromise of the device, with the date, cause, and nature of each termination explained in detail.

(7) The e-mail address of the registrant.

The information contained in a registration under this section is a public record as defined in G.S. 132-1, except for information contained in ~~subsection (7),~~ subdivision (7) of this subsection, which shall be considered confidential information and shall not be subject to disclosure except as provided in Chapter 132 of the General Statutes or as provided by rule."

SECTION 2. G.S. 45-37(a) reads as rewritten:

"(a) Subject to the provisions of G.S. 45-36.9(a) and G.S. 45-73 relating to security instruments which secure future advances, any security instrument intended to secure the payment of money or the performance of any other obligation registered as required by law may be satisfied of record and thereby discharged and released of record in the following manner:

(1) Security instruments satisfied of record prior to October 1, 2005, pursuant to this subdivision as it was in effect prior to October 1, 2005, shall be deemed satisfied of record, discharged, and released.

...

(5) Security instruments satisfied of record prior to October 1, 2005, pursuant to this subdivision as it was in effect prior to October 1, 2005, shall be deemed satisfied of record, discharged, and released.

(6) Security instruments satisfied of record prior to October 1, 2005, pursuant to this subdivision as it was in effect prior to October 1, 2005, shall be deemed satisfied of record, discharged, and released.

...."

SECTION 3. If Senate Bill 1479, 2005 Regular Session, becomes law, Sections 1 and 2 of this act are repealed.

PART II. OTHER CHANGES

SECTION 4.(a) G.S. 14-72(b) reads as rewritten:

"(b) The crime of larceny is a felony, without regard to the value of the property in question, if the larceny ~~is:~~is any of the following:

(1) From the ~~person; or~~ person.

(2) Committed pursuant to a violation of G.S. 14-51, 14-53, ~~14-54~~14-54, 14-54.1, or ~~14-57; or~~14-57.

(3) Of any explosive or incendiary device or substance. As used in this section, the phrase "explosive or incendiary device or substance" shall include any explosive or incendiary grenade or bomb; any dynamite, blasting powder, nitroglycerin, TNT, or other high explosive; or any device, ingredient for such device, or type or quantity of substance primarily useful for large-scale destruction of property by explosive or incendiary action or lethal injury to persons by explosive or incendiary action. This definition shall not include fireworks; or any form, type, or quantity of gasoline, butane gas, natural gas, or any other substance having explosive or incendiary properties but serving a legitimate nondestructive or nonlethal use in the form, type, or quantity stolen.

(4) Of any firearm. As used in this section, the term "firearm" shall include any instrument used in the propulsion of a shot, shell or bullet

by the action of gunpowder or any other explosive substance within it. A "firearm," which at the time of theft is not capable of being fired, shall be included within this definition if it can be made to work. This definition shall not include air rifles or air pistols.

(5) Of any record or paper in the custody of the North Carolina State Archives as defined by G.S. 121-2(7) and G.S. 121-2(8)."

SECTION 4.(b) This section becomes effective December 1, 2006, and applies to acts committed on or after that date.

SECTION 5.(a) G.S. 14-269(b) reads as rewritten:

"(b) This prohibition shall not apply to the following persons:

(1) Officers and enlisted personnel of the armed forces of the United States when in discharge of their official duties as such and acting under orders requiring them to carry arms and weapons;

(2) Civil and law enforcement officers of the United States;

(3) Officers and soldiers of the militia and the national guard when called into actual service;

(4) Officers of the State, or of any ~~county, city, or town,~~ county, city, town, or company police agency charged with the execution of the laws of the State, when acting in the discharge of their official duties;

(5) Sworn law-enforcement officers, when off-duty, provided that an officer does not carry a concealed weapon while consuming alcohol or an unlawful controlled substance or while alcohol or an unlawful controlled substance remains in the officer's body."

SECTION 5.(b) G.S. 74E-6(c) reads as rewritten:

"(c) All Company Police. – Company police officers, while in the performance of their duties of employment, have the same powers as municipal and county police officers to make arrests for both felonies and misdemeanors and to charge for infractions on any of the following:

(1) Real property owned by or in the possession and control of their employer.

(2) Real property owned by or in the possession and control of a person who has contracted with the employer to provide on-site company police security personnel services for the property.

(3) Any other real property while in continuous and immediate pursuit of a person for an offense committed upon property described in subdivisions (1) or (2) of this subsection.

Company police officers shall have, if duly authorized by the superior officer in charge, the authority to carry concealed weapons pursuant to and in conformity with ~~G.S. 14-269(b)(5).~~G.S. 14-269(b)(4) and (5)."

SECTION 5.(c) This section becomes effective October 1, 2006.

SECTION 6. G.S. 14-306.1A, as enacted by Section 4 of S.L. 2006-6, is amended by adding a new subsection to read:

"(f) Machines described in G.S. 14-306(b)(1) are excluded from this section."

SECTION 7.(a) G.S. 14-409.11 reads as rewritten:

"**§ 14-409.11. "Antique firearm" defined.**

(a) The term "antique firearm" means any of the following:

(1) Any firearm (including any firearm with a matchlock, flintlock, percussion cap, or similar type of ignition system) manufactured on or before 1898.

(2) Any replica of any firearm described in subdivision (1) of this subsection if the replica meets one of the following:

a. Is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition.

b. Uses rimfire or conventional centerfire fixed ammunition which is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade.

(3) Any muzzle loading rifle, muzzle loading shotgun, or muzzle loading pistol, which is designed to use black powder substitute, and which cannot use fixed ammunition.

(b) For purposes of this section, the term "antique firearm" shall not include any weapon which:

(1) Incorporates a firearm frame or receiver.

(2) Is converted into a muzzle loading weapon.

(3) Is a muzzle loading weapon that can be readily converted to fire fixed ammunition by replacing the barrel, bolt, breechblock, or any combination thereof.

~~The term "antique firearm" means any firearm manufactured in or before 1898 (including any matchlock, flintlock, percussion cap, or similar early type of ignition system) or replica thereof, whether actually manufactured before or after the year 1898; and also any firearm using fixed ammunition manufactured in or before 1898, for which ammunition is no longer manufactured in the United States and is not readily available in the ordinary channels of commercial trade.~~"

SECTION 7.(b) G.S. 14-415.1(a) reads as rewritten:

"(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 firearm 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. This section does not apply to an antique firearm, as defined in G.S. 14-409.11.

Every person violating the provisions of this section shall be punished as a Class G felon."

SECTION 8.(a) G.S. 18C-130(a) reads as rewritten:

"(a) The Commission shall determine the ~~type~~ types of lottery games that may be used in the Lottery. Games may include instant lotteries, online games, games played on computer terminals or other devices, and other games traditional to a lottery or that have been conducted by any other state government-operated lottery."

SECTION 8.(b) G.S. 18C-131(e) reads as rewritten:

"(e) It shall be a defense for the person who sold a ticket or share in violation of subsection (d) of this section if the person does either of the following:

(1) Shows that the purchaser produced a valid drivers license, a special identification card issued under G.S. 20-37.7, a military identification card, or a passport, showing the purchaser to be at least 18 years old and bearing a physical description of the person named on the card that reasonably describes the purchaser.

(2) Produces evidence of other facts that reasonably indicated at the time of sale that the purchaser was at least 18 years old."

SECTION 8.(c) G.S. 18C-111(a) reads as rewritten:

"(a) The Commission shall consist of nine members, five of whom shall be appointed by the Governor, two of whom shall be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, and two of whom shall be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives. Commissioners may be removed by the appointing authority for cause. The Governor shall select the chair of the Commission from among its membership, who shall serve at the pleasure of the Governor."

SECTION 8.(d) G.S. 18C-151(e) reads as rewritten:

"(e) After entering into a contract with a lottery contractor, the Commission shall require the lottery contractor to periodically update the information required to be disclosed under ~~G.S. 18C-149.~~ G.S. 18C-152(c). Any contract with a lottery contractor who does not periodically update the required disclosures may be terminated by the Commission."

SECTION 8.(e) G.S. 18C-164(a) reads as rewritten:

"(a) The funds remaining in the North Carolina State Lottery Fund after receipt of all revenues to the Lottery Fund and after accrual of all obligations of the Commission for prizes and expenses shall be considered to be the net revenues of the North Carolina State Lottery Fund. The net revenues of the North Carolina State Lottery Fund shall be transferred ~~periodically~~ quarterly by the tenth business day following the end of the quarter to the Education Lottery Fund, which shall be created in the State treasury."

SECTION 8.(f) G.S. 105-163.2B reads as rewritten:

"**§ 105-163.2B. North Carolina State Lottery Commission must withhold taxes.**

The North Carolina State Lottery Commission, established by Chapter 18C of the General Statutes, must deduct and withhold State income taxes from the payment of winnings ~~that are reportable to the Internal Revenue Service under section 3406 of the Code.~~ in an amount of six hundred dollars ($600.00) or more. The amount of taxes to be withheld is seven percent (7%) of the winnings. The Commission must file a ~~return and~~ return, pay the withheld ~~taxes~~ taxes, and report the amount withheld in the time and manner required under G.S. 105-163.6 as if the winnings were wages. The taxes the Commission withholds are held in trust for the Secretary."

SECTION 8.(g) G.S. 114-19.16 reads as rewritten:

"**§ 114-19.16. Criminal record checks for the North Carolina State Lottery Commission and its Director.**

The Department of Justice may provide to the North Carolina State Lottery Commission and to its Director from the State and National Repositories of Criminal Histories the criminal history of any prospective employee of the Commission and any prospective lottery vendor. The North Carolina State Lottery Commission or its Director shall provide to the Department of Justice, along with the request, the fingerprints of the prospective employee of the Commission, or of the prospective lottery vendor, a form signed by the prospective employee of the Commission, or of the prospective vendor 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 fingerprints of the prospective employee of the Commission, or prospective lottery vendor, 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 North Carolina State Lottery Commission and its Director shall remit any fingerprint information retained by the Commission to alcohol law enforcement agents appointed under Article 5 of Chapter 18B of the General Statutes and shall keep all information obtained pursuant to this section confidential. The Department of Justice shall charge a reasonable fee only for conducting the checks of the ~~national~~ criminal history records authorized by this section."

SECTION 8.(h) G.S. 115C-499.1(3) reads as rewritten:

"(3) Eligible postsecondary institution. – A school that is:

a. A constituent institution of The University of North Carolina as defined in G.S. 116-2(4);

b. A community college as defined in G.S. 115D-2(2); or

c. A nonpublic postsecondary institution as defined in G.S. 116-22(1) or ~~116-43.5(a)(1).~~ G.S. 116-43.5(a)(1)."

SECTION 8.(i) G.S. 115C-546.2(d)(2) reads as rewritten:

"(2) A sum equal to thirty-five percent (35%) of those monies transferred in accordance with G.S. 18C-164 shall be allocated to those local school administrative units located in whole or part in counties in which the effective county tax rate as a percentage of the ~~effective~~ State average effective tax rate is greater than one hundred percent (100%), with the following definitions applying to this subdivision:

a. "Effective county tax rate" means the actual county tax rate for the previous fiscal year multiplied by a three-year weighted average of the most recent annual sales assessment ratio studies.

b. "State average effective tax rate" means the average effective county tax rates for all counties.

c. "Sales assessment ratio studies" means sales assessment ratio studies performed by the Department of Revenue under G.S. 105-289(h)."

SECTION 8.(j) S.L. 2005-276 is amended by adding a new section to read:

"**SECTION 31.1(jj)** If House Bill 1023, 2005 Regular Session, becomes law, then that act is amended by adding a new section to read:

'**SECTION 10.4.** Section 10.3 of this act is effective for taxable years beginning on or after January 1, 2005.' "

SECTION 8.(k) S.L. 2005-344 is amended by adding a new section to read:

"**SECTION 2.1.** The State Education Assistance Authority shall report annually to the Joint Legislative Commission on Governmental Operations regarding the use of the funds allocated to the Authority under this act."

SECTION 8.(l) Section 12 of S.L. 2005-344 reads as rewritten:

"**SECTION 12.** The first security audit required under ~~G.S. 18C-123(a)~~G.S. 18C-122(a) shall be conducted at the beginning of the first calendar year after the effective date of this act. The first audit required under ~~G.S. 18C-123(d)~~G.S. 18C-122(d) shall be conducted at the end of the first fiscal year after the effective date of this act."

SECTION 9. G.S. 20-157(f) reads as rewritten:

"(f) When an authorized emergency vehicle as described in subsection (a) of this section or any public service vehicle 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 or public service 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 and be prepared to stop until completely past the authorized emergency vehicle or public service 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.

For purposes of this section, "public service vehicle" means a vehicle that has been called to the scene by a motorist or a law enforcement officer, is being used to assist motorists or law enforcement officers with wrecked or disabled vehicles, and is operating an amber-colored flashing light authorized by G.S. 20-130.2. Violation of this subsection shall be negligence per se."

SECTION 10.(a) G.S. 20-171.19 is amended by adding a new subsection to read:

"(a1) Notwithstanding subsection (a) of this section, any person employed by a supplier of retail electric service, while engaged in power line inspection, may operate an all-terrain vehicle while wearing both of the following:

(1) Head protection approved by the Occupational Safety and Health Administration and equipped with a chin strap and conforming to the standards applicable to suppliers of retail electric service.

(2) Electric industry standard eye protection approved by the Occupational Safety and Health Administration and conforming to the standards applicable to suppliers of retail electric service."

SECTION 10.(b) This section becomes effective December 1, 2006, and applies to acts committed on or after that date.

SECTION 11.(a) G.S. 20-217(g) reads as rewritten:

"(g) Any person who willfully violates subsection (a) of this section and ~~willfully~~ strikes any person causing serious bodily injury to that person shall be guilty of a Class I felony."

SECTION 11.(b) This section becomes effective December 1, 2006, and applies to acts committed on or after that date.

SECTION 12. G.S. 20-288(g), as enacted by Section 2.3 of S.L. 2006-105, reads as rewritten:

"(g) A corporate surety may refuse to renew a surety bond furnished pursuant to this section by giving or mailing written notice of nonrenewal to the license holder and to the Commissioner not less than 30 days prior to the premium anniversary date of the surety bond. The notice must be given or mailed by certified mail to the license holder at its last known address. ~~Cancellation~~ Nonrenewal of the surety bond shall not affect any liability incurred or accrued prior to the premium anniversary date of the surety bond."

SECTION 13.(a) G.S. 36C-2-206 reads as rewritten:

"**§ 36C-2-206. Representation of parties.**

(a) ~~In~~ Notwithstanding any other applicable rule of the Rules of Civil Procedure or provision of Chapter 1 of the General Statutes, in any trust ~~proceeding or action,~~proceeding, whether brought before the clerk of superior court or in the superior court division of the General Court of Justice, the parties shall be represented as provided in Article 3 of this Chapter. ~~the following rules apply notwithstanding any other applicable Rule of Civil Procedure or provision of Chapter 1 of the General Statutes:~~

~~(1) Parties shall be represented as provided in Article 3 of this Chapter.~~

(b) ~~(2)~~ In the case of any party represented by another as provided in ~~subdivision (1)~~ subsection (a) of this section, service of process shall be made by serving such representative."

SECTION 13.(b) G.S. 36C-4-408 reads as rewritten:

"**§ 36C-4-408. Trust for care of animal.**

(a) Subject to this section, a trust for the care of one or more designated domestic or pet animals alive at the time of creation of the trust is valid.

(b) Except as expressly provided otherwise in the trust instrument, no portion of the principal or income may be converted to the use of the trustee or to any use other than for the benefit of the designated animal or animals.

(c) The trust terminates at the death of the animal or last surviving animal. Upon termination, the trustee shall transfer the unexpended trust property in the following order:

(1) As directed in the trust ~~instrument;~~instrument.

(2) If the trust was created in a preresiduary clause in the ~~transferor's~~settlor's will or in a codicil to the ~~transferor's~~settlor's will, under the residuary clause in the ~~transferor's will;~~settlor's will.

(3) If no taker is produced by the application of subdivision (1) or (2) of this subsection, to ~~the transferor or the transferor's heirs~~ the settlor, if then living, otherwise to the settlor's heirs determined as of the date of the ~~transferor's~~settlor's death under Chapter 29 of the General Statutes.

(d) The intended use of the principal or income can be enforced by a person designated for that purpose in the trust instrument or, if none, by a person appointed by the clerk of superior court having jurisdiction over the ~~decedent's estate~~ trust upon application to the clerk of superior court by a person.

(e) Except as ordered by the clerk of superior court or required by the trust instrument, no filing, report, registration, periodic accounting, separate maintenance of funds, appointment, bond, or fee is required by reason of the existence of the fiduciary relationship of the trustee.

(f) A governing instrument shall be liberally construed to bring the transfer within this section, to presume against the merely precatory or honorary nature of the disposition, and to carry out the general intent of the ~~transferor.~~settlor. Extrinsic evidence is admissible in determining the ~~transferor's~~settlor's intent.

(g) The clerk of superior court may reduce the amount of the property transferred, if the clerk of superior court determines that the amount substantially exceeds the amount required for the intended use. The amount of the reduction, if any, passes as unexpended trust property under subsection (c) of this section.

(h) If no trustee is designated or if no designated trustee agrees to serve or is able to serve, the clerk of superior court must name a trustee. The clerk of superior court may order the transfer of the property to another trustee, if required to assure that the intended use is carried out and if no successor trustee is designated in the trust instrument or if no designated successor trustee agrees to serve or is able to serve. The clerk of superior court may also make other orders and determinations as are advisable to carry out the intent of the ~~transferor~~ settlor and the purpose of this section."

SECTION 13.(c) G.S. 36C-4-410(c) is repealed.

SECTION 13.(d) G.S. 36C-4-411(e) is repealed.

SECTION 13.(e) G.S. 36C-4-412(c) is repealed.

SECTION 13.(f) G.S. 36C-4-414(d) is repealed.

SECTION 13.(g) G.S. 36C-4-416 reads as rewritten:

"**§ 36C-4-416. Modification to achieve settlor's tax objectives.**

To achieve a settlor's tax objectives, the court may modify the terms of a trust in a manner that is not contrary to the settlor's probable intention. The court may provide that the modification has retroactive effect. ~~Jurisdiction of a proceeding brought under this section shall be as provided in G.S. 36C-2-203.~~"

SECTION 13.(h) G.S. 36C-4-417(a) reads as rewritten:

"(a) Unless otherwise provided in the trust instrument, ~~after notice to the qualified beneficiaries,~~ a trustee ~~may:~~may do any of the following:

(1) Consolidate the assets of more than one trust and administer the assets as one trust under the terms of one of the trusts if the terms of the trusts are substantially similar and the beneficiaries of the trusts are ~~identical; or~~identical.

(2) Divide one trust into two or more separate trusts if the new trusts provide in the aggregate for the same succession of interests and beneficiaries as are provided in the original trust."

SECTION 13.(i) G.S. 36C-4-419 reads as rewritten:

"**§ 36C-4-419. Effect of inalienable interest on modification or termination.**

The court, in exercising its discretion to modify or terminate an irrevocable trust under G.S. 36C-4-411, 36C-4-412, or ~~36C-4-413~~ 36C-4-414 shall consider provisions making the interest of a beneficiary inalienable, including those described in Article 5, but the court is not precluded from the exercise of that discretion solely because of such provisions."

SECTION 13.(j) G.S. 36C-7-701(b) reads as rewritten:

"(b) A person designated as trustee who has not yet accepted the trusteeship may reject the trusteeship. A designated trustee who does not accept the trusteeship within ~~a reasonable time,~~ 120 days after written notice to accept the trusteeship is provided ~~after receiving written notice of the trusteeship~~ is considered to have rejected the trusteeship."

SECTION 13.(k) G.S. 36C-8-815 reads as rewritten:

"**§ 36C-8-815. General powers of trustee.**

(a) A trustee, without authorization by the court, may ~~exercise:~~exercise any of the following:

(1) Powers conferred by the terms of the ~~trust; or~~ trust.

(2) Except as limited by the terms of the trust:

a. All powers over the trust property that an unmarried competent owner has over individually owned property;

b. Any other powers appropriate to achieve the proper investment, management, administration, or distribution of the trust property; and

c. Any other powers conferred by this Chapter.

(b) ~~The exercise of a power is subject to the fiduciary duties prescribed by this Article.~~No provision of this section shall relieve a trustee of the fiduciary duties under this Article."

SECTION 13.(l) G.S. 6-21.5 reads as rewritten:

"**§ 6-21.5. Attorney's fees in nonjusticiable cases.**

In any ~~civil action or special proceeding~~ civil action, special proceeding, or estate or trust proceeding, the court, upon motion of the prevailing party, may award a reasonable attorney's fee to the prevailing party if the court finds that there was a complete absence of a justiciable issue of either law or fact raised by the losing party in any pleading. The filing of a general denial or the granting of any preliminary motion, such as a motion for

judgment on the pleadings pursuant to G.S. 1A-1, Rule 12, a motion to dismiss pursuant to G.S. 1A-1, Rule 12(b)(6), a motion for a directed verdict pursuant to G.S. 1A-1, Rule 50, or a motion for summary judgment pursuant to G.S. 1A-1, Rule 56, is not in itself a sufficient reason for the court to award attorney's fees, but may be evidence to support the court's decision to make such an award. A party who advances a claim or defense supported by a good faith argument for an extension, modification, or reversal of law may not be required under this section to pay attorney's fees. The court shall make findings of fact and conclusions of law to support its award of attorney's fees under this section."

SECTION 13.(m) G.S. 32-55 reads as rewritten:

"**§ 32-55. Notice.**

(a) The trustee shall give written notice to all beneficiaries of each proposed payment of compensation if the annual amount of compensation exceeds four-tenths of one percent (4/10 of 1%) of the principal value of the assets of the trust on the last day of the trust accounting year. The notice shall contain a statement that the beneficiaries have 20 days from when notice is given to file a proceeding for review of the reasonableness of the compensation with the clerk of superior court in accordance with ~~Article 3 of Chapter 36A~~ Article 2 of Chapter 36C of the General Statutes."

SECTION 13.(n) G.S. 32-57(a) reads as rewritten:

"(a) The trustee or any beneficiary may initiate a proceeding under ~~Article 3 of Chapter 36A~~ Article 2 of Chapter 36C of the General Statutes for review of the reasonableness of any compensation or expense reimbursement and for the approval or denial of the payment of compensation or expense reimbursement. A beneficiary may initiate a proceeding even though the 20-day period referred to in G.S. 32-56(2) has expired."

SECTION 13.(o) G.S. 32-71(a) reads as rewritten:

"(a) In acquiring, investing, reinvesting, exchanging, retaining, selling, and managing property for the benefit of another, a fiduciary shall observe the standard of judgment and care under the circumstances then prevailing, which an ordinarily prudent person of discretion and intelligence, who is a fiduciary of the property of others, would observe as such fiduciary; and if the fiduciary has special skills or is named a fiduciary on the basis of representations of special skills or expertise, he is under a duty to use those skills. This subsection and subsection (b) of this section do not apply to trusts governed by ~~Article 15 of this Chapter.~~Article 9 of Chapter 36C of the General Statutes."

SECTION 13.(p) G.S. 37A-2-202(b) reads as rewritten:

"(b) In determining a beneficiary's share of net income, the following rules apply:

(1) The beneficiary is entitled to receive a portion of the net income equal to the beneficiary's fractional interest in the undistributed principal assets immediately before the distribution date, including assets that later may be sold to meet principal obligations.

(2) The beneficiary's fractional interest in the undistributed principal assets shall be calculated without regard to property specifically given

to a beneficiary and property required to pay pecuniary amounts not in ~~trust.~~trust to which G.S. 37A-2-201(3) applies.

(3) The beneficiary's fractional interest in the undistributed principal assets shall be calculated on the basis of the aggregate value of those assets as of the distribution date without reducing the value by any unpaid principal obligation.

(4) The distribution date for purposes of this section may be the date as of which the fiduciary calculates the value of the assets if that date is reasonably near the date on which assets are actually distributed."

SECTION 13.(q) G.S. 53-163.5(d) reads as rewritten:

"(d) Such bank or trust company may invest the funds held by it in any fiduciary capacity in one or more common trust funds, provided that (i) such investment is not prohibited by the instrument, judgment, decree or order creating such fiduciary relationship or amendment ~~thereof; (ii) in the case of co-fiduciaries the written consent of the co-fiduciary is obtained by the bank or trust company; and (iii)~~ thereof, and (ii) ~~that~~ the bank has no interest in the assets of the common trust fund other than as a fiduciary."

SECTION 13.(r) The Revisor of Statutes is authorized to cause to be printed any amendments to the explanatory comments of the drafters of S.L. 2005-192 that are prepared by the drafters of this section, as the Revisor deems appropriate.

SECTION 13.(s) This section becomes effective October 1, 2006, and applies to (i) all trusts created before, on, or after that date; (ii) all judicial proceedings concerning trusts commenced on or after that date; and (iii) all judicial proceedings concerning trusts commenced before that date unless the court finds that application of a particular provision of this act would substantially interfere with the effective conduct of the judicial proceedings or prejudice the rights of the parties, in which case the law as it existed on September 30, 2006, shall apply.

SECTION 14.(a) G.S. 53B-2(3) reads as rewritten:

"(3) "Financial record" means an original of, a copy of, or information derived from, a record held by a financial institution pertaining to a customer's relationship with the financial institution and identified with or identifiable with the customer. Financial record shall not include forged or counterfeit financial instruments or records relating to an account established under a fictitious name or another person's name without proper authorization."

SECTION 14.(b) G.S. 53B-4 reads as rewritten:

"**§ 53B-4. Access to financial records.**

Notwithstanding any other provision of law, no government authority may have access to a customer's financial record held by a financial institution unless the financial record is described with reasonable specificity and access is sought pursuant ~~to:~~to any of the following:

(1) Customer authorization that meets the requirements of the Right to Financial Privacy Act § 1104, 12 U.S.C. § 3404, provided, however, a customer authorization received by a State agency or a county

department of social services for the purpose of determining eligibility for the programs of public assistance under Chapter 108A of the General Statutes, or for purposes of a government inquiry concerning these same programs of public assistance, cannot be revoked and shall remain valid for 12 months unless a shorter period is specified in the authorization, or a customer authorization that is given by a licensed attorney with respect to an account in which the attorney holds funds as a ~~fiduciary;~~fiduciary.

(2) Authorization under G.S. 105-251, 105-251.1, or ~~105-258;~~105-258.

(3) Search warrant as provided in Article 11 of Chapter 15A of the General ~~Statutes;~~Statutes.

(4) Statutory authority of a supervisory agency to examine or have access to financial records in the exercise of its supervisory, regulatory, or monetary functions with respect to a financial ~~institution;~~institution.

(5) The authority granted under G.S. 116B-72 and G.S. ~~116B-75;~~116B-75.

(6) Examination and review by the State Auditor or his authorized representative under G.S. 147-64.6(c)(9) or G.S. ~~147-64.7(a);~~147-64.7(a).

(7) Request by a government authority authorized to buy and sell student loan notes under Article 23 of Chapter 116 of the General Statutes for financial records relating to insured student ~~loans;~~loans.

(8) Pending litigation to which the government authority and the customer are ~~parties;~~parties.

(9) Subpoena or court order in connection with a grand jury ~~proceeding;~~proceeding.

(10) A writ of execution under Article 28 of Chapter 1 of the General ~~Statutes; or~~Statutes.

(11) Other court order or administrative or judicial subpoena authorized by law if the requirements of G.S. 53B-5 are met.

(12) The authority granted to the Attorney General under Chapter 75 of the General Statutes.

As used in this section, the term "reasonable specificity" means that degree of specificity reasonable under all the circumstances, and, with respect to requests under G.S. 116B-72 and G.S. 116B-75, may include designation by general type or class."

SECTION 14.(c) This section becomes effective October 1, 2006, and applies to acts committed on or after that date.

SECTION 15. G.S. 62-182.1 reads as rewritten:

"**§ 62-182.1. Access to dedicated public right-of-way.**

When any map or plat of a subdivision, recorded as provided in G.S. 47-30 and G.S. 136-102.6, reflects the dedication of a public street or other public right-of-way, the dedicated public street or public right-of-way shall, upon recordation of the map or plat, become immediately available for use by any public ~~utility~~ utility, telephone membership corporation organized under G.S. 117-30, or cable television system to install, maintain, and operate lines, cables, or facilities for the provision of service to the

public. No public ~~utility~~ utility, telephone membership corporation organized under G.S. 117-30, or cable television system shall place or erect any line, cable, or facility in, over, or upon a street or right-of-way in a subdivision that is intended to become a public street or public right-of-way, until a map or plat of the subdivision has been recorded as provided in G.S. 47-30 and G.S. 136-102.6, and except in accordance with procedures established by the Department of Transportation, Division of Highways, for accommodating utilities or cable television systems on highway rights-of-way. Upon recordation of a map or plat of a subdivision as provided in G.S. 47-30 and G.S. 136-102.6, no liability shall attach to the developer of the property as a result of any activity of a public ~~utility~~ utility, telephone membership corporation organized under G.S. 117-30, or cable television system occurring in the dedicated public street or public right-of-way. Nothing in this section shall relieve the developer of the property of responsibilities under G.S. 136-102.6."

SECTION 16.(a) G.S. 90-85.46(2)b. reads as rewritten:

"b. A program established by a person or entity holding a valid pharmacy permit pursuant to G.S. 90-85.21 or ~~G.S. 90-85.21(a)~~G.S. 90-85.21A to evaluate the quality of pharmacy services and alleged medication errors and incidents and make recommendations to improve the quality of pharmacy services."

SECTION 16.(b) G.S. 90-85.47(a) reads as rewritten:

"(a) Every person or entity holding a valid pharmacy permit pursuant to G.S. 90-85.21 or ~~G.S. 90-85.21(a),~~G.S. 90-85.21A shall establish or participate in a pharmacy quality assurance program as defined under G.S. 90-85.46(2), to evaluate the following:

(1) The quality of the practice of pharmacy.
(2) The cause of alleged medication errors and incidents.
(3) Pharmaceutical care outcomes.
(4) Possible improvements for the practice of pharmacy.
(5) Methods to reduce alleged medication errors and incidents."

SECTION 17. G.S. 93E-1-7(a) reads as rewritten:

"(a) Trainee registrations, licenses, and certificates issued under this Chapter shall expire on the 30th day of June of every year and shall become invalid after that date unless renewed prior to the expiration date by filing an application with and paying to the Executive Director of the Board the fee of two hundred dollars ($200.00). As a prerequisite to the renewal of a trainee registration or a real estate appraiser license or certificate, the trainee registration holder, the licensee, or the certificate holder must satisfy any continuing education requirements that may be prescribed by the Board under subsection (b) of this ~~section; provided, however, that members~~ section. The members of the General Assembly are exempt from this requirement and any education program regarding trainee supervision during their term of office. The Board may adopt rules establishing a system of trainee registration, license, and certificate renewal in which trainee registrations, licenses, and certificates expire annually with varying expiration dates."

SECTION 18. G.S. 95-25.3(g) is repealed.

SECTION 19. G.S. 97-19.1, as amended by Section 1 of S.L. 2006-26, reads as rewritten:

"**§ 97-19.1. Truck, tractor, or truck tractor trailer driver's status as employee or independent contractor.**

(a) An individual in the interstate or intrastate carrier industry who operates a truck, tractor, or truck tractor trailer licensed by a governmental motor vehicle regulatory agency may be an employee or an independent contractor under this Article dependent upon the application of the common law test for determining employment status.

Any principal contractor, intermediate contractor, or subcontractor, irrespective of whether such contractor regularly employs three or more employees, who contracts with an individual in the interstate or intrastate carrier industry who operates a truck, tractor, or truck tractor trailer licensed by ~~a governmental motor vehicle regulatory agency~~ the United States Department of Transportation and who has not secured the payment of compensation in the manner provided for employers set forth in G.S. 97-93 for himself personally and for his employees and subcontractors, if any, shall be liable as an employer under this Article for the payment of compensation and other benefits on account of the injury or death of the independent contractor and his employees or subcontractors due to an accident arising out of and in the course of the performance of the work covered by such contract.

(b) Notwithstanding subsection (a) of this section, a principal contractor, intermediate contractor, or subcontractor shall not be liable as an employer under this Article for the payment of compensation on account of the injury or death of the independent contractor if the principal contractor, intermediate contractor, or subcontractor (i) contracts with an independent contractor ~~that~~ who is an individual licensed by ~~a governmental motor vehicle regulatory agency~~ the United States Department of Transportation and (ii) the independent contractor personally is operating the vehicle solely pursuant to that license.

(c) The principal contractor, intermediate contractor, or subcontractor may insure any and all of his independent contractors and their employees or subcontractors in a blanket policy, and when insured, the independent contractors, subcontractors, and employees will be entitled to compensation benefits under the blanket policy.

A principal contractor, intermediate contractor, or subcontractor may include in the governing contract with an independent contractor in the interstate or intrastate carrier industry who operates a truck, tractor, or truck tractor trailer licensed by a governmental motor vehicle regulatory agency an agreement for the independent contractor to reimburse the cost of covering that independent contractor under the principal contractor's, intermediate contractor's, or subcontractor's coverage of his business."

SECTION 20. G.S. 105A-2(6) reads as rewritten:

"**§ 105A-2. Definitions.**

The following definitions apply in this Chapter:

...

(6) Local agency. – Any of the following:

a. A county, to the extent it is not considered a State agency.
b. A municipality.
c. A water and sewer authority created under Article 1 of Chapter 162A of the General Statutes.
d. A regional joint agency created by interlocal agreement under Article 20 of Chapter 160A of the General Statutes between two or more counties, cities, or both.
e. A public health authority created under Part 1B of Article 2 of Chapter 130A of the General ~~Statutes.~~Statutes or other authorizing legislation.
f. A metropolitan sewerage district created under Article 5 of Chapter 162A of the General Statutes.
g. A sanitary district created under Part 2 of Article 2 of Chapter 130A of the General Statutes.

...."

SECTION 20.5. If Senate Bill 1587, 2005 Regular Session, becomes law, then G.S. 113-174.3(a), as enacted by that act, reads as rewritten:

"(a) License. – A person who operates a for hire boat may purchase a For Hire Blanket CRFL issued by the Division. A For Hire Blanket CRFL authorizes all individuals on the for hire boat who do not hold a license issued under this Article or Article 25A of this Chapter to engage in recreational fishing in coastal fishing waters that are not joint fishing waters. A For Hire Blanket CRFL does not authorize individuals to engage in recreational fishing in joint fishing waters or inland fishing waters. This license is valid for a period of one year from the date of issuance. The fee for a For Hire Blanket CRFL is:

(1) Two hundred fifty dollars ($250.00) for a vessel ~~captained by an individual who holds a certification from the United States Coast Guard to~~ that will carry six or fewer passengers.
(2) Three hundred fifty dollars ($350.00) for a vessel ~~captained by an individual who holds a certification from the United States Coast Guard to~~ that will carry greater than six passengers."

SECTION 21. G.S. 115D-20(3) reads as rewritten:

"(3) To purchase any land, easement, or right-of-way which shall be necessary for the proper operation of the institution, upon approval of the State Board of Community Colleges, and if necessary, to acquire land by condemnation in the same manner and under the same procedures as provided in General Statutes Chapter 40A. For the purpose of condemnation, the determination by the trustees as to the location and amount of land to be taken and the necessity therefor shall be conclusive."

SECTION 22. G.S. 120-36.2 reads as rewritten:

"**§ 120-36.2. Organization.**

(a) The Legislative Services Commission shall ~~elect~~appoint a Director of Fiscal Research, who shall serve at the pleasure of the Commission. The Director of Fiscal

Research shall be responsible to the Legislative Services Officer in the performance of his duties.

(b) The Director of Fiscal Research ~~shall appoint and may remove, after consultation with the Legislative Services Officer and subject in each case to the approval of the Commission, the professional and clerical employees of the Division. He~~ shall assign the duties and supervise and direct the activities of the employees of the Division.

(c) The Director and employees of the Division shall receive salaries that shall be fixed by the Commission, shall receive the travel and subsistence allowances fixed by G.S. 138-6 and 138-7, and shall be entitled to the other benefits available to State employees."

SECTION 23. G.S. 122C-142, as amended by S.L. 2006-142, reads as rewritten:

"**§ 122C-142. Contract for services.**

(a) When the area authority contracts with persons for the provision of services, it shall use the standard contract adopted by the Secretary and shall assure that these contracted services meet the requirements of applicable State statutes and the rules of the Commission and the Secretary. However, an area authority or county program may amend the contract to comply with any court-imposed duty or responsibility. An area authority or county program that is operating under a Medicaid waiver may amend the contract subject to the approval of the Secretary. Terms of the standard contract shall require the area authority to monitor the contract to assure that rules and State statutes are met. It shall also place an obligation upon the entity providing services to provide to the area authority timely data regarding the clients being served, the services provided, and the client outcomes. The Secretary may also monitor contracted services to assure that rules and State statutes are met."

SECTION 24.(a) G.S. 128-1.1 is amended to add a new subsection to read:

"(c1) Where authorized by federal law, any State or local law enforcement agency may authorize its law enforcement officers to also perform the functions of an officer under 8 U.S.C. § 1357(g) if the agency has a Memorandum of Agreement or Memorandum of Understanding for that purpose with a federal agency. State and local law enforcement officers authorized under this provision are authorized to hold any office or position with the applicable federal agency required to perform the described functions."

SECTION 24.(b) This section becomes effective January 1, 2006, and any actions taken between that date and the date this section becomes law that would have been proper if this section had been then in effect are in all respects validated and confirmed, and no office shall be considered to have been vacated.

SECTION 24.5. G.S. 143-143.21A(d) reads as rewritten:

"(d) The dealer shall return the deposit or other payment toward or payment for the purchase price to the buyer if the buyer cancels the purchase before midnight of the third business day after the date the buyer signed the purchase agreement or if any of the material terms of the purchase agreement are changed by the dealer. To make the cancellation effective, the buyer shall give the dealer written notice of the buyer's

cancellation of the purchase. The dealer shall return the deposit or other payment toward or payment for the purchase price to the buyer within seven business ~~days~~ days, or 15 business days when payment is by personal check, after receipt of the notice of cancellation or within three business days of any change by the dealer of the purchase agreement. For purposes of this section, "business day" means any day except Sunday and legal holidays. Each time the dealer gives the buyer a new set of financing terms, unless the financing terms are more favorable to the buyer, the buyer shall be given another three-day cancellation period. The dealer shall not commence setup procedures until after the final three-day cancellation period has expired."

SECTION 25. G.S. 143B-131.2 reads as rewritten:

"**§ 143B-131.2. Roanoke Island Commission – Purpose, powers, and duties.**

(a) The Commission is created to combine various existing entities in the spirit of cooperation for a cohesive body to protect, preserve, develop, and interpret the historical and cultural assets of Roanoke Island. The Commission is further created to operate and administer the Elizabeth II State Historic Site and Visitor Center, the Elizabeth II, Ice Plant Island, and all other properties under the administration of the Department of Cultural Resources located on Roanoke Island having historical significance to the State of North Carolina, Dare County, or the Town of Manteo, except as otherwise determined by the Commission.

(b) The Commission shall have the following powers and duties:

(1) To advise the Secretary of Transportation and adopt rules on matters pertaining to, affecting, and encouraging restoration, preservation, and enhancement of the appearance, maintenance, and aesthetic quality of U.S. Highway 64/264 and the U.S. 64/264 Bypass ~~and N.C. 400 travel corridors~~ travel corridor on Roanoke Island and the grounds on Roanoke Island Festival Park.

(2) To operate the Elizabeth II State Historic Site and Visitor Center and the Elizabeth II as permanent memorials commemorating the Roanoke Voyages, 1584-1587.

(3) To supervise the development of Ice Plant Island and to manage future facilities.

(4) To advise the Secretary of the Department of Cultural Resources on matters pertinent to historical and cultural events on Roanoke Island.

(5) With the assistance of the Department of Cultural Resources, to identify, preserve, and protect properties located on Roanoke Island having historical significance to the State of North Carolina, Dare County, or the Town of Manteo consistent with applicable State laws and rules.

(6) To establish and collect a charge for admission to any property or event operated by the Commission.

(7) To solicit and accept gifts, grants, and donations.

(8) To cooperate with the Secretary and Department of Cultural Resources, the Secretary and Department of Transportation, the Secretary and Department of Environment and Natural Resources, and

other governmental agencies, officials, and entities, and provide them with assistance and advice.

(9) To adopt and enforce such bylaws, rules, and guidelines that the Commission deems to be reasonably necessary in order to carry out its powers and duties. Chapter 150B of the General Statutes does not apply to the adoption of rules by the Commission.

(10) To establish and maintain a separate fund composed of moneys which may come into its hands from gifts, donations, grants, or bequests, which funds will be used by the Commission for purposes of carrying out its duties and purposes herein set forth. The Commission may also establish a reserve fund to be maintained and used for contingencies and emergencies. Funds appropriated to the Commission may be transferred to the Friends of Elizabeth II, Inc., a private, nonprofit corporation. The Friends of Elizabeth II, Inc., shall use the funds transferred to it to carry out the purposes of this Part.

(11) By cooperative arrangement with other agencies, groups, individuals, and other entities, to coordinate and schedule historical and cultural events on Roanoke Island.

(12) Make recommendations to the Secretary of Cultural Resources concerning personnel and budgetary matters.

(13) To acquire real and personal property by purchase, gift, bequest, devise, and exchange.

(14) To administer the Roanoke Island Commission Fund and the Roanoke Island Commission Endowment Fund as provided in G.S. 143B-131.8.

(15) To procure supplies, services, and property as appropriate and to enter into contracts, leases, or other legal agreements to carry out the purposes of this Part and duties of the Commission. The provisions of G.S. 143-129 and Article 3 of Chapter 143 of the General Statutes do not apply to purchases by the Roanoke Island Commission of equipment, supplies, and services."

SECTION 26.(a) G.S. 153A-340(b)(2) reads as rewritten:

"(2) Except as provided in G.S. 106-743.4 for farms that are subject to a conservation agreement under G.S. 106-743.2, bona fide farm purposes include the production and activities relating or incidental to the production of crops, fruits, vegetables, ornamental and flowering plants, dairy, livestock, poultry, and all other forms of agricultural products as defined in G.S. 106-581.1 having a domestic or foreign market. For purposes of this subdivision, the production of a nonfarm product that the Department of Agriculture and Consumer Services recognizes as a "Goodness Grows in North Carolina" product that is produced on a farm subject to a conservation agreement under G.S. 106-743.2 is a bona fide farm purpose."

SECTION 26.(b) This section becomes effective January 1, 2007.

SECTION 27.(a) G.S. 153A-376(f) reads as rewritten:

"(f) All program income from Economic Development Grants from the Small Cities Community Development Block Grant Program may be retained by recipient "economically distressed counties", as defined in ~~G.S. 143B-437A~~G.S. 143B-437.01 for the purposes of creating local economic development revolving loan funds. Such program income derived through the use by counties of Small Cities Community Development Block Grant money includes but is not limited to: (i) payment of principal and interest on loans made by the county using Community Development Block Grant Funds; (ii) proceeds from the lease or disposition of real property acquired with Community Development Block Grant Funds; and (iii) any late fees associated with loan or lease payments in (i) and (ii) above. The local economic development revolving loan fund set up by the county shall fund only those activities eligible under Title I of the federal Housing and Community Development Act of 1974, as amended (P.L. 93-383), and shall meet at least one of the three national objectives of the Housing and Community Development Act. Any expiration of ~~G.S. 143B-437A~~G.S. 143B-437.01 or G.S. 105-129.3 shall not affect this subsection as to designations of economically distressed counties made prior to its expiration."

SECTION 27.(b) G.S. 160A-456(e1) reads as rewritten:

"(e1) All program income from Economic Development Grants from the Small Cities Community Development Block Grant Program may be retained by recipient cities in "economically distressed counties", as defined in ~~G.S. 143B-437A,~~G.S. 143B-437.01, for the purposes of creating local economic development revolving loan funds. Such program income derived through the use by cities of Small Cities Community Development Block Grant money includes but is not limited to: (i) payment of principal and interest on loans made by the county using Community Development Block Grant Funds; (ii) proceeds from the lease or disposition of real property acquired with Community Development Block Grant Funds; and (iii) any late fees associated with loan or lease payments in (i) and (ii) above. The local economic development revolving loan fund set up by the city shall fund only those activities eligible under Title I of the federal Housing and Community Development Act of 1974, as amended (P.L. 93-383), and shall meet at least one of the three national objectives of the Housing and Community Development Act. Any expiration of ~~G.S. 143B-437A~~G.S. 143B-437.01 or G.S. 105-129.3 shall not affect this subsection as to designations of economically distressed counties made prior to its expiration."

SECTION 28. G.S. 160A-383 reads as rewritten:

"Zoning regulations shall be made in accordance with a comprehensive plan. ~~Prior to~~When adopting or rejecting any zoning amendment, the governing board shall ~~adopt~~also approve a statement describing whether its action is consistent with an adopted comprehensive plan and any other officially adopted plan that is applicable, and briefly explaining why the board considers the action taken to be reasonable and in the public interest. That statement is not subject to judicial review.

The planning board shall advise and comment on whether the proposed amendment is consistent with any comprehensive plan that has been adopted and any other officially adopted plan that is applicable. The planning board shall provide a written recommendation to the governing board that addresses plan consistency and other

matters as deemed appropriate by the planning board, but a comment by the planning board that a proposed amendment is inconsistent with the comprehensive plan shall not preclude consideration or approval of the proposed amendment by the governing board.

Zoning regulations shall be designed to promote the public health, safety, and general welfare. To that end, the regulations may address, among other things, the following public purposes: to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to lessen congestion in the streets; to secure safety from fire, panic, and dangers; and to facilitate the efficient and adequate provision of transportation, water, sewerage, schools, parks, and other public requirements. The regulations shall be made with reasonable consideration, among other things, as to the character of the district and its peculiar suitability for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout such city."

SECTION 29.(a) G.S. 163-278.83 reads as rewritten:

"**§ 163-278.83. Penalties.**

Except as otherwise provided in this Article, a violation of this Article is a Class 2 misdemeanor. The State Board of Elections has the same authority to compel from any ~~organization~~ individual, committee, association, or any other organization or group of individuals covered by this Article the disclosures required by this Article that the Board has to compel ~~from a political committee~~ the disclosures required by Article 22A of this Chapter. The civil penalties and remedies in G.S. 163-278.34 shall apply to violations of this Article, and where those provisions apply to violations involving contributions and expenditures they shall apply in the same manner to payments and disbursements in violation of G.S. 163-278.82."

SECTION 29.(b) G.S. 163-278.93 reads as rewritten:

"**§ 163-278.93. Penalties.**

Except as otherwise provided in this Article, a violation of this Article is a Class 2 misdemeanor. The State Board of Elections has the same authority to compel from any ~~organization~~ individual, committee, association, or any other organization or group of individuals covered by this Article the disclosures required by this Article that the Board has to compel ~~from a political committee~~ the disclosures required by Article 22A of this Chapter. The civil penalties and remedies in G.S. 163-278.34 shall apply to violations of this Article, and where those provisions apply to violations involving contributions and expenditures they shall apply in the same manner to payments and disbursements in violation of G.S. 163-278.92."

SECTION 29.(c) If House Bill 966 of the 2005 Regular Session becomes law, G.S. 163-278.102 reads as rewritten:

"**§ 163-278.102. Penalties.**

The State Board of Elections has the same authority to compel from any ~~organization~~ individual, committee, association, or any other organization or group of individuals covered by this Article the disclosures required by this Article that the Board has to compel ~~from a political committee~~ the disclosures required by Article 22A of this Chapter. The civil penalties and remedies in G.S. 163-278.34 shall apply to violations of this Article."

SECTION 29.(d) If House Bill 966 of the 2005 Regular Session becomes law, G.S. 163-278.112 reads as rewritten:

"**§ 163-278.112. Penalties.**

The State Board of Elections has the same authority to compel from any ~~organization~~ individual, committee, association, or any other organization or group of individuals covered by this Article the disclosures required by this Article that the Board has to compel ~~from a political committee~~ the disclosures required by Article 22A of this Chapter. The civil penalties and remedies in G.S. 163-278.34 shall apply to violations of this Article."

SECTION 29.(e) If House Bill 966 of the 2005 Regular Session becomes law, G.S. 163-278.100(4) as enacted by that law reads as rewritten:

"(4) The term "targeted to the relevant electorate" means a communication which refers to a clearly identified candidate for statewide office or the General Assembly and which can be received by 50,000 or more individuals in the State in the case of a candidacy for statewide office and ~~2,500~~ 7,500 or more individuals in the district in the case of a candidacy for General Assembly."

SECTION 30. Section 2.18 of S.L. 2004-158 reads as rewritten:

"**SECTION 2.18.(a)** Jack Olsen of Moore County is appointed to the State Judicial Council for a term expiring on ~~December 31, 2007.~~December 31, 2006.

SECTION 2.18.(b) Effective January 1, 2005, Dumont Clarke of Mecklenburg County is appointed to the State Judicial Council for a term expiring on ~~December 31, 2009.~~December 31, 2008."

SECTION 31.(a) Section 3(c) of S.L. 2005-190 reads as rewritten:

"**SECTION 3.(c) Nutrient management strategy.** – The Environmental Management Commission shall develop a nutrient management strategy for drinking water supply reservoirs to which this section applies by 1 July ~~2008.~~2009. The nutrient management strategy shall be based on a calibrated nutrient response model that meets the requirement of G.S. 143-215.1(c5). The nutrient management strategy shall include specific mandatory measures to achieve the reduction goals. The Commission shall consider the cost of the proposed measures in relation to the effectiveness of the measures. These measures could include, but are not limited to, buffers, erosion and sedimentation control requirements, post-construction stormwater management, agricultural nutrient reduction measures, the addition of nutrient removal treatment processes to point source permitted wastewater treatment plants, the removal of point source discharging wastewater treatments through regionalization and conversion to non-discharge treatment technologies, and any other measures that the Commission determines to be necessary to meet the nutrient reduction goals. To the extent that one or more other State programs already mandate any of these measures, the nutrient management strategy shall incorporate the mandated measures and any extension of those measures and any additional measures that may be necessary to achieve the nutrient reduction goals. In making a nutrient loading allocation to a permit holder, the Commission shall, to the extent allowed by federal and State law, give consideration to

all voluntary efforts taken by the permit holder to protect water quality prior to the development of the nutrient management strategy."

SECTION 31.(b) Section 3(e) of S.L. 2005-190 reads as rewritten:

"**SECTION 3.(e) Implementation; rulemaking.** – The Environmental Management Commission shall adopt permanent rules to implement the nutrient management strategies required by this section by 1 July ~~2008.~~2009. The rules shall require that reductions in nutrient loading from all sources begin no later than five years after the rules become effective."

SECTION 31.(c) Section 4 of S.L. 2005-190 reads as rewritten:

"**SECTION 4. Other drinking water supply reservoirs.** – The Environmental Management Commission shall not make any new or increased nutrient loading allocation to any person who is required to obtain a permit under G.S. 143-215 for an individual wastewater discharge directly or indirectly into any drinking water supply reservoir for which the Division of Water Quality of the Department of Environment and Natural Resources has prepared or updated a calibrated nutrient response model since 1 July 2002 until permanent rules adopted by the Commission to implement the nutrient management strategy for that reservoir become effective. The Commission shall report its progress in developing and implementing nutrient management strategies for reservoirs to which this section applies to the Environmental Review Commission by 1 April ~~2006.~~ of each year beginning 1 April 2006."

SECTION 32. Section 2.3 of S.L. 2005-421 reads as rewritten:

"**SECTION 2.3.** Dr. Paul Rush of Scotland County is appointed to the North Carolina Board of Athletic Trainer Examiners for a term expiring on June 30, ~~2008.~~2007."

SECTION 33.(a) The lead-in language of Section 6 of S.L. 2006-6 reads as rewritten:

"**SECTION 6.** ~~G.S. 147-12(14)~~G.S. 147-12(a)(14) reads as rewritten:".

SECTION 33.(b) This section becomes effective June 6, 2006.

SECTION 33.5. S.L. 2006-66 is amended by inserting a new section to read:

"**SECTION 17.7.** G.S. 143B-394.4(4) reads as rewritten:

"(4) "Displaced homemaker" means an individual who:

a. Has worked in his or her own household and has provided unpaid household services; and

b. Is unable to secure gainful employment due to the lack of required training, age, or experience; or is unemployed, or underemployed; and

c. Has been dependent on the income of another household member but is no longer adequately supported by that income, or is receiving support but is within two years of losing the support, or has been supported by public assistance as the parent of minor children ~~and is no longer eligible.~~ but is no longer eligible, or is within two years of losing the eligibility."

SECTION 34. The introductory language of Section 3(o) of S.L. 2006-69 reads as rewritten:

"**SECTION 3.(o)** The catch line to Part 13A of Article 3 of Chapter 143B of the General Statutes reads as rewritten:".

SECTION 35. The title of S.L. 2006-85 is amended to read: "AN ACT TO PROVIDE MEMBERSHIP GUIDELINES FOR THE JACKSON COUNTY AIRPORT AUTHORITY AND TO PROVIDE FOR THE FILLING OF VACANCIES IN THE AIRPORT AUTHORITY."

SECTION 36. Section 1 of S.L. 2006-89 reads as rewritten:

"**SECTION 1.** The transfer of real property by the High Point Alcoholic Beverage Control Board located at Lot B of the property of The Mitchell Company as described in Book ~~5584,~~5548, pages 0182 to 0184, per plats thereof recorded in the Office of the Register of Deeds for Guilford County, North Carolina, in 2002, and 910 Greensboro Road, High Point, North Carolina, as described in Book 6389, pages 0107 to 0109 and recorded in the Office of the Register of Deeds for Guilford County, North Carolina, in 2005, shall not be deemed invalid for failure to follow the procedures for the sale of real property outlined in Article 12 of Chapter 160A."

SECTION 37. Section 4.1 of S.L. 2006-113 reads as rewritten:

"**SECTION 4.1.** Part III of this act becomes effective December 1, 2006, and applies to offenses committed on or after that date. ~~This~~ The remainder of this act becomes effective December 1, 2006, and applies to actions commenced on or after that date."

SECTION 38. Section 3(a) of S.L. 2006-126 reads as rewritten:

"**SECTION 3.(a)** The maximum building height on any building within the corporate limits of the City of Hendersonville shall not exceed 64 feet. For purposes of this section, building height shall mean the vertical distance measured from the average grade to the highest point of the coping of a flat roof, to the deck line of a mansard roof, or to the mean height level between the eaves and ridge of a gable, hip, or gambrel roof. The height limitation created by this subsection does not apply to spires, belfries, cupolas, antennas, water tanks, ventilators, chimneys, or other appurtenances usually required to be placed above the roof level and not intended for human occupancy. No variance to this subsection may be granted. This subsection does not apply to hospitals, churches, cultural performing arts centers, government buildings, or buildings erected prior to the effective date of this section."

SECTION 39. If House Bill 767, 2005 Regular Session, becomes law, then G.S. 157-29(b), as amended by that act, reads as rewritten:

"(b) In the operation or management of housing projects, portions of projects, or other housing assistance programs for persons of low income, an authority shall at all times observe the following duties with respect to rentals and tenant selection:

(1) It may rent or lease dwelling accommodations set aside for persons of low income only to persons who lack the amount of income that is necessary (as determined by the housing authority undertaking the project) to enable them, without financial assistance, to live in decent, safe, and sanitary dwellings, without overcrowding; and

(2) It may rent or lease dwelling accommodations to persons of low income only at rentals within the financial reach of such persons.

(3a) It shall comply with the following targeting requirements:

a. Not less than forty percent (40%) of the families admitted to its public housing program from its waiting list in its fiscal year shall be extremely low-income families with incomes at or below thirty percent (30%) of the area median income. For purposes of this section, this shall be known as the "basic targeting requirement".

b. To the extent provided in ~~subdivision (4a) of this subsection,~~ sub-subdivisions c. and d. of this subdivision, the admission of extremely low-income families to its ~~section 8~~ Section 8 voucher program during the same fiscal year shall be credited against the basic targeting requirement. For purposes of this section,~~"section 8"~~ "Section 8" refers to ~~section 8~~ Section 8 of the U.S. Housing Act of 1937 as amended.

c. If admissions of extremely low-income families to its ~~section 8~~ Section 8 voucher program during its fiscal year ~~exceeds~~ exceed the seventy-five percent (75%) ~~of the~~ minimum targeting requirement for its ~~section 8~~ Section 8 voucher program, the excess shall be credited against its basic targeting requirement for the same fiscal year.

d. The fiscal year credit for ~~section 8~~ Section 8 voucher program admissions that exceeded the minimum ~~section 8~~ Section 8 voucher program targeting requirement shall not exceed the lower of any of the following:

1. Ten percent (10%) of its waiting list admissions during its fiscal year.
2. Ten percent (10%) of waiting list admissions to its ~~section 8~~ Section 8 tenant-based assistance program during its fiscal year.
3. The number of qualifying low-income families who, during the fiscal year, commence occupancy of its public housing units that are located in census tracts with a poverty rate of thirty percent (30%) or more. For purposes of this sub-sub-subdivision, qualifying low-income family means a low-income family other than an extremely low-income family.

(4a) Its targeting requirement for tenant-based assistance shall ensure that not less than seventy-five percent (75%) of the families admitted to its tenant-based voucher program from its waiting list during its fiscal year shall be extremely low-income families with incomes at or below thirty percent (30%) of the area median income."

SECTION 40.(a) If House Bill 914, 2005 Regular Session, becomes law, effective July 1, 2007, G.S. 143B-426.39A, 143B-426.39B, and 143B-426.39C, as enacted by Section 9 of House Bill 914, are recodified as G.S. 143B-426.39D,

143B-426.39E, and 143B-426.39F. The Revisor of Statutes is authorized to change the references to G.S. 143B-426.39A, 143B-426.39B, and 143B-426.39C in G.S. 143B-426.39, 53-245(b), 62A-22(d), 96-6, 147-9.3, 174-9.4 as amended by Sections 8, 17, 19, 23, 112, and 113 of House Bill 914, to the correct recodified statutory references.

SECTION 40.(b) If House Bill 914, 2005 Regular Session, becomes law, effective July 1, 2007, the same amendment to G.S. 143-3.3(g), made by Section 6.35 of S.L. 2005-276, is also made to G.S. 143B-426.39D(g), as enacted by Section 9 of House Bill 914 and recodified by Section 6.19(a) of this section.

SECTION 40.(c) If House Bill 914, 2005 Regular Session, becomes law, effective July 1, 2007, G.S. 143B-426.39(6) reads as rewritten:

"(6) Prescribe, develop, operate, and maintain a uniform payroll system, in accordance with ~~G.S. 143-3.2 and G.S. 143-34.1,~~ G.S. 143B-426.39E and G.S. 143C-6-6 for all State agencies. This uniform payroll system shall be designed to assure compliance with all legal and constitutional requirements. When the State Controller finds it expedient to do so because of a State agency's size and location, the State Controller may authorize a State agency to operate its own payroll system. Any State agency authorized by the State Controller to operate its own payroll system shall comply with the requirements adopted by the State Controller."

SECTION 40.(d) To reflect the provisions of G.S. 143-16.6 which was enacted in Section 34.1(d) of S.L. 2005-276, if House Bill 914, 2005 Regular Session becomes law, then effective July 1, 2007, Article 9 of Chapter 143C of the General Statutes, as enacted by Section 3 of House Bill 914, 2005 Regular Session, is amended by adding a new section to read:

"**§ 143C-9-3A. Assignment to the State of rights to tobacco manufacturer escrow funds.**

A tobacco product manufacturer that elects to place funds into escrow pursuant to G.S. 66-291(a)(2) may make an assignment of its interest in the funds to the benefit of the State. The assignment applies to all funds, and any earnings and appreciation, that are in the escrow account at the time of the assignment or are subsequently deposited into the escrow account and are not released under the provisions of subdivision (1) or (2) of G.S. 66-291(b) at any time on or before the expiration of 10 years from the date of assignment. The assignment is irrevocable and shall include any reversionary interest in the escrow account and the funds therein that would otherwise belong to the tobacco manufacturer, including the right to receive the escrowed funds pursuant to G.S. 66-291(b)(3).

An assignment of rights executed pursuant to this section shall be in writing and shall be signed by a duly authorized representative of the tobacco product manufacturer making the assignment. An assignment is effective upon delivery to the Attorney General and the financial institution where the escrow account is maintained."

SECTION 40.(e) If a final judgment by a court of competent jurisdiction declares that G.S. 143C-9-3A, as enacted by subsection (d) of this section, is invalid or

unenforceable, then the statute is repealed, and any assignment made under it is void. If, as a result of a final judgment, it is determined that G.S. 143C-9-3A, as enacted by subsection (b) of this section, would subject payments to this State by participating manufacturers under the Master Settlement Agreement, as defined in G.S. 66-290, to a Non-Participating Manufacturer Adjustment under Section IX of that Agreement, then G.S. 143C-9-3A is repealed, and any assignment made under it is void.

SECTION 40.(f) If House Bill 914, 2005 Regular Session, becomes law, then effective July 1, 2007, Article 9 of Chapter 143C, as enacted by Section 3 of House Bill 914, 2005 Regular Session, is amended by adding a new section to read:

"**§ 143C-3B. JDIG Reserve Fund.**

(a) The State Controller shall establish a reserve in the General Fund to be known as the JDIG Reserve. Funds from the JDIG Reserve shall not be expended or transferred except in accordance with G.S. 143B-437.63.

(b) It is the intent of the General Assembly to appropriate funds annually to the JDIG Reserve established in this section in amounts sufficient to meet the anticipated cash requirements for each fiscal year of the Job Development Investment Grant Program established pursuant to G.S. 143B-437.52."

SECTION 40.(g) If House Bill 914, 2005 Regular Session, becomes law, then effective July 1, 2007, G.S. 143C-3-1, as enacted by Section 2 of House Bill 914, 2005 Regular Session, reads as rewritten:

"**§ 143C-3-1. Budget estimate for the legislative branch.**

The Legislative ~~Administrative~~ Services Officer shall give the Director an estimate of the financial needs of the legislative branch for the upcoming fiscal period in accordance with the schedule prescribed by the Director. The estimates for the legislative branch shall be approved and certified by the President Pro Tempore of the Senate and the Speaker of the House of Representatives. The estimates shall be itemized in accordance with the accounting classifications adopted by the Controller. The Director shall include the estimates in the budget the Director submits to the General Assembly. The Director may recommend changes to these estimates in the budget submitted to the General Assembly."

SECTION 40.(h) If House Bill 914, 2005 Regular Session, becomes law, then effective July 1, 2007, G.S. 143C-1-1(b), as enacted by Section 2 of House Bill 914, 2005 Regular Session, reads as rewritten:

"(b) The provisions of this Chapter shall apply to every State agency and to every non-State entity that receives or expends any State funds. No State agency or non-State entity shall expend any State funds except in accordance with an act of appropriation and the requirements of this Chapter. The provisions of Chapter 120 of the General Statutes shall continue to apply to the General Assembly and to control its expenditures and in the event of a conflict with this Chapter, the provisions of Chapter 120 of the General Statutes shall control. Nothing in this Chapter abrogates or diminishes the inherent power of the legislative, executive, or judicial branch."

SECTION 40.(i) If Senate Bill 198, 2005 Regular Session, becomes law, this section is repealed.

SECTION 41. If House Bill 1231, 2005 Regular Session, becomes law, then G.S. 75-38(d), as enacted by House Bill 1231, reads as rewritten:

"(d) A "triggering event" means the declaration of a state of emergency pursuant to G.S. ~~166A-8,~~166A-8 or Article 36A of Chapter 14 of the General Statutes, the proclamation of a state of disaster pursuant to ~~Article 36A of Chapter 14 of the General Statutes,~~ G.S. 166A-6, or a finding of abnormal market disruption pursuant to G.S. 75-38(e)."

SECTION 42. If House Bill 1327, 2005 Regular Session, becomes law, then G.S. 114-19.16, as enacted by that act, is recodifed as G.S. 114-19.18. If House Bill 1848, 2005 Regular Session, becomes law, then G.S. 114-19.16, as enacted by that act, is recodifed as G.S. 114-19.19.

SECTION 43. If both House Bill 1827 and House Bill 2882, 2005 Regular Session, become law, then Section 3 of House Bill 1827 is repealed.

SECTION 44.(a) If House Bill 1848, 2005 Regular Session, becomes law, Section 8 of the bill reads as rewritten:

"**SECTION 8.** Section 4 of S.L. 2006-32 reads as rewritten:

"**SECTION 4.** The Legislative Research Commission ~~and the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services (LOC)~~ shall study drug treatment courts in North Carolina. The study shall include the following issues in relation to drug treatment courts:

(1) Funding mechanisms;
(2) Target populations;
(3) Interagency collaboration at the State and local levels; and
(4) Any other matter that the Commissions deem appropriate or necessary to provide proper information to the General Assembly on the subject of the study.

The Commission may report its findings and recommendations to the 2007 Regular Session of the 2007 General Assembly."

SECTION 44.(b) If House Bill 1848, 2005 Regular Session, becomes law, Section 12 of the bill reads as rewritten:

"**SECTION 12.** In order to provide for an orderly transition in membership to the Judicial Standards Commission to the six-year terms specified in G.S. 7A-375(b), as amended by Section 11 of this act, and notwithstanding G.S. 7A-375(b), as amended by Section 11 of this act, the following provisions apply:

(1) The initial terms of the new district court ~~judge~~judge, ~~and~~ of one new member of the North Carolina ~~Bar~~ Bar, and of one citizen upon recommendation of the Speaker of the House of Representatives, appointed to the Commission effective January 1, 2007, shall be ~~three~~-two-year terms.
(2) The initial terms of all other new members appointed to the Commission effective January 1, 2007, shall be ~~six~~-five-year terms.
~~(3) The term of the citizen appointed by the Governor to the Commission effective January 1, 2007, shall be a three-year term.~~

~~(4) The term for the citizen appointed by the Governor to the Commission effective January 1, 2010, shall be a three-year term.~~"

SECTION 45.(a) If House Bill 1895, 2005 Regular Session, becomes law, then G.S. 58-50-245(17) reads as rewritten:

"(17) "Insurer" means any entity that provides health insurance coverage in this State. For the purposes of this Part, insurer includes:

a. An insurance company;
b. A hospital or medical service corporation;
c. A health maintenance organization;
d. A multiple employer welfare arrangement;
e. A third-party administrator or claims processor;
f. An administrative service organization; and
g. Any other nongovernmental entity providing a health benefit plan subject to State insurance ~~regulation; and~~ regulation."

SECTION 45.(b) If House Bill 1895, 2005 Regular Session, becomes law, then G.S. 58-50-250(b)(2) reads as rewritten:

"(2) Two members of the general public who are not employed by or affiliated with an insurance company or plan, group hospital, or other health care provider, and can reasonably be expected to qualify for coverage in the Pool. Members of the general public include individuals whose only affiliation with health insurance or health care coverage is as a covered member. The two members of the general public shall be appointed by the General Assembly, as follows:

a. One member upon the recommendation of the President Pro Tempore of the Senate.
b. One member upon the recommendation of the Speaker of the House of Representatives."

SECTION 45.(c) If House Bill 1895, 2005 Regular Session, becomes law, then G.S. 58-50-255(a) reads as rewritten:

"(a) The Executive Director, in collaboration with the Board, shall select through a competitive bidding process one or more authorized insurers or a third-party administrator to administer the Pool. The Executive Director shall evaluate bids submitted based on criteria established by the Board. The criteria shall allow for the comparison of information about each bidding administrator and selection of a Pool Administrator based on at least the following:

(1) Proven ability to handle health insurance coverage to individuals.
(2) Efficiency and timeliness of the claim processing procedures.
(3) Estimated total charges for administering the Pool.
(4) Ability to apply effective cost containment programs and procedures and to administer the Pool in a cost-efficient manner.
(5) Financial condition and stability.

If a member of the Board has submitted a bid to be selected by the Board as Pool Administrator, that bidding member of the Board shall not participate in the selection process or in the Board's final decision on the selection of the Administrator."

SECTION 45.(d) If House Bill 1895, 2005 Regular Session, becomes law, then G.S. 58-50-300 reads as rewritten:

"**§ 58-50-300. Audit.**

An audit of the Pool shall be conducted annually under the oversight of the State Auditor. The cost of the audit shall be reimbursed to the State Auditor from the Reserve for the North Carolina Health Insurance Risk Pool."

SECTION 46.(a) If House Bill 1896, 2005 Regular Session, becomes law, then Section 19(e) of House Bill 1896 is rewritten to read:

"**SECTION 19.(e)** Section 19(a) becomes effective December 1, 2006, and applies to all offenses committed on or after that date and to all individuals who move into this State on or after that date. The remainder of this section becomes effective December 1, 2006, and applies to all applications for a drivers license, learner's permit, instruction permit, or special identification card submitted on or after that date."

SECTION 46.(b) If House Bill 1896, 2005 Regular Session, becomes law, then G.S. 14-208.12A, as enacted by Section 10(a) of that act, reads as rewritten:

"**§ 14-208.12A. Request for termination of registration requirement.**

(a) A person required to register under this Part ~~who has served his or her sentence~~ may petition the superior court in the district where the person resides to terminate the registration requirement 10 years from the date of initial county registration if the person has not been convicted of a subsequent offense requiring registration under this Article."

SECTION 46.(c) If House Bill 1896, 2005 Regular Session, becomes law, then the first sentence of G.S. 20-9(i), as enacted by Section 19(c) of that act, reads as rewritten:

"(i) The Division shall not issue a drivers license to an applicant ~~from another state~~ who has resided in this State for less than 12 months until the Division has searched the National Sex Offender Public Registry to determine if the person is currently registered as a sex offender in another state."

SECTION 46.(d) If House Bill 1896, 2005 Regular Session, becomes law, then G.S. 20-37.7(b1), as enacted by Section 19(d) of that act, reads as rewritten:

"(b1) Search National Sex Offender Public Registry. – The Division shall not issue a special identification card to an applicant ~~from another state~~ who has resided in this State for less than 12 months until the Division has searched the National Sex Offender Public Registry to determine if the person is currently registered as a sex offender in another state."

SECTION 47. If House Bill 1965, 2005 Regular Session, becomes law, every reference in that act to July 1, 2006, is changed to August 15, 2006.

SECTION 48.(a) G.S. 163-127.1, as enacted by Section 1 of S.L. 2006-155, reads as rewritten:

"**§ 163-127.1. Definitions.**

As used in this Article, the following terms mean:

(1) Board. – State Board of Elections.

(2) Candidate. – A person having filed a notice of candidacy under ~~Article 10 of Chapter 163 of the General Statutes or having filed a petition~~

~~under Article 11 of Chapter 163 of the General Statutes.~~the appropriate statute for any elective office in this State.

(3) Challenger. – Any qualified voter registered in the same district as the office for which the candidate has filed or petitioned.

(4) Office. – The elected office for which the candidate has filed or petitioned."

SECTION 48.(b) This section becomes effective on January 1, 2007.

SECTION 49. If House Bill 2762, 2005 Regular Session, becomes law, then G.S. 166-5(c1)(26), as enacted by that act, is recodified as G.S. 126-5(c1)(27).

SECTION 50.(a) If House Bill 2873, 2005 Regular Session, becomes law then G.S. 87-88(i), as amended by Section 3 of House Bill 2873, reads as rewritten:

"(i) Chlorination of the Well. – Upon completion of the well construction and pump installation, all water-supply wells installed for the purpose of obtaining groundwater for human consumption ~~and all private drinking water wells~~ shall be sterilized in accordance with standards for sterilization of drinking water wells established by the U.S. Public Health Service."

SECTION 50.(b) If House Bill 2873, 2005 Regular Session, becomes law, then G.S. 87-97, as enacted by Section 4 of House Bill 2873, is amended by adding a new subsection to read:

"(f1) Chlorination of the Well. – Upon completion of construction of a private drinking water well, the well shall be sterilized in accordance with the standards of drinking water wells established by the United States Public Health Service."

SECTION 50.(c) If House Bill 2873, 2005 Regular Session, becomes law, then G.S. 87-97(g), as enacted by Section 4 of House Bill 2873, reads as rewritten:

"(g) Certificate of Completion. – Upon completion of construction of a private drinking water well or repair of a private drinking water well for which a permit is required under this section, the local health department shall inspect the well to determine whether it was constructed or repaired in compliance with the construction permit or repair permit. If the local health department determines that the private drinking water well has been constructed or repaired in accordance with the requirements of the construction permit or repair permit, the construction and repair requirements of this Article, and rules adopted pursuant to this Article, the local health department shall issue a certificate of completion. No person shall place a private drinking water well into service without first having obtained a certificate of completion. No person shall return a private drinking water well that has undergone repair to service without first having obtained a certificate of completion."

SECTION 51. If House Bill 2873, 2005 Regular Session, becomes law, then G.S. 87-97(h), as enacted by Section 4 of House Bill 2873, reads as rewritten:

"(h) Drinking Water Testing. – Within 30 days after it issues a certificate of completion for a newly constructed private drinking water well, the local health department shall test the water obtained from the ~~well~~ well, or ensure that the water obtained from the well has been sampled and tested by a certified laboratory, in accordance with rules adopted by the Commission for Health Services. The water shall be tested for the following parameters: arsenic, barium, cadmium, chromium, copper,

fluoride, lead, iron, magnesium, manganese, mercury, nitrates, nitrites, selenium, silver, sodium, zinc, pH, and bacterial indicators."

SECTION 52.(a) If Senate Bill 602, 2005 Regular Session, becomes law, then G.S. 47-14(a), as amended by Section 40(c) of that bill, reads as rewritten:

"(a) The register of deeds shall not accept for registration any instrument that requires proof or acknowledgement unless the execution of the instrument by one or more signers appears to have been proved or acknowledged before an officer with the apparent authority to take proofs or acknowledgements, and the said proof or acknowledgement includes the officer's signature, commission expiration date, and official seal, if required. The register of deeds shall accept an instrument for registration that does not require proof or acknowledgement if the instrument otherwise satisfies the requirements of G.S. 161-14. Any document previously recorded or any certified copy of any document previously recorded may be rerecorded, regardless of whether it has been changed or altered, or it is being rerecorded pursuant to G.S. 47-36.1. The register of deeds shall not be required to verify or make inquiry concerning (i) the legal sufficiency of any proof or acknowledgement, (ii) the authority of any officer who took a proof or acknowledgement, (iii) the legal sufficiency of any document presented for registration, or (iv) upon presentation of the original document for re-recording, whether the original document has been changed or altered."

SECTION 52.(b) If Senate Bill 602, 2005 Regular Session, becomes law, then Section 40.(d), as enacted in the bill, reads as rewritten:

"**SECTION 40.(d)** Subsection (a) of this section becomes effective October 1, 2006. ~~This~~ The remainder of this section becomes effective October 1, 2005."

SECTION 53. If Senate Bill 951 of the 2005 Regular Session becomes law, then G.S. 160A-49.3(a2), as enacted by that act, reads as rewritten:

"(a2) Firms shall ~~fill~~ file notice of provision of solid waste collection service with the city clerk of all cities located in the firm's collection area or within five miles thereof."

SECTION 54.(a) If Senate Bill 2009, 2005 Regular Session, becomes law, then G.S. 115C-531(i), as enacted by Senate Bill 2009, reads as rewritten:

"(i) Lien Laws Not Affected. – ~~The provisions of Article 2 of Chapter 44A of the General Statutes apply to any real property, improvement to the real property, and rights that flow with the real property that is subject to a capital lease under this section. Real property that is subject to a capital lease under this section is subject to liens and foreclosure actions in the same manner and to the same extent as if the property were owned in fee simple by a private entity.~~ All laws relating to liens on private property apply to private property interests in a capital lease project undertaken under this section."

SECTION 54.(b) If Senate Bill 2009, 2005 Regular Session, becomes law, then G.S.115C-532(d) , as enacted by Senate Bill 2009, reads as rewritten:

"(d) Additional Requirements Regarding Design Services. – Required design and engineering services shall be performed by an ~~engineer,~~engineer or licensed architect, to the extent permitted under G.S. 83A-13(b), or a licensed architect. Specifications for any new school building shall be consistent with the requirements of G.S. 143-128(a).

All applicable requirements for the review or approval of design and specifications for school buildings by the Department of Public Instruction and the Department of Insurance apply to school buildings constructed, repaired, or renovated under a capital lease authorized under this section."

SECTION 55. The Enrolling Clerk may file with the Secretary of State a corrected copy of Resolution 2006-10, changing the name "Hernadez" to "Hernandez", and may correct the copies in the legislative database.

PART III. EFFECTIVE DATE

SECTION 56. Except as otherwise provided, this act is effective when it becomes law.

2005

HOUSE
JUDICIARY I

COMMITTEE
MINUTES

House Judiciary I Committee

July 12, 2005
10:00 a.m.

Minutes

The House Judiciary I Committee met on Tuesday, July 12, 2005 at 10:00 a. m. Chairman Joe Hackney called the meeting to order and the following members were present: Representatives Alexander, Blust, Capps, Goodwin, Harrison, Insko, Miller, Ross, Stam, Stiller and West. Ex-officio members Cunningham and Eddins were also present. A copy of the agenda and visitor registration is attached, (Attachments I and II).

Chairman Hackney announced that the first bill under consideration would be House Bill 529, AN ACT TO SUSPEND EXECUTIONS FOR TWO YEARS WHILE CONDUCTING A STUDY ON ISSUES RELATING TO THE DEATH SENTENCE, (Attachment III). The Committee previously heard the bill on May 31, 2005. Vice Chair Ross was asked to chair during the discussion of Chairman Hackney's bill.

A Proposed Committee Substitute was distributed, (Attachment IV), and Representative Harrison moved that it be adopted for the purpose of discussion. The motion carried. A bill summary prepared by Ms. Susan Sitze, Committee Counsel, was also distributed, (Attachment V). Representative Hackney was then recognized to explain the substitute. He noted that the bill had been before the Committee before and that the sponsors had been working to develop a bill that would address the problem that would be acceptable to a majority of members of the House. He stated to the Committee that when apparent problems surface in criminal justice system the legislature must study and take appropriate action. He said that something is wrong with the system when innocent people are on death row.

Representative Hackney stated that the Proposed Committee Substitute takes the point of view that a blanket moratorium is not imposed, but there is an opportunity for anyone who has an execution set to apply to a judge in the county where the sentence of death was imposed for a stay. That stay would be granted if the person could show one or more of a number of factors outlined on page 3 of the bill.

Representative Hackney stated that he felt the Committee Substitute provides a course that the House can take if it chooses to do so to study and to have a pause in those cases where there is an issue under study and that it is appropriate to have a pause in those cases.

Representative Hackney offered an amendment, (Attachment VI), that would change the title by inserting the words "the administration" and moved its adoption. The amendment was adopted.

Representative Stam was recognized and spoke in opposition to the Committee Substitute. He said that the bill would allow a Superior Court judge, based on the testimony of one witness, to overrule a higher-level judge. He also expressed opposition regarding the issue of credible evidence of disproportionate racial impact, and the issue of disproportionality versus life sentences saying that this proceeding comes after the state Supreme Court would have considered that on direct appeal.

Representative Hackney was recognized to respond to Representative Stam's comments. He said that if one has a fair trial, free from prejudicial error, and the person being tried is the wrong person, should an execution take place? He further stated that it is not true that one Superior Court judge would over-rule another, or the Supreme Court. He said that the only thing that would be done, would be to have a stay entered. He said that a stay would not reverse a death sentence nor would not reverse a conviction, and would do nothing except impose a pause. He also said that there is nothing in the bill that says that one cannot appeal if a judge makes a mistake and imposes a stay when it should not occur.

Representative Miller stated that he preferred the previous version of the bill, but reminded the committee that the bill addresses a stay and not an over-ruling. He then offered an amendment, (Attachment VII), to delete the word "Judicial" from the title of the bill. Upon vote of the Committee, the amendment was adopted.

Representative Capps spoke in opposition to the bill and in particular to the study commission section saying that if a commission is established it should include people who are involved in the investigations and the executing of the judgments and not be comprised of a group of legislators selected on a political basis.

Representative Harrison was recognized and offered an amendment, (Attachment VIII). The amendment would add another category (whether the felony murder rule should be applied in capital cases) to the list of things the Commission could study. Upon vote of the Committee, the amendment was adopted.

Representative Stiller asked for clarification of the evidence of disproportionate racial impact. He questioned whether it applied within a specific county, a judicial district or statewide?

Representative Hackney responded that if there were actual evidence of disproportionate racial impact, counsel would have an opportunity to argue that to the presiding judge.

Representative Eddins stated that though not intended, the bill appeared to be an attack on the courts system and in doing so victims are also being attacked. He said that he could not support the bill.

Representative Cunningham stated that it had been proven many times that there are some major problems in the courts system and that the bill does not step on anyone's

toes. He expressed disappointment in the current version, saying that it is far less than what the black caucus would like to have. He further stated that he would make a motion at the appropriate time.

Vice Chair Ross recognized Representative Insko who spoke briefly in support of the bill.

Representative Stam was recognized and stated that the courts system is attacked by the bill and commented on the cost of the bill.

Representative Hackney responded that the bill is not an attack on victims and does not impact victims. He said the bill is an attack on the imperfections in the courts system. He said the legislature has a duty to address those imperfections and make the system as good as possible, particularly in the case of the death penalty. He said that the bill is a vehicle to address such imperfections while not reversing anyone's conviction or death sentence. He said that it would put into place a pause sanctioned by a Superior Court judge.

Representative Blust stated that the study is not controversial and asked why the legislature could not simply pass a bill calling for a study and have a separate vote on the remaining issues contained in the bill.

Representative Hackney replied that if it is found during the study that discriminatory practices have occurred in the administration of the death penalty and we have people who would not receive the death penalty now because of legislation that was passed five years ago, then those executions should be paused while the study is being conducted.

Representative Cunningham moved that the amendments be rolled into a new Committee Substitute #2, that it be given a favorable report, and that the Committee Substitute #1 be given an unfavorable report. Upon voice vote, the Chair determined that the ayes prevailed, (Attachment IX). A copy of the new Committee Substitute is attached, (Attachment X).

A copy of a letter that was distributed by Representative Stam is included in the attachments, (Attachment XI).

The next bill to be considered was House Bill 6, AN ACT TO AMEND THE LOBBYING LAWS BY INCREASING THE INFORMATION REQUIRED TO BE REPORTED ON LOBBYING ACTIVITIES AND BY REQUIRING REPORTING OF LOBBYING ACTIVITIES OF EXECUTIVE BRANCH OFFICERS, AND TO APPROPRIATE FUNDS TO IMPLEMENT THE ACT, (Attachment XII). Representative Hackney distributed a Proposed Committee Substitute, (Attachment XIII). Representative Miller moved that it be adopted for the purpose of discussion. The motion carried. Representative Hackney was recognized for an explanation of the Committee Substitute.

Representative Hackney stated that the bill is a result of a study that was conducted by the Secretary of State's Office. As a result of that study and its recommendations, companion bills were introduced by him and Senator Rand during the Short Session of 2004. During that session, there was little time to work on the bills and they were introduced again this year. He said that the Committee Substitute is a version that he had been working on with some of the advocates.

Representative Hackney stated that the bill address the integrity of the legislative process. He noted that the reporting procedures now in place for expenditures by lobbyists and those who hire lobbyists is inadequate in North Carolina, and that our law is inadequate in other ways.

Representative Hackney said that the bill closes the so-called goodwill loophole, provides that lobbyists and lobbyists principals report every expenditure over $10, covers lobbyists principals as well as lobbyists and covers the governor, lieutenant governor, council of state and members of the cabinet. The bill provides for monthly reporting and provides for electronic reporting. He said that the bill includes a revolving door provision and covers family members as well as legislators and members of the covered executive branch. He noted that the bill is a full disclosure and comprehensive reporting bill and contemplates reporting far more items than are covered by present law and represents a great step forward.

Ms. Erika Churchill, Committee Counsel, was recognized for further explanation of the bill. A bill summary prepared by Ms. Churchill is attached to the minutes, (Attachment XIV). She said that there were no caps on expenditures made for the purpose of lobbying, but all expenditures must be reported. She said that an expenditure is defined as a thing of value greater than $10 that directly or indirectly is made to, at the request of, for the benefit of, or on behalf of a covered person, legislative employee or that person's immediate family member. She said that a covered person is a legislator, governor, and lieutenant governor. Legislative employees are all employees and officers of the General Assembly. Ms. Churchill defined immediate family member as a spouse, un-emancipated children living in the individual's household, or persons claimed by the individual or the individual's spouse as dependents for tax purpose living in that individual's household.

Ms. Churchill defined lobbying as any of the following: 1. Influencing or attempting to influence legislative action through direct, oral or written communication or activities with a covered person, legislative employee or that person's immediate family member; 2. The solicitation of others by legislative lobbyists or lobbyist's principals to influence legislative action; 3. Developing goodwill through communications or activities with a covered person, legislative employee or that person's immediate family with the intention of ultimately influencing current or future legislative action but does include communications or activities in a normal business, civic, religious, fraternal or commercial relationship and not connected to legislative action, and noted that this is the closing of the goodwill loophole.

Ms. Churchill defined legislative action as the preparation, research, drafting, introduction, consideration, modification, amendment, approval, passage and enactment of a bill, resolution, amendment, motion or something before the General Assembly. This also includes the consideration of any bill by the governor that is subject to the veto.

Ms. Churchill said that the bill would provide that the legislative lobbyists registration be for one year rather that the current entire biennium and reduce the fees accordingly. The bill sets up a registration process for executive lobbyists.

Ms. Churchill stated that the bill provides that legislative lobbyist would report monthly during regular legislative sessions and quarterly after the end of the session. She said that lobbyists would be required to report the amount, date, description of the expenditure, name and address of the payee, the name of any covered person, legislative employee or that person's immediate family member benefiting from the expenditure in the following categories: 1. Transportation and lodging; 2. Entertainment, food and beverages; 3. Meetings and events; 4.Gifts; 5.Solicitation of others to lobby; 6. Other expenditures. She said the Secretary of State would be given the authority to adopt rule making, to determine the format of the reporting and to protect the name of any payee that was under Chapter 50B domestic violence order or the address confidentiality program. She said that lobbyists could report the name of a group if there were more than fifteen persons benefiting from the expenditure, provided that the group, with particularity, could be identified. She stated that the same would go for the reporting of the legislative lobbyist principal. In addition to that, the legislative lobbyist principal would have to report the compensation paid or promised to all legislative lobbyists based on the estimated time and expense spent lobbying.

Ms. Churchill stated that no member of former member of the General Assembly could be employed as an executive or legislative lobbyist within one year after the expiration of the term for which the member was elected or appointed to serve. She said that no person serving as Governor, as a member of Council of State, or as a head of a principal State department could be employed as an executive or legislative lobbyist within one year of separation from employment or leaving office, whichever is later. She further stated that no individual registered as a legislative lobbyist can serve as a campaign manager for a member of the General Assembly and that legislative or executive lobbyist would not be eligible for appointment to any board, authority or commission or other body established by the State that regulates the activities of a business or agency that the lobbyist represented within one year after the expiration of the lobbyist's registration. Ms. Churchill said that no legislative or executive lobbyist, or another acting on that lobbyist's behalf shall permit a covered person, legislative employee, or that person's immediate family member to use the cash or credit of the lobbyist for the purpose of lobbying unless the lobbyist is in attendance at the time of the expenditure.

Ms. Churchill said the bill would also add one category to the persons exempted from this article. That would be an employee who represents the employer's interests in

legislative action for no more than three hours in a quarter, provided that neither the employee nor the employer makes an expenditure.

With regard to gifts, she said that if a covered person or a legislative employee accepts an expenditure valued over $200 from a person exempted or not covered by the article, the person (if in North Carolina), making the expenditure shall report the gift or expenditure. If the person making the expenditure were outside North Carolina, it would be the responsibility of the covered person or legislative employee to make the report to the Secretary of State. If a covered person or legislative employee accepts a scholarship valued at over $200, a report would be made to the Secretary of State. She said that the reporting requirements of this section do not apply to lawful campaign contributions, any devise or inheritance, gifts associated primarily with nonlegislative employment, gifts other than food, beverages, travel and lodging which are received from a person who is a citizen of a country other than the United States or a state other than North Carolina and is given during a ceremonial presentation or as a result of a custom, or a thing of value that is paid for by the State.

Ms. Churchill said that in addition to the criminal penalties that are already in place, an additional up to $5,000 civil fine may be levied for willful false or incomplete reporting.

Ms. Churchill commented on the section addressing executive branch lobbying and stated that executive action is the preparation, research, drafting, introduction, consideration, modification, amendment, approval, passage, adoption, tabling, postponement, defeat or rejection of a rule, regulation, executive order, policy, resolution, contract, request for proposal, amendment, motion, report, nomination or appointment by the executive branch or by a member or employee of the executive branch acting in an official capacity. She said this does not include any action by an attorney representing a client with respect to an executive action. She said that executive branch officers are the Governor, any member of the Council of State, and heads of the cabinet departments, the Board of Governors and the presidents of the universities of The University of North Carolina System. She said that the reporting requirements are the same and that gifts not normally subject to the article would be subject to be reported by the executive branch officers.

Ms. Churchill stated that the Secretary of State would be required to establish a "No Gifts" registry for persons desiring to be on it. She also noted the appropriations set forth by the bill to implement the act and noted the effective date of the act.

Representative Miller questioned the provision regarding campaign managers and asked if a campaign manager is an official position. Ms. Churchill replied that she would have to check the statutes in order to reply to his question.

Representative Miller also asked if any conflict existed with respect to expenditures if one's spouse was a lobbyist. Ms. Churchill replied that if the expenditure was made for the purpose of lobbying, it is to be reported.

Representative Harrison questioned whether the bill applied to lobbying the members of the Rules Commission or any of the regulatory commissions.

Representative Hackney stated that the bill is a work in progress and invited the comment of interested parties.

The meeting was adjourned at 11:00.

Representative Joe Hackney
Chairman

Emily Reynolds Freeman
Committee Clerk

ATTACHMENT I

HOUSE COMMITTEE ON JUDICIARY I

July 12, 2005
10:00 a.m.

OPENING REMARKS

AGENDA ITEMS

House Bill 6 – Amend Lobbying Laws
Representative Hackney

House Bill 529 – Suspend Executions for Two Years
Representatives Hackney, Luebke, Cunningham and Earle

Senate Bill 612– Amend Lobbying Laws
Senator Rand

ADJOURNMENT

ATTACHMENT II

VISITOR REGISTRATION SHEET

House Judiciary I — July 12, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Alan Gell	C.P.A.L ? Stayoutic
George Reed	NC Council of Churches
Charmaine Fuller	CJPC
Rashone Sullivan	CJPC
[illegible]	Secretary of [illegible]
[illegible]	[illegible]
Rick Webb	NCGA [illegible]
[illegible]	Rep Coors [illegible]
John Cyrus	NCSG
Joal Broun	Secretary of State
Mike Nelson	Conservation Council

VISITOR REGISTRATION SHEET

House Judiciary I — **Name of Committee**

July 12, 2005 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Butch Gunnells	NC Soft Drink Assoc.
Paul Jeffreys	Tuffman Inc.
Scott Langley	
Sheila Stumph	
Roberta Mathurin	private citizen representing self
Johanna deGraffenreid	
Dan Whitley	
Scott Boon	Concerned citizen
Stephanie Phillippi	PTADP
Karen Wood	District Attorney's Conference
Stuart Albright	Guilford Co DA

VISITOR REGISTRATION SHEET

House Judiciary I — July 12, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Robert F Johnson	District Att'y - 15A (Alamance)
Greg McLeod	NCAGO
Don McCorquodale	SAS
Caroline Kazmierski	NCTA
Alice Garland	NCDOC
Sandra Lang	Martin Marietta
George Goddard	NCSOA
[illegible]	NCFPC
[illegible]	NASW.NC
[illegible]	IPNC

VISITOR REGISTRATION SHEET

House Judiciary I — July 12, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Holly Bryan	NCATL
Dick Taylor	NCATL
Paul Pulley	NCATL
David Fox	Alley Associates
Michael Horner	NCAE
John Goodman	Alley Associates.
Cas Swain	NCCM
Gardner Payne	Edmisten & Webb
K Bolton	AC-T
Aaron Chang	Intern
Ryan Pusley	Intern

VISITOR REGISTRATION SHEET

House Judiciary I — July 12, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Stephen Dear	PFADD
Howard Lenga	NCLM
John Conrike	President NCVAN
Chet Hodgin	NC VAN
Anthony Petty	N.C. Center for Nonprofits
Mildred Spearman	NCDOC
Tom Mundy	NC GA
Lindie Funk	NCVAN
John Steen	UNC CEDP
John Motsinger	GOV OFFICE
Shannon Buckley	GA OFFICE

VISITOR REGISTRATION SHEET

House Judiciary I — July 12, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Erin Kinney	NC Conservation Network
Alissa Dolan	NC Conservation Network
Tom Fear	[illegible]
Marianne Williams	Bayleaf Dr. Raleigh
Fannie B. Montague	NCVAN Raleigh
Henry Huntoff	N.C.S.D.A.
John Hardin	NCDP
Kathleen Joyce	NCASA
[illegible]	[illegible]
[illegible]	NCSBA
Shannon Shaughnessy	NCCM

VISITOR REGISTRATION SHEET

House Judiciary I — July 12, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Karl Rove	
Molly Ryan	NCSBA
Mary Lassiter	
James D. Hunt	
Jule Shanklin	
Charles R. Hosler	EPA (Retired)
John Bowdish	ADA
John Strange	NC Moratorium Now
Lawson E Zilly	NC Moratorium Now
Ted Frazer	N.C. Moratorium Now
Zeb Alley	Alley's Assoc.

VISITOR REGISTRATION SHEET

House Judiciary I — July 12, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Gerda Stein	Raleigh
Jane Hunt	"
Chad Hinton	Civitas Institute
Mel Chilton	NCVAN
Branny Vickory	NC Coal of DAs
Frank R. Parrish	Coal of DAs
Helen Baddour	House Page
Megan Flanagan	House Page
[illegible]	Capitol Press
Bob Phillips	Common Cause
Marc Tiepel	NCCCR

VISITOR REGISTRATION SHEET

House Judiciary I — July 12, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Sarah Harger	ACLU-NC
Paula A. Wolf	El Pueblo
James Peaice	
Brian Elderbroom	Common Sense Foundation
David Neal	Fair Trial Initiative
Sarah Stegge	Common Sense Foundation
David Mills	COMMON SENSE FOUNDATION
Evan Webb	
Catherine Trotman	NCCM
Renee Winn	Atty
Michelle Frazier	NC Bar Ass'n

VISITOR REGISTRATION SHEET

House Judiciary I — July 12, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
[signature]	XCRA - Tc WA
John Herren.	Self-Help.
A.J Hudson	Rep Cunningham
Ashleigh Taylor	Rep. Wainwright

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H **2**

HOUSE BILL 529*
Committee Substitute Favorable 5/31/05

Short Title: Suspend Executions for Two Years. (Public)

Sponsors:

Referred to:

March 9, 2005

A BILL TO BE ENTITLED

AN ACT TO SUSPEND EXECUTIONS FOR TWO YEARS WHILE CONDUCTING A STUDY ON ISSUES RELATING TO THE DEATH SENTENCE.

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) 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 suspension of executions while matters relating to the imposition of the death penalty are further studied; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. Notwithstanding G.S. 15-194, the Secretary of Correction shall not set a date for any execution sooner than two years from the effective date of this act. During that period, the study authorized by Section 2 of this act shall be undertaken and the results reported to the General Assembly.

SECTION 2.(a) There is created a Study Commission on Capital Punishment. The Commission shall consist of 15 members appointed as follows:

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

In the course of its study, the Commission shall consult with representatives of victims, law enforcement, or other interested parties.

SECTION 2.(b) The Commission shall consider and report on:

(1) The adequacy of counsel in all stages of capital cases and the sufficiency of guidelines for the appointment and performance of such counsel appointed prior to the enactment of current guidelines and qualifications.
(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 2.(c) The Speaker of the House of Representatives shall appoint a cochair, and the President Pro Tempore of the Senate shall appoint a cochair for the Commission. The Commission may meet at any time upon the joint call of the cochairs. Vacancies on the Commission shall be filled by the same appointing authority as made the initial appointment.

The Commission, while in the discharge of its official duties, may exercise all powers provided for under G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4. The Commission may contract for professional, clerical, or consultant services as provided by G.S. 120-32.02.

Subject to the approval of the Legislative Services Commission, the Commission may meet in the Legislative Building or the Legislative Office Building. The Legislative Services Commission, through the Legislative Services Officer, shall assign professional staff to assist the Commission in its work. The House of Representatives' and the Senate's Supervisors of Clerks shall assign clerical support staff to the Commission, and the expenses relating to the clerical employees shall be borne by the Commission. Members of the Commission shall receive subsistence and travel expenses at the rates set forth in G.S. 120-3.1, 138-5, or 138-6, as appropriate.

SECTION 2.(d) The Commission shall submit an interim report to the 2007 Regular Session of the General Assembly on the Commission's findings and recommendations, which may include any statutory changes necessary to implement the recommendations. The Commission shall make a final report to the 2008 Regular Session of the 2007 General Assembly and shall terminate upon the earlier of the filing

of its final report or the convening of the 2008 Regular Session of the 2007 General Assembly.

SECTION 2.(e) Of the funds appropriated to the General Assembly, the Legislative Services Commission shall allocate funds for the expenses of the Commission established by this section.

SECTION 3. Notwithstanding the suspension of executions in Section 1 above, nothing in this act shall prevent the prosecution of capital cases at trial or appeal, nor the imposition of a sentence of death during the period of suspension of executions.

SECTION 4. This act is effective when it becomes law and applies only to cases in which a death sentence was imposed prior to January 1, 2005.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 529*
Committee Substitute Favorable 5/31/05
PROPOSED COMMITTEE SUBSTITUTE H529-CSSA-26 [v.2]

7/11/2005 11:16:56 AM

Short Title: Study Death Penalty. (Public)

Sponsors:

Referred to:

March 9, 2005

A BILL TO BE ENTITLED

AN ACT TO STUDY THE DEATH PENALTY AND TO PERMIT EXECUTIONS DURING THE STUDY ABSENT A JUDICIAL STAY.

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) 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 suspension of executions while matters relating to the imposition of the death penalty are further studied; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1.(a) There is created a Study Commission on Capital Punishment. The Commission shall consist of 15 members appointed as follows:

(1) Five Senators appointed by the President Pro Tempore of the Senate.

(2) Five Representatives appointed by the Speaker of the House of Representatives.

(3) Five members of the public appointed by the Governor.

In the course of its study, the Commission shall consult with representatives of victims, law enforcement, or other interested parties.

SECTION 1.(b) The Commission shall consider and report on:

(1) The adequacy of counsel in all stages of capital cases and the sufficiency of guidelines for the appointment and performance of such counsel appointed prior to the enactment of current guidelines and qualifications.

(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 1.(c) The Speaker of the House of Representatives shall appoint a cochair, and the President Pro Tempore of the Senate shall appoint a cochair for the Commission. The Commission may meet at any time upon the joint call of the cochairs. Vacancies on the Commission shall be filled by the same appointing authority as made the initial appointment.

The Commission, while in the discharge of its official duties, may exercise all powers provided for under G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4. The Commission may contract for professional, clerical, or consultant services as provided by G.S. 120-32.02.

Subject to the approval of the Legislative Services Commission, the Commission may meet in the Legislative Building or the Legislative Office Building. The Legislative Services Commission, through the Legislative Services Officer, shall assign professional staff to assist the Commission in its work. The House of Representatives' and the Senate's Supervisors of Clerks shall assign clerical support staff to the Commission, and the expenses relating to the clerical employees shall be borne by the Commission. Members of the Commission shall receive subsistence and travel expenses at the rates set forth in G.S. 120-3.1, 138-5, or 138-6, as appropriate.

SECTION 1.(d) The Commission shall submit an interim report to the 2007 Regular Session of the General Assembly on the Commission's findings and recommendations, which may include any statutory changes necessary to implement the recommendations. The Commission shall make a final report to the 2008 Regular Session of the 2007 General Assembly and shall terminate upon the earlier of the filing of its final report or the convening of the 2008 Regular Session of the 2007 General Assembly.

SECTION 1.(e) Of the funds appropriated to the General Assembly, the Legislative Services Commission shall allocate funds for the expenses of the Commission established by this section.

SECTION 2. The Secretary of Correction shall continue to set dates for executions pursuant to G.S. 15-194 during the period of the study authorized by Section 1 of this act. However, upon motion of a capital defendant, for whom an execution date has been set, filed in the county where the sentence of death was imposed, a superior court judge shall consider whether the execution should be stayed. The execution shall be stayed until the legislature has concluded its study if the superior court judge certifies and finds one or more of the following:

(1) That there is credible evidence of factual innocence of the capital offense although the defendant has not prevailed in the courts on this issue;

(2) That the capital case in question was tried before the effective date of legislation providing for open file discovery at trial, and that there is credible evidence that prosecutorial misconduct may have contributed to the verdict or sentence of death, although the defendant has not prevailed in the courts on this issue;

(3) That the capital case in question was tried before the effective date of legislation providing that capital defendant's trial counsel be appointed under rules and standards set by the Office of Indigent Defense Services, and that there is credible evidence that errors by defense counsel at any stage may have contributed to the verdict or sentence of death, or failure of the defendant to receive relief through the courts subsequent to the trial, although the defendant has not prevailed in the courts on this issue;

(4) That there is credible evidence of disproportionate racial impact in the operation of capital case processing and that the defendant is a member of a racial group for which the disproportionate impact is shown, or there is credible evidence of an improper role of the race of the defendant or the race of the victim(s) in the prosecution, conviction or death verdict although the defendant has not prevailed in the courts on this issue;

(5) That there is credible evidence that the death penalty in this case is disproportionate when compared to other cases where the defendants have received a life sentence or the death penalty, although the defendant has not prevailed in the courts on this issue;

(6) that the capital case in question was tried before the effective date of legislation giving the prosecutor discretion to try or plead the case as a non-capital first degree murder and there is credible evidence that the defendant might not have received the death penalty if the legislation had been in effect at the time of the defendant's trial; or

(7) That the capital case in question was tried before the effective date of legislation providing for a life sentence without parole for first degree

murder, and there is credible evidence that the defendant might not have received the death penalty if the legislation had been in effect at the time of the defendant's trial.

SECTION 3. Notwithstanding Section 2 above, nothing in this act shall prevent the prosecution of capital cases at trial or appeal, nor the imposition of a sentence of death during the period of the study.

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

HOUSE BILL 529: Study Death Penalty

BILL ANALYSIS

Committee:	House Judiciary I	**Date:**	July 12, 2005
Introduced by:	Reps. Hackney, Luebke, Cunningham, Earle	**Summary by:**	Susan Sitze
Version:	PCS to Second Edition H529-CSSA-26		Committee Counsel

SUMMARY: ***The Proposed Committee Substitute for House Bill 529 would authorize a study of the death penalty. Executions would be permitted during the period of the study absent a judicial stay.***

BILL ANALYSIS: **Section 1** of the bill would create a Study Commission on Capital Punishment. The Commission would consist of 15 members and would be authorized to study the death penalty, including issues such as: adequacy of counsel, racial impact, discrimination in sentencing and prosecutorial misconduct. The Commission is required to file an interim report to the 2007 General Assembly and a final report to the 2008 General Assembly.

Section 2 of the bill authorizes the Secretary of Correction to continue to set execution dates during the period of the study. This section also authorizes a capital defendant to file a motion with the superior court to have the execution stayed pending the study. The judge may stay the execution if the judge finds one of seven enumerated circumstances.

Section 3 of the bill provides that nothing in this act shall prevent the prosecution of capital cases at trial or appeal, nor the imposition of a sentence of death during the period of the study.

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

H0529e2-SMSA-CSSA-26

ATTACHMENT VI

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. H529 DATE _____

S. B. No. _____ Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE H529-CSSA-26[v.2]

(Rep.) Hackney
Sen.)

moves to amend the bill on page 1, line 2

(X) WHICH CHANGES THE TITLE

by rewriting the line to read:

"AN ACT TO STUDY THE ADMINISTRATION OF THE DEATH PENALTY AND TO PERMIT EXECUTIONS"

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 529*

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

H529-ASA-17 [v.1]

Date _____,2005

Comm. Sub. [YES]
Amends Title [YES]
H529-CSSA-26[v.2]

Representative Miller

moves to amend the bill on page 1, line 3
by deleting the word "JUDICIAL".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 529*

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

H529-ASA-15 [v.1]

Date _____,2005

Comm. Sub. [YES]
Amends Title [NO]
H529-CSSA-26[v.2]

Representative Harrison

moves to amend the bill on page 2, line 20
by rewriting the line to read:
"(7) Whether the felony murder rule should be applied in capital cases.
(8) Any other appropriate or relevant subject."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

7-12
Hank -
adopted

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:

By Representative Hackney (Chair) for the Committee on JUDICIARY I.

☒Committee Substitute for

HB 529 A BILL TO BE ENTITLED AN ACT TO SUSPEND EXECUTIONS FOR TWO YEARS WHILE CONDUCTING A STUDY ON ISSUES RELATING TO THE DEATH SENTENCE.

☒ With a favorable report as to the Committee Substitute bill #2, which changes the title, unfavorable as to Committee Substitute Bill #1.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

_____ Pursuant to Rule 36(b), the (House/Senate) committee substitute bill/(joint) resolution (No._____) is placed on the Calendar of _____. (The original bill resolution No._____) is placed on the Unfavorable Calendar.

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

ATTACHMENT X

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

H D

HOUSE BILL 529*
Committee Substitute Favorable 5/31/05
PROPOSED COMMITTEE SUBSTITUTE H529-PCS70536-SA-26

Short Title: Study Death Penalty. (Public)

Sponsors:

Referred to:

March 9, 2005

A BILL TO BE ENTITLED

AN ACT TO STUDY THE ADMINISTRATION OF THE DEATH PENALTY AND TO PERMIT EXECUTIONS DURING THE STUDY ABSENT A STAY.

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) 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 suspension of executions while matters relating to the imposition of the death penalty are further studied; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1.(a) There is created a Study Commission on Capital Punishment. The Commission shall consist of 15 members appointed as follows:

(1) Five Senators appointed by the President Pro Tempore of the Senate.

(2) Five Representatives appointed by the Speaker of the House of Representatives.
(3) Five members of the public appointed by the Governor.

In the course of its study, the Commission shall consult with representatives of victims, law enforcement, or other interested parties.

SECTION 1.(b) The Commission shall consider and report on:

(1) The adequacy of counsel in all stages of capital cases and the sufficiency of guidelines for the appointment and performance of such counsel appointed prior to the enactment of current guidelines and qualifications.
(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) Whether the felony murder rule should be applied in capital cases.
(8) Any other appropriate or relevant subject.

SECTION 1.(c) The Speaker of the House of Representatives shall appoint a cochair, and the President Pro Tempore of the Senate shall appoint a cochair for the Commission. The Commission may meet at any time upon the joint call of the cochairs. Vacancies on the Commission shall be filled by the same appointing authority as made the initial appointment.

The Commission, while in the discharge of its official duties, may exercise all powers provided for under G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4. The Commission may contract for professional, clerical, or consultant services as provided by G.S. 120-32.02.

Subject to the approval of the Legislative Services Commission, the Commission may meet in the Legislative Building or the Legislative Office Building. The Legislative Services Commission, through the Legislative Services Officer, shall assign professional staff to assist the Commission in its work. The House of Representatives' and the Senate's Supervisors of Clerks shall assign clerical support staff to the Commission, and the expenses relating to the clerical employees shall be borne by the Commission. Members of the Commission shall receive subsistence and travel expenses at the rates set forth in G.S. 120-3.1, 138-5, or 138-6, as appropriate.

SECTION 1.(d) The Commission shall submit an interim report to the 2007 Regular Session of the General Assembly on the Commission's findings and recommendations, which may include any statutory changes necessary to implement the recommendations. The Commission shall make a final report to the 2008 Regular Session of the 2007 General Assembly and shall terminate upon the earlier of the filing

of its final report or the convening of the 2008 Regular Session of the 2007 General Assembly.

SECTION 1.(e) Of the funds appropriated to the General Assembly, the Legislative Services Commission shall allocate funds for the expenses of the Commission established by this section.

SECTION 2. The Secretary of Correction shall continue to set dates for executions pursuant to G.S. 15-194 during the period of the study authorized by Section 1 of this act. However, upon motion of a capital defendant, for whom an execution date has been set, filed in the county where the sentence of death was imposed, a superior court judge shall consider whether the execution should be stayed. The execution shall be stayed until the legislature has concluded its study if the superior court judge certifies and finds one or more of the following:

(1) That there is credible evidence of factual innocence of the capital offense although the defendant has not prevailed in the courts on this issue;

(2) That the capital case in question was tried before the effective date of legislation providing for open file discovery at trial, and that there is credible evidence that prosecutorial misconduct may have contributed to the verdict or sentence of death, although the defendant has not prevailed in the courts on this issue;

(3) That the capital case in question was tried before the effective date of legislation providing that capital defendant's trial counsel be appointed under rules and standards set by the Office of Indigent Defense Services, and that there is credible evidence that errors by defense counsel at any stage may have contributed to the verdict or sentence of death, or failure of the defendant to receive relief through the courts subsequent to the trial, although the defendant has not prevailed in the courts on this issue;

(4) That there is credible evidence of disproportionate racial impact in the operation of capital case processing and that the defendant is a member of a racial group for which the disproportionate impact is shown, or there is credible evidence of an improper role of the race of the defendant or the race of the victim(s) in the prosecution, conviction, or death verdict although the defendant has not prevailed in the courts on this issue;

(5) That there is credible evidence that the death penalty in this case is disproportionate when compared to other cases where the defendants have received a life sentence or the death penalty, although the defendant has not prevailed in the courts on this issue;

(6) That the capital case in question was tried before the effective date of legislation giving the prosecutor discretion to try or plead the case as a noncapital first degree murder, and there is credible evidence that the defendant might not have received the death penalty if the legislation had been in effect at the time of the defendant's trial; or

(7) That the capital case in question was tried before the effective date of legislation providing for a life sentence without parole for first degree murder, and there is credible evidence that the defendant might not have received the death penalty if the legislation had been in effect at the time of the defendant's trial.

SECTION 3. Notwithstanding Section 2 above, nothing in this act shall prevent the prosecution of capital cases at trial or appeal, nor the imposition of a sentence of death during the period of the study.

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

ATTACHMENT XI

North Carolina General Assembly
House of Representatives

REPRESENTATIVE PAUL STAM
37TH DISTRICT

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COMMITTEES:
APPROPRIATIONS/HEALTH AND HUMAN SERVICES
COMMERCE
FEDERAL RELATIONS AND TRADE ISSUES
JUDICIARY I

July 12, 2005

RE: Moratorium HB529

Dear House Colleagues

One of the most important duties of any government is the suppression of premeditated murder. I believe the death penalty is the appropriate way to deter murder while vindicating and reaffirming the ultimate high value that we place on the life of the innocent victim.

Individual moratorium death cases are reviewed extensively by state and federal courts, and ultimately by the Governor. 8-15 years pass before execution. The case is reviewed by 47 judges, state and federal, all looking at claims of error in the trial or claims of innocence. Each murderer already has an individual moratorium while the case is studied.

Procedural protections are extensive:

Open-file discovery: In 1996 the General Assembly provided capital defendants the right to complete post-conviction discovery of all files, and may use such discovery to claim that the prosecution failed to disclose evidence the defendant believed to be important.

Innocence Protection Act: In 2001 pre-trial and post-trial DNA testing was augmented to prevent the conviction of the innocent.

No Death Penalty for the Mentally Retarded: In 2001 the General Assembly prohibited the execution of mentally retarded defendants.

Prosecutorial discretion: In 2001, prosecutors were granted the authority to use discretion in deciding not to seek the death penalty. Ironically, proponents of a moratorium now point to the use of that discretion as an argument for a moratorium.

Additional representation: Indigent defendants facing the death penalty are appointed two trial attorneys, and, since 1996, capital defendants have two attorneys in post-conviction hearings, all at state expense.

Proportionality considered: The Supreme Court of North Carolina reviews all death penalty cases on direct appeal for proportionality to other similar cases. On the other hand the Court does not have the authority to reject a life sentence and make it capital.

Proportionally, review is a one-way street in favor of those sentenced to die.

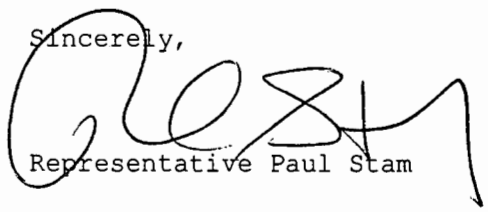
Innocence claims are rare: Of the 36 defendants who have been executed since capital punishment was reinstated in North Carolina in 1977, none had a credible claim of "actual innocence." 64% of those actually executed have been white, which puts a new light on the claim that most are minorities.

Deterrence: Whether or not the death penalty deters murder is debated. I believe it deters some, but not all, murders. No state actually executes enough murderers that a prospective gunman can anticipate an execution if he or she pulls that trigger. But a moratorium almost guarantees that criminals will not be deterred during a moratorium period. They might read the headlines, not the fine print. And district attorneys are unlikely to try capital cases during the moratorium period since the extra and considerable expense may well be for naught.

Professors Marchesini and Cloninger of the University of Houston found that a one-year court-imposed moratorium in Texas probably caused 90 additional homicides. Whether North Carolina would experience a similar surge in homicide during the two-year period of a moratorium is unknowable.

Conclusion: In view of the safeguards and the exhaustive state and federal court review of all death penalty cases, as well as the absence of any showing of systemic problems in North Carolina resulting in the execution of the actually innocent, a moratorium on executions is unwarranted for the proper administration of justice. It could cause real harm to families who lose loved ones. I will vote no.

Sincerely,



Representative Paul Stam

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 1

HOUSE BILL 6

Short Title:	Amend Lobbying Laws.	(Public)
Sponsors:	Representatives Hackney; Martin and Ross.	
Referred to:	Rules, Calendar, and Operations of the House.	

January 27, 2005

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LOBBYING LAWS BY INCREASING THE INFORMATION REQUIRED TO BE REPORTED ON LOBBYING ACTIVITIES AND BY REQUIRING REGISTRATION AND REPORTING OF LOBBYING ACTIVITIES OF EXECUTIVE BRANCH AGENCIES AND EMPLOYEES, AND TO APPROPRIATE FUNDS TO IMPLEMENT THE ACT.

The General Assembly of North Carolina enacts:

SECTION 1. Article 9A of Chapter 120 of the General Statutes reads as rewritten:

"Article 9A.

"Lobbying.

"**§ 120-47.1. Definitions.**

For the purposes of this Article, the following terms shall have the meanings ascribed to them in this section unless the context clearly indicates a different meaning:

(1) The terms "contribution," "compensation" and "expenditure" mean any advance, conveyance, deposit, payment, gift, retainer, fee, salary, honorarium, reimbursement, loan, pledge or anything of value and any contract, agreement, promise or other obligation whether or not legally ~~enforceable, but those terms do not include prizes, awards, or compensation not exceeding one hundred dollars ($100.00) in a calendar year.~~enforceable.

(1a) The term "executive action" means the preparation, research, drafting, introduction, consideration, modification, amendment, approval, passage, adoption, tabling, postponement, defeat, or rejection of a rule, regulation, executive order, policy, resolution, contract, request for proposal, amendment, motion, report, nomination, or appointment by the executive branch or by a member or employee of the executive branch acting or purporting to act in an official capacity. This term

shall not include any action by an attorney in connection with litigation involving a State official or State agency.

(1b) The term "executive lobbyist" means any lobbyist for or against executive action.

(2), (3) Repealed by Session Laws 1991, c. 740, s. 1.1.

(4) The term "legislative action" means the preparation, research, drafting, introduction, consideration, modification, amendment, approval, passage, enactment, tabling, postponement, defeat, or rejection of a bill, resolution, amendment, motion, report, nomination, appointment, or other matter by the legislature or by a member or employee of the legislature acting or purporting to act in an official capacity. It also includes the consideration of any bill by the Governor for the Governor's approval or veto.

(4a) The term "legislative liaison personnel" means any State officer or employee whose principal duties in practice or as set forth in that person's job description involve lobbying the General Assembly.

(4b) The term "legislative lobbyist" means any lobbyist for or against legislative action.

(5) The term "lobbying" ~~means:~~means any of the following:

a. Influencing or attempting to influence legislative action through direct oral or written communication with a member of the General ~~Assembly; or~~Assembly, or the staff or an employee of the General Assembly.

a1. Influencing or attempting to influence executive action through direct oral or written communication with an officer or employee of the executive branch authorized to take such action, including members of boards, commissions, councils, or other collective bodies.

b. Solicitation of others by lobbyists to influence legislative or executive action.

(6) The term "lobbyist" means an individual who:

a. Is employed and receives compensation, or who contracts for economic consideration, for the purpose of lobbying; or

b. Represents another person and receives compensation for the purpose of lobbying.

The term "lobbyist" shall not include those individuals who are specifically exempted from this Article by G.S. 120-47.8. For the purpose of determining whether an individual is a lobbyist under this subdivision, reimbursement of actual travel and subsistence expenses shall not be considered compensation; provided, however, that reimbursement in the ordinary course of business of these expenses shall be considered compensation if a significant part of the individual's duties involve lobbying before the Executive Branch or

the General Assembly. The term "lobbyist" includes both executive lobbyist and legislative lobbyist.

(7) The terms "lobbyist's principal" and "principal" mean the entity in whose behalf the lobbyist influences or attempts to influence executive or legislative action.

(8) The term "person" means any individual, firm, partnership, committee, association, corporation, or any other organization or group of persons.

(9) The General Assembly is in "regular session" from the date set by law or resolution that the General Assembly convenes until the General Assembly either:

a. Adjourns sine die; or

b. Recesses or adjourns for more than 10 days.

"**§ 120-47.2. Registration procedure.**

(a) A lobbyist shall file a registration statement with the Secretary of ~~State~~ State, in a manner prescribed by the Secretary of State including electronically, before engaging in any lobbying. A separate registration statement is required for each lobbyist's principal. The registration shall indicate whether it is for executive action, legislative action, or both.

(b) The form of the registration shall be prescribed by the Secretary of State and shall include the registrant's full name, firm, and complete address; the registrant's place of business; the full name and complete address of each person by whom the registrant is employed or retained; and a general description of the matters on which the registrant expects to act as a lobbyist.

(c) Each lobbyist shall register again with the Secretary of State no later than 10 days after any change in the information supplied in his last registration under subsection (b). Each supplementary registration shall include a complete statement of the information that has changed.

(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 executive or legislative lobbyists and whom they represent. Within 20 days after the beginning of the term of a Governor, the Secretary of State shall furnish the Governor, each other member of the Council of State, and the head of each principal department of the Executive Branch, and the State Legislative Library a list of all persons who have registered as executive or legislative lobbyists and whom they represent. A supplemental list of legislative lobbyists shall be furnished periodically each 20 days thereafter as the session progresses. A supplemental list of executive lobbyists shall be furnished periodically each 60 days thereafter.

(e) Each registration statement of a legislative lobbyist required under this Article shall be effective from the date of filing until January 1 of the following odd-numbered year. The lobbyist shall file a new registration statement after that date, and the applicable fee shall be due and payable.

(f) Each registration statement of an executive lobbyist required under this Article shall be effective from the date of filing until January 1 of the following

odd-numbered year when the term of the Governor commences. The lobbyist shall file a new registration statement after that date, and the applicable fee shall be due and payable.

"**§ 120-47.3. Registration fee.**

(a) Every lobbyist's principal shall pay to the Secretary of State a fee of two hundred dollars ($200.00) that is due and payable by either the lobbyist or the lobbyist's principal at the time of registration.

(b) A separate registration, together with a separate registration fee of two hundred dollars ($200.00) is required for each lobbyist's principal for which a person acts as a lobbyist. Fees so collected shall be deposited in the General Fund of the State.

(c) A separate registration and fee is required for each of legislative and executive branch lobbying.

(d) The Secretary of State may prescribe that fees required under this section be paid electronically.

"**§ 120-47.4. Written authority from lobbyist's principal to be filed.**

Each lobbyist shall file with the Secretary of State within 10 days after his registration a written authorization to act as such, signed by the lobbyist's principal.

"**§ 120-47.4A. Certain expenditures prohibited.**

It shall be a violation under this Article for any lobbyist or lobbyist principal to give or pay for any of the following to any legislator, a member of the legislator's immediate family, legislative staff person, legislative employee, or any other person elected or appointed a legislator prior to taking office:

(1) Gifts in excess of twenty-five dollars ($25.00) in value.

(2) Gifts valued twenty-five dollars ($25.00) or less, unless the same types of gifts are given to every member of the General Assembly.

(3) Meals.

(4) Transportation expenses except actual reasonable expenses permitted under subdivision (5) of this section.

(5) Tickets, fees, or expenses for or to any sporting, recreational, or entertainment events.

(6) Speaking fees or honoraria except for reimbursement of actual reasonable travel expenses incurred in connection with the speech.

(7) Loans, other than commercially available loans made on terms not more favorable than generally available to the public in the normal course of business.

(8) Contributions, other than lawful campaign contributions.

"**§ 120-47.5. Contingency lobbying fees and election influence prohibited.**

(a) No person shall act as a lobbyist for compensation which is dependent in any manner upon the passage or defeat of any proposed legislation or upon any other contingency connected with any action of the General Assembly, the House, the Senate or any committee thereof.

(b) No person shall attempt to influence the action of any member of the General Assembly by the promise of financial support of the member's candidacy, or by threat of financial contribution in opposition to the member's candidacy in any future election.

(c) No person shall act as a lobbyist for compensation that is dependent in any manner upon any executive action.

(d) No person shall attempt to influence the action of the Governor or any other member of the Council of State by the promise of financial support of the member's candidacy, or by threat of financial contribution in opposition to the member's candidacy in any future election.

"**§ 120-47.6. Statements of lobbyist's lobbying expenses required.**

(a) Each legislative lobbyist shall file an expense report under oath with the Secretary of ~~State~~ State, in a manner prescribed by the Secretary of State including electronically, with respect to each principal within 60 days after the last day of ~~the~~ each annual regular session. This expense report shall include all expenditures made between January 1 and the last day of ~~the~~ each annual regular session. The lobbyist shall file a supplemental report including all expenditures made after the last day of ~~the~~ each annual regular session, but during the calendar year, by February 28 of the following year. The lobbyist shall file both expense reports whether or not expenditures are made.

(a1) Each executive lobbyist shall file semiannual expense reports with the Secretary of State with respect to each principal within 45 days after the end of the reporting periods ending on June 30 and December 31 of each year. The expense report shall include all expenditures during the prior six-month reporting period. The lobbyist shall file an expense report whether or not expenditures are made.

(b) Each expense report shall set forth the date of each expenditure, to whom paid, the name of any legislator or executive branch official who benefitted from each expenditure, and the amount of each expenditure made during the previous reporting period in connection with lobbying, in each of the following categories: (1) transportation, (2) lodging, (3) entertainment, (4) food, (5) any item having a cash equivalent value ~~of more than twenty-five dollars ($25.00)~~ and (6) contributions made, paid, incurred or promised, directly or indirectly. ~~It shall not be necessary to report expenditures of twenty-five dollars ($25.00) or less, nor shall it be necessary to report any expenditures made in connection with the attendance of a legislator at any fund-raising function or event sponsored by a nonprofit organization qualified under 26 U.S.C. § 501(c). When more than 10 members of the General Assembly benefitted or were invited to benefit from an expenditure, the lobbyist shall not be required to report the name of any legislator, but shall be required to report the number of legislators or, with particularity, the basis for their selection.~~

(b1) In addition to the expenditures required to be reported under subsection (b) of this section, the expense report shall also include information concerning contractual arrangements in excess of one hundred dollars ($100.00) per year or direct business relationships between the legislator, the legislator's spouse, or the legislator's dependent household members and the lobbyist, currently in existence or entered into within the previous 12 months.

(c) All reports shall be in the form prescribed by the Secretary of State and shall be open to public ~~inspection.~~inspection upon filing.

(d) When a lobbyist fails to file a lobbying expense report as required herein, the Secretary of State shall send a certified or registered letter advising the lobbyist of the

delinquency and the penalties provided by law. Within 20 days of the receipt of the letter, the lobbyist shall deliver or post by United States mail to the Secretary of State the required report and an additional late filing fee in an amount equal to the late filing fee under G.S. 163-278.34(a)(2).

(e) Filing of the required report and payment of the additional fee within the time extended shall constitute compliance with this section. Failure to file an expense report in one of the manners prescribed herein shall result in revocation of any and all registrations of a lobbyist under this Article. No lobbyist may register or reregister under this Article until he has fully complied with this section. Appeal of a decision by the Secretary of State shall be in accordance with Chapter 150B of the General Statutes.

(f) The oath required under this section shall attest to the truthfulness and completeness of the report.

"§ 120-47.7. Statements of lobbyist's principal lobbying expenses required.

(a) Each legislative lobbyist's principal shall file an expense report under oath with the Secretary of ~~State~~ State, in a manner prescribed by the Secretary of State including electronically, within 60 days after the last day of ~~the~~ each annual regular session. This expense report shall include all expenditures made between January 1 and the last day of ~~the~~ each annual regular session. The principal shall file a supplemental expense report, including all expenditures made after the last day of ~~the~~ each annual regular session, but during the calendar year, by February 28 of the following year. The principal shall file both expense reports whether or not expenditures are made during a reporting period.

(a1) Each executive lobbyist's principal shall file semiannual expense reports with the Secretary of State within 45 days after the end of the reporting periods ending on June 30 and December 31 of each year. The expense report shall include all expenditures made during the prior six-month reporting period. The principal shall file an expense report whether or not expenditures are made during a reporting period.

(b) Each expense report shall set forth the name and address of each lobbyist employed, appointed, or retained by the lobbyist's principal, the date of each expenditure made, to whom paid, name of any legislator or executive branch official who benefitted from each expenditure, and amount of each expenditure made during the previous reporting period in connection with lobbying, in each of the following categories: (1) transportation, (2) lodging, (3) entertainment, (4) food, (5) any item having a cash equivalent ~~value of more than twenty-five dollars ($25.00),~~value, (6) contributions made, paid, incurred or promised, directly or indirectly, and (7) compensation to lobbyists in connection with their lobbying activities. ~~It shall not be necessary to report expenditures of twenty-five dollars ($25.00) or less, nor shall it be necessary to report any expenditures made in connection with the attendance of a legislator at any fund-raising function or event sponsored by a nonprofit organization qualified under 26 U.S.C. § 501(c). When more than 10 members of the General Assembly benefitted or were invited to benefit from an expenditure, the principal shall not be required to report the name of any legislator, but shall be required to report the number of legislators or the basis for their selection.~~ In the category of compensation to lobbyists the principal shall estimate and report the compensation paid or promised

directly or indirectly, to all lobbyists based on the estimated time, effort and expense in connection with lobbying activities on behalf of the principal. If a lobbyist is a full-time employee of the principal, or is compensated by means of an annual fee or retainer, the principal shall estimate and report the portion of all such lobbyists' salaries or retainers that compensate the lobbyists for lobbying.

(b1) In addition to the expenditures required to be reported under subsection (b) of this section, the expense report shall also include information concerning contractual arrangements in excess of one hundred dollars ($100.00) per year or direct business relationships between the legislator, the legislator's spouse, or the legislator's dependent household members and the lobbyist's principal, currently in existence or entered into within the previous 12 months.

(c) All reports shall be in the form prescribed by the Secretary of State and open to public inspection.

(d) When a lobbyist's principal fails to file a lobbying expense report as required herein, the Secretary of State shall send a certified or registered letter advising the lobbyist's principal of the delinquency and the penalties provided by law. Within 20 days of the receipt of the letter, the lobbyist's principal shall deliver or post by United States mail to the Secretary of State the required report and a late filing fee in an amount equal to the late filing fee under G.S. 163-278.34(a)(2).

(e) Filing of the required report and payment of the late fee within the time extended shall constitute compliance with this section.

(f) The oath required under this section shall attest to the truthfulness and completeness of the report.

"**§ 120-47.7A. Powers and duties of the Secretary of State.**

(a) The Secretary of State shall perform systematic audits of reports required to be filed under G.S. 120-47.6 and G.S. 120-47.7 on a regular basis.

(b) The Secretary of State may petition a court of competent jurisdiction for the approval to issue subpoenas and subpoenas duces tecum as necessary to conduct investigations of violations of this Article. The court shall authorize subpoenas under this subsection when the court determines they are necessary for the enforcement of this Article. Subpoenas issued pursuant to this subsection shall be enforceable by the court through the court's contempt powers.

(c) Complaints of violations of this Article and all other records accumulated in conjunction with the investigation of these complaints shall be considered records of criminal investigations under G.S. 132-1.4 and shall not become public records until a determination is made by the appropriate prosecutorial authority that no criminal charges will be brought against the person against whom the complaint was filed.

"**§ 120-47.7B. Legislator/lobbyist prohibitions.**

(a) No legislator or former legislator may be employed as a lobbyist by a principal to lobby as defined in this Article during any biennial legislative session to which the legislator has been elected or appointed.

(b) No legislator may solicit contributions or donations from lobbyists or their principals for any charity, civic project, or other community project.

"**§ 120-47.8. Persons exempted from provisions of Article.**

The provisions of this Article shall not be construed to apply to any of the following:

(1) An individual, not acting as a lobbyist, solely engaged in expressing a personal opinion on legislative matters to his own legislative delegation or other members of the General Assembly.

(2) A person appearing before a ~~legislative committee~~ committee, commission, board, council, or other collective body at the invitation or request of the ~~committee~~ collective body or a member thereof and who engages in no further activities as a lobbyist in connection with that or any other executive or legislative ~~matter.~~action.

(3) a. A duly elected or appointed official or employee of the State, the United States, a county, municipality, school district or other governmental agency, when appearing solely in connection with matters pertaining to his office and public duties.

b. Notwithstanding the persons exempted in this Article, the Governor, Council of State, and all appointed heads of State departments, agencies and institutions, shall designate all authorized official legislative liaison personnel and shall file and maintain current lists of designated legislative liaison personnel with the Secretary of State and shall likewise file with the Secretary of State a full and accurate accounting of all money expended on lobbying, other than the salaries of regular full-time employees, at the same times lobbyists are required to file expense reports under G.S. 120-47.6.

(4) A person performing professional services in drafting ~~bills~~ bills, rules, regulations, executive orders, policies, resolutions, contracts, or requests for proposal, or in advising and rendering opinions to clients, or to legislators or executive branch officials on behalf of clients, as to the construction and effect of proposed or pending ~~legislation~~ executive or legislative action where the professional services are not otherwise, directly or indirectly, connected with legislative or executive action.

(5) A person who owns, publishes or is employed by any news medium while engaged in the acquisition or dissemination of news on behalf of the news medium.

(6) Repealed by Session Laws 1991, c. 740, s. 1.1.

(7) Members of the General ~~Assembly.~~Assembly when the lobbying concerns legislative action.

(8) A person responding to inquiries from a member of the General Assembly or a legislative employee, and who engages in no further activities as a lobbyist in connection with that or any other legislative matter.

(8a) A person responding to inquiries from an executive branch officer or employee and who engages in no further activities as a lobbyist in connection with that or any other executive branch matter.

(9) An individual giving facts or recommendations pertaining to legislative matters to his own legislative delegation only.

"**§ 120-47.9. Punishment for violation.**

(a) Whoever willfully violates any provision of this Article shall be guilty of a Class 1 misdemeanor. In addition, no lobbyist who is convicted of a violation of the provisions of this Article shall in any way act as a lobbyist for a period of two years following his conviction.

(b) In addition to the criminal penalties set forth in this section, the Secretary of State may levy civil fines for false or inadequate reporting up to five thousand dollars ($5,000) per violation.

"**§ 120-47.10. Enforcement of Article by Attorney General.**

The Secretary of State shall report apparent violations of this Article to the Attorney General. The Attorney General shall, upon complaint made to him of violations of this Article, make an appropriate investigation thereof, and he shall forward a copy of the investigation to the district attorney of the prosecutorial district as defined in G.S. 7A-60 of which Wake County is a part, who shall prosecute any person who violates any provisions of this Article.

"**§ 120-47.11. Rules and forms.**

The Secretary of State shall make, amend, and rescind any rules, orders, forms, and definitions as are necessary to carry out the provisions of this Article.

"**§ 120-47.12. Limitations on agency legislative liaisons.**

(a) No principal State department may use State funds to contract with persons who are not employed by the State to lobby the General Assembly.

(b) No more than two persons in each principal State department and constituent institution of The University of North Carolina may be registered to lobby the General Assembly or designated as legislative ~~liaisons~~ liaison personnel pursuant to this Article.

(c) All persons designated as legislative liaison personnel pursuant to this Article and the principal State department or constituent institution of The University of North Carolina who employs the legislative liaison personnel shall report all expenditures made for lobbying purposes in the same manner as required for legislative lobbyists under G.S. 120-47.6 and lobbyist's principals under G.S. 120-47.7."

SECTION 2. There is appropriated from the General Fund to the Office of the Secretary of State the sum of two hundred thousand dollars ($200,000) for the 2005-2006 fiscal year to provide for the enforcement personnel, administrative staff, and expenses necessary to implement this act.

SECTION 3. There is appropriated from the General Fund to the Office of the Secretary of State the sum of one hundred twelve thousand dollars ($112,000) for the 2005-2006 fiscal year to provide for the implementation of electronic filing of all lobbyists' and lobbyists' principals reports required under Article 9A of Chapter 120 of the General Statues and to provide public access via the Internet to all these filings. The Secretary of State shall implement electronic filing of all lobbyists' and lobbyists'

principals reports required under Article 9A of Chapter 120 of the General Statutes and provide public access via the Internet to all these filings as soon as practicable.

SECTION 4. Sections 2, 3, and 4 of this act become effective July 1, 2005. The remainder of this act becomes effective January 1, 2006.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

H D

HOUSE BILL 6
PROPOSED COMMITTEE SUBSTITUTE H6-PCS30345-ST-46

Short Title: Amend Lobbying Laws. (Public)

Sponsors:

Referred to:

January 27, 2005

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LOBBYING LAWS BY INCREASING THE INFORMATION REQUIRED TO BE REPORTED ON LOBBYING ACTIVITIES AND BY REQUIRING REPORTING OF LOBBYING ACTIVITIES OF EXECUTIVE BRANCH OFFICERS, AND TO APPROPRIATE FUNDS TO IMPLEMENT THE ACT.

The General Assembly of North Carolina enacts:

SECTION 1. Article 9A of Chapter 120 of the General Statutes reads as rewritten:

"Article 9A.

"Legislative Branch Lobbying.

"§ 120-47.1. Definitions.

~~For the purposes of this Article, the following terms shall have the meanings ascribed to them in this section unless the context clearly indicates a different meaning:~~The following definitions shall apply in this Article:

(1) The term "covered person" means a legislator, the Governor, or the Lieutenant Governor.

~~(1)~~(1a) The ~~terms "contribution," "compensation" and~~ term "expenditure" ~~mean~~ means any advance, contribution, conveyance, deposit, distribution, payment, gift, retainer, fee, salary, honorarium, reimbursement, loan, pledge or ~~anything~~ thing of value greater than ten dollars ($10.00), ~~and any~~or a contract, agreement, promise or other obligation whether or not legally enforceable, ~~but those terms do not include prizes, awards, or compensation not exceeding one hundred dollars ($100.00) in a calendar year.~~that directly or indirectly is made to, at the request of, for the benefit of, or on the behalf of a covered person, legislative employee, or that person's immediate family member.

(1b) The term "executive lobbyist" means a lobbyist registered pursuant to Article 4C of Chapter 147 of the General Statutes.

(2), (3) Repealed by Session Laws 1991, c. 740, s. 1.1.

(3a) The term "gift" means any payment, entertainment, advance, services, forgiveness of an obligation or debt, or thing of value, unless consideration of equal or greater value has been given therefor.

(3b) The term "immediate family member" means spouse, unemancipated children living in the individual's household, or persons claimed by the individual or the individual's spouse as dependents for tax purposes living in the individual's household.

(4) The term "legislative action" means the preparation, research, drafting, introduction, consideration, modification, amendment, approval, passage, enactment, tabling, postponement, defeat, or rejection of a bill, resolution, amendment, motion, report, nomination, appointment, or other matter by the legislature or by a member or employee of the legislature acting or purporting to act in an official capacity. It also includes the consideration of any bill by the Governor for the Governor's approval or veto under Article II, Section 22(1) of the Constitution or for the Governor to allow the bill to become law under Article II, Section 22(7) of the Constitution.

(4a) The term "legislative employee" means employees and officers of the General Assembly.

(4b) The term "legislative liaison personnel" means any State ~~officer or employee~~officers whose principal duties in ~~practice~~ practice, or as set forth in that person's job ~~description~~ description, involve lobbying the General Assembly.

(4c) The term "legislative lobbyist" means any lobbyist for or against legislative action.

(4d) The term "legislator" means a member of the General Assembly or a person elected or appointed a member of the General Assembly prior to taking office.

(5) The term "lobbying" ~~means:~~means any of the following:

a. Influencing or attempting to influence legislative action through direct oral or written communication or activities with a ~~member of the General Assembly; or~~covered person, legislative employee, or that person's immediate family member.

b. Solicitation of others by legislative lobbyists or lobbyist's principals to influence legislative action.

c. Developing goodwill through communications or activities with a covered person, legislative employee, or that person's immediate family with the intention of ultimately influencing current or future legislative action, but does not include communications or activities with a covered person, legislative employee, or that person's immediate family member in a

normal business, civic, religious, fraternal, or commercial relationship and not connected to legislative action.

(6) The term "lobbyist" means an individual ~~who:~~who meets any of the following criteria:

a. Is employed and receives compensation, or who contracts for economic consideration, for the purpose of ~~lobbying; or~~lobbying.

b. Represents another person and receives compensation for the purpose of lobbying.

c. Is legislative liaison personnel.

The term "lobbyist" shall not include those individuals who are specifically exempted from this Article by G.S. 120-47.8. For the purpose of determining whether an individual is a lobbyist under this subdivision, reimbursement of actual travel and subsistence expenses shall not be considered compensation; provided, however, that reimbursement in the ordinary course of business of these expenses shall be considered compensation if a significant part of the individual's duties involve lobbying before the General Assembly.

(7) The terms "lobbyist's principal" and "principal" mean the ~~entity in~~person on whose behalf the legislative lobbyist ~~influences or attempts to influence legislative action.~~lobbies. In the case where a lobbyist is employed by a law firm, consulting firm, or other entity retained by a person for legislative lobbying, the principal is the person whose interests the lobbyist represents in lobbying.

(8) The term "person" means any individual, firm, partnership, committee, association, corporation, business entity, or any other organization or group of persons.

(9) The General Assembly is in "regular session" from the date set by law or resolution that the General Assembly convenes until the General Assembly either:

a. Adjourns sine die; or

b. Recesses or adjourns for more than 10 days.

"**§ 120-47.2. Registration procedure.**

(a) A legislative lobbyist shall file a registration statement with the Secretary of State before engaging in any ~~lobbying.~~lobbying, in a manner prescribed by the Secretary of State, including electronically. It shall be unlawful for a person to lobby without registering unless exempted by this Article. A separate registration statement is required for each lobbyist's principal. The registration shall indicate whether it is registration as a legislative lobbyist, executive lobbyist, or both, and a separate registration fee shall be paid for each separate type of registration.

(b) The form of the registration shall be prescribed by the Secretary of State and shall include the registrant's full name, firm, ~~and~~ complete ~~address;~~address and telephone number; the registrant's place of business; the full ~~name and~~name, complete address and telephone number of each person by whom the registrant is employed or

retained; and a general description of the matters on which the registrant expects to act as a legislative lobbyist. The Secretary of State shall make available as soon as practicable the registrations of the lobbyists and lobbyists' principals in an electronic, searchable format.

(c) Each legislative lobbyist shall ~~register again~~file an amended registration form with the Secretary of State no later than 10 days after any change in the information supplied in ~~his~~ the legislative lobbyist's last registration under subsection (b). Each supplementary registration shall include a complete statement of the information that has changed.

(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 executive or legislative lobbyists and whom they represent. Within 20 days after the beginning of the term of a Governor, the Secretary of State shall furnish the Governor, each other member of the Council of State, the head of each principal department of the Executive Branch, and the State Legislative Library a list of all persons who have registered as executive or legislative lobbyists and whom they represent. A supplemental list of legislative lobbyists shall be furnished periodically each 20 days thereafter as the session progresses. A supplemental list of executive lobbyists shall be furnished periodically each 60 days thereafter. All lists required by this section may be furnished electronically.

(e) Each registration statement of a legislative lobbyist required under this Article shall be effective from the date of filing until January 1 of the following ~~odd-numbered~~ year. The legislative lobbyist shall file a new registration statement after that date, and the applicable fee shall be due and payable.

"§ 120-47.3. Registration fee.

(a) Every lobbyist's principal shall pay to the Secretary of State a fee of ~~two hundred dollars ($200.00)~~ one hundred dollars ($100.00) that is due and payable by either the legislative lobbyist or the lobbyist's principal at the time of registration. If the legislative lobbyist is also registering as an executive lobbyist for that lobbyist's principal, the fee shall be seventy-five dollars ($75.00) to register as a legislative lobbyist.

(b) A separate registration, together with a separate registration fee of ~~two hundred dollars ($200.00)~~ one hundred dollars ($100.00) is required for each lobbyist's principal for which a person acts as a legislative lobbyist. If the lobbyist's principal is also registering under Article 4C of Chapter 147 of the General Statutes, the fee shall be seventy-five dollars ($75.00).

(c) ~~Fees so collected shall be deposited in the General Fund of the State.~~ All fees shall be paid to the Department of the Secretary of State and deposited into the Lobbyist Registration Fund to be used to pay the costs incurred in administering and enforcing this Article.

(d) The Secretary of State may prescribe that fees required under this section be paid electronically.

"§ 120-47.4. Written authority from lobbyist's principal to be filed.

Each legislative lobbyist shall file with the Secretary of State within 10 days after ~~his~~ the legislative lobbyist's registration a written authorization to act as such, signed by the lobbyist's principal.

"§ 120-47.5. Contingency lobbying fees and election influence prohibited.

(a) No person shall act as a legislative lobbyist for compensation that is dependent upon the result or outcome of any legislative action. ~~which is dependent in any manner upon the passage or defeat of any proposed legislation or upon any other contingency connected with any action of the General Assembly, the House, the Senate or any committee thereof.~~

(b) No ~~person~~ legislative lobbyist or legislative lobbyist's principal shall attempt to influence the action of any ~~member of the General Assembly~~ covered person by the promise of financial support of the ~~member's~~covered person's candidacy, or by threat of financial ~~contribution~~ support in opposition to the ~~member's~~ covered person's candidacy in any future election.

"§ 120-47.5A. Exemptions and inclusions for reporting purposes.

(a) For purposes of G.S. 120-47.6 and G.S. 120-47.7, the following expenditures need not be reported:

(1) Gifts from an immediate family member or person who is the child, stepchild, parent, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, grandparent, or grandchild of the covered person or legislative employee.

(2) Lawful campaign contributions.

(b) For purposes of G.S. 120-47.6 and G.S. 120-47.7, all expenditures made for the purpose of lobbying shall be reported, including the following:

(1) Expenditures made on behalf of a covered person, a legislative employee, or those persons' immediate family members in the regular course of that person's nonlegislative employment.

(2) Contractual arrangements or direct business relationships between a legislative lobbyist or legislative lobbyist's principal and a covered person, legislative employee, or that person's immediate family member, in effect during the reporting period or the previous 12 months.

(3) Amounts reimbursed by a principal to a legislative lobbyist in the ordinary course of business by the lobbyist's principal or other employer.

"§ 120-47.6. Statements of legislative lobbyist's lobbying ~~expenses~~ expenditures required.

(a) Each legislative lobbyist shall file ~~an expense report with the Secretary of State with respect to each principal within 60 days after the last day of the regular session. This expense report shall include all expenditures made between January 1 and the last day of the regular session. The lobbyist shall file a supplemental report including all expenditures made after the last day of the regular session, but during the calendar year, by February 28 of the following year.~~ monthly expenditure reports under oath with the Secretary of State, in a manner prescribed by the Secretary of State

including electronically, with respect to each lobbyist's principal, while the General Assembly is in regular session, and quarterly thereafter. The expenditure report shall include all expenditures during the reporting period, and shall be due 10 business days after the end of the reporting period. The legislative lobbyist shall file ~~both~~ expense reports whether or not expenditures are made.

(b) Each ~~expense~~ expenditure report shall set forth the ~~date of each expenditure, to whom paid, the name of any legislator who benefitted from each expenditure, and the amount of each expenditure made during the previous reporting period in connection with lobbying, in each of the following categories: (1) transportation, (2) lodging, (3) entertainment, (4) food, (5) any item having a cash equivalent value of more than twenty-five dollars ($25.00) and (6) contributions made, paid, incurred or promised, directly or indirectly. It shall not be necessary to report expenditures of twenty-five dollars ($25.00) or less, nor shall it be necessary to report any expenditures made in connection with the attendance of a legislator at any fund-raising function or event sponsored by a nonprofit organization qualified under 26 U.S.C. § 501(c). When more than 10 members of the General Assembly benefitted or were invited to benefit from an expenditure, the lobbyist shall not be required to report the name of any legislator, but shall be required to report the number of legislators or, with particularity, the basis for their selection.~~amount, date, a description of the expenditure, name and address of the payee, and name of any covered person, legislative employee, or that person's immediate family member benefiting from the expenditure. Such expenditures shall be reported using the following categories:

(1) Transportation and lodging.
(2) Entertainment, food, and beverages.
(3) Meetings and events.
(4) Gifts.
(5) Solicitation of others to lobby.
(6) Other expenditures.

(c) All reports shall be in the form prescribed by the Secretary of State and shall be open to public ~~inspection.~~inspection upon filing. When more than 15 covered persons benefit from an expenditure, no names of individuals need be reported provided that the report identifies the approximate number of covered persons benefiting and, with particularity, the basis for their selection, including the name of the legislative body, committee, caucus, or other group whose membership list is a matter of public record in accordance with G.S. 132-1 or including a description of the group that clearly distinguishes its purpose or composition from the general membership of the General Assembly. The approximate number of legislative employees and immediate family members of covered persons and legislative employees who benefited from the expenditure shall be listed separately.

(d) When a legislative lobbyist fails to file ~~a lobbying expense~~an expenditure report as required ~~herein,~~in this section, the Secretary of State shall send a certified or registered letter advising the legislative lobbyist of the delinquency and the penalties provided by law. Within 20 days of the receipt of the letter, the legislative lobbyist shall deliver or post by United States mail to the Secretary of State the required report and an

additional late filing fee in an amount equal to the late filing fee under G.S. 163-278.34(a)(2).

(e) Filing of the required report and payment of the additional fee within the time extended shall constitute compliance with this section. Failure to file an ~~expense~~ expenditure report in one of the manners prescribed ~~herein~~ in this section shall result in revocation of any and all registrations of a legislative lobbyist under this Article. No legislative lobbyist may register or reregister under this Article until ~~he~~ the legislative lobbyist has fully complied with this section.

(f) Appeal of a decision by the Secretary of State under this section shall be in accordance with Article 3 of Chapter 150B of the General Statutes.

(g) The oath required under this section shall attest to the truthfulness and completeness of the report.

(h) The Secretary of State may adopt rules to facilitate disclosure of expenditures, including the format of reports and additional categories of information, and to protect the addresses of payees under protective order issued pursuant to Chapter 50B of the General Statutes or participating in the Address Confidentiality Program pursuant to Chapter 15C of the General Statutes.

"**§ 120-47.7. Statements of legislative lobbyist's principal lobbying ~~expenses~~ expenditures required.**

(a) Each legislative lobbyist's principal shall file ~~an expense report with the Secretary of State within 60 days after the last day of the regular session. This expense report shall include all expenditures made between January 1 and the last day of the regular session. The 'principal shall file a supplemental expense report, including all expenditures made after the last day of the regular session, but during the calendar year, by February 28 of the following year.~~ monthly expenditure reports under oath with the Secretary of State, in a manner prescribed by the Secretary of State including electronically, while the General Assembly is in regular session, and quarterly thereafter. The expenditure report shall include all expenditures during the reporting period, and shall be due 10 business days after the end of the reporting period. The lobbyist's principal shall file both ~~expense~~ expenditure reports whether or not expenditures are made during a reporting period.

(b) Each ~~expense~~ expenditure report shall set forth the ~~name and address of each lobbyist employed, appointed, or retained by the lobbyist's principal, the date of each expenditure made, to whom paid, name of any legislator who benefitted from each expenditure, and amount of each expenditure made during the previous reporting period in connection with lobbying, in each of the following categories: (1) transportation, (2) lodging, (3) entertainment, (4) food, (5) any item having a cash equivalent value of more than twenty-five dollars ($25.00), (6) contributions made, paid, incurred or promised, directly or indirectly, and (7) compensation to lobbyists in connection with their lobbying activities. It shall not be necessary to report expenditures of twenty-five dollars ($25.00) or less, nor shall it be necessary to report any expenditures made in connection with the attendance of a legislator at any fund-raising function or event sponsored by a nonprofit organization qualified under 26 U.S.C. § 501(c). When more than 10 members of the General Assembly benefitted or were invited to benefit from an~~

~~expenditure, the principal shall not be required to report the name of any legislator, but shall be required to report the number of legislators or the basis for their selection. In the category of compensation to lobbyists the principal shall estimate and report the compensation paid or promised directly or indirectly, to all lobbyists based on the estimated time, effort and expense in connection with lobbying activities on behalf of the principal. If a lobbyist is a full-time employee of the principal, or is compensated by means of an annual fee or retainer, the principal shall estimate and report the portion of all such lobbyists' salaries or retainers that compensate the lobbyists for lobbying.~~ amount, date, a description of the expenditure, name and address of the payee, and name of any covered person, legislative employee, or that person's immediate family member affected by the expenditure. Such expenditures shall be reported using the following categories:

(1) Transportation and lodging.

(2) Entertainment, food, and beverages.

(3) Meetings and events.

(4) Gifts.

(5) Solicitation of others to lobby.

(6) The compensation paid or promised to all legislative lobbyists based on estimated time and expense spent lobbying directly or indirectly on behalf of the lobbyist's principal. If a legislative lobbyist is a full-time employee of the lobbyist's principal, or is compensated by means of an annual fee or retainer, the lobbyist's principal shall estimate and report the portion of the salary or retainer that compensates for direct and indirect lobbying. The lobbyist's principal's expenditure report shall include an itemized description of all expenditures reimbursed or paid to legislative lobbyists for lobbying that are not reported on the legislative lobbyists' reports. For purposes of this subsection, amounts reimbursed in the ordinary course of business shall be considered compensation if a significant part of the individual's duties involves legislative lobbying, whether reimbursed by the principal or another source.

(7) Other expenditures.

(c) All reports shall be in the form prescribed by the Secretary of State and open to public ~~inspection.~~inspection upon filing. When more than 15 covered persons benefit from an expenditure, no names of individuals need be reported provided that the report identifies the approximate number of covered persons benefiting and, with particularity, the basis for their selection, including the name of the legislative body, committee, caucus, or other group whose membership list is a matter of public record in accordance with G.S. 132-1 or including a description of the group that clearly distinguishes its purpose or composition from the general membership of the General Assembly. The approximate number of legislative employees and immediate family members of covered persons and legislative employees who benefited from the expenditure shall be listed separately.

(d) When a lobbyist's principal fails to file ~~a lobbying expense~~an expenditure report as required ~~herein,~~in this section, the Secretary of State shall send a certified or registered letter advising the lobbyist's principal of the delinquency and the penalties provided by law. Within 20 days of the receipt of the letter, the lobbyist's principal shall deliver or post by United States mail to the Secretary of State the required report and a late filing fee in an amount equal to the late filing fee under G.S. 163-278.34(a)(2).

(e) Filing of the required report and payment of the late fee within the time extended shall constitute compliance with this section. Failure to file an expenditure report in one of the manners prescribed in this section shall result in revocation of any and all registrations of a lobbyist's principal under this Article. No lobbyist's principal may register or reregister under this Article until the lobbyist's principal has fully complied with this section.

(f) Appeal of a decision by the Secretary of State under this section shall be in accordance with Article 3 of Chapter 150B of the General Statutes.

(g) The oath required under this section shall attest to the truthfulness and completeness of the report.

(h) The Secretary of State may adopt rules to facilitate disclosure of expenditures, including the format of reports and additional categories of information, and to protect the addresses of payees under protective order issued pursuant to Chapter 50B of the General Statutes or participating in the Address Confidentiality Program pursuant to Chapter 15C of the General Statutes.

"**§ 120-47.7B. Powers and duties of the Secretary of State.**

(a) The Secretary of State shall perform systematic audits of reports required to be filed under G.S. 120-47.6 and G.S. 120-47.7 on a regular basis.

(b) The Secretary of State may petition a court of competent jurisdiction for the approval to issue subpoenas and subpoenas duces tecum as necessary to conduct investigations of violations of this Article. The court shall authorize subpoenas under this subsection when the court determines they are necessary for the enforcement of this Article. Subpoenas issued pursuant to this subsection shall be enforceable by the court through the court's contempt powers.

(c) Complaints of violations of this Article and all other records accumulated in conjunction with the investigation of these complaints shall be considered records of criminal investigations under G.S. 132-1.4 and shall not become public records until a determination is made by the appropriate prosecutorial authority that no criminal charges will be brought against the person against whom the complaint was filed.

"**§ 120-47.7C. Prohibitions.**

(a) No member or former member of the General Assembly may be employed as an executive or legislative lobbyist by a lobbyist's principal to lobby as defined in this Article or Article 4C of Chapter 147 of the General Statutes within one year after the expiration of the term for which the member was elected or appointed to serve.

(b) No person serving as Governor, as a member of the Council of State, or as a head of a principal State department listed in G.S. 143B-6 may be employed as an executive or legislative lobbyist by a lobbyist's principal to lobby as defined in this

Article or Article 4C of Chapter 147 of the General Statutes within one year after separation from employment or leaving office, whichever is later.

(c) No individual registered as a legislative lobbyist shall serve as a campaign manager or a campaign treasurer under Chapter 163 of the General Statutes for a campaign for election as a member of the General Assembly.

(d) A legislative or executive lobbyist shall not be eligible for appointment to any board, authority, commission, or other body established by the laws of this State that regulates the activities of a business, organization, person, or agency that the lobbyist represented within one year after the expiration of the lobbyist's registration.

(e) No legislative or executive lobbyist or another acting on the lobbyist's behalf shall permit a covered person, legislative employee, or that person's immediate family member to use the cash or credit of the lobbyist for the purpose of lobbying unless the lobbyist is in attendance at the time of the expenditure.

"**§ 120-47.8. Persons exempted from provisions of Article.**

~~The~~ Except as otherwise provided in this Article, the provisions of this Article shall not be construed to apply to any of the following:

(1) An individual, not acting as a legislative lobbyist, solely engaged in expressing a personal opinion on legislative matters to ~~his~~ the individual's own legislative delegation or other members of the General Assembly.

(2) A person appearing before a legislative committee at the invitation or request of the committee or a member thereof and who engages in no further activities as a legislative lobbyist in connection with that or any other legislative ~~matter.~~action.

(3) a. A duly elected or appointed official or employee of the State, the United States, a county, municipality, school district or other governmental agency, when appearing solely in connection with matters pertaining to ~~his~~ the office and public duties.

b. Notwithstanding the persons exempted in this Article, the Governor, Council of State, and all appointed heads of State departments, agencies and institutions, shall designate all authorized official legislative liaison personnel and shall file and maintain current lists of designated legislative liaison personnel with the Secretary of ~~State and shall likewise file with the Secretary of State a full and accurate accounting of all money expended on lobbying, other than the salaries of regular full-time employees, at the same times lobbyists are required to file expense reports under G.S. 120-47.6.~~State.

(4) A person performing professional services in drafting bills or in advising and rendering opinions to clients, or to ~~legislators~~ covered persons on behalf of clients, as to the construction and effect of proposed or pending legislation where the professional services are not otherwise, directly or indirectly, connected with legislative action.

(5) A person who owns, publishes or is employed by any news medium while engaged in the acquisition or dissemination of news on behalf of the news medium.

(6) Repealed by Session Laws 1991, c. 740, s. 1.1.

(7) ~~Members of the General Assembly.~~Covered persons and legislative employees.

(8) A person responding to inquiries from a member of the General Assembly or a legislative employee, and who engages in no further activities as a legislative lobbyist in connection with that or any other legislative matter.

(9) An individual giving facts or recommendations pertaining to legislative ~~matters~~ actions to ~~his~~ the individual's own legislative delegation only.

(10) An employee who represents the employer's interests in legislative action for no more than three hours in a quarter, provided that neither the employee nor the employer makes any expenditure as defined in G.S. 120-47.1.

"**§ 120-47.8A. Gifts from persons exempted or not covered by this Article.**

(a) If a covered person or a legislative employee accepts an expenditure valued over two hundred dollars ($200.00) from a person exempted or not covered by this Article for the purpose of lobbying, the person making the expenditure shall report the date, a description of the expenditure, the name and address of the person making the expenditure, and the estimated fair market value of the expenditure.

(b) If the person making the expenditure in subsection (a) of this section is outside North Carolina, the covered person or legislative employee accepting the expenditure shall be responsible for filing the report.

(c) If a covered person or a legislative employee accepts a scholarship valued over two hundred dollars ($200.00) from a person exempted or not covered by this Article, the person granting the scholarship shall report the date of the scholarship, a description of the event involved, the name and address of the person granting the scholarship, and the estimated fair market value.

(d) If the person granting the scholarship in subsection (c) of this section is outside North Carolina, the covered person or legislative employee accepting the scholarship shall be responsible for filing the report.

(e) This section shall not apply to any of the following:

(1) Lawful campaign contributions.

(2) Any devise or inheritance.

(3) Gifts associated primarily with the covered person, legislative employee, or that person's immediate family member's nonlegislative employment.

(4) Gifts, other than food, beverages, travel, and lodging which are received from a person who is a citizen of a country other than the United States or a state other than North Carolina and is given during a ceremonial presentation or as a result of a custom.

(5) A thing of value that is paid for by the State.

(f) Reports required by this section shall be filed by the end of the quarter following the gift with the Secretary of State in a manner prescribed by the Secretary of State, including electronically.

"**§ 120-47.9. Punishment for violation.**

(a) Whoever willfully violates any provision of this Article shall be guilty of a Class 1 misdemeanor. In addition, no legislative lobbyist who is convicted of a violation of the provisions of this Article shall in any way act as a legislative or executive lobbyist for a period of two years following ~~his~~ conviction.

(b) In addition to the criminal penalties set forth in this section, the Secretary of State may levy civil fines for willful false or incomplete reporting up to five thousand dollars ($5,000) per violation.

"**§ 120-47.10. Enforcement of Article by Attorney General.**

The Secretary of State shall report apparent violations of this Article to the Attorney General. The Attorney General shall, upon ~~complaint made to him of violations of this Article,~~ complaint, make an appropriate investigation thereof, and ~~he~~ the Attorney General shall forward a copy of the investigation to the district attorney of the prosecutorial district as defined in G.S. 7A-60 of which Wake County is a part, who shall prosecute any person who violates any provisions of this Article.

"**§ 120-47.11. Rules and forms.**

The Secretary of State shall ~~make, amend, and rescind~~adopt any rules, orders, forms, and definitions as are necessary to carry out the provisions of this Article.

"**§ 120-47.12. Limitations on agency legislative ~~liaisons.~~liaison personnel.**

(a) No ~~principal~~ State department may use State funds to contract with persons who are not employed by the State to lobby the General Assembly.

(b) No more than two persons in each ~~principal~~ State department and constituent institution of The University of North Carolina may be registered to lobby the General Assembly or designated as legislative ~~liaisons~~ liaison personnel pursuant to this Article.

(c) All persons designated as legislative liaison personnel pursuant to this Article and the State department or constituent institution of The University of North Carolina who employs the legislative liaison personnel shall report all expenditures made for lobbying purposes in the same manner as required for legislative lobbyists under G.S. 120-47.6 and lobbyist's principals under G.S. 120-47.7."

SECTION 2. Chapter 147 of the General Statutes is amended by adding a new Article to read:

"Article 4C.

"Executive Branch Lobbying.

"**§ 147-54.31. Definitions.**

The following definitions shall apply in this Article:

(1) The term "executive action" means the preparation, research, drafting, introduction, consideration, modification, amendment, approval, passage, adoption, tabling, postponement, defeat, or rejection of a rule, regulation, executive order, policy, resolution, contract, request for proposal, amendment, motion, report, nomination, or appointment by

the executive branch or by a member or employee of the executive branch acting or purporting to act in an official capacity. This term shall not include any action by an attorney representing a client with respect to the executive action.

(2) The term "executive branch officers" means the Governor, any member of the Council of State, and heads of those departments listed in G.S. 143-6, and the Board of Governors and the presidents of the universities of The University of North Carolina System.

(3) The term "executive lobbyist" means any lobbyist for or against executive action.

(4) The term "expenditure" means any advance, contribution, conveyance, deposit, distribution, payment, gift, retainer, fee, salary, honorarium, reimbursement, loan, pledge, or thing of value greater than ten dollars ($10.00), or a contract, agreement, promise, or other obligation whether or not legally enforceable, that directly or indirectly is made to, at the request of, for the benefit of, or on the behalf of an executive branch officer or that person's immediate family member.

(5) The term "immediate family member" means spouse, unemancipated children living in the individual's household, or persons claimed by the individual or the individual's spouse as dependents for tax purposes living in the individual's household.

(6) The term "lobbying" means any of the following:

a. Influencing or attempting to influence executive action or through direct oral or written communication or activities with an executive branch officer.

b. Solicitation of others by an executive lobbyist or lobbyist's principal to influence executive action.

c. Developing executive goodwill through communications or activities with an executive branch officer or that person's immediate family with the intention of ultimately influencing current or future executive action, but does not include communications or activities with executive branch officers or that person's immediate family member in a normal business or commercial relationship and not connected to executive action.

(7) The term "lobbyist" means an individual who meets any of the following criteria:

a. Is employed and receives compensation, or who contracts for economic consideration, for the purpose of lobbying.

b. Represents another person and receives compensation for the purpose of lobbying.

The term "lobbyist" shall not include those individuals who are specifically exempted from this Article by G.S. 147-54.40. For the purpose of determining whether an individual is an executive lobbyist under this subdivision, reimbursement of actual travel and subsistence

expenses shall not be considered compensation; provided, however, that reimbursement in the ordinary course of business of these expenses shall be considered compensation if a significant part of the individual's duties involves executive lobbying.

(8) The terms "lobbyist's principal" and "principal" mean the person on whose behalf the executive lobbyist lobbies. In the case where a lobbyist is employed by a law firm, consulting firm, or other entity retained by a person for executive lobbying, the principal is the person whose interests the lobbyist represents in lobbying.

(9) The term "person" means any individual, firm, partnership, committee, association, corporation, business entity, or any other organization or group of persons.

"**§ 147-54.32. Election influence prohibited.**

No executive lobbyist or executive lobbyist's principal shall attempt to influence the action of an executive branch officer by the promise of financial support of the executive branch officer's candidacy or appointment, or by threat of financial support in opposition to the executive branch officer's candidacy in any future election.

"**§ 147-54.33. Exemptions and inclusions for reporting purposes.**

(a) For purposes of G.S. 147-54.36 and G.S. 147-54.37, the following expenditures need not be reported:

(1) Gifts from an immediate family member or person who is the child, stepchild, parent, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, grandparent, or grandchild of the executive branch officer.

(2) Lawful campaign contributions.

(b) For purposes of G.S. 147-54.36 and G.S. 147-54.37, all expenditures made for the purpose of lobbying need to be reported, including:

(1) Expenditures made on behalf of an executive branch officer or that person's immediate family members in the regular course of that person's nonexecutive employment.

(2) Contractual arrangements or direct business relationships between an executive lobbyist or executive lobbyist's principal and an executive branch officer or that person's immediate family member, in effect during the reporting period or the previous 12 months.

(3) Amounts reimbursed by a principal to an executive lobbyist in the ordinary course of business by the lobbyist's principal or other employer.

"**§ 147-54.36. Statements of executive lobbyist's lobbying expenditures required.**

(a) Each executive lobbyist shall file quarterly expenditure reports under oath with the Secretary of State, in a manner prescribed by the Secretary of State, including electronically, with respect to each lobbyist's principal within 10 days after the end of the reporting period. The expenditure report shall include all expenditures during the reporting period. The executive lobbyist shall file an expenditure report whether or not expenditures are made.

(b) Each expenditure report shall set forth the amount, date, a description of the expenditure, name and address of the payee, and name of any executive branch officer, or that person's immediate family member affected by the expenditure. Such expenditures shall be reported using the following categories:

(1) Transportation and lodging.
(2) Entertainment, food, and beverages.
(3) Meetings and events.
(4) Gifts.
(5) Solicitation of others to lobby.
(6) Other expenditures.

(c) All reports shall be in the form prescribed by the Secretary of State and shall be open to public inspection upon filing. When more than 15 executive branch officers benefit from an expenditure, no names of individuals need be reported provided that the report identifies the approximate number of executive branch officers benefiting and, with particularity, the basis for their selection. The approximate number of immediate family members who benefited from the expenditure shall be listed separately.

(d) When an executive lobbyist fails to file an expenditure report as required in this section, the Secretary of State shall send a certified or registered letter advising the executive lobbyist of the delinquency and the penalties provided by law. Within 20 days of the receipt of the letter, the executive lobbyist shall deliver or post by United States mail to the Secretary of State the required report and an additional late filing fee in an amount equal to the late filing fee under G.S. 163-278.34(a)(2).

(e) Filing of the required report and payment of the additional fee within the time extended shall constitute compliance with this section. Failure to file an expense report in one of the manners prescribed herein shall result in revocation of any and all registrations of an executive lobbyist under this Article. No executive lobbyist may register or reregister under this Article until the executive lobbyist has fully complied with this section.

(f) Appeal of a decision by the Secretary of State under this section shall be in accordance with Article 3 of Chapter 150B of the General Statutes.

(g) The oath required under this section shall attest to the truthfulness and completeness of the report.

(h) The Secretary of State may adopt rules to facilitate disclosure of expenditures, including the format of reports and additional categories of information, and to protect the addresses of payees under protective order issued pursuant to Chapter 50B of the General Statutes or participating in the Address Confidentiality Program pursuant to Chapter 15C of the General Statutes.

"**§ 147-54.37. Statements of lobbyist's principal lobbying expenses required.**

(a) Each executive lobbyist's principal shall file quarterly expenditure reports under oath with the Secretary of State within 10 days after the end of the reporting period. The expenditure report shall include all expenditures during the reporting period. The lobbyist's principal shall file an expenditure report whether or not expenditures are made during a reporting period.

(b) Each expenditure report shall set forth the amount, date, a description of the expenditure, name and address of the payee, and name of any executive branch officers, or that person's immediate family member affected by the expenditure. Such expenditures shall be reported using the following categories:

(1) Transportation and lodging.
(2) Entertainment, food, and beverages.
(3) Meetings and events.
(4) Gifts.
(5) Solicitation of others to lobby.
(6) Other expenditures.

(c) All reports shall be in the form prescribed by the Secretary of State and open to public inspection upon filing. When more than 15 executive branch officers benefit from an expenditure, no names of individuals need be reported provided that the report identifies the approximate number of executive branch officers benefiting and, with particularity, the basis for their selection. The approximate number of immediate family members who benefited from the expenditure shall be listed separately.

(d) When a lobbyist's principal fails to file an expenditure report as required in this section, the Secretary of State shall send a certified or registered letter advising the lobbyist's principal of the delinquency and the penalties provided by law. Within 20 days of the receipt of the letter, the lobbyist's principal shall deliver or post by United States mail to the Secretary of State the required report and a late filing fee in an amount equal to the late filing fee under G.S. 163-278.34(a)(2).

(e) Filing of the required report and payment of the late fee within the time extended shall constitute compliance with this section. Failure to file an expense report in one of the manners prescribed herein shall result in revocation of any and all registrations of an executive lobbyist under this Article. No executive lobbyist may register or reregister under this Article until the executive lobbyist has fully complied with this section.

(f) Appeal of a decision by the Secretary of State under this section shall be in accordance with Article 3 of Chapter 150B of the General Statutes.

(g) The oath required under this section shall attest to the truthfulness and completeness of the report.

(h) The Secretary of State may adopt rules to facilitate disclosure of expenditures, including the format of reports and additional categories of information, and to protect the addresses of payees under protective order issued pursuant to Chapter 50B of the General Statutes or participating in the Address Confidentiality Program pursuant to Chapter 15C of the General Statutes.

"**§ 147-54.39. Powers and duties of the Secretary of State.**

(a) The Secretary of State shall perform systematic audits of reports required to be filed under G.S. 147-54.36 and G.S. 147-54.37 on a regular basis.

(b) The Secretary of State may petition a court of competent jurisdiction for the approval to issue subpoenas and subpoenas duces tecum as necessary to conduct investigations of violations of this Article. The court shall authorize subpoenas under this subsection when the court determines they are necessary for the enforcement of this

Article. Subpoenas issued pursuant to this subsection shall be enforceable by the court through the court's contempt powers.

(c) Complaints of violations of this Article and all other records accumulated in conjunction with the investigation of these complaints shall be considered records of criminal investigations under G.S. 132-1.4 and shall not become public records until a determination is made by the appropriate prosecutorial authority that no criminal charges will be brought against the person against whom the complaint was filed.

"**§ 147-54.40. Persons exempted from provisions of Article.**

The provisions of this Article shall not be construed to apply to any of the following:

(1) An individual, not acting as an executive lobbyist, solely engaged in expressing a personal opinion on an executive action.

(2) A person appearing before a committee, commission, board, council, or other collective body at the invitation or request of the collective body or a member thereof and who engages in no further activities as an executive lobbyist in connection with that or any other executive action.

(3) A duly elected or appointed official or employee of the State, the United States, a county, municipality, school district, or other governmental agency, when appearing solely in connection with matters pertaining to the office and its public duties.

(4) A person performing professional services in drafting bills, rules, regulations, executive orders, policies, resolutions, contracts, or requests for proposal, or in advising and rendering opinions to clients, or executive branch officials on behalf of clients, as to the construction and effect of proposed or pending executive action where the professional services are not otherwise, directly or indirectly, connected with executive action.

(5) A person who owns, publishes, or is employed by any news medium while engaged in the acquisition or dissemination of news on behalf of the news medium.

(6) A person responding to inquiries from an executive branch officer and who engages in no further activities as an executive lobbyist in connection with that or any other executive branch matter.

(7) A person appearing before an executive branch agency or department on behalf of another person, on an individual application for a license or permit, or a disciplinary action on a license or permit.

(8) An employee who represents the employer's interests in executive action for no more than six hours during a six-month reporting period, provided that neither the employee nor the employer make any expenditure as defined in G.S. 147-54.31.

"**§ 147-54.41. Gifts from persons exempted or not covered by this Article.**

(a) If an executive branch officer accepts an expenditure valued over two hundred dollars ($200.00) from a person exempted or not covered by this Article for the purpose of lobbying, the person making the expenditure shall report the date, a

description of the expenditure, the name and address of the person making the expenditure, and the estimated fair market value of the expenditure.

(b) If the person making the expenditure in subsection (a) of this section is outside North Carolina, the executive branch officer accepting the expenditure shall be responsible for filing the report.

(c) If a covered person or a legislative employee accepts a scholarship valued over two hundred dollars ($200.00) from a person exempted or not covered by this Article, the person granting the scholarship shall report the date of the scholarship, a description of the event involved, the name and address of the person granting the scholarship, and the estimated fair market value.

(d) If the person granting the scholarship in subsection (c) of this section is outside North Carolina, the covered person or legislative employee accepting the scholarship shall be responsible for filing the report.

(e) This section shall not apply to any of the following:

(1) Lawful campaign contributions.

(2) Any devise or inheritance.

(3) Gifts associated primarily with the executive branch officer or that person's immediate family member's nonexecutive employment.

(4) Gifts, other than food, beverages, travel, and lodging received by an executive branch officer which are received from a person who is a citizen of a country other than the United States or a state other than North Carolina and is given during a ceremonial presentation or as a result of a custom.

(5) A thing of value that is paid for by the State.

(f) Reports required by this section shall be filed by the end of the quarter following the gift with the Secretary of State in a manner prescribed by the Secretary of State, including electronically.

"**§ 147-54.42. Punishment for violation.**

(a) Whoever willfully violates any provision of this Article shall be guilty of a Class 1 misdemeanor. In addition, no executive lobbyist who is convicted of a violation of the provisions of this Article shall in any way act as an executive or legislative lobbyist for a period of two years following conviction.

(b) In addition to the criminal penalties set forth in this section, the Secretary of State may levy civil fines for willful false or incomplete reporting up to five thousand dollars ($5,000) per violation.

"**§ 147-54.43. Enforcement of Article by Attorney General.**

The Secretary of State shall report apparent violations of this Article to the Attorney General. The Attorney General shall, upon complaint, make an appropriate investigation thereof, and the Attorney General shall forward a copy of the investigation to the district attorney of the prosecutorial district as defined in G.S. 7A-60, of which Wake County is a part, who shall prosecute any person who violates any provisions of this Article.

"**§ 147-54.44. Rules and forms.**

The Secretary of State shall adopt any rules, orders, forms, and definitions as are necessary to carry out the provisions of this Article."

SECTION 3. Article 4 of Chapter 147 of the General Statutes is amended by adding a new section to read:

"**§ 147-54.8. No gifts registry.**

(a) The Secretary of State shall establish a 'No Gifts' registry for persons subject to Article 9A of Chapter 120 of the General Statutes and Article 4C of this Chapter.

(b) The list of persons on the registry shall be published with the list of lobbyists and lobbyists' principals required under G.S. 120-47.2.

(c) The Secretary shall have the authority to adopt rules to implement this section."

SECTION 4. There is appropriated from the General Fund to the Office of the Secretary of State the sum of two hundred thousand dollars ($200,000) for the 2005-2006 fiscal year to provide for the enforcement personnel, administrative staff, and expenses necessary to implement this act.

SECTION 5. There is appropriated from the General Fund to the Office of the Secretary of State the sum of one hundred twelve thousand dollars ($112,000) for the 2005-2006 fiscal year to provide for the implementation of electronic filing of all lobbyists' and lobbyists' principals' reports required under Article 9A of Chapter 120 of the General Statutes and to provide public access via the Internet to all these filings. The Secretary of State shall implement electronic filing of all lobbyists' and lobbyists' principals' reports required under Article 9A of Chapter 120 of the General Statutes and provide public access via the Internet to all these filings as soon as practicable.

SECTION 6. Sections 4, 5, and 6 of this act become effective July 1, 2005. G.S. 120-47.7C(d), as enacted by Section 1 of this act, shall apply to appointments made on or after January 1, 2007. The remainder of this act becomes effective January 1, 2007.

HOUSE BILL 6: Amend Lobbying Laws

BILL ANALYSIS

Committee:	House Judiciary I	**Date:**	July 11, 2005
Introduced by:	Rep. Hackney	**Summary by:**	R. Erika Churchill
Version:	PCS to First Edition H6-PCS30345-46		Committee Counsel

SUMMARY: ***The Proposed Committee Substitute for House Bill 6 would amend the lobbying laws by including goodwill lobbying, increasing the frequency and details of legislative lobbyists' and lobbyist's principals' reports, and prohibiting a legislator from lobbying during a legislative session to which the legislator was elected or appointed. The bill also creates lobbying laws governing executive branch lobbying.***

CURRENT LAW:

Under current law, a person who is paid to try to influence legislative action (action on a specific bill, resolution, amendment, etc.) is required to register as a lobbyist with the Secretary of State and report at the end of each regular session, expenditures in excess of $25 spent on lobbying legislators. Expenditures spent for the general goodwill of legislators not tied to specific legislative action do not need to be reported, nor do expenditures spent on legislative staff or legislators' family members. There is no limitation on the types or amount of expenditures that at lobbyist can spend on a legislator for lobbying purposes. Every principal who hires the services of a lobbyist also has to file reports on expenditures they made for lobbying, including the amount of compensation paid to lobbyists. Exempt from the lobbying laws are persons who lobby on their own behalf, persons appearing before the General Assembly at the General Assembly's request, elected and appointed local government officials and employees lobbying on behalf of their local governments, State agency legislative liaison personnel, and members of the General Assembly. Violation of this law is punished as a Class 1 misdemeanor.

Currently executive branch lobbying is not regulated.

BILL ANALYSIS:

Section 1 amends the legislative lobbying law in the following ways:

- Includes lobbying the Governor in relation to the Governor's veto.
- Includes developing goodwill as part of the definition of lobbying.
- Permits gifts from lobbyists to their family members who are legislators or legislative employees. Also exempts lawful campaign contributions.
- Defines "expenditure" to include anything of value over $10.
- Expenditures by legislative liaison personnel and State agencies are subject to the same limitations and have to be reported the same as expenditures by other lobbyists.
- The registration period for a lobbyist is one year, rather than the current two years.
- Increases the details of lobbying expenditure reports to include the amount, date, a description of the expenditure, name and address of the payee, name of any covered person benefiting from the expenditure (or legislative employee or those person's immediate family members) in each of the following categories:
    - Transportation and lodging
    - Entertainment, food, and beverages
    - Meetings and events
    - Gifts
    - Solicitation of others to lobby
    - Other expenditures

  If more than 15 covered persons benefit from the expenditure, the lobbyist may elect to report the approximate number of covered persons benefiting and, with particularity, the basis for their selection.

The approximate number of legislative employees and immediate family members shall be reported separately.

The Secretary of State is granted rulemaking authority to facilitate disclosure of expenditures, including the format of the report and additional categories. The rules are also to protect the address of payees under a Chapter 50B protective order or participating in the Address Confidentiality Program.

- The lobbyist's principal must also report, in addition to the expenditures reported by the lobbyist, the compensation paid to each lobbyist.
- Prohibits a legislator or former legislator from being employed as a legislative or executive branch lobbyist within 1 year after the expiration of the term for which the legislator was elected or appointed to serve.
- Prohibits a lobbyist from serving as a campaign manager or campaign treasurer for a legislative campaign.
- Prohibits a lobbyist from being appointed to any board, authority, commission, etc. that regulates the activities of a business, organization, person or agency that the lobbyist represented within one year of that representation.
- Prohibits a lobbyist from allowing a covered person, legislative employee, or that person's immediate family member to use the lobbyist's cash or credit without the lobbyist being present at the time of the expenditure.
- An additional exception to the registration and reporting law is made for an employee who represents an employer's interest before the General Assembly for no more than 3 hours in a quarter, and who does not spend money on a legislator, legislative employee or an immediate family member that would otherwise be required to be reported by a registered lobbyist.
- Requires gifts of $200 for the purpose of lobbying from persons not required to register and report as lobbyists or lobbyist's principals or more to be reported. If the person giving the gift is in North Carolina, that person shall make the report. If the person giving the gift is outside North Carolina, the person accepting the gift shall make the report. Certain exceptions apply.
- Requires scholarships valued over $200 to be reported.
- Allows for a civil fine up to $5,000 per violation in addition to any criminal penalties.

Section 2 creates a new article to regulate executive branch lobbying much the same as legislative lobbying is regulated with the following differences:

- Lobbying is defined as the influencing of "executive action" which is defined as being the consideration of a rule, regulation, executive order, policy, resolution, contract, request for proposal, nomination or appointment by the Governor, member of the Council of State, heads of the cabinet, and the Board of Governors and university presidents.
- Executive branch lobbying does not include action by an attorney.
- Lobbyist and lobbyist's principals' reports are due every 6 months.
- Prohibits the Governor or a member of the Council of State from acting as a legislative or executive branch lobbyist during the time of the biennial legislative session in which the person served in office.

Section 3 requires the Secretary of State to create a "No Gifts" registry.

Section 4 appropriates $200,000 for the '05-'06 fiscal year to the Secretary of State for personnel and expenses to implement the act.

Section 5 appropriates $112,000 for the '05-'06 fiscal year to the Secretary of State for the implementation of electronic filing of reports required by the act.

EFFECTIVE DATE: The appropriations are effective July 1, 2005. The remainder of the act is effective January 1, 2007.

H0006e1-SMST-CSST-46
O. Walker Regan contributed to this summary.

House Judiciary I Committee

July 19, 2005
10:00 a.m.

Minutes

The House Judiciary I Committee met on Tuesday, July 19, 2005 at 10:00 a. m. in Room 1228 in the Legislative Building. Chairman Joe Hackney called the meeting to order and the following members were present: Representative Alexander, Blust, Capps, Clary, Goodwin, Harrison, Insko, Miller, Ross, Stam, Stiller and West. A copy of the agenda and visitor registration is attached, (Attachments I and II).

Chairman Hackney welcomed the visitors and introduced the pages.

Vice Chair Ross assumed the chair for the discussion of Senate Bill 612, AN ACT TO AMEND THE LOBBYING LAWS BY INCREASING THE INFORMATION REQUIRED TO BE REPORTED ON LEGISLATIVE LOBBYING ACTIVITIES AND BY REQUIRING REGISTRATION AND REPORTING OF LOBBYING ACTIVITIES OF EXECUTIVE BRANCH AGENCIES AND EMPLOYEES, (Attachment III). A Proposed House Committee Substitute was distributed, (Attachment IV), and Representative Hackney moved its adoption for the purpose of discussion. The motion carried. He reminded the Committee that the House version of the bill (House Bill 6) was explained and discussed during the July 12 meeting of the Committee. He said that the new Committee Substitute was very similar to the bill that was discussed during that meeting.

Ms. Erika Churchill, Committee Counsel, stated that the bill is the language of House Bill 6 that has been placed in Senate Bill 612. She pointed out changes that were in the bill. Her bill analysis is attached, (Attachment V).

Representative Stam offered an amendment, (Attachment VI). Representative Hackney requested that each of the issues be voted on separately. The first issue dealt with immediate family" on page 2, lines 7-10 and on page 13, lines 10-13. Representative Stam moved adoption of those amendments. Upon vote of the committee, they were adopted. The next amendment was on page 2, lines 37-38 to remove the words "lobbyist's principals." Representative Stam moved adoption. Representative Hackney spoke in opposition to this amendment. Discussion followed and upon vote of the Committee, the amendment failed. The next amendment was on page 3, lines 21-24. Representative Stam stated that the definition of lobbying was already stated and was therefore unnecessary on these lines. Representative Hackney spoke against the amendment. Representative Stam withdrew that part of the amendment.

Representative Stam moved adoption of the next part of the amendment on page 3, line 27 by adding "group of persons which ha an independent legal existence." Representative Hackney expressed support for this amendment. The amendment was

adopted. Representative Stam offered the next part of the amendment that would amend the bill on page 4, line 42 by inserting "may" between "section" and "be," and moved its adoption. Representative Hackney expressed support. Representative Stiller offered a perfecting amendment by adding the words "but not require" following the words "The Secretary of State may prescribe," and moved its adoption. The motion carried. The Committee then adopted the perfected amendment.

Representative Stam then moved adoption of next part of the amendment on page 5, line 43 through page 6, line 2. and on page 7,lines 23-26. These amendments called for quarterly reporting instead of monthly reporting. Representative Hackney stated that more frequent reporting is one of the prime objectives of those who support the bill. Representative Stam withdrew the amendments.

Representative Stam moved to amend the bill on page 9, lines 30-31 and page 9, lines 35-37 to allow lobbying within one year after the end of service or employment. Discussion followed. Representative Hackney stated that it was his preference to leave the language as it is. Vice Chair Ross pointed out that this provision is not in the Senate version so it will be an issue that will be in controversy between the two chambers. Upon a vote of the Committee, the amendment failed.

Representative Stam moved to amend the bill on page 9, lines 38-39 to delete "a campaign manager or." Representative Miller explained the amendment. Representative Hackney did not object to the amendment, but indicated that he did not agree policy-wise. Representative Insko spoke in support. Representative Hackney asked if the language could be left as is and allow time for change in the Finance or Appropriations process. Representative Miller stated that he preferred a vote on the amendment. Upon vote of the Committee, the amendment failed.

Representative Stam moved to amend the bill on page 10, lines 3-4 to delete the words "for the purpose of lobbying." Representative Hackney spoke in opposition to this amendment because he noted that in some cases legislative lobbyist are married to legislative employees, etc. Following discussion, Representative Stam agreed to withdraw the amendment to allow time to perfect the amendment. Representative Hackney agreed that such an amendment could be offered in Appropriations or Finance. Representative Stam withdrew the amendment.

Representative Stam moved to amend the bill on page 11, line 28 to rewrite that line to read "Any gift from a family member to a covered person or legislative employee." There was a typographical error in the amendment and the word "to" was removed. The modified amendment was adopted.

Representative Stam moved to amend the bill on page 12, line 39 by rewriting that line to read "respect to the executive action or any ministerial act performed by an executive branch officer." Following discussion, Representative Stam withdrew the amendment.

Representative Hackney offered an amendment, (Attachment VII), on behalf of Representative Ross to amend the bill on page 5, line 25 and page 15, line 6 by inserting "or made on behalf of" between "benefiting" and "an." He moved adoption of the amendment. The amendment was adopted.

Representative Hackney thanked the members of the Committee for their careful review of the legislation. He stated that it is a good full disclosure bill that will greatly improve the confidence and the integrity of the process. He said that the bill is a good balance of the things that need to be balanced. He thanked the advocates for their hard work

Representative Blust asked if the bill would require lobbyist to report contributions that they have helped obtain for campaigns. Representative Hackney stated that political fundraising is covered under different statutes and the bill does not go into political fundraising at all.

Representative Stiller asked if the bill limits the amount of money that a lobbying can expend in a year. Ms. Churchill replied that the bill does not do this. Representative Hackney added that the frequent and monthly reporting and disclosure is a limiting influence all its own and will have an impact in that regard.

Representative Harrison moved a favorable report for the House Proposed Committee Substitute incorporating the amendments and with authorizations to staff to make any needed conforming amendments and that the original bill be given an unfavorable report and that the bill be re-referred to the Committee on Finance. The motion carried, (Attachment VIII). A copy of the new bill is attached, (Attachment IX).

The meeting adjourned at 11:15 a.m.

Representative Deborah Ross
Vice Chair

Emily Reynolds Freeman
Committee Clerk

ATTACHMENT J

HOUSE COMMITTEE ON JUDICIARY I

July 19, 2005
10:00 a.m.

OPENING REMARKS

AGENDA ITEMS

House Bill 6 – Amend Lobbying Laws
Representative Hackney

Senate Bill 612– Amend Lobbying Laws
Senator Rand

ADJOURNMENT

VISITOR REGISTRATION SHEET

House Judiciary I — **Name of Committee**

July 19, 2005 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Anthony Petty	N.C. Center for Nonprofits
Alissa Dolan	NC Conservation Network
Erin Kinney	NC Conservation Network
Sheila Talton-Dewitt	JLP Civitas Institute
Elizabeth Dalton	NCCBI
Cam	Cmes
Katherine Jane	NCASA
Susan Harrison	WCBS
Johanna Reese	DENR
Paula A. Wolf.	El Pueblo, Inc.
Bill Phillips	CC NC

VISITOR REGISTRATION SHEET

House Judiciary I — July 19, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Dan Lamm	NCCU
Cainarean Audrian	SOS
Trish A. Rushing	NC SOS
Joal H. Broun	NC SOS
Kelley Monday Kelly	NC SOS
Cay Cuccs	self
Jackie Ramey	Martin Marietta
Dawn Johnson	Smith Anderson
Chris Heagarty	NC Center for Voter Education
Michael Hooser	NCAE
Christie Barbee	CAPA

VISITOR REGISTRATION SHEET

House Judiciary I — July 19, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Marc Fiesta	NCCLR
Kathy Edwards	UNC-CH
Kate Roetzer	Sierra Club
Elizabeth Self	Sierra Club
Molly Diggins	Sierra Club
Hal Miller	NCAGCT
John Capps	NCS Triangle
[illegible]	NCGA
Kevin Leonard	WCSR
Mark Benson	Capitol Group
Lou Watson	NCAATCF
Barbara Conaldo	BSCOR

VISITOR REGISTRATION SHEET

House Judiciary I — July 19, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
P. E. Mullen	The Mullen Co.
Bob Edwards	NC Providers Council
Cynthia Shurling	Conservation Council
Tom Palmquist	ENC
Sarah Phillips	
Tracy Hatcher	N.C.S.D.A.
John Adams	
Rich Webb	NCGA Intern
Curtis Woods	NCGA Intern
Lisa Percy	Duke Energy
Kim Howell	Gov's office

VISITOR REGISTRATION SHEET

House Judiciary I — **Name of Committee**

July 19, 2005 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Suzanne Barclay	GOV Office
Doug Heron	NC Bar Association
Bill Weathersbon	NC-AFL
Sarah Steege	Common Sense Foundation
Brian Eldersbroom	Common Sense Foundation
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GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

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SENATE BILL 612*

Judiciary I Committee Substitute Adopted 3/31/05
Finance Committee Substitute Adopted 4/11/05
Fourth Edition Engrossed 4/14/05

Short Title: Amend Lobbying Laws. (Public)

Sponsors:

Referred to:

March 17, 2005

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LOBBYING LAWS BY INCREASING THE INFORMATION REQUIRED TO BE REPORTED ON LEGISLATIVE LOBBYING ACTIVITIES AND BY REQUIRING REGISTRATION AND REPORTING OF LOBBYING ACTIVITIES OF EXECUTIVE BRANCH AGENCIES AND EMPLOYEES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 9A of Chapter 120 of the General Statutes reads as rewritten:

"Article 9A.

"Legislative Branch Lobbying.

"**§ 120-47.1. Definitions.**

For the purposes of this Article, the following terms shall have the meanings ascribed to them in this section unless the context clearly indicates a different meaning:

(1) The terms "contribution," "compensation" and "expenditure" mean any advance, conveyance, deposit, payment, gift, retainer, fee, salary, honorarium, reimbursement, loan, pledge or anything of value and any contract, agreement, promise or other obligation whether or not legally ~~enforceable, but those terms do not include prizes, awards, or compensation not exceeding one hundred dollars ($100.00) in a calendar year.~~enforceable.

(1a) The term "covered person" means a legislator, the Governor, or the Lieutenant Governor.

(1b) The term "developing legislative goodwill" means the attempt to obtain the goodwill of a covered person by communications or activities with that covered person with the intention of ultimately influencing legislative action, but does not otherwise include

communications or activities with a covered person in a normal business or commercial relationship.

(1c) The term "executive lobbyist" means a lobbyist registered pursuant to Article 4C of Chapter 147 of the General Statutes.

(2), (3) Repealed by Session Laws 1991, c. 740, s. 1.1.

(3a) The term "immediate family member" means spouse, unemancipated children living in the individual's household, or persons claimed by the individual or the individual's spouse as dependents for tax purposes living in the individual's household.

(4) The term "legislative action" means the preparation, research, drafting, introduction, consideration, modification, amendment, approval, passage, enactment, tabling, postponement, defeat, or rejection of a bill, resolution, amendment, motion, report, nomination, appointment, or other matter by the legislature or by a member or employee of the legislature acting or purporting to act in an official capacity. It also includes the consideration of any bill by the Governor for the Governor's approval or veto under Article II, Section 22(1) of the Constitution or for the Governor to allow the bill to become law under Article II, Section 22(7) of the Constitution.

(4a) The term "legislative employee" means employees and officers of the General Assembly.

(4b) The term "legislative liaison personnel" means any State officer or employee whose principal duties in ~~practice~~ practice, or as set forth in that person's job ~~description~~ description, involve lobbying the General Assembly.

(4c) The term "legislative lobbyist" means any lobbyist for or against legislative action.

(4d) The term "legislator" means a member of the General Assembly or a person elected or appointed a member of the General Assembly prior to taking office.

(5) The term "lobbying" ~~means:~~means any of the following:

a. Influencing or attempting to influence legislative action or developing legislative goodwill, through direct oral or written communication with a ~~member of the General Assembly; or~~covered person or a legislative employee.

b. Solicitation of others by lobbyists or lobbyist's principals to influence legislative action.

(6) The term "lobbyist" means an individual ~~who:~~who meets any of the following criteria:

a. Is employed and receives compensation, or who contracts for economic consideration, for the purpose of ~~lobbying; or~~lobbying.

b. Represents another person and receives compensation for the purpose of lobbying.

c. Is legislative liaison personnel.

The term "lobbyist" shall not include those individuals who are specifically exempted from this Article by G.S. 120-47.8. For the purpose of determining whether an individual is a lobbyist under this subdivision, reimbursement of actual travel and subsistence expenses shall not be considered compensation; provided, however, that reimbursement in the ordinary course of business of these expenses shall be considered compensation if a significant part of the individual's duties involve lobbying before the General Assembly.

(7) The terms "lobbyist's principal" and "principal" mean the ~~entity in~~person on whose behalf the legislative lobbyist ~~influences or attempts to influence legislative action.~~lobbies.

(8) The term "person" means any individual, firm, partnership, committee, association, corporation, business entity, or any other organization or group of persons.

(9) The General Assembly is in "regular session" from the date set by law or resolution that the General Assembly convenes until the General Assembly either:

a. Adjourns sine die; or

b. Recesses or adjourns for more than 10 days.

"**§ 120-47.2. Registration procedure.**

(a) A legislative lobbyist shall file a registration statement with the Secretary of State before engaging in any ~~lobbying.~~lobbying, in a manner prescribed by the Secretary of State, including electronically. A separate registration statement is required for each lobbyist's principal. The registration shall indicate whether it is registration as a legislative lobbyist, executive lobbyist, or both, and a separate registration fee shall be paid for each separate type of registration.

(b) The form of the registration shall be prescribed by the Secretary of State and shall include the registrant's full name, firm, ~~and~~ complete ~~address;~~address and telephone number; the registrant's place of business; the full ~~name and~~name, complete address and telephone number of each person by whom the registrant is employed or retained; and a general description of the matters on which the registrant expects to act as a legislative lobbyist.

(c) Each legislative lobbyist shall ~~register again~~file an amended registration form with the Secretary of State no later than 10 days after any change in the information supplied in ~~his~~ the legislative lobbyist's last registration under subsection (b). Each supplementary registration shall include a complete statement of the information that has changed.

(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 executive or legislative lobbyists and whom they represent. Within 20 days after the beginning of the term of a Governor, the Secretary of State shall furnish the Governor, each other member of the Council of State, the head of each principal department of the Executive Branch, and the

State Legislative Library a list of all persons who have registered as executive or legislative lobbyists and whom they represent. A supplemental list of legislative lobbyists shall be furnished periodically each 20 days thereafter as the session progresses. A supplemental list of executive lobbyists shall be furnished periodically each 60 days thereafter.

(e) Each registration statement of a legislative lobbyist required under this Article shall be effective from the date of filing until January 1 of the following odd-numbered year. The legislative lobbyist shall file a new registration statement after that date, and the applicable fee shall be due and payable.

"**§ 120-47.3. Registration fee.**

(a) Every lobbyist's principal shall pay to the Secretary of State a fee of two hundred dollars ($200.00) that is due and payable by either the legislative lobbyist or the lobbyist's principal at the time of registration.

(b) A separate registration, together with a separate registration fee of two hundred dollars ($200.00) is required for each lobbyist's principal for which a person acts as a legislative lobbyist.

(c) Fees so collected shall be deposited in the General Fund of the State.

(d) The Secretary of State may prescribe that fees required under this section be paid electronically.

"**§ 120-47.4. Written authority from lobbyist's principal to be filed.**

Each legislative lobbyist shall file with the Secretary of State within 10 days after ~~his~~ the legislative lobbyist's registration a written authorization to act as such, signed by the lobbyist's principal.

"**§ 120-47.5. Contingency lobbying fees and election influence prohibited.**

(a) No person shall act as a legislative lobbyist for compensation that is dependent upon the result or outcome of any legislative action.~~which is dependent in any manner upon the passage or defeat of any proposed legislation or upon any other contingency connected with any action of the General Assembly, the House, the Senate or any committee thereof.~~

(b) No person shall attempt to influence the action of any member of the General Assembly by the promise of financial support of the member's candidacy, or by threat of financial contribution or expenditure in opposition to the member's candidacy in any future election.

"**§ 120-47.5A. Certain expenditures prohibited.**

(a) A lobbyist's principal and any legislative lobbyist acting on behalf of the lobbyist's principal shall not collectively spend more than one hundred dollars ($100.00) in a calendar year on lobbying expenditures specified in subsection (c) of this section for each covered person or legislative employee and that person's immediate family, collectively.

(b) A legislative lobbyist shall not spend more than one hundred dollars ($100.00) in a calendar year on items specified in subsection (c) of this section for each covered person or legislative employee and that person's immediate family, collectively, that are not paid or reimbursed by a lobbyist's principal. The limits of this subsection

shall apply in addition to and regardless of the number of lobbyist's principals by whom the legislative lobbyist is compensated.

(c) Lobbying expenditures include any of the following when made directly or indirectly to support lobbying, and that benefit one covered person or legislative employee, or that person's immediate family:

(1) Gifts, meals, event tickets, transportation, speaking fees, and other expenses.

(2) Loans, other than commercially available loans made on terms not more favorable than generally available to the public in the normal course of business.

(3) Contributions, other than lawful campaign contributions.

Expenses benefiting more than one recipient shall be prorated among the recipients.

(d) The prohibitions on lobbying expenditures set forth in this section shall not apply to any of the following:

(1) Gifts from a person who is the spouse, child, stepchild, parent, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, grandparent, or grandchild of the covered person or legislative employee, or who is a member of the covered person or legislative employee's household, and dependent upon the covered person or legislative employee.

(2) The cost of attendance or participation provided by the sponsoring entity of lodging, and of food and beverages consumed, at events sponsored by or in conjunction with a civic, charitable, governmental, trade association, or community organization.

"§ 120-47.6. Statements of lobbyist's lobbying expenses required.

(a) Each lobbyist shall file ~~an expense report with the Secretary of State with respect to each principal within 60 days after the last day of the regular session. This expense report shall include all expenditures made between January 1 and the last day of the regular session. The lobbyist shall file a supplemental report including all expenditures made after the last day of the regular session, but during the calendar year, by February 28 of the following year.~~ semiannual expense reports under oath with the Secretary of State, in a manner prescribed by the Secretary of State including electronically, with respect to each lobbyist's principal within 45 days after the end of the reporting periods ending on June 30 and December 31 of each year. The expense report shall include all expenditures during the prior six-month reporting period. The legislative lobbyist shall file both expense reports whether or not expenditures are made.

(b) Each expense report shall set forth the following information:

(1) ~~date of each expenditure, to whom paid, the name of any legislator who benefitted from each expenditure, and the amount of each expenditure made during the previous reporting period in connection with lobbying, in each of the following categories: (1) transportation, (2) lodging, (3) entertainment, (4) food, (5) any item having a cash equivalent value of more than twenty five dollars ($25.00) and (6) contributions made, paid, incurred or promised, directly or indirectly.~~

~~It shall not be necessary to report expenditures of twenty-five dollars ($25.00) or less, nor shall it be necessary to report any expenditures made in connection with the attendance of a legislator at any fund-raising function or event sponsored by a nonprofit organization qualified under 26 U.S.C. § 501(c). When more than 10 members of the General Assembly benefitted or were invited to benefit from an expenditure, the lobbyist shall not be required to report the name of any legislator, but shall be required to report the number of legislators or, with particularity, the basis for their selection.~~ The fair market value, date, the name and address of the person receiving payment, and the type of item or activity of each expenditure made directly or indirectly to support lobbying, that benefited any covered person, legislative employee, or that person's immediate family member, and the name of each such person who benefited.

(2) The fair market value, date, the name and address of the person receiving payment, and the type of item or activity of each contractual arrangement or direct business relationship between a legislative lobbyist or lobbyist's principal and a covered person, legislative employee, or that person's immediate family member, in effect during the reporting period or previous 12 months.

(c) All reports shall be in the form prescribed by the Secretary of State and shall be open to public ~~inspection.~~inspection upon filing.

(d) When a legislative lobbyist fails to file a lobbying expense report as required ~~herein,~~in this section, the Secretary of State shall send a certified or registered letter advising the legislative lobbyist of the delinquency and the penalties provided by law. Within 20 days of the receipt of the letter, the legislative lobbyist shall deliver or post by United States mail to the Secretary of State the required report and an additional late filing fee in an amount equal to the late filing fee under G.S. 163-278.34(a)(2).

(e) Filing of the required report and payment of the additional fee within the time extended shall constitute compliance with this section. Failure to file an expense report in one of the manners prescribed ~~herein~~ in this section shall result in revocation of any and all registrations of a legislative lobbyist under this Article. No legislative lobbyist may register or reregister under this Article until ~~he~~ the legislative lobbyist has fully complied with this section.

(f) Appeal of a decision by the Secretary of State under this section shall be in accordance with Article 3 of Chapter 150B of the General Statutes.

(g) The oath required under this section shall attest to the truthfulness and completeness of the report.

"**§ 120-47.7. Statements of lobbyist's principal lobbying expenses required.**

(a) Each lobbyist's principal shall file ~~an expense report with the Secretary of State within 60 days after the last day of the regular session. This expense report shall include all expenditures made between January 1 and the last day of the regular session. The 'principal shall file a supplemental expense report, including all expenditures made after the last day of the regular session, but during the calendar year, by February 28 of~~

~~the following year.~~ semiannual expense reports under oath with the Secretary of State within 45 days after the end of the reporting periods ending on June 30 and December 31 of each year. The expense report shall include all expenditures made during the prior six-month reporting period. The lobbyist's principal shall file both expense reports whether or not expenditures are made during a reporting period.

(b) Each expense report shall set forth the ~~name and address of each lobbyist employed, appointed, or retained by the lobbyist's principal, the date of each expenditure made, to whom paid, name of any legislator who benefitted from each expenditure, and amount of each expenditure made during the previous reporting period in connection with lobbying, in each of the following categories: (1) transportation, (2) lodging, (3) entertainment, (4) food, (5) any item having a cash equivalent value of more than twenty-five dollars ($25.00), (6) contributions made, paid, incurred or promised, directly or indirectly, and (7) compensation to lobbyists in connection with their lobbying activities. It shall not be necessary to report expenditures of twenty-five dollars ($25.00) or less, nor shall it be necessary to report any expenditures made in connection with the attendance of a legislator at any fund-raising function or event sponsored by a nonprofit organization qualified under 26 U.S.C. § 501(c). When more than 10 members of the General Assembly benefitted or were invited to benefit from an expenditure, the principal shall not be required to report the name of any legislator, but shall be required to report the number of legislators or the basis for their selection. In the category of compensation to lobbyists the principal shall estimate and report the compensation paid or promised directly or indirectly, to all lobbyists based on the estimated time, effort and expense in connection with lobbying activities on behalf of the principal. If a lobbyist is a full-time employee of the principal, or is compensated by means of an annual fee or retainer, the principal shall estimate and report the portion of all such lobbyists' salaries or retainers that compensate the lobbyists for lobbying.~~ following information:

(1) The fair market value, date, the name and address of the person receiving payment, and the type of item or activity of each expenditure made directly or indirectly to support lobbying, which benefited any covered person, legislative employee, or that person's immediate family member, and the name of each such person who benefited.

(2) The fair market value, date, the name and address of the person receiving value, and the type of item or activity of each contractual arrangement or direct business relationship between a legislative lobbyist or lobbyist's principal and a covered person, legislative employee, or that person's immediate family member, in effect during the period or previous 12 months.

(3) The compensation paid or promised to all legislative lobbyists based on estimated time and expense spent lobbying directly or indirectly on behalf of the lobbyist's principal, including developing goodwill with covered persons, and legislative employees. If a legislative lobbyist is a full-time employee of the lobbyist's principal, or is compensated by means of an annual fee or retainer, the lobbyist's principal shall

estimate and report the portion of the salary or retainer that compensates for direct and indirect lobbying. The lobbyist's principal's expense report shall include an itemized description of all expenditures reimbursed or paid to legislative lobbyists for direct and indirect lobbying that are not reported on the legislative lobbyists' reports.

(c) All reports shall be in the form prescribed by the Secretary of State and open to public ~~inspection.~~inspection upon filing.

(d) When a lobbyist's principal fails to file a lobbying expense report as required ~~herein,~~in this section, the Secretary of State shall send a certified or registered letter advising the lobbyist's principal of the delinquency and the penalties provided by law. Within 20 days of the receipt of the letter, the lobbyist's principal shall deliver or post by United States mail to the Secretary of State the required report and a late filing fee in an amount equal to the late filing fee under G.S. 163-278.34(a)(2).

(e) Filing of the required report and payment of the late fee within the time extended shall constitute compliance with this section. Failure to file an expense report in one of the manners prescribed in this section shall result in revocation of any and all registrations of a lobbyist's principal under this Article. No lobbyist's principal may register or reregister under this Article until the lobbyist's principal has fully complied with this section.

(f) Appeal of a decision by the Secretary of State under this section shall be in accordance with Article 3 of Chapter 150B of the General Statutes.

(g) The oath required under this section shall attest to the truthfulness and completeness of the report.

"**§ 120-47.7A. Powers and duties of the Secretary of State.**

(a) The Secretary of State shall perform systematic audits of reports required to be filed under G.S. 120-47.6 and G.S. 120-47.7 on a regular basis.

(b) The Secretary of State may petition a court of competent jurisdiction for the approval to issue subpoenas and subpoenas duces tecum as necessary to conduct investigations of violations of this Article. The court shall authorize subpoenas under this subsection when the court determines they are necessary for the enforcement of this Article. Subpoenas issued pursuant to this subsection shall be enforceable by the court through the court's contempt powers.

(c) Complaints of violations of this Article and all other records accumulated in conjunction with the investigation of these complaints shall be considered records of criminal investigations under G.S. 132-1.4 and shall not become public records until a determination is made by the appropriate prosecutorial authority that no criminal charges will be brought against the person against whom the complaint was filed.

"**§ 120-47.7B. Prohibitions.**

(a) No member or former member of the General Assembly may be employed as an executive or legislative lobbyist by a lobbyist's principal to lobby as defined in this Article or Article 4C of Chapter 147 of the General Statutes during any biennial legislative session to which the member or former member of the General Assembly has been elected or appointed.

(b) No person serving as Governor or as a member of the Council of State may be employed as an executive or legislative lobbyist by a lobbyist's principal to lobby as defined in this Article or Article 4C of Chapter 147 of the General Statutes during the time of the current biennial legislative session during which the person served in office.

(c) No individual registered as a legislative lobbyist shall serve as a campaign manager or a campaign treasurer under Chapter 163 of the General Statutes for a campaign for election as a member of the General Assembly.

"**§ 120-47.8. Persons exempted from provisions of Article.**

~~The~~ Except as otherwise provided in this Article, the provisions of this Article shall not be construed to apply to any of the following:

(1) An individual, not acting as a legislative lobbyist, solely engaged in expressing a personal opinion on legislative matters to ~~his~~ the individual's own legislative delegation or other members of the General Assembly.

(2) A person appearing before a legislative committee at the invitation or request of the committee or a member thereof and who engages in no further activities as a legislative lobbyist in connection with that or any other legislative ~~matter.~~action.

(3) a. A duly elected or appointed official or employee of the State, the United States, a county, municipality, school district or other governmental agency, when appearing solely in connection with matters pertaining to ~~his~~ the office and public duties.

b. Notwithstanding the persons exempted in this Article, the Governor, Council of State, and all appointed heads of State departments, agencies and institutions, shall designate all authorized official legislative liaison personnel and shall file and maintain current lists of designated legislative liaison personnel with the Secretary of ~~State and shall likewise file with the Secretary of State a full and accurate accounting of all money expended on lobbying, other than the salaries of regular full-time employees, at the same times lobbyists are required to file expense reports under G.S. 120-47.6.~~State.

(4) A person performing professional services in drafting bills or in advising and rendering opinions to clients, or to ~~legislators~~ covered persons on behalf of clients, as to the construction and effect of proposed or pending legislation where the professional services are not otherwise, directly or indirectly, connected with legislative action.

(5) A person who owns, publishes or is employed by any news medium while engaged in the acquisition or dissemination of news on behalf of the news medium.

(6) Repealed by Session Laws 1991, c. 740, s. 1.1.

(7) Members of the General Assembly.

(8) A person responding to inquiries from a member of the General Assembly or a legislative employee, and who engages in no further activities as a legislative lobbyist in connection with that or any other legislative matter.

(9) An individual giving facts or recommendations pertaining to legislative ~~matters~~ actions to ~~his~~ the individual's own legislative delegation only.

(10) An employee who represents the employer's interests in legislative action for no more than six hours during a reporting period, provided that neither the employee nor the employer makes any expenditure directly or indirectly that would be prohibited under G.S. 120-47.5A, or any expenditure reportable under G.S. 120-47.6 or G.S. 120-47.7, if the person were not exempt under this section.

"§ 120-47.9. Punishment for violation.

(a) Whoever willfully violates any provision of this Article shall be guilty of a Class 1 misdemeanor. In addition, no legislative lobbyist who is convicted of a violation of the provisions of this Article shall in any way act as a legislative or executive lobbyist for a period of two years following ~~his~~ conviction.

(b) In addition to the criminal penalties set forth in this section, the Secretary of State may levy civil fines for false or incomplete reporting up to five thousand dollars ($5,000) per violation.

"§ 120-47.10. Enforcement of Article by Attorney General.

The Secretary of State shall report apparent violations of this Article to the Attorney General. The Attorney General shall, upon complaint made to ~~him~~ the Attorney General of violations of this Article, make an appropriate investigation thereof, and ~~he~~ the Attorney General shall forward a copy of the investigation to the district attorney of the prosecutorial district as defined in G.S. 7A-60 of which Wake County is a part, who shall prosecute any person who violates any provisions of this Article.

"§ 120-47.11. Rules and forms.

The Secretary of State shall ~~make, amend, and rescind~~adopt any rules, orders, forms, and definitions as are necessary to carry out the provisions of this Article.

"§ 120-47.12. Limitations on agency legislative liaisons.

(a) No ~~principal~~ State department may use State funds to contract with persons who are not employed by the State to lobby the General Assembly.

(b) No more than two persons in each ~~principal~~ State department and constituent institution of The University of North Carolina may be registered to lobby the General Assembly or designated as legislative ~~liaisons~~ liaison personnel pursuant to this Article.

(c) All persons designated as legislative liaison personnel pursuant to this Article and the State department or constituent institution of The University of North Carolina who employs the legislative liaison personnel shall report all expenditures made for lobbying purposes in the same manner as required for legislative lobbyists under G.S. 120-47.6 and lobbyist's principals under G.S. 120-47.7."

SECTION 2. Chapter 147 of the General Statutes is amended by adding a new Article to read:

"Article 4C.
"Executive Branch Lobbying.

"**§ 147-54.31. Definitions.**

For the purposes of this Article, the following terms shall have the meanings ascribed to them in this section unless the context clearly indicates a different meaning:

(1) The terms "contribution," "compensation," and "expenditure" mean any advance, conveyance, deposit, payment, gift, retainer, fee, salary, honorarium, reimbursement, loan, pledge, or anything of value and any contract, agreement, promise, or other obligation whether or not legally enforceable.

(2) The term "developing executive branch goodwill" means the attempt to obtain the goodwill of an executive branch officer or employee by communications or activities with that executive branch officer or employee with the intention of ultimately influencing executive action.

(3) The term "executive action" means the preparation, research, drafting, introduction, consideration, modification, amendment, approval, passage, adoption, tabling, postponement, defeat, or rejection of a rule, regulation, executive order, policy, resolution, contract, request for proposal, amendment, motion, report, nomination, or appointment by the executive branch or by a member or employee of the executive branch acting or purporting to act in an official capacity. This term shall not include any action by an attorney in connection with litigation or an administrative hearing under Chapter 150B of the General Statutes, involving a State official or State agency.

(4) The term "executive branch officer or employee" means the Governor, any member of the Council of State, State official, member of a State board, commission, council or authority, State employee, or any other person elected or appointed to a Council of State position prior to taking office, who participates in decision making regarding executive action but does not include persons chiefly engaged in clerical, secretarial, or ministerial duties.

(5) The term "executive lobbyist" means any lobbyist for or against executive action.

(6) The term "immediate family member" means spouse, unemancipated children living in the individual's household, or persons claimed by the individual or the individual's spouse as dependents for tax purposes, living in the household.

(7) The term "legislative lobbyist" means a lobbyist registered pursuant to Article 9A of Chapter 120 of the General Statutes.

(8) The term "lobbying" means any of the following:

a. Influencing or attempting to influence executive action or developing executive branch goodwill through direct oral or written communication with an officer or employee of the executive branch authorized to take such action, including

members of boards, commissions, councils, or other collective bodies.

b. Solicitation of others by lobbyists to influence executive action.

(9) The term "lobbyist" means an individual who:

a. Is employed and receives compensation, or who contracts for economic consideration, for the purpose of lobbying; or

b. Represents another person and receives compensation for the purpose of lobbying.

The term "lobbyist" shall not include those individuals who are specifically exempted from this Article by G.S. 147-54.40. For the purpose of determining whether an individual is a lobbyist under this subdivision, reimbursement of actual travel and subsistence expenses shall not be considered compensation; provided, however, that reimbursement in the ordinary course of business of these expenses shall be considered compensation if a significant part of the individual's duties involves lobbying before the Executive Branch.

(10) The terms "lobbyist's principal" and "principal" mean the person on whose behalf the executive lobbyist lobbies.

(11) The term "person" means any individual, firm, partnership, committee, association, corporation, business entity, or any other organization or group of persons.

"**§ 147-54.32. Registration procedure.**

(a) An executive lobbyist shall file a registration statement with the Secretary of State before engaging in any lobbying, in a manner prescribed by the Secretary of State, including electronically. A separate registration statement is required for each lobbyist's principal. The registration shall indicate whether it is for executive action, legislative action, or both, and a separate registration fee shall be paid for each separate type of registration.

(b) The form of the registration shall be prescribed by the Secretary of State and shall include the registrant's full name, firm, complete address, and telephone number; the registrant's place of business; the full name, complete address, and telephone number of each person by whom the registrant is employed or retained; and a general description of the matters on which the registrant expects to act as a lobbyist.

(c) Each executive lobbyist shall file an amended registration form with the Secretary of State no later than 10 days after any change in the information supplied in the executive lobbyist's last registration under subsection (b) of this section. Each supplementary registration shall include a complete statement of the information that has changed.

(d) Each registration statement of an executive lobbyist required under this Article shall be effective from the date of filing until January 1 of the following year. The executive lobbyist shall file a new registration statement effective on or before January 1 for the subsequent year and annually thereafter. The applicable fee shall be due and payable upon the filing of each registration statement.

"**§ 147-54.33. Registration fee.**

(a) Every lobbyist's principal shall pay to the Secretary of State a fee of two hundred dollars ($200.00) that is due and payable by either the executive lobbyist or the lobbyist's principal at the time of registration.

(b) A separate registration, together with a separate registration fee of two hundred dollars ($200.00), is required for each lobbyist's principal for which a person acts as an executive lobbyist.

(c) Fees collected under this section shall be deposited in the General Fund of the State.

(d) The Secretary of State may prescribe that fees required under this section be paid electronically.

"**§ 147-54.34. Written authority from lobbyist's principal to be filed.**

Each executive lobbyist shall file with the Secretary of State within 10 days after the executive lobbyist's registration a written authorization to act as such, signed by the lobbyist's principal.

"**§ 147-54.35. Contingency lobbying fees and election influence prohibited.**

(a) No person shall act as an executive lobbyist for compensation that is dependent upon the result or outcome of any executive action.

(b) No person shall attempt to influence the action of an executive branch officer or employee by the promise of financial support of the executive branch officer's or employee's candidacy, or by threat of financial contribution or expenditure in opposition to the executive branch officer's or employee's candidacy in any future election.

"**§ 147-54.36. Certain expenditures prohibited.**

(a) A lobbyist's principal and any executive lobbyist acting on behalf of the principal shall not collectively spend more than one hundred dollars ($100.00) in a calendar year on lobbying expenditures specified in subsection (c) of this section for each executive branch officer or employee and that person's immediate family, collectively.

(b) An executive lobbyist shall not spend more than one hundred dollars ($100.00) in a calendar year on items specified in subsection (c) of this section for each executive branch officer or employee and that person's immediate family, collectively, that are not paid or reimbursed by a lobbyist's principal. The limits of this subsection shall apply in addition to and regardless of the number of lobbyist's principals by whom the executive lobbyist is compensated.

(c) Lobbying expenditures include any of the following when made directly or indirectly to support lobbying, and that benefit one executive branch officer or employee, or that person's immediate family:

(1) Gifts, meals, event tickets, transportation, speaking fees, and other expenses.

(2) Loans, other than commercially available loans made on terms not more favorable than generally available to the public in the normal course of business.

(3) Contributions, other than lawful campaign contributions.

Expenses benefiting more than one recipient shall be prorated among the recipients.

(d) The prohibitions on lobbying expenditures set forth in this section shall not apply to any of the following:

(1) Gifts from a person who is the spouse, child, stepchild, parent, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, grandparent, or grandchild of the executive branch officer or employee, or who is a member of the executive branch officer or employee's household, and dependent upon the executive branch officer or employee.

(2) The cost of attendance or participation provided by the sponsoring entity, of lodging, and of food and beverages consumed, at events sponsored by or in conjunction with a civic, charitable, governmental, trade association, or community organization.

"**§ 147-54.37. Statements of lobbyist's lobbying expenses required.**

(a) Each executive lobbyist shall file semiannual expense reports under oath with the Secretary of State, in a manner prescribed by the Secretary of State including electronically, with respect to each lobbyist's principal within 45 days after the end of the reporting periods ending on June 30 and December 31 of each year. The expense report shall include all expenditures during the prior six-month reporting period. The executive lobbyist shall file an expense report whether or not expenditures are made.

(b) Each expense report shall set forth the following information:

(1) The fair market value, date, the name and address of the person receiving payment, and the type of item or activity of each expenditure made directly or indirectly to support lobbying, including developing executive branch goodwill, which benefited any executive branch officer or employee, or that person's immediate family member, and the name of each such person who benefited.

(2) The fair market value, date, the name and address of the person receiving value, and the type of item or activity of each contractual arrangement or direct business relationship between an executive lobbyist or lobbyist's principal and an executive branch officer or employee, or that person's immediate family member, in effect during the period or previous 12 months.

(c) All reports shall be in the form prescribed by the Secretary of State and shall be open to public inspection upon filing.

(d) When an executive lobbyist fails to file a lobbying expense report as required herein, the Secretary of State shall send a certified or registered letter advising the executive lobbyist of the delinquency and the penalties provided by law. Within 20 days of the receipt of the letter, the executive lobbyist shall deliver or post by United States mail to the Secretary of State the required report and an additional late filing fee in an amount equal to the late filing fee under G.S. 163-278.34(a)(2).

(e) Filing of the required report and payment of the additional fee within the time extended shall constitute compliance with this section. Failure to file an expense report in one of the manners prescribed herein shall result in revocation of any and all registrations of an executive lobbyist under this Article. No executive lobbyist may

register or reregister under this Article until the executive lobbyist has fully complied with this section. Appeal of a decision by the Secretary of State shall be in accordance with Article 3 of Chapter 150B of the General Statutes.

(f) Appeal of a decision by the Secretary of State under this section shall be in accordance with Article 3 of Chapter 150B of the General Statutes.

(g) The oath required under this section shall attest to the truthfulness and completeness of the report.

"**§ 147-54.38. Statements of lobbyist's principal lobbying expenses required.**

(a) Each executive lobbyist's principal shall file semiannual expense reports under oath with the Secretary of State within 45 days after the end of the reporting periods ending on June 30 and December 31 of each year. The expense report shall include all expenditures made during the prior six-month reporting period. The lobbyist's principal shall file an expense report whether or not expenditures are made during a reporting period.

(b) Each expense report shall set forth the following information:

(1) The fair market value, date, the name and address of the person receiving payment, and the type of item or activity of each expenditure made directly or indirectly to support lobbying, including developing executive branch goodwill, which benefited any executive branch officer or employee, or that person's immediate family member, and the name of each such person who benefited.

(2) The fair market value, date, the name and address of the person receiving payment, and the type of item or activity of each contractual arrangement or direct business relationship between an executive legislative lobbyist or lobbyist's principal and an executive branch officer or employee, or that person's immediate family member, in effect during the period or previous 12 months.

(3) The compensation paid or promised to all executive lobbyists based on estimated time and expense spent lobbying directly or indirectly on behalf of the principal, including developing goodwill with executive branch officers or employees. If an executive lobbyist is a full-time employee of the lobbyist's principal, or is compensated by means of an annual fee or retainer, the lobbyist's principal shall estimate and report the portion of the salary or retainer that compensates for direct and indirect lobbying. The principal's expense report shall include an itemized description of all expenditures reimbursed or paid to executive lobbyists for direct and indirect lobbying that are not reported on the executive lobbyist's reports.

(c) All reports shall be in the form prescribed by the Secretary of State and open to public inspection upon filing.

(d) When a lobbyist's principal fails to file a lobbying expense report as required in this section, the Secretary of State shall send a certified or registered letter advising the lobbyist's principal of the delinquency and the penalties provided by law. Within 20 days of the receipt of the letter, the lobbyist's principal shall deliver or post by United

States mail to the Secretary of State the required report and a late filing fee in an amount equal to the late filing fee under G.S. 163-278.34(a)(2).

(e) Filing of the required report and payment of the late fee within the time extended shall constitute compliance with this section.

(f) Appeal of a decision by the Secretary of State under this section shall be in accordance with Article 3 of Chapter 150B of the General Statutes.

(g) The oath required under this section shall attest to the truthfulness and completeness of the report.

"**§ 147-54.39. Powers and duties of the Secretary of State.**

(a) The Secretary of State shall perform systematic audits of reports required to be filed under G.S. 147-54.37 and G.S. 147-54.38 on a regular basis.

(b) The Secretary of State may petition a court of competent jurisdiction for the approval to issue subpoenas and subpoenas duces tecum as necessary to conduct investigations of violations of this Article. The court shall authorize subpoenas under this subsection when the court determines they are necessary for the enforcement of this Article. Subpoenas issued pursuant to this subsection shall be enforceable by the court through the court's contempt powers.

(c) Complaints of violations of this Article and all other records accumulated in conjunction with the investigation of these complaints shall be considered records of criminal investigations under G.S. 132-1.4 and shall not become public records until a determination is made by the appropriate prosecutorial authority that no criminal charges will be brought against the person against whom the complaint was filed.

"**§ 147-54.40. Persons exempted from provisions of Article.**

The provisions of this Article shall not be construed to apply to any of the following:

(1) An individual, not acting as an executive lobbyist, solely engaged in expressing a personal opinion on an executive action.

(2) A person appearing before a committee, commission, board, council, or other collective body at the invitation or request of the collective body or a member thereof and who engages in no further activities as an executive lobbyist in connection with that or any other executive action.

(3) A duly elected or appointed official or employee of the State, the United States, a county, municipality, school district, or other governmental agency, when appearing solely in connection with matters pertaining to his office and public duties.

(4) A person performing professional services in drafting bills, rules, regulations, executive orders, policies, resolutions, contracts, or requests for proposal, or in advising and rendering opinions to clients, or executive branch officials on behalf of clients, as to the construction and effect of proposed or pending executive action where the professional services are not otherwise, directly or indirectly, connected with executive action.

(5) A person who owns, publishes, or is employed by any news medium while engaged in the acquisition or dissemination of news on behalf of the news medium.

(6) A person responding to inquiries from an executive branch officer or employee and who engages in no further activities as an executive lobbyist in connection with that or any other executive branch matter.

(7) A person appearing before an executive branch agency or department on behalf of another person, on an individual application for a license or permit, or a disciplinary action on a license or permit.

(8) An employee who represents the employer's interests in executive action for no more than six hours during a six-month reporting period, provided that neither the employee nor the employer make any expenditure directly or indirectly that would be prohibited under G.S. 147-54.36, or any expenditure reportable under G.S. 147-54.37 or G.S. 147-54.38, if the person were not exempt under this section.

"**§ 147-54.41. Punishment for violation.**

(a) Whoever willfully violates any provision of this Article shall be guilty of a Class 1 misdemeanor. In addition, no executive lobbyist who is convicted of a violation of the provisions of this Article shall in any way act as an executive or legislative lobbyist for a period of two years following conviction.

(b) In addition to the criminal penalties set forth in this section, the Secretary of State may levy civil fines for false or incomplete reporting up to five thousand dollars ($5,000) per violation.

"**§ 147-54.42. Enforcement of Article by Attorney General.**

The Secretary of State shall report apparent violations of this Article to the Attorney General. The Attorney General shall, upon complaint made to the Attorney General of violations of this Article, make an appropriate investigation thereof, and the Attorney General shall forward a copy of the investigation to the district attorney of the prosecutorial district as defined in G.S. 7A-60, of which Wake County is a part, who shall prosecute any person who violates any provisions of this Article.

"**§ 147-54.43. Rules and forms.**

The Secretary of State shall adopt any rules, orders, forms, and definitions as are necessary to carry out the provisions of this Article."

SECTION 3. This act becomes effective January 1, 2006.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 612*
Judiciary I Committee Substitute Adopted 3/31/05
Finance Committee Substitute Adopted 4/11/05
Fourth Edition Engrossed 4/14/05
PROPOSED HOUSE COMMITTEE SUBSTITUTE S612-CSST-77 [v.1]

7/18/2005 4:58:15 PM

Short Title: Amend Lobbying Laws. (Public)

Sponsors:

Referred to:

March 17, 2005

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LOBBYING LAWS BY INCREASING THE INFORMATION REQUIRED TO BE REPORTED ON LOBBYING ACTIVITIES AND BY REQUIRING REPORTING OF LOBBYING ACTIVITIES OF EXECUTIVE BRANCH OFFICERS, AND TO APPROPRIATE FUNDS TO IMPLEMENT THE ACT.

The General Assembly of North Carolina enacts:

SECTION 1. Article 9A of Chapter 120 of the General Statutes reads as rewritten:

"Article 9A.

"Legislative Branch Lobbying.

"§ 120-47.1. Definitions.

~~For the purposes of this Article, the following terms shall have the meanings ascribed to them in this section unless the context clearly indicates a different meaning:~~The following definitions shall apply in this Article:

(1) The term "covered person" means a legislator, the Governor, or the Lieutenant Governor.

~~(1)~~(1a) The ~~terms "contribution," "compensation" and~~ term "expenditure" ~~mean~~ means any advance, contribution, conveyance, deposit, distribution, payment, gift, retainer, fee, salary, honorarium, reimbursement, loan, pledge or ~~anything~~ thing of value greater than ten dollars ($10.00), ~~and any~~or ~~contract~~a contract, agreement, promise or other obligation whether or not legally enforceable, ~~but those terms do not include prizes, awards, or compensation not exceeding one hundred dollars ($100.00) in a calendar year.~~that directly or indirectly

is made to, at the request of, for the benefit of, or on the behalf of a covered person, legislative employee, or that person's immediate family member.

(1b) The term "executive lobbyist" means a lobbyist registered pursuant to Article 4C of Chapter 147 of the General Statutes.

(2), (3) Repealed by Session Laws 1991, c. 740, s. 1.1.

(3a) The term "immediate family member" means spouse, unemancipated children living in the individual's household, or persons claimed by the individual or the individual's spouse as dependents for tax purposes living in the individual's household.

(4) The term "legislative action" means the preparation, research, drafting, introduction, consideration, modification, amendment, approval, passage, enactment, tabling, postponement, defeat, or rejection of a bill, resolution, amendment, motion, report, nomination, appointment, or other matter by the legislature or by a member or employee of the legislature acting or purporting to act in an official capacity. It also includes the consideration of any bill by the Governor for the Governor's approval or veto under Article II, Section 22(1) of the Constitution or for the Governor to allow the bill to become law under Article II, Section 22(7) of the Constitution.

(4a) The term "legislative employee" means employees and officers of the General Assembly.

(4b) The term "legislative liaison personnel" means any State ~~officer or employee~~officer whose principal ~~duties~~ duties, in practice or as set forth in that person's job ~~description~~ description, ~~involve~~ include lobbying the General Assembly.

(4c) The term "legislative lobbyist" means any lobbyist for or against legislative action.

(4d) The term "legislator" means a member of the General Assembly or a person elected or appointed a member of the General Assembly prior to taking office.

(5) The term "lobbying" ~~means:~~means any of the following:

a. Influencing or attempting to influence legislative action through direct ~~oral or written~~ communication or activities with a ~~member of the General Assembly; or~~covered person, legislative employee, or that person's immediate family member.

b. Solicitation of others by legislative lobbyists or lobbyist's principals to influence legislative action.

c. Developing goodwill through communications or activities with a covered person, legislative employee, or that person's immediate family with the intention of influencing current or future legislative action, but does not include communications or activities with a covered person, legislative employee, or that person's immediate family member in a business, civic,

religious, fraternal, or commercial relationship which is not connected to legislative action.

(6) The term "lobbyist" means an individual ~~who:~~who meets any of the following criteria:

a. Is employed and receives compensation, or who contracts for economic consideration, for the purpose of ~~lobbying; or~~lobbying.

b. Represents another person and receives compensation for the purpose of lobbying.

c. Is legislative liaison personnel.

The term "lobbyist" shall not include those individuals who are specifically exempted from this Article by G.S. 120-47.8. For the purpose of determining whether an individual is a lobbyist under this subdivision, reimbursement of actual travel and subsistence expenses shall not be considered compensation; provided, however, that reimbursement in the ordinary course of business of these expenses shall be considered compensation if a significant part of the individual's duties involve lobbying before the General Assembly.

(7) The terms "lobbyist's principal" and "principal" mean the ~~entity~~ ~~in~~person on whose behalf the legislative lobbyist ~~influences or attempts to influence legislative action.~~lobbies. In the case where a lobbyist is employed by a law firm, consulting firm, or other entity retained by a person for legislative lobbying, the principal is the person whose interests the lobbyist represents in lobbying.

(8) The term "person" means any individual, firm, partnership, committee, association, corporation, business entity, or any other organization or group of persons.

(9) The General Assembly is in "regular session" from the date set by law or resolution that the General Assembly convenes until the General Assembly either:

a. Adjourns sine die; or

b. Recesses or adjourns for more than 10 days.

"**§ 120-47.2. Registration procedure.**

(a) A legislative lobbyist shall file a registration statement with the Secretary of State before engaging in any ~~lobbying.~~lobbying, in a manner prescribed by the Secretary of State. It shall be unlawful for a person to lobby without registering unless exempted by this Article. A separate registration statement is required for each lobbyist's principal. The registration shall indicate whether it is registration as a legislative lobbyist, executive lobbyist, or both, and a separate registration fee shall be paid for each separate type of registration.

(b) The form of the registration shall be prescribed by the Secretary of State and shall include the registrant's full name, firm, ~~and~~ complete ~~address;~~address and telephone number; the registrant's place of business; the full ~~name and~~name, complete address and telephone number of each person by whom the registrant is employed or

retained; and a general description of the matters on which the registrant expects to act as a legislative lobbyist. The Secretary of State shall make available as soon as practicable the registrations of the lobbyists and lobbyists' principals in an electronic, searchable format.

(c) Each legislative lobbyist shall ~~register again~~file an amended registration form with the Secretary of State no later than 10 days after any change in the information supplied in ~~his~~ the legislative lobbyist's last registration under subsection (b). Each supplementary registration shall include a complete statement of the information that has changed.

(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 executive or legislative lobbyists and whom they represent. Within 20 days after the beginning of the term of a Governor, the Secretary of State shall furnish the Governor, each other member of the Council of State, the head of each principal department of the Executive Branch, and the State Legislative Library a list of all persons who have registered as executive or legislative lobbyists and whom they represent. A supplemental list of legislative lobbyists shall be furnished periodically each 20 days thereafter as the session progresses. A supplemental list of executive lobbyists shall be furnished periodically each 60 days thereafter. All lists required by this section may be furnished electronically.

(e) Each registration statement of a legislative lobbyist required under this Article shall be effective from the date of filing until January 1 of the following ~~odd-numbered~~ year. The legislative lobbyist shall file a new registration statement after that date, and the applicable fee shall be due and payable.

"§ 120-47.3. Registration fee.

(a) Every lobbyist's principal shall pay to the Secretary of State a fee of ~~two hundred dollars ($200.00)~~ one hundred dollars ($100.00) that is due and payable by either the legislative lobbyist or the lobbyist's principal at the time of registration. If the legislative lobbyist is also registering as an executive lobbyist for that lobbyist's principal, the fee shall be seventy-five dollars ($75.00) to register as a legislative lobbyist.

(b) A separate registration, together with a separate registration fee of ~~two hundred dollars ($200.00)~~ one hundred dollars ($100.00) is required for each lobbyist's principal for which a person acts as a legislative lobbyist. If the lobbyist's principal is also registering under Article 4C of Chapter 147 of the General Statutes, the fee shall be seventy-five dollars ($75.00).

(c) ~~Fees so collected shall be deposited in the General Fund of the State.~~ All fees shall be paid to the Department of the Secretary of State and deposited into the Lobbyist Registration Fund to be used to pay the costs incurred in administering and enforcing this Article.

(d) The Secretary of State may prescribe that fees required under this section be paid electronically.

"§ 120-47.4. Written authority from lobbyist's principal to be filed.

Each legislative lobbyist shall file with the Secretary of State within 10 days after ~~his~~ the legislative lobbyist's registration a written authorization to act as such, signed by the lobbyist's principal.

"§ 120-47.5. Contingency lobbying fees and election influence prohibited.

(a) No person shall act as a legislative lobbyist for compensation that is dependent upon the result or outcome of any legislative action. ~~which is dependent in any manner upon the passage or defeat of any proposed legislation or upon any other contingency connected with any action of the General Assembly, the House, the Senate or any committee thereof.~~

(b) No ~~person~~ legislative lobbyist or legislative lobbyist's principal shall attempt to influence the action of any ~~member of the General Assembly~~ covered person by the promise of financial support of the ~~member's~~covered person's candidacy, or by threat of financial ~~contribution~~ support in opposition to the ~~member's~~ covered person's candidacy in any future election.

"§ 120-47.5A. Exemptions and inclusions for reporting purposes.

(a) For purposes of G.S. 120-47.6 and G.S. 120-47.7, the following expenditures need not be reported:

(1) Gifts from an immediate family member or person who is the child, stepchild, parent, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, grandparent, or grandchild of the covered person or legislative employee.

(2) Lawful campaign contributions.

(b) For purposes of G.S. 120-47.6 and G.S. 120-47.7, all expenditures made for the purpose of lobbying shall be reported, including the following:

(1) Expenditures benefiting a covered person, a legislative employee, or those persons' immediate family members in the regular course of that person's nonlegislative employment.

(2) Contractual arrangements or direct business relationships between a legislative lobbyist or legislative lobbyist's principal and a covered person, legislative employee, or that person's immediate family member, in effect during the reporting period or the previous 12 months.

(3) Amounts reimbursed by a principal to a legislative lobbyist in the ordinary course of business by the lobbyist's principal or other employer.

"§ 120-47.6. Statements of legislative lobbyist's lobbying ~~expenses~~ expenditures required.

(a) Each legislative lobbyist shall file ~~an expense report with the Secretary of State with respect to each principal within 60 days after the last day of the regular session. This expense report shall include all expenditures made between January 1 and the last day of the regular session. The lobbyist shall file a supplemental report including all expenditures made after the last day of the regular session, but during the calendar year, by February 28 of the following year.~~ monthly expenditure reports under oath with the Secretary of State, in a manner prescribed by the Secretary of State

including electronically, with respect to each lobbyist's principal, while the General Assembly is in regular session, and quarterly thereafter. The expenditure report shall include all expenditures during the reporting period, and shall be due 10 business days after the end of the reporting period. The legislative lobbyist shall file ~~both~~ expense reports whether or not expenditures are made.

(b) Each ~~expense~~ expenditure report shall set forth the ~~date of each expenditure, to whom paid, the name of any legislator who benefitted from each expenditure, and the amount of each expenditure made during the previous reporting period in connection with lobbying, in each of the following categories: (1) transportation, (2) lodging, (3) entertainment, (4) food, (5) any item having a cash equivalent value of more than twenty five dollars ($25.00) and (6) contributions made, paid, incurred or promised, directly or indirectly. It shall not be necessary to report expenditures of twenty five dollars ($25.00) or less, nor shall it be necessary to report any expenditures made in connection with the attendance of a legislator at any fund raising function or event sponsored by a nonprofit organization qualified under 26 U.S.C. § 501(c). When more than 10 members of the General Assembly benefitted or were invited to benefit from an expenditure, the lobbyist shall not be required to report the name of any legislator, but shall be required to report the number of legislators or, with particularity, the basis for their selection.~~amount, date, a description of the expenditure, name and address of the payee, and name of any covered person, legislative employee, or that person's immediate family member benefiting from the expenditure. Such expenditures shall be reported using the following categories:

(1) Transportation and lodging.
(2) Entertainment, food, and beverages.
(3) Meetings and events.
(4) Gifts.
(5) Solicitation of others to lobby.
(6) Other expenditures.

(c) All reports shall be in the form prescribed by the Secretary of State and shall be open to public ~~inspection.~~inspection upon filing. When more than 15 covered persons benefit from an expenditure, no names of individuals need be reported provided that the report identifies the approximate number of covered persons benefiting and, with particularity, the basis for their selection, including the name of the legislative body, committee, caucus, or other group whose membership list is a matter of public record in accordance with G.S. 132-1 or including a description of the group that clearly distinguishes its purpose or composition from the general membership of the General Assembly. The approximate number of legislative employees and immediate family members of covered persons and legislative employees who benefited from the expenditure shall be listed separately.

(d) When a legislative lobbyist fails to file ~~a lobbying expense~~an expenditure report as required ~~herein,~~in this section, the Secretary of State shall send a certified or registered letter advising the legislative lobbyist of the delinquency and the penalties provided by law. Within 20 days of the receipt of the letter, the legislative lobbyist shall deliver or post by United States mail to the Secretary of State the required report and an

additional late filing fee in an amount equal to the late filing fee under G.S. 163-278.34(a)(2).

(e) Filing of the required report and payment of the additional fee within the time extended shall constitute compliance with this section. Failure to file an ~~expense~~ expenditure report in one of the manners prescribed ~~herein~~ in this section shall result in revocation of any and all registrations of a legislative lobbyist under this Article. No legislative lobbyist may register or reregister under this Article until ~~he~~ the legislative lobbyist has fully complied with this section.

(f) Appeal of a decision by the Secretary of State under this section shall be in accordance with Article 3 of Chapter 150B of the General Statutes.

(g) The Secretary of State may adopt rules to facilitate disclosure of expenditures, including the format of reports and additional categories of information, and to protect the addresses of payees under protective order issued pursuant to Chapter 50B of the General Statutes or participating in the Address Confidentiality Program pursuant to Chapter 15C of the General Statutes.

"§ 120-47.7. Statements of legislative lobbyist's principal lobbying ~~expenses~~ expenditures required.

(a) Each legislative lobbyist's principal shall file ~~an expense report with the Secretary of State within 60 days after the last day of the regular session. This expense report shall include all expenditures made between January 1 and the last day of the regular session. The 'principal shall file a supplemental expense report, including all expenditures made after the last day of the regular session, but during the calendar year, by February 28 of the following year.~~ monthly expenditure reports under oath with the Secretary of State, in a manner prescribed by the Secretary of State including electronically, while the General Assembly is in regular session, and quarterly thereafter. The expenditure report shall include all expenditures during the reporting period, and shall be due 10 business days after the end of the reporting period. The lobbyist's principal shall file ~~both expense~~ the expenditure reports whether or not expenditures are made during a reporting period.

(b) Each ~~expense~~ expenditure report shall set forth the ~~name and address of each lobbyist employed, appointed, or retained by the lobbyist's principal, the date of each expenditure made, to whom paid, name of any legislator who benefitted from each expenditure, and amount of each expenditure made during the previous reporting period in connection with lobbying, in each of the following categories: (1) transportation, (2) lodging, (3) entertainment, (4) food, (5) any item having a cash equivalent value of more than twenty-five dollars ($25.00), (6) contributions made, paid, incurred or promised, directly or indirectly, and (7) compensation to lobbyists in connection with their lobbying activities. It shall not be necessary to report expenditures of twenty-five dollars ($25.00) or less, nor shall it be necessary to report any expenditures made in connection with the attendance of a legislator at any fund-raising function or event sponsored by a nonprofit organization qualified under 26 U.S.C. § 501(c). When more than 10 members of the General Assembly benefitted or were invited to benefit from an expenditure, the principal shall not be required to report the name of any legislator, but shall be required to report the number of legislators or the basis for their selection. In~~

~~the category of compensation to lobbyists the principal shall estimate and report the compensation paid or promised directly or indirectly, to all lobbyists based on the estimated time, effort and expense in connection with lobbying activities on behalf of the principal. If a lobbyist is a full-time employee of the principal, or is compensated by means of an annual fee or retainer, the principal shall estimate and report the portion of all such lobbyists' salaries or retainers that compensate the lobbyists for lobbying.~~ amount, date, a description of the expenditure, name and address of the payee, and name of any covered person, legislative employee, or that person's immediate family member affected by the expenditure. Such expenditures shall be reported using the following categories:

(1) Transportation and lodging.
(2) Entertainment, food, and beverages.
(3) Meetings and events.
(4) Gifts.
(5) Solicitation of others to lobby.
(6) The compensation paid or agreed to be paid to all legislative lobbyists. If a legislative lobbyist is a full-time employee of the lobbyist's principal, or is compensated by means of an annual fee or retainer, the lobbyist's principal shall estimate and report the portion of the salary or retainer that compensates for direct and indirect lobbying. The lobbyist's principal's expenditure report shall include an itemized description of all expenditures reimbursed or paid to legislative lobbyists for lobbying that are not reported on the legislative lobbyists' reports. For purposes of this subsection, amounts reimbursed in the ordinary course of business shall be considered compensation if a significant part of the individual's duties involves legislative lobbying, whether reimbursed by the principal or another source.
(7) Other expenditures.

(c) All reports shall be in the form prescribed by the Secretary of State and open to public ~~inspection.~~inspection upon filing. When more than 15 covered persons benefit from an expenditure, no names of individuals need be reported provided that the report identifies the approximate number of covered persons benefiting and, with particularity, the basis for their selection, including the name of the legislative body, committee, caucus, or other group whose membership list is a matter of public record in accordance with G.S. 132-1 or including a description of the group that clearly distinguishes its purpose or composition from the general membership of the General Assembly. The approximate number of legislative employees and immediate family members of covered persons and legislative employees who benefited from the expenditure shall be listed separately.

(d) When a lobbyist's principal fails to file ~~a lobbying expense~~an expenditure report as required ~~herein,~~in this section, the Secretary of State shall send a certified or registered letter advising the lobbyist's principal of the delinquency and the penalties provided by law. Within 20 days of the receipt of the letter, the lobbyist's principal shall

deliver or post by United States mail to the Secretary of State the required report and a late filing fee in an amount equal to the late filing fee under G.S. 163-278.34(a)(2).

(e) Filing of the required report and payment of the late fee within the time extended shall constitute compliance with this section. Failure to file an expenditure report in one of the manners prescribed in this section shall result in revocation of any and all registrations of a lobbyist's principal under this Article. No lobbyist's principal may register or reregister under this Article until the lobbyist's principal has fully complied with this section.

(f) Appeal of a decision by the Secretary of State under this section shall be in accordance with Article 3 of Chapter 150B of the General Statutes.

(g) The Secretary of State may adopt rules to facilitate disclosure of expenditures, including the format of reports and additional categories of information, and to protect the addresses of payees under protective order issued pursuant to Chapter 50B of the General Statutes or participating in the Address Confidentiality Program pursuant to Chapter 15C of the General Statutes.

"**§ 120-47.7B. Powers and duties of the Secretary of State.**

(a) The Secretary of State shall perform systematic audits of reports required to be filed under G.S. 120-47.6 and G.S. 120-47.7 on a regular basis.

(b) The Secretary of State may petition the Superior Court of Wake County for the approval to issue subpoenas and subpoenas duces tecum as necessary to conduct investigations of violations of this Article. The court shall authorize subpoenas under this subsection when the court determines they are necessary for the enforcement of this Article. Subpoenas issued pursuant to this subsection shall be enforceable by the court through contempt powers.

(c) Complaints of violations of this Article and all other records accumulated in conjunction with the investigation of these complaints shall be considered records of criminal investigations under G.S. 132-1.4.

"**§ 120-47.7C. Prohibitions.**

(a) No member or former member of the General Assembly may be employed as an executive or legislative lobbyist by a lobbyist's principal to lobby as defined in this Article or Article 4C of Chapter 147 of the General Statutes within one year after the expiration of the term for which the member was elected or appointed to serve.

(b) No person serving as Governor, as a member of the Council of State, or as a head of a principal State department listed in G.S. 143B-6 may be employed as an executive or legislative lobbyist by a lobbyist's principal to lobby as defined in this Article or Article 4C of Chapter 147 of the General Statutes within one year after separation from employment or leaving office, whichever is later.

(c) No individual registered as a legislative lobbyist shall serve as a campaign manager or a campaign treasurer under Chapter 163 of the General Statutes for a campaign for election as a member of the General Assembly.

(d) A legislative or executive lobbyist shall not be eligible for appointment to any board, authority, commission, or other body established by the laws of this State that regulates the activities of a person that the lobbyist represented within one year after the expiration of the lobbyist's registration.

(e) No legislative or executive lobbyist or another acting on the lobbyist's behalf shall permit a covered person, legislative employee, executive branch officer, or that person's immediate family member to use the cash or credit of the lobbyist for the purpose of lobbying unless the lobbyist is in attendance at the time of the expenditure.

"§ 120-47.8. Persons exempted from provisions of Article.

~~The~~ Except as otherwise provided in this Article, the provisions of this Article shall not be construed to apply to any of the following:

(1) An ~~individual, not acting as a lobbyist,~~ individual solely engaged in expressing a personal opinion or stating facts or recommendations on legislative matters to ~~his own legislative delegation or other~~ members of the General Assembly.

(2) A person appearing before a legislative committee at the invitation or request of the committee or a member thereof and who engages in no further activities as a legislative ~~lobbyist in connection with that or any other legislative matter.action.~~lobbyist.

(3) a. A duly elected or appointed official or employee of the State, the United States, a county, municipality, school district or other governmental agency, when appearing solely in connection with matters pertaining to ~~his~~ the office and public duties.

b. Notwithstanding the persons exempted in this Article, the Governor, Council of State, and all appointed heads of State departments, agencies and institutions, shall designate all authorized official legislative liaison personnel and shall file and maintain current lists of designated legislative liaison personnel with the Secretary of ~~State and shall likewise file with the Secretary of State a full and accurate accounting of all money expended on lobbying, other than the salaries of regular full-time employees, at the same times lobbyists are required to file expense reports under G.S. 120-47.6.~~State.

(4) A person performing professional services in drafting bills or in advising and rendering opinions to clients, or to ~~legislators~~ covered persons on behalf of clients, as to the construction and effect of proposed or pending legislation where the professional services are not ~~otherwise, directly or indirectly,~~ otherwise connected with legislative action.

(5) A person who owns, publishes or is employed by any news medium while engaged in the acquisition or dissemination of news on behalf of the news medium.

(6) Repealed by Session Laws 1991, c. 740, s. 1.1.

(7) ~~Members of the General Assembly.~~Covered persons and legislative employees.

(8) A person responding to inquiries from a member of the General Assembly or a legislative employee, and who engages in no further

activities as a legislative lobbyist in connection with that or any other legislative matter.

(9) ~~An individual giving facts or recommendations pertaining to legislative matters to his own legislative delegation only.~~An employee who represents the employer's interests in legislative action for no more than three hours in a quarter, provided that neither the employee nor the employer makes any expenditure as defined in G.S. 120-47.1.

"**§ 120-47.8A. Expenditures made by persons exempted or not covered by this Article.**

(a) If a covered person or a legislative employee accepts an expenditure made for the purpose of lobbying valued over two hundred dollars ($200.00) from a person exempted or not covered by this Article, the person making the expenditure shall report the date, a description of the expenditure, the name and address of the person making the expenditure, and the estimated fair market value of the expenditure.

(b) If the person making the expenditure in subsection (a) of this section is outside North Carolina, the covered person or legislative employee accepting the expenditure shall be responsible for filing the report.

(c) If a covered person or a legislative employee accepts a scholarship valued over two hundred dollars ($200.00) from a person exempted or not covered by this Article, the person granting the scholarship shall report the date of the scholarship, a description of the event involved, the name and address of the person granting the scholarship, and the estimated fair market value.

(d) If the person granting the scholarship in subsection (c) of this section is outside North Carolina, the covered person or legislative employee accepting the scholarship shall be responsible for filing the report.

(e) This section shall not apply to any of the following:

(1) Lawful campaign contributions.

(2) Any devise or inheritance.

(3) Gifts associated primarily with the covered person, legislative employee, or that person's immediate family member's nonlegislative employment.

(4) Gifts, other than food, beverages, travel, and lodging, which are received from a person who is a citizen of a country other than the United States or a state other than North Carolina and given during a ceremonial presentation or as a custom.

(5) A thing of value that is paid for by the State.

(f) Reports required by this section shall be filed by the end of the quarter following the gift with the Secretary of State in a manner prescribed by the Secretary of State, including electronically.

"**§ 120-47.9. Punishment for violation.**

(a) Whoever willfully violates any provision of this Article shall be guilty of a Class 1 misdemeanor. In addition, no legislative lobbyist who is convicted of a violation of the provisions of this Article shall in any way act as a legislative or executive lobbyist for a period of two years following ~~his~~ conviction.

(b) In addition to the criminal penalties set forth in this section, the Secretary of State may levy civil fines for willful false or incomplete reporting up to five thousand dollars ($5,000) per violation.

"§ 120-47.10. Enforcement of Article by Attorney General.

The Secretary of State shall report apparent violations of this Article to the Attorney General. The Attorney General shall, upon ~~complaint made to him of violations of this Article,~~ complaint, make an appropriate investigation thereof, and ~~he~~ the Attorney General shall forward a copy of the investigation to the district attorney of the prosecutorial district as defined in G.S. 7A-60 of which Wake County is a part, who shall prosecute any person who violates any provisions of this Article.

"§ 120-47.11. Rules and forms.

The Secretary of State shall ~~make, amend, and rescind~~adopt any rules, orders, forms, and definitions as are necessary to carry out the provisions of this Article.

"§ 120-47.12. Limitations on agency legislative ~~liaisons.~~liaison personnel.

(a) No ~~principal~~ State department may use State funds to contract with persons who are not employed by the State to lobby the General Assembly.

(b) No more than two persons in each ~~principal~~ State department and constituent institution of The University of North Carolina may be registered to lobby the General Assembly or designated as legislative ~~liaisons~~ liaison personnel pursuant to this Article.

(c) All persons designated as legislative liaison personnel pursuant to this Article and the State department or constituent institution of The University of North Carolina who employs the legislative liaison personnel shall report all expenditures made for lobbying purposes in the same manner as required for legislative lobbyists under G.S. 120-47.6 and lobbyist's principals under G.S. 120-47.7."

SECTION 2. Chapter 147 of the General Statutes is amended by adding a new Article to read:

"Article 4C.

"Executive Branch Lobbying.

"§ 147-54.31. Definitions.

The following definitions shall apply in this Article:

(1) The term "executive action" means the preparation, research, drafting, introduction, consideration, modification, amendment, approval, passage, adoption, tabling, postponement, defeat, or rejection of a rule, regulation, executive order, policy, resolution, contract, request for proposal, amendment, motion, report, nomination, or appointment by the executive branch or by a member or employee of the executive branch acting or purporting to act in an official capacity. This term shall not include any action by an attorney representing a client with respect to the executive action.

(2) The term "executive branch officers" means the Governor, any member of the Council of State, and heads of those departments listed in G.S. 143-6, and the Board of Governors and the presidents of the universities of The University of North Carolina System.

(3) The term "executive lobbyist" means any lobbyist for or against executive action.

(4) The term "expenditure" means any advance, contribution, conveyance, deposit, distribution, payment, gift, retainer, fee, salary, honorarium, reimbursement, loan, pledge, or thing of value greater than ten dollars ($10.00), or a contract, agreement, promise, or other obligation whether or not legally enforceable, that directly or indirectly is made to, at the request of, for the benefit of, or on the behalf of an executive branch officer or that person's immediate family member.

(5) The term "immediate family member" means spouse, unemancipated children living in the individual's household, or persons claimed by the individual or the individual's spouse as dependents for tax purposes living in the individual's household.

(6) The term "lobbying" means any of the following:

a. Influencing or attempting to influence executive action or through direct communication or activities with an executive branch officer.

b. Solicitation of others by an executive lobbyist or lobbyist's principal to influence executive action.

c. Developing executive goodwill through communications or activities with an executive branch officer or that person's immediate family with the intention of influencing current or future executive action, but does not include communications or activities with executive branch officers or that person's immediate family member in a business, civic, religious, fraternal, or commercial relationship which is not connected to executive action.

(7) The term "lobbyist" means an individual who meets any of the following criteria:

a. Is employed and receives compensation, or who contracts for economic consideration, for the purpose of lobbying.

b. Represents another person and receives compensation for the purpose of lobbying.

The term "lobbyist" shall not include those individuals who are specifically exempted from this Article by G.S. 147-54.40. For the purpose of determining whether an individual is an executive lobbyist under this subdivision, reimbursement of actual travel and subsistence expenses shall not be considered compensation; provided, however, that reimbursement in the ordinary course of business of these expenses shall be considered compensation if a significant part of the individual's duties involves executive lobbying.

(8) The terms "lobbyist's principal" and "principal" mean the person on whose behalf the executive lobbyist lobbies. In the case where a lobbyist is employed by a law firm, consulting firm, or other entity

retained by a person for executive lobbying, the principal is the person whose interests the lobbyist represents in lobbying.

(9) The term "person" means any individual, firm, partnership, committee, association, corporation, business entity, or any other organization or group of persons.

"**§ 147-54.32. Registration procedure.**

(a) An executive lobbyist shall file a registration statement with the Secretary of State before engaging in any lobbying in a manner prescribed by the Secretary of State. It shall be unlawful for a person to lobby without registering unless exempted by this Article. A separate registration statement is required for each lobbyist's principal. The registration shall indicate whether it is registration as a legislative lobbyist, executive lobbyist, or both, and a separate registration fee shall be paid for each separate type of registration.

(b) The form of the registration shall be prescribed by the Secretary of State and shall include the registrant's full name, firm, and complete address and telephone number; the registrant's place of business; the full name and complete address and telephone number of each person by whom the registrant is employed or retained; and a general description of the matters on which the registrant expects to act as an executive lobbyist. The Secretary of State shall make available as soon as practicable the registrations of the lobbyists and lobbyists' principals in an electronic, searchable format.

(c) Each executive lobbyist shall register file an amended registration form with the Secretary of State no later than 10 days after any change in the information supplied in the executive lobbyist's last registration under subsection (b). Each supplementary registration shall include a complete statement of the information that has changed.

(d) Each registration statement of an executive lobbyist required under this Article shall be effective from the date of filing until January 1 of the following year. The executive lobbyist shall file a new registration statement after that date.

"**§ 147-54.34. Written authority from lobbyist's principal to be filed.**

Each executive lobbyist shall file with the Secretary of State within 10 days after the executive lobbyist's registration a written authorization to act as such, signed by the lobbyist's principal.

"**§ 147-54.35. Contingency lobbying fees and election influence prohibited.**

(a) No person shall act as an executive lobbyist for compensation that is dependent upon the result or outcome of any executive action.

(b) No executive lobbyist or executive lobbyist's principal shall attempt to influence the action of an executive branch officer by the promise of financial support of the executive branch officer's candidacy or appointment, or by threat of financial support in opposition to the executive branch officer's candidacy in any future election.

"**§ 147-54.36. Exemptions and inclusions for reporting purposes.**

(a) For purposes of G.S. 147-54.36 and G.S. 147-54.37, the following expenditures need not be reported:

(1) Gifts from an immediate family member or person who is the child, stepchild, parent, sibling, mother-in-law, father-in-law, son-in-law,

daughter-in-law, grandparent, or grandchild of the executive branch officer.

(2) Lawful campaign contributions.

(b) For purposes of G.S. 147-54.36 and G.S. 147-54.37, all expenditures made for the purpose of lobbying need to be reported, including:

(1) Expenditures benefiting an executive branch officer or that person's immediate family members in the regular course of that person's nonexecutive employment.

(2) Contractual arrangements or direct business relationships between an executive lobbyist or executive lobbyist's principal and an executive branch officer or that person's immediate family member, in effect during the reporting period or the previous 12 months.

(3) Amounts reimbursed by a principal to an executive lobbyist in the ordinary course of business by the lobbyist's principal or other employer.

"**§ 147-54.37. Statements of executive lobbyist's lobbying expenditures required.**

(a) Each executive lobbyist shall file quarterly expenditure reports under oath with the Secretary of State, in a manner prescribed by the Secretary of State, including electronically, with respect to each lobbyist's principal within 10 days after the end of the reporting period. The expenditure report shall include all expenditures during the reporting period. The executive lobbyist shall file an expenditure report whether or not expenditures are made.

(b) Each expenditure report shall set forth the amount, date, a description of the expenditure, name and address of the payee, and name of any executive branch officer, or that person's immediate family member affected by the expenditure. Such expenditures shall be reported using the following categories:

(1) Transportation and lodging.

(2) Entertainment, food, and beverages.

(3) Meetings and events.

(4) Gifts.

(5) Solicitation of others to lobby.

(6) Other expenditures.

(c) All reports shall be in the form prescribed by the Secretary of State and shall be open to public inspection upon filing. When more than 15 executive branch officers benefit from an expenditure, no names of individuals need be reported provided that the report identifies the approximate number of executive branch officers benefiting and, with particularity, the basis for their selection. The approximate number of immediate family members who benefited from the expenditure shall be listed separately.

(d) When an executive lobbyist fails to file an expenditure report as required in this section, the Secretary of State shall send a certified or registered letter advising the executive lobbyist of the delinquency and the penalties provided by law. Within 20 days of the receipt of the letter, the executive lobbyist shall deliver or post by United States mail to the Secretary of State the required report and an additional late filing fee in an amount equal to the late filing fee under G.S. 163-278.34(a)(2).

(e) Filing of the required report and payment of the additional fee within the time extended shall constitute compliance with this section. Failure to file an expense report in one of the manners prescribed herein shall result in revocation of any and all registrations of an executive lobbyist under this Article. No executive lobbyist may register or reregister under this Article until the executive lobbyist has fully complied with this section.

(f) Appeal of a decision by the Secretary of State under this section shall be in accordance with Article 3 of Chapter 150B of the General Statutes.

(g) The Secretary of State may adopt rules to facilitate disclosure of expenditures, including the format of reports and additional categories of information, and to protect the addresses of payees under protective order issued pursuant to Chapter 50B of the General Statutes or participating in the Address Confidentiality Program pursuant to Chapter 15C of the General Statutes.

"**§ 147-54.38. Statements of lobbyist's principal lobbying expenses required.**

(a) Each executive lobbyist's principal shall file quarterly expenditure reports under oath with the Secretary of State within 10 days after the end of the reporting period. The expenditure report shall include all expenditures during the reporting period. The lobbyist's principal shall file an expenditure report whether or not expenditures are made during a reporting period.

(b) Each expenditure report shall set forth the amount, date, a description of the expenditure, name and address of the payee, and name of any executive branch officers, or that person's immediate family member affected by the expenditure. Such expenditures shall be reported using the following categories:

(1) Transportation and lodging.
(2) Entertainment, food, and beverages.
(3) Meetings and events.
(4) Gifts.
(5) Solicitation of others to lobby.
(6) Other expenditures.

(c) All reports shall be in the form prescribed by the Secretary of State and open to public inspection upon filing. When more than 15 executive branch officers benefit from an expenditure, no names of individuals need be reported provided that the report identifies the approximate number of executive branch officers benefiting and, with particularity, the basis for their selection. The approximate number of immediate family members who benefited from the expenditure shall be listed separately.

(d) When a lobbyist's principal fails to file an expenditure report as required in this section, the Secretary of State shall send a certified or registered letter advising the lobbyist's principal of the delinquency and the penalties provided by law. Within 20 days of the receipt of the letter, the lobbyist's principal shall deliver or post by United States mail to the Secretary of State the required report and a late filing fee in an amount equal to the late filing fee under G.S. 163-278.34(a)(2).

(e) Filing of the required report and payment of the late fee within the time extended shall constitute compliance with this section. Failure to file an expense report in one of the manners prescribed herein shall result in revocation of any and all

registrations of an executive lobbyist under this Article. No executive lobbyist may register or reregister under this Article until the executive lobbyist has fully complied with this section.

(f) Appeal of a decision by the Secretary of State under this section shall be in accordance with Article 3 of Chapter 150B of the General Statutes.

(g) The Secretary of State may adopt rules to facilitate disclosure of expenditures, including the format of reports and additional categories of information, and to protect the addresses of payees under protective order issued pursuant to Chapter 50B of the General Statutes or participating in the Address Confidentiality Program pursuant to Chapter 15C of the General Statutes.

"**§ 147-54.39. Powers and duties of the Secretary of State.**

(a) The Secretary of State shall perform systematic audits of reports required to be filed under G.S. 147-54.36 and G.S. 147-54.37 on a regular basis.

(b) The Secretary of State may petition the Superior Court of Wake County for the approval to issue subpoenas and subpoenas duces tecum as necessary to conduct investigations of violations of this Article. The court shall authorize subpoenas under this subsection when the court determines they are necessary for the enforcement of this Article. Subpoenas issued pursuant to this subsection shall be enforceable by the court through contempt powers.

(c) Complaints of violations of this Article and all other records accumulated in conjunction with the investigation of these complaints shall be considered records of criminal investigations under G.S. 132-1.4.

"**§ 147-54.40. Persons exempted from provisions of Article.**

The provisions of this Article shall not be construed to apply to any of the following:

(1) An individual solely engaged in expressing a personal opinion on an executive action.

(2) A person appearing before a committee, commission, board, council, or other collective body at the invitation or request of the collective body or a member thereof and who engages in no further activities as an executive lobbyist in connection with that or any other executive action.

(3) A duly elected or appointed official or employee of the State, the United States, a county, municipality, school district, or other governmental agency, when appearing solely in connection with matters pertaining to the office and its public duties.

(4) A person performing professional services in advising and rendering opinions to clients, or executive branch officers on behalf of clients, as to the construction and effect of proposed or pending executive action where the professional services are not otherwise connected with executive action.

(5) A person who owns, publishes, or is employed by any news medium while engaged in the acquisition or dissemination of news on behalf of the news medium.

(6) A person responding to inquiries from an executive branch officer and who engages in no further activities as an executive lobbyist in connection with that or any other executive action.

(7) A person appearing before an executive branch agency or department on behalf of another person, on an individual application for a license or permit, or a disciplinary action on a license or permit.

(8) An employee who represents the employer's interests in executive action for no more than six hours during a six-month reporting period, provided that neither the employee nor the employer make any expenditure as defined in G.S. 147-54.31.

"**§ 147-54.41. Expenditures made by persons exempted or not covered by this Article.**

(a) If an executive branch officer accepts an expenditure made for the purpose of lobbying valued over two hundred dollars ($200.00) from a person exempted or not covered by this Article, the person making the expenditure shall report the date, a description of the expenditure, the name and address of the person making the expenditure, and the estimated fair market value of the expenditure.

(b) If the person making the expenditure in subsection (a) of this section is outside North Carolina, the executive branch officer accepting the expenditure shall be responsible for filing the report.

(c) If a covered person or a legislative employee accepts a scholarship valued over two hundred dollars ($200.00) from a person exempted or not covered by this Article, the person granting the scholarship shall report the date of the scholarship, a description of the event involved, the name and address of the person granting the scholarship, and the estimated fair market value.

(d) If the person granting the scholarship in subsection (c) of this section is outside North Carolina, the covered person or legislative employee accepting the scholarship shall be responsible for filing the report.

(e) This section shall not apply to any of the following:

(1) Lawful campaign contributions.

(2) Any devise or inheritance.

(3) Gifts associated primarily with the executive branch officer or that person's immediate family member's nonexecutive employment.

(4) Gifts, other than food, beverages, travel, and lodging, received by an executive branch officer which are received from a person who is a citizen of a country other than the United States or a state other than North Carolina and given during a ceremonial presentation or as a custom.

(5) A thing of value that is paid for by the State.

(f) Reports required by this section shall be filed by the end of the quarter following the gift with the Secretary of State in a manner prescribed by the Secretary of State, including electronically.

"**§ 147-54.42. Punishment for violation.**

(a) Whoever willfully violates any provision of this Article shall be guilty of a Class 1 misdemeanor. In addition, no executive lobbyist who is convicted of a violation of the provisions of this Article shall in any way act as an executive or legislative lobbyist for a period of two years following conviction.

(b) In addition to the criminal penalties set forth in this section, the Secretary of State may levy civil fines for willful false or incomplete reporting up to five thousand dollars ($5,000) per violation.

"**§ 147-54.43. Enforcement of Article by Attorney General.**

The Secretary of State shall report apparent violations of this Article to the Attorney General. The Attorney General shall, upon complaint, make an appropriate investigation thereof, and the Attorney General shall forward a copy of the investigation to the district attorney of the prosecutorial district as defined in G.S. 7A-60, of which Wake County is a part, who shall prosecute any person who violates any provisions of this Article.

"**§ 147-54.44. Rules and forms.**

The Secretary of State shall adopt any rules, orders, forms, and definitions as are necessary to carry out the provisions of this Article."

SECTION 3. Article 4 of Chapter 147 of the General Statutes is amended by adding a new section to read:

"**§ 147-54.8. No gifts registry.**

(a) The Secretary of State shall establish a 'No Gifts' registry for persons subject to Article 9A of Chapter 120 of the General Statutes or Article 4C of this Chapter. The 'No Gifts' registry shall be published and updated with the list of lobbyists and lobbyists' principals required under G.S. 120-47.2.

(b) Executive lobbyists, legislative lobbyists and lobbyist's principals shall not give gifts to persons placing their names on the registry.

(c) The Secretary shall have the authority to adopt rules to implement this section in compliance with the following criteria:

(1) The registration is valid from the time the person registers until January 1 of the following year, unless the person requests in writing the removal of that person's name

(2) The registration shall be in writing.

(d) For purposes of this sections, the term "gift" means any payment, entertainment, advance, services, forgiveness of an obligation or debt, or thing of value, unless consideration of equal or greater value has been given therefore."

SECTION 4. There is appropriated from the General Fund to the Office of the Secretary of State the sum of two hundred thousand dollars ($200,000) for the 2005-2006 fiscal year to provide for the enforcement personnel, administrative staff, and expenses necessary to implement this act.

SECTION 5. There is appropriated from the General Fund to the Office of the Secretary of State the sum of one hundred twelve thousand dollars ($112,000) for the 2005-2006 fiscal year to provide for the implementation of electronic filing of all lobbyists' and lobbyists' principals' reports required under Article 9A of Chapter 120 of the General Statutes and to provide public access via the Internet to all these filings. The Secretary of State shall implement electronic filing of all lobbyists' and lobbyists'

principals' reports required under Article 9A of Chapter 120 of the General Statutes and provide public access via the Internet to all these filings as soon as practicable.

SECTION 6. Sections 4, 5, and 6 of this act become effective July 1, 2005. G.S. 120-47.7C(d), as enacted by Section 1 of this act, shall apply to appointments made on or after January 1, 2007. The remainder of this act becomes effective January 1, 2007.

SENATE BILL 612: Amend Lobbying Laws

BILL ANALYSIS

Committee:	House Judiciary I	**Date:**	July 18, 2005
Introduced by:	Sen. Rand	**Summary by:**	R. Erika Churchill
Version:	PCS to Fourth Edition S612-CSST-77		Committee Counsel

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 612 would amend the lobbying laws by including goodwill lobbying, increasing the frequency and details of legislative lobbyists' and lobbyist's principals' reports, and prohibiting a legislator from lobbying during one year following a legislative session to which the legislator was elected or appointed. The bill also creates lobbying laws governing executive branch lobbying.***

CURRENT LAW:

Under current law, a person who is paid to try to influence legislative action (action on a specific bill, resolution, amendment, etc.) is required to register as a lobbyist with the Secretary of State and report at the end of each regular session, expenditures in excess of $25 spent on lobbying legislators. Expenditures spent for the general goodwill of legislators not tied to specific legislative action do not need to be reported, nor do expenditures spent on legislative staff or legislators' family members. There is no limitation on the types or amount of expenditures that at lobbyist can spend on a legislator for lobbying purposes. Every principal who hires the services of a lobbyist also has to file reports on expenditures they made for lobbying, including the amount of compensation paid to lobbyists. Exempt from the lobbying laws are persons who lobby on their own behalf, persons appearing before the General Assembly at the General Assembly's request, elected and appointed local government officials and employees lobbying on behalf of their local governments, State agency legislative liaison personnel, and members of the General Assembly. Violation of this law is punished as a Class 1 misdemeanor.

Currently executive branch lobbying is not regulated.

BILL ANALYSIS:

Section 1 amends the legislative lobbying law in the following ways:

- Includes lobbying the Governor in relation to the Governor's veto.
- Includes developing goodwill as part of the definition of lobbying.
- Permits gifts from lobbyists to their family members who are legislators or legislative employees. Also exempts lawful campaign contributions.
- Defines "expenditure" to include anything of value over $10.
- Expenditures by legislative liaison personnel and State agencies are subject to the same limitations and have to be reported the same as expenditures by other lobbyists.
- The registration period for a lobbyist is one year, rather than the current two years.
- Increases the details of lobbying expenditure reports to include the amount, date, a description of the expenditure, name and address of the payee, name of any covered person benefiting from the expenditure (or legislative employee or those person's immediate family members) in each of the following categories:
    - Transportation and lodging
    - Entertainment, food, and beverages
    - Meetings and events
    - Gifts
    - Solicitation of others to lobby
    - Other expenditures

  If more than 15 covered persons benefit from the expenditure, the lobbyist may elect to report the approximate number of covered persons benefiting and, with particularity, the basis for their selection.

The approximate number of legislative employees and immediate family members shall be reported separately.

The Secretary of State is granted rulemaking authority to facilitate disclosure of expenditures, including the format of the report and additional categories. The rules are also to protect the address of payees under a Chapter 50B protective order or participating in the Address Confidentiality Program.

- The lobbyist's principal must also report, in addition to the expenditures reported by the lobbyist, the compensation paid or agreed to be paid to each lobbyist.
- Prohibits a legislator or former legislator from being employed as a legislative or executive branch lobbyist within 1 year after the expiration of the term for which the legislator was elected or appointed to serve.
- Prohibits the Governor or Council of State member or head of a cabinet department from being employed as a legislative or executive branch lobbyist within 1 year after separation from employment or leaving office, whichever is later.
- Prohibits a lobbyist from serving as a campaign manager or campaign treasurer for a legislative campaign.
- Prohibits a lobbyist from being appointed to any board, authority, commission, etc. that regulates the activities of a business, organization, person or agency that the lobbyist represented within one year of that representation.
- Prohibits a lobbyist from allowing a covered person, legislative employee, or that person's immediate family member to use the lobbyist's cash or credit for the purpose of lobbying without the lobbyist being present at the time of the expenditure.
- An additional exception to the registration and reporting law is made for an employee who represents an employer's interest before the General Assembly for no more than 3 hours in a quarter, and who does not spend money on a legislator, legislative employee or an immediate family member that would otherwise be required to be reported by a registered lobbyist.
- Requires expenditures of $200 made for the purpose of lobbying from persons not required to register and report as lobbyists or lobbyist's principals or more to be reported. If the person giving the gift is in North Carolina, that person shall make the report. If the person giving the gift is outside North Carolina, the person accepting the gift shall make the report. Certain exceptions apply.
- Requires scholarships valued over $200 to be reported.
- Allows for a civil fine up to $5,000 per violation in addition to any criminal penalties.

Section 2 creates a new article to regulate executive branch lobbying much the same as legislative lobbying is regulated with the following differences:

- Lobbying is defined as the influencing of "executive action" which is defined as being the consideration of a rule, regulation, executive order, policy, resolution, contract, request for proposal, nomination or appointment by the Governor, member of the Council of State, heads of the cabinet, and the Board of Governors and university presidents.
- Executive branch lobbying does not include action by an attorney.
- Lobbyist and lobbyist's principals' reports are due every 6 months.
- Prohibits the Governor or a member of the Council of State from acting as a legislative or executive branch lobbyist during the time of the biennial legislative session in which the person served in office.

Section 3 requires the Secretary of State to create a "No Gifts" registry.

Section 4 appropriates $200,000 for the '05-'06 fiscal year to the Secretary of State for personnel and expenses to implement the act.

Section 5 appropriates $112,000 for the '05-'06 fiscal year to the Secretary of State for the implementation of electronic filing of reports required by the act.

EFFECTIVE DATE: The appropriations are effective July 1, 2005. The remainder of the act is effective January 1, 2007.

S0612e4-SMST-CSST-77
O. Walker Regan contributed to this summary.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 612*

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

S612-AST-57 [v.1]

Date _____,2005

Comm. Sub. [NO]
Amends Title [NO]
s612-CSST-77v1

Representative Stam

moves to amend the bill on page 2, lines 7-10 by rewriting those lines to read:

"(3a) The term "immediate family member" means a spouse, descendant or ascendant.";

and on page 2, lines 37-38 by rewriting those lines to read:

"b. Solicitation of others by legislative lobbyists to influence legislative action.";

and on page 3, lines 21-24 by rewriting those lines to read:

"~~attempts to influence legislative action.~~lobbies.";

and on page 3, line 27 by rewriting that line to read:

"group of ~~persons.~~persons which has an independent legal existence.";

and on page 4, line 42 by inserting "may" between "section" and "be" on that line;

and on page 5, line 43 through page 6, line 2 by rewriting those lines to read:

"~~calendar year, by February 28 of the following year.~~quarterly expenditure reports under oath with the Secretary of State, in a manner prescribed by the Secretary of State with respect to each lobbyist principal. The expenditure report shall";

and on page 7, lines 23-26 be rewriting those lines to read:

"~~by February 28 of the following year.~~quarterly expenditure reports under oath with the Secretary of State, in a manner prescribed by the Secretary of State with respect to each

lobbyist principal. The expenditure report shall include all expenditures during the reporting";

and on page 9, lines 30-31 by rewriting those lines to read:
"an executive or legislative lobbyist by a lobbyist's principal to lobby within one year after the end of that member's service as a legislator.";

and on page 9, lines 35-37 by rewriting those lines to read:
"executive or legislative lobbyist by a lobbyist's principal to lobby within one year after separation from employment.";

and on page 9, lines 38-39 by deleting "a campaign manager or";

and on page 10, lines 3-4 by deleting "for the purpose of lobbying";

and on page 11, line 28 by rewriting that line to read:
"(2) Any gift to from a family member to a covered person or legislative employee.";

and on page 12, line 39 by rewriting that line to read:
"respect to the executive action or any ministerial act performed by an executive branch officer."

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 612*

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

S612-AST-57 [v.1]

on page 13, lines 10-13 by rewriting those lines to read:

"(5) The term "immediate family member" means a spouse, descendant or ascendant.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

ATTACHMENT VII

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE _____

S. B. No. 612 Amendment No. 2
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.) Hackney
Sen.)

moves to amend the bill on page 5, line 25

( ) WHICH CHANGES THE TITLE

by and page 15, line 6 by inserting the following between "benefiting" and "an":

"or made on behalf of, ~~at the request of or made at~~"

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative Hackney (Chair) for the Committee on JUDICIARY I.

☒Committee Substitute # 2 for
SB 612 A BILL TO BE ENTITLED AN ACT TO AMEND THE LOBBYING LAWS BY INCREASING THE INFORMATION REQUIRED TO BE REPORTED ON LEGISLATIVE LOBBYING ACTIVITIES AND BY REQUIRING REGISTRATION AND REPORTING OF LOBBYING ACTIVITIES OF EXECUTIVE BRANCH AGENCIES AND EMPLOYEES.

☒ With a favorable report as to House committee substitute bill, which changes the title, unfavorable as to Senate committee substitute bill #2, and recommendation that the House committee substitute bill be re-referred to the Committee on Finance.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

_____ Pursuant to Rule 36(b), the (House/Senate) committee substitute bill/(joint) resolution (No._____) is placed on the Calendar of _____. (The original bill resolution No._____) is placed on the Unfavorable Calendar.

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 612*

Judiciary I Committee Substitute Adopted 3/31/05
Finance Committee Substitute Adopted 4/11/05
Fourth Edition Engrossed 4/14/05
PROPOSED HOUSE COMMITTEE SUBSTITUTE S612-PCS35255-ST-77

Short Title: Amend Lobbying Laws. (Public)

Sponsors:

Referred to:

March 17, 2005

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LOBBYING LAWS BY INCREASING THE INFORMATION REQUIRED TO BE REPORTED ON LOBBYING ACTIVITIES AND BY REQUIRING REPORTING OF LOBBYING ACTIVITIES OF EXECUTIVE BRANCH OFFICERS, AND TO APPROPRIATE FUNDS TO IMPLEMENT THE ACT.

The General Assembly of North Carolina enacts:

SECTION 1. Article 9A of Chapter 120 of the General Statutes reads as rewritten:

"Article 9A.

"Legislative Branch Lobbying.

"§ 120-47.1. Definitions.

~~For the purposes of this Article, the following terms shall have the meanings ascribed to them in this section unless the context clearly indicates a different meaning:~~The following definitions shall apply in this Article:

(1) The term "covered person" means a legislator, the Governor, or the Lieutenant Governor.

~~(1)~~(1a) The ~~terms "contribution," "compensation" and~~ term "expenditure" ~~mean~~ means any advance, contribution, conveyance, deposit, distribution, payment, gift, retainer, fee, salary, honorarium, reimbursement, loan, pledge or ~~anything~~ thing of value greater than ten dollars ($10.00), ~~and any~~or ~~contract~~a contract, agreement, promise or other obligation whether or not legally enforceable, ~~but those terms do not include prizes, awards, or compensation not exceeding one hundred dollars ($100.00) in a calendar year.~~that directly or indirectly

is made to, at the request of, for the benefit of, or on the behalf of a covered person, legislative employee, or that person's immediate family member.

(1b) The term "executive lobbyist" means a lobbyist registered pursuant to Article 4C of Chapter 147 of the General Statutes.

(2), (3) Repealed by Session Laws 1991, c. 740, s. 1.1.

(3a) The term "immediate family member" means spouse, descendant, or ascendant.

(4) The term "legislative action" means the preparation, research, drafting, introduction, consideration, modification, amendment, approval, passage, enactment, tabling, postponement, defeat, or rejection of a bill, resolution, amendment, motion, report, nomination, appointment, or other matter by the legislature or by a member or employee of the legislature acting or purporting to act in an official capacity. It also includes the consideration of any bill by the Governor for the Governor's approval or veto under Article II, Section 22(1) of the Constitution or for the Governor to allow the bill to become law under Article II, Section 22(7) of the Constitution.

(4a) The term "legislative employee" means employees and officers of the General Assembly.

(4b) The term "legislative liaison personnel" means any State ~~officer or employee~~officer whose principal ~~duties~~ duties, in practice or as set forth in that person's job ~~description~~ description, ~~involve~~ include lobbying the General Assembly.

(4c) The term "legislative lobbyist" means any lobbyist for or against legislative action.

(4d) The term "legislator" means a member of the General Assembly or a person elected or appointed a member of the General Assembly prior to taking office.

(5) The term "lobbying" ~~means:~~means any of the following:

a. Influencing or attempting to influence legislative action through direct ~~oral or written~~ communication or activities with a ~~member of the General Assembly; or~~covered person, legislative employee, or that person's immediate family member.

b. Solicitation of others by legislative lobbyists or lobbyists' principals to influence legislative action.

c. Developing goodwill through communications or activities with a covered person, legislative employee, or that person's immediate family with the intention of influencing current or future legislative action, but does not include communications or activities with a covered person, legislative employee, or that person's immediate family member in a business, civic, religious, fraternal, or commercial relationship which is not connected to legislative action.

(6) The term "lobbyist" means an individual ~~who:~~who meets any of the following criteria:

a. Is employed and receives compensation, or who contracts for economic consideration, for the purpose of ~~lobbying; or~~lobbying.

b. Represents another person and receives compensation for the purpose of lobbying.

c. Is legislative liaison personnel.

The term "lobbyist" shall not include those individuals who are specifically exempted from this Article by G.S. 120-47.8. For the purpose of determining whether an individual is a lobbyist under this subdivision, reimbursement of actual travel and subsistence expenses shall not be considered compensation; provided, however, that reimbursement in the ordinary course of business of these expenses shall be considered compensation if a significant part of the individual's duties involve lobbying before the General Assembly.

(7) The terms "lobbyist's principal" and "principal" mean the ~~entity in~~person on whose behalf the legislative lobbyist ~~influences or attempts to influence legislative action.~~lobbies. In the case where a lobbyist is employed by a law firm, consulting firm, or other entity retained by a person for legislative lobbying, the principal is the person whose interests the lobbyist represents in lobbying.

(8) The term "person" means any individual, firm, partnership, committee, association, corporation, business entity, or any other organization or group of ~~persons.~~persons which has an independent legal existence.

(9) The General Assembly is in "regular session" from the date set by law or resolution that the General Assembly convenes until the General Assembly either:

a. Adjourns sine die; or

b. Recesses or adjourns for more than 10 days.

"§ 120-47.2. Registration procedure.

(a) A legislative lobbyist shall file a registration statement with the Secretary of State before engaging in any ~~lobbying.~~lobbying, in a manner prescribed by the Secretary of State. It shall be unlawful for a person to lobby without registering unless exempted by this Article. A separate registration statement is required for each lobbyist's principal. The registration shall indicate whether it is registration as a legislative lobbyist, executive lobbyist, or both, and a separate registration fee shall be paid for each separate type of registration.

(b) The form of the registration shall be prescribed by the Secretary of State and shall include the registrant's full name, firm, ~~and~~ complete ~~address;~~address and telephone number; the registrant's place of business; the full ~~name and~~name, complete address and telephone number of each person by whom the registrant is employed or retained; and a general description of the matters on which the registrant expects to act as a legislative lobbyist. The Secretary of State shall make available as soon as

practicable the registrations of the lobbyists and lobbyists' principals in an electronic, searchable format.

(c) Each legislative lobbyist shall ~~register again~~file an amended registration form with the Secretary of State no later than 10 days after any change in the information supplied in ~~his~~ the legislative lobbyist's last registration under subsection (b). Each supplementary registration shall include a complete statement of the information that has changed.

(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 executive or legislative lobbyists and whom they represent. Within 20 days after the beginning of the term of a Governor, the Secretary of State shall furnish the Governor, each other member of the Council of State, the head of each principal department of the Executive Branch, and the State Legislative Library a list of all persons who have registered as executive or legislative lobbyists and whom they represent. A supplemental list of legislative lobbyists shall be furnished periodically each 20 days thereafter as the session progresses. A supplemental list of executive lobbyists shall be furnished periodically each 60 days thereafter. All lists required by this section may be furnished electronically.

(e) Each registration statement of a legislative lobbyist required under this Article shall be effective from the date of filing until January 1 of the following ~~odd-numbered~~ year. The legislative lobbyist shall file a new registration statement after that date, and the applicable fee shall be due and payable.

"§ 120-47.3. Registration fee.

(a) Every lobbyist's principal shall pay to the Secretary of State a fee of ~~two hundred dollars ($200.00)~~ one hundred dollars ($100.00) that is due and payable by either the legislative lobbyist or the lobbyist's principal at the time of registration. If the legislative lobbyist is also registering as an executive lobbyist for that lobbyist's principal, the fee shall be seventy-five dollars ($75.00) to register as a legislative lobbyist.

(b) A separate registration, together with a separate registration fee of ~~two hundred dollars ($200.00)~~ one hundred dollars ($100.00) is required for each lobbyist's principal for which a person acts as a legislative lobbyist. If the lobbyist's principal is also registering under Article 4C of Chapter 147 of the General Statutes, the fee shall be seventy-five dollars ($75.00).

(c) ~~Fees so collected shall be deposited in the General Fund of the State.~~ All fees shall be paid to the Department of the Secretary of State and deposited into the Lobbyist Registration Fund to be used to pay the costs incurred in administering and enforcing this Article.

(d) The Secretary of State may prescribe that fees required under this section may be paid electronically, but may not require that fees be paid electronically.

"§ 120-47.4. Written authority from lobbyist's principal to be filed.

Each legislative lobbyist shall file with the Secretary of State within 10 days after ~~his~~ the legislative lobbyist's registration a written authorization to act as such, signed by the lobbyist's principal.

"**§ 120-47.5. Contingency lobbying fees and election influence prohibited.**

(a) No person shall act as a legislative lobbyist for compensation that is dependent upon the result or outcome of any legislative action. ~~which is dependent in any manner upon the passage or defeat of any proposed legislation or upon any other contingency connected with any action of the General Assembly, the House, the Senate or any committee thereof.~~

(b) No ~~person~~ legislative lobbyist or legislative lobbyist's principal shall attempt to influence the action of any ~~member of the General Assembly~~ covered person by the promise of financial support of the ~~member's~~covered person's candidacy, or by threat of financial ~~contribution~~ support in opposition to the ~~member's~~ covered person's candidacy in any future election.

"**§ 120-47.5A. Exemptions and inclusions for reporting purposes.**

(a) For purposes of G.S. 120-47.6 and G.S. 120-47.7, the following expenditures need not be reported:

(1) Gifts from an immediate family member or person who is the child, stepchild, parent, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, grandparent, or grandchild of the covered person or legislative employee.

(2) Lawful campaign contributions.

(b) For purposes of G.S. 120-47.6 and G.S. 120-47.7, all expenditures made for the purpose of lobbying shall be reported, including the following:

(1) Expenditures benefiting or made on behalf of a covered person, a legislative employee, or those persons' immediate family members in the regular course of that person's nonlegislative employment.

(2) Contractual arrangements or direct business relationships between a legislative lobbyist or legislative lobbyist's principal and a covered person, legislative employee, or that person's immediate family member, in effect during the reporting period or the previous 12 months.

(3) Amounts reimbursed by a principal to a legislative lobbyist in the ordinary course of business by the lobbyist's principal or other employer.

"**§ 120-47.6. Statements of legislative lobbyist's lobbying ~~expenses~~ expenditures required.**

(a) Each legislative lobbyist shall file ~~an expense report with the Secretary of State with respect to each principal within 60 days after the last day of the regular session. This expense report shall include all expenditures made between January 1 and the last day of the regular session. The lobbyist shall file a supplemental report including all expenditures made after the last day of the regular session, but during the calendar year, by February 28 of the following year.~~ monthly expenditure reports under oath with the Secretary of State, in a manner prescribed by the Secretary of State

including electronically, with respect to each lobbyist's principal, while the General Assembly is in regular session, and quarterly thereafter. The expenditure report shall include all expenditures during the reporting period and shall be due 10 business days after the end of the reporting period. The legislative lobbyist shall file ~~both~~ expense reports whether or not expenditures are made.

(b) Each ~~expense~~ expenditure report shall set forth the ~~date of each expenditure, to whom paid, the name of any legislator who benefitted from each expenditure, and the amount of each expenditure made during the previous reporting period in connection with lobbying, in each of the following categories: (1) transportation, (2) lodging, (3) entertainment, (4) food, (5) any item having a cash equivalent value of more than twenty-five dollars ($25.00) and (6) contributions made, paid, incurred or promised, directly or indirectly. It shall not be necessary to report expenditures of twenty-five dollars ($25.00) or less, nor shall it be necessary to report any expenditures made in connection with the attendance of a legislator at any fund-raising function or event sponsored by a nonprofit organization qualified under 26 U.S.C. § 501(c). When more than 10 members of the General Assembly benefitted or were invited to benefit from an expenditure, the lobbyist shall not be required to report the name of any legislator, but shall be required to report the number of legislators or, with particularity, the basis for their selection.~~amount, date, a description of the expenditure, name and address of the payee, and name of any covered person, legislative employee, or that person's immediate family member benefiting from the expenditure. Such expenditures shall be reported using the following categories:

(1) Transportation and lodging.
(2) Entertainment, food, and beverages.
(3) Meetings and events.
(4) Gifts.
(5) Solicitation of others to lobby.
(6) Other expenditures.

(c) All reports shall be in the form prescribed by the Secretary of State and shall be open to public ~~inspection.~~inspection upon filing. When more than 15 covered persons benefit from an expenditure, no names of individuals need be reported provided that the report identifies the approximate number of covered persons benefiting and, with particularity, the basis for their selection, including the name of the legislative body, committee, caucus, or other group whose membership list is a matter of public record in accordance with G.S. 132-1 or including a description of the group that clearly distinguishes its purpose or composition from the general membership of the General Assembly. The approximate number of legislative employees and immediate family members of covered persons and legislative employees who benefited from the expenditure shall be listed separately.

(d) When a legislative lobbyist fails to file ~~a lobbying expense~~an expenditure report as required ~~herein,~~in this section, the Secretary of State shall send a certified or registered letter advising the legislative lobbyist of the delinquency and the penalties provided by law. Within 20 days of the receipt of the letter, the legislative lobbyist shall deliver or post by United States mail to the Secretary of State the required report and an

additional late filing fee in an amount equal to the late filing fee under G.S. 163-278.34(a)(2).

(e) Filing of the required report and payment of the additional fee within the time extended shall constitute compliance with this section. Failure to file an ~~expense~~ expenditure report in one of the manners prescribed ~~herein~~ in this section shall result in revocation of any and all registrations of a legislative lobbyist under this Article. No legislative lobbyist may register or reregister under this Article until ~~he~~ the legislative lobbyist has fully complied with this section.

(f) Appeal of a decision by the Secretary of State under this section shall be in accordance with Article 3 of Chapter 150B of the General Statutes.

(g) The Secretary of State may adopt rules to facilitate disclosure of expenditures, including the format of reports and additional categories of information, and to protect the addresses of payees under protective order issued pursuant to Chapter 50B of the General Statutes or participating in the Address Confidentiality Program pursuant to Chapter 15C of the General Statutes.

"**§ 120-47.7. Statements of legislative lobbyist's principal lobbying ~~expenses~~ expenditures required.**

(a) Each legislative lobbyist's principal shall file ~~an expense report with the Secretary of State within 60 days after the last day of the regular session. This expense report shall include all expenditures made between January 1 and the last day of the regular session. The 'principal shall file a supplemental expense report, including all expenditures made after the last day of the regular session, but during the calendar year, by February 28 of the following year.~~ monthly expenditure reports under oath with the Secretary of State, in a manner prescribed by the Secretary of State including electronically, while the General Assembly is in regular session, and quarterly thereafter. The expenditure report shall include all expenditures during the reporting period, and shall be due 10 business days after the end of the reporting period. The lobbyist's principal shall file ~~both expense~~ the expenditure reports whether or not expenditures are made during a reporting period.

(b) Each ~~expense~~ expenditure report shall set forth the ~~name and address of each lobbyist employed, appointed, or retained by the lobbyist's principal, the date of each expenditure made, to whom paid, name of any legislator who benefitted from each expenditure, and amount of each expenditure made during the previous reporting period in connection with lobbying, in each of the following categories: (1) transportation, (2) lodging, (3) entertainment, (4) food, (5) any item having a cash equivalent value of more than twenty-five dollars ($25.00), (6) contributions made, paid, incurred or promised, directly or indirectly, and (7) compensation to lobbyists in connection with their lobbying activities. It shall not be necessary to report expenditures of twenty-five dollars ($25.00) or less, nor shall it be necessary to report any expenditures made in connection with the attendance of a legislator at any fund-raising function or event sponsored by a nonprofit organization qualified under 26 U.S.C. § 501(c). When more than 10 members of the General Assembly benefitted or were invited to benefit from an expenditure, the principal shall not be required to report the name of any legislator, but shall be required to report the number of legislators or the basis for their selection. In~~

~~the category of compensation to lobbyists the principal shall estimate and report the compensation paid or promised directly or indirectly, to all lobbyists based on the estimated time, effort and expense in connection with lobbying activities on behalf of the principal. If a lobbyist is a full-time employee of the principal, or is compensated by means of an annual fee or retainer, the principal shall estimate and report the portion of all such lobbyists' salaries or retainers that compensate the lobbyists for lobbying.~~ amount, date, a description of the expenditure, name and address of the payee, and name of any covered person, legislative employee, or that person's immediate family member affected by the expenditure. Such expenditures shall be reported using the following categories:

(1) Transportation and lodging.
(2) Entertainment, food, and beverages.
(3) Meetings and events.
(4) Gifts.
(5) Solicitation of others to lobby.
(6) The compensation paid or agreed to be paid to all legislative lobbyists. If a legislative lobbyist is a full-time employee of the lobbyist's principal, or is compensated by means of an annual fee or retainer, the lobbyist's principal shall estimate and report the portion of the salary or retainer that compensates for direct and indirect lobbying. The lobbyist's principal's expenditure report shall include an itemized description of all expenditures reimbursed or paid to legislative lobbyists for lobbying that are not reported on the legislative lobbyists' reports. For purposes of this subsection, amounts reimbursed in the ordinary course of business shall be considered compensation if a significant part of the individual's duties involves legislative lobbying, whether reimbursed by the principal or another source.
(7) Other expenditures.

(c) All reports shall be in the form prescribed by the Secretary of State and open to public ~~inspection.~~inspection upon filing. When more than 15 covered persons benefit from an expenditure, no names of individuals need be reported provided that the report identifies the approximate number of covered persons benefiting and, with particularity, the basis for their selection, including the name of the legislative body, committee, caucus, or other group whose membership list is a matter of public record in accordance with G.S. 132-1 or including a description of the group that clearly distinguishes its purpose or composition from the general membership of the General Assembly. The approximate number of legislative employees and immediate family members of covered persons and legislative employees who benefited from the expenditure shall be listed separately.

(d) When a lobbyist's principal fails to file ~~a lobbying expense~~an expenditure report as required ~~herein,~~in this section, the Secretary of State shall send a certified or registered letter advising the lobbyist's principal of the delinquency and the penalties provided by law. Within 20 days of the receipt of the letter, the lobbyist's principal shall

deliver or post by United States mail to the Secretary of State the required report and a late filing fee in an amount equal to the late filing fee under G.S. 163-278.34(a)(2).

(e) Filing of the required report and payment of the late fee within the time extended shall constitute compliance with this section. Failure to file an expenditure report in one of the manners prescribed in this section shall result in revocation of any and all registrations of a lobbyist's principal under this Article. No lobbyist's principal may register or reregister under this Article until the lobbyist's principal has fully complied with this section.

(f) Appeal of a decision by the Secretary of State under this section shall be in accordance with Article 3 of Chapter 150B of the General Statutes.

(g) The Secretary of State may adopt rules to facilitate disclosure of expenditures, including the format of reports and additional categories of information, and to protect the addresses of payees under protective order issued pursuant to Chapter 50B of the General Statutes or participating in the Address Confidentiality Program pursuant to Chapter 15C of the General Statutes.

"**§ 120-47.7B. Powers and duties of the Secretary of State.**

(a) The Secretary of State shall perform systematic audits of reports required to be filed under G.S. 120-47.6 and G.S. 120-47.7 on a regular basis.

(b) The Secretary of State may petition the Superior Court of Wake County for the approval to issue subpoenas and subpoenas duces tecum as necessary to conduct investigations of violations of this Article. The court shall authorize subpoenas under this subsection when the court determines they are necessary for the enforcement of this Article. Subpoenas issued pursuant to this subsection shall be enforceable by the court through contempt powers.

(c) Complaints of violations of this Article and all other records accumulated in conjunction with the investigation of these complaints shall be considered records of criminal investigations under G.S. 132-1.4.

"**§ 120-47.7C. Prohibitions.**

(a) No member or former member of the General Assembly may be employed as an executive or legislative lobbyist by a lobbyist's principal to lobby as defined in this Article or Article 4C of Chapter 147 of the General Statutes within one year after the expiration of the term for which the member was elected or appointed to serve.

(b) No person serving as Governor, as a member of the Council of State, or as a head of a principal State department listed in G.S. 143B-6 may be employed as an executive or legislative lobbyist by a lobbyist's principal to lobby as defined in this Article or Article 4C of Chapter 147 of the General Statutes within one year after separation from employment or leaving office, whichever is later.

(c) No individual registered as a legislative lobbyist shall serve as a campaign manager or a campaign treasurer under Chapter 163 of the General Statutes for a campaign for election as a member of the General Assembly.

(d) A legislative or executive lobbyist shall not be eligible for appointment to any board, authority, commission, or other body established by the laws of this State that regulates the activities of a person that the lobbyist represented within one year after the expiration of the lobbyist's registration.

(e) No legislative or executive lobbyist or another acting on the lobbyist's behalf shall permit a covered person, legislative employee, executive branch officer, or that person's immediate family member to use the cash or credit of the lobbyist for the purpose of lobbying unless the lobbyist is in attendance at the time of the expenditure.

"**§ 120-47.8. Persons exempted from provisions of Article.**

~~The~~ Except as otherwise provided in this Article, the provisions of this Article shall not be construed to apply to any of the following:

(1) An ~~individual, not acting as a lobbyist,~~ individual solely engaged in expressing a personal opinion or stating facts or recommendations on legislative matters to ~~his own legislative delegation or other~~ members of the General Assembly.

(2) A person appearing before a legislative committee at the invitation or request of the committee or a member thereof and who engages in no further activities as a legislative ~~lobbyist in connection with that or any other legislative matter.~~lobbyist.

(3) a. A duly elected or appointed official or employee of the State, the United States, a county, municipality, school district or other governmental agency, when appearing solely in connection with matters pertaining to ~~his~~ the office and public duties.

b. Notwithstanding the persons exempted in this Article, the Governor, Council of State, and all appointed heads of State departments, agencies and institutions, shall designate all authorized official legislative liaison personnel and shall file and maintain current lists of designated legislative liaison personnel with the Secretary of ~~State and shall likewise file with the Secretary of State a full and accurate accounting of all money expended on lobbying, other than the salaries of regular full-time employees, at the same times lobbyists are required to file expense reports under G.S. 120-47.6.~~State.

(4) A person performing professional services in drafting bills or in advising and rendering opinions to clients, or to ~~legislators~~ covered persons on behalf of clients, as to the construction and effect of proposed or pending legislation where the professional services are not ~~otherwise, directly or indirectly,~~ otherwise connected with legislative action.

(5) A person who owns, publishes or is employed by any news medium while engaged in the acquisition or dissemination of news on behalf of the news medium.

(6) Repealed by Session Laws 1991, c. 740, s. 1.1.

(7) ~~Members of the General Assembly.~~Covered persons and legislative employees.

(8) A person responding to inquiries from a member of the General Assembly or a legislative employee, and who engages in no further

activities as a legislative lobbyist in connection with that or any other legislative matter.

(9) ~~An individual giving facts or recommendations pertaining to legislative matters to his own legislative delegation only.~~An employee who represents the employer's interests in legislative action for no more than three hours in a quarter, provided that neither the employee nor the employer makes any expenditure as defined in G.S. 120-47.1.

"**§ 120-47.8A. Expenditures made by persons exempted or not covered by this Article.**

(a) If a covered person or a legislative employee accepts an expenditure made for the purpose of lobbying valued over two hundred dollars ($200.00) from a person exempted or not covered by this Article, the person making the expenditure shall report the date, a description of the expenditure, the name and address of the person making the expenditure, and the estimated fair market value of the expenditure.

(b) If the person making the expenditure in subsection (a) of this section is outside North Carolina, the covered person or legislative employee accepting the expenditure shall be responsible for filing the report.

(c) If a covered person or a legislative employee accepts a scholarship valued over two hundred dollars ($200.00) from a person exempted or not covered by this Article, the person granting the scholarship shall report the date of the scholarship, a description of the event involved, the name and address of the person granting the scholarship, and the estimated fair market value.

(d) If the person granting the scholarship in subsection (c) of this section is outside North Carolina, the covered person or legislative employee accepting the scholarship shall be responsible for filing the report.

(e) This section shall not apply to any of the following:

(1) Lawful campaign contributions.

(2) Any gift from a family member to a covered person or legislative employee.

(3) Gifts associated primarily with the covered person, legislative employee, or that person's immediate family member's nonlegislative employment.

(4) Gifts, other than food, beverages, travel, and lodging, which are received from a person who is a citizen of a country other than the United States or a state other than North Carolina and given during a ceremonial presentation or as a custom.

(5) A thing of value that is paid for by the State.

(f) Reports required by this section shall be filed by the end of the quarter following the gift with the Secretary of State in a manner prescribed by the Secretary of State, including electronically.

"**§ 120-47.9. Punishment for violation.**

(a) Whoever willfully violates any provision of this Article shall be guilty of a Class 1 misdemeanor. In addition, no legislative lobbyist who is convicted of a violation

of the provisions of this Article shall in any way act as a legislative or executive lobbyist for a period of two years following ~~his~~ conviction.

(b) In addition to the criminal penalties set forth in this section, the Secretary of State may levy civil fines for willful false or incomplete reporting up to five thousand dollars ($5,000) per violation.

"**§ 120-47.10. Enforcement of Article by Attorney General.**

The Secretary of State shall report apparent violations of this Article to the Attorney General. The Attorney General shall, upon ~~complaint made to him of violations of this Article,~~ complaint, make an appropriate investigation thereof, and ~~he~~ the Attorney General shall forward a copy of the investigation to the district attorney of the prosecutorial district as defined in G.S. 7A-60 of which Wake County is a part, who shall prosecute any person who violates any provisions of this Article.

"**§ 120-47.11. Rules and forms.**

The Secretary of State shall ~~make, amend, and rescind~~adopt any rules, orders, forms, and definitions as are necessary to carry out the provisions of this Article.

"**§ 120-47.12. Limitations on agency legislative ~~liaisons.~~liaison personnel.**

(a) No ~~principal~~ State department may use State funds to contract with persons who are not employed by the State to lobby the General Assembly.

(b) No more than two persons in each ~~principal~~ State department and constituent institution of The University of North Carolina may be registered to lobby the General Assembly or designated as legislative ~~liaisons~~ liaison personnel pursuant to this Article.

(c) All persons designated as legislative liaison personnel pursuant to this Article and the State department or constituent institution of The University of North Carolina who employs the legislative liaison personnel shall report all expenditures made for lobbying purposes in the same manner as required for legislative lobbyists under G.S. 120-47.6 and lobbyists' principals under G.S. 120-47.7."

SECTION 2. Chapter 147 of the General Statutes is amended by adding a new Article to read:

"Article 4C.

"Executive Branch Lobbying.

"**§ 147-54.31. Definitions.**

The following definitions shall apply in this Article:

(1) The term "executive action" means the preparation, research, drafting, introduction, consideration, modification, amendment, approval, passage, adoption, tabling, postponement, defeat, or rejection of a rule, regulation, executive order, policy, resolution, contract, request for proposal, amendment, motion, report, nomination, or appointment by the executive branch or by a member or employee of the executive branch acting or purporting to act in an official capacity. This term shall not include any action by an attorney representing a client with respect to the executive action.

(2) The term "executive branch officers" means the Governor, any member of the Council of State, and heads of those departments listed

in G.S. 143-6, and the Board of Governors and the presidents of the universities of The University of North Carolina System.

(3) The term "executive lobbyist" means any lobbyist for or against executive action.

(4) The term "expenditure" means any advance, contribution, conveyance, deposit, distribution, payment, gift, retainer, fee, salary, honorarium, reimbursement, loan, pledge, or thing of value greater than ten dollars ($10.00), or a contract, agreement, promise, or other obligation whether or not legally enforceable, that directly or indirectly is made to, at the request of, for the benefit of, or on the behalf of an executive branch officer or that person's immediate family member.

(5) The term "immediate family member" means spouse, descendant or ascendant.

(6) The term "lobbying" means any of the following:

a. Influencing or attempting to influence executive action or through direct communication or activities with an executive branch officer.

b. Solicitation of others by an executive lobbyist or lobbyist's principal to influence executive action.

c. Developing executive goodwill through communications or activities with an executive branch officer or that person's immediate family with the intention of influencing current or future executive action, but does not include communications or activities with executive branch officers or that person's immediate family member in a business, civic, religious, fraternal, or commercial relationship which is not connected to executive action.

(7) The term "lobbyist" means an individual who meets any of the following criteria:

a. Is employed and receives compensation, or who contracts for economic consideration, for the purpose of lobbying.

b. Represents another person and receives compensation for the purpose of lobbying.

The term "lobbyist" shall not include those individuals who are specifically exempted from this Article by G.S. 147-54.40. For the purpose of determining whether an individual is an executive lobbyist under this subdivision, reimbursement of actual travel and subsistence expenses shall not be considered compensation; provided, however, that reimbursement in the ordinary course of business of these expenses shall be considered compensation if a significant part of the individual's duties involves executive lobbying.

(8) The terms "lobbyist's principal" and "principal" mean the person on whose behalf the executive lobbyist lobbies. In the case where a lobbyist is employed by a law firm, consulting firm, or other entity

retained by a person for executive lobbying, the principal is the person whose interests the lobbyist represents in lobbying.

(9) The term "person" means any individual, firm, partnership, committee, association, corporation, business entity, or any other organization or group of persons which has an independent legal existence.

"**§ 147-54.32. Registration procedure.**

(a) An executive lobbyist shall file a registration statement with the Secretary of State before engaging in any lobbying in a manner prescribed by the Secretary of State. It shall be unlawful for a person to lobby without registering unless exempted by this Article. A separate registration statement is required for each lobbyist's principal. The registration shall indicate whether it is registration as a legislative lobbyist, executive lobbyist, or both, and a separate registration fee shall be paid for each separate type of registration.

(b) The form of the registration shall be prescribed by the Secretary of State and shall include the registrant's full name, firm, and complete address and telephone number; the registrant's place of business; the full name and complete address and telephone number of each person by whom the registrant is employed or retained; and a general description of the matters on which the registrant expects to act as an executive lobbyist. The Secretary of State shall make available as soon as practicable the registrations of the lobbyists and lobbyists' principals in an electronic, searchable format.

(c) Each executive lobbyist shall register file an amended registration form with the Secretary of State no later than 10 days after any change in the information supplied in the executive lobbyist's last registration under subsection (b). Each supplementary registration shall include a complete statement of the information that has changed.

(d) Each registration statement of an executive lobbyist required under this Article shall be effective from the date of filing until January 1 of the following year. The executive lobbyist shall file a new registration statement after that date.

"**§ 147-54.34. Written authority from lobbyist's principal to be filed.**

Each executive lobbyist shall file with the Secretary of State within 10 days after the executive lobbyist's registration a written authorization to act as such, signed by the lobbyist's principal.

"**§ 147-54.35. Contingency lobbying fees and election influence prohibited.**

(a) No person shall act as an executive lobbyist for compensation that is dependent upon the result or outcome of any executive action.

(b) No executive lobbyist or executive lobbyist's principal shall attempt to influence the action of an executive branch officer by the promise of financial support of the executive branch officer's candidacy or appointment, or by threat of financial support in opposition to the executive branch officer's candidacy in any future election.

"**§ 147-54.36. Exemptions and inclusions for reporting purposes.**

(a) For purposes of G.S. 147-54.36 and G.S. 147-54.37, the following expenditures need not be reported:

(1) Gifts from an immediate family member or person who is the child, stepchild, parent, sibling, mother-in-law, father-in-law, son-in-law,

daughter-in-law, grandparent, or grandchild of the executive branch officer.

(2) Lawful campaign contributions.

(b) For purposes of G.S. 147-54.36 and G.S. 147-54.37, all expenditures made for the purpose of lobbying need to be reported, including:

(1) Expenditures benefiting or made on behalf of an executive branch officer or that person's immediate family members in the regular course of that person's nonexecutive employment.

(2) Contractual arrangements or direct business relationships between an executive lobbyist or executive lobbyist's principal and an executive branch officer or that person's immediate family member, in effect during the reporting period or the previous 12 months.

(3) Amounts reimbursed by a principal to an executive lobbyist in the ordinary course of business by the lobbyist's principal or other employer.

"**§ 147-54.37. Statements of executive lobbyist's lobbying expenditures required.**

(a) Each executive lobbyist shall file quarterly expenditure reports under oath with the Secretary of State, in a manner prescribed by the Secretary of State, including electronically, with respect to each lobbyist's principal within 10 days after the end of the reporting period. The expenditure report shall include all expenditures during the reporting period. The executive lobbyist shall file an expenditure report whether or not expenditures are made.

(b) Each expenditure report shall set forth the amount, date, a description of the expenditure, name and address of the payee, and name of any executive branch officer, or that person's immediate family member affected by the expenditure. Such expenditures shall be reported using the following categories:

(1) Transportation and lodging.

(2) Entertainment, food, and beverages.

(3) Meetings and events.

(4) Gifts.

(5) Solicitation of others to lobby.

(6) Other expenditures.

(c) All reports shall be in the form prescribed by the Secretary of State and shall be open to public inspection upon filing. When more than 15 executive branch officers benefit from an expenditure, no names of individuals need be reported provided that the report identifies the approximate number of executive branch officers benefiting and, with particularity, the basis for their selection. The approximate number of immediate family members who benefited from the expenditure shall be listed separately.

(d) When an executive lobbyist fails to file an expenditure report as required in this section, the Secretary of State shall send a certified or registered letter advising the executive lobbyist of the delinquency and the penalties provided by law. Within 20 days of the receipt of the letter, the executive lobbyist shall deliver or post by United States mail to the Secretary of State the required report and an additional late filing fee in an amount equal to the late filing fee under G.S. 163-278.34(a)(2).

(e) Filing of the required report and payment of the additional fee within the time extended shall constitute compliance with this section. Failure to file an expense report in one of the manners prescribed herein shall result in revocation of any and all registrations of an executive lobbyist under this Article. No executive lobbyist may register or reregister under this Article until the executive lobbyist has fully complied with this section.

(f) Appeal of a decision by the Secretary of State under this section shall be in accordance with Article 3 of Chapter 150B of the General Statutes.

(g) The Secretary of State may adopt rules to facilitate disclosure of expenditures, including the format of reports and additional categories of information, and to protect the addresses of payees under protective order issued pursuant to Chapter 50B of the General Statutes or participating in the Address Confidentiality Program pursuant to Chapter 15C of the General Statutes.

"**§ 147-54.38. Statements of lobbyist's principal lobbying expenses required.**

(a) Each executive lobbyist's principal shall file quarterly expenditure reports under oath with the Secretary of State within 10 days after the end of the reporting period. The expenditure report shall include all expenditures during the reporting period. The lobbyist's principal shall file an expenditure report whether or not expenditures are made during a reporting period.

(b) Each expenditure report shall set forth the amount, date, a description of the expenditure, name and address of the payee, and name of any executive branch officers, or that person's immediate family member affected by the expenditure. Such expenditures shall be reported using the following categories:

(1) Transportation and lodging.
(2) Entertainment, food, and beverages.
(3) Meetings and events.
(4) Gifts.
(5) Solicitation of others to lobby.
(6) Other expenditures.

(c) All reports shall be in the form prescribed by the Secretary of State and open to public inspection upon filing. When more than 15 executive branch officers benefit from an expenditure, no names of individuals need be reported provided that the report identifies the approximate number of executive branch officers benefiting and, with particularity, the basis for their selection. The approximate number of immediate family members who benefited from the expenditure shall be listed separately.

(d) When a lobbyist's principal fails to file an expenditure report as required in this section, the Secretary of State shall send a certified or registered letter advising the lobbyist's principal of the delinquency and the penalties provided by law. Within 20 days of the receipt of the letter, the lobbyist's principal shall deliver or post by United States mail to the Secretary of State the required report and a late filing fee in an amount equal to the late filing fee under G.S. 163-278.34(a)(2).

(e) Filing of the required report and payment of the late fee within the time extended shall constitute compliance with this section. Failure to file an expense report in one of the manners prescribed herein shall result in revocation of any and all

registrations of an executive lobbyist under this Article. No executive lobbyist may register or reregister under this Article until the executive lobbyist has fully complied with this section.

(f) Appeal of a decision by the Secretary of State under this section shall be in accordance with Article 3 of Chapter 150B of the General Statutes.

(g) The Secretary of State may adopt rules to facilitate disclosure of expenditures, including the format of reports and additional categories of information, and to protect the addresses of payees under protective order issued pursuant to Chapter 50B of the General Statutes or participating in the Address Confidentiality Program pursuant to Chapter 15C of the General Statutes.

"**§ 147-54.39. Powers and duties of the Secretary of State.**

(a) The Secretary of State shall perform systematic audits of reports required to be filed under G.S. 147-54.36 and G.S. 147-54.37 on a regular basis.

(b) The Secretary of State may petition the Superior Court of Wake County for the approval to issue subpoenas and subpoenas duces tecum as necessary to conduct investigations of violations of this Article. The court shall authorize subpoenas under this subsection when the court determines they are necessary for the enforcement of this Article. Subpoenas issued pursuant to this subsection shall be enforceable by the court through contempt powers.

(c) Complaints of violations of this Article and all other records accumulated in conjunction with the investigation of these complaints shall be considered records of criminal investigations under G.S. 132-1.4.

"**§ 147-54.40. Persons exempted from provisions of Article.**

The provisions of this Article shall not be construed to apply to any of the following:

(1) An individual solely engaged in expressing a personal opinion on an executive action.

(2) A person appearing before a committee, commission, board, council, or other collective body at the invitation or request of the collective body or a member thereof and who engages in no further activities as an executive lobbyist in connection with that or any other executive action.

(3) A duly elected or appointed official or employee of the State, the United States, a county, municipality, school district, or other governmental agency, when appearing solely in connection with matters pertaining to the office and its public duties.

(4) A person performing professional services in advising and rendering opinions to clients, or executive branch officers on behalf of clients, as to the construction and effect of proposed or pending executive action where the professional services are not otherwise connected with executive action.

(5) A person who owns, publishes, or is employed by any news medium while engaged in the acquisition or dissemination of news on behalf of the news medium.

(6) A person responding to inquiries from an executive branch officer and who engages in no further activities as an executive lobbyist in connection with that or any other executive action.

(7) A person appearing before an executive branch agency or department on behalf of another person, on an individual application for a license or permit, or a disciplinary action on a license or permit.

(8) An employee who represents the employer's interests in executive action for no more than six hours during a six-month reporting period, provided that neither the employee nor the employer make any expenditure as defined in G.S. 147-54.31.

"**§ 147-54.41. Expenditures made by persons exempted or not covered by this Article.**

(a) If an executive branch officer accepts an expenditure made for the purpose of lobbying valued over two hundred dollars ($200.00) from a person exempted or not covered by this Article, the person making the expenditure shall report the date, a description of the expenditure, the name and address of the person making the expenditure, and the estimated fair market value of the expenditure.

(b) If the person making the expenditure in subsection (a) of this section is outside North Carolina, the executive branch officer accepting the expenditure shall be responsible for filing the report.

(c) If a covered person or a legislative employee accepts a scholarship valued over two hundred dollars ($200.00) from a person exempted or not covered by this Article, the person granting the scholarship shall report the date of the scholarship, a description of the event involved, the name and address of the person granting the scholarship, and the estimated fair market value.

(d) If the person granting the scholarship in subsection (c) of this section is outside North Carolina, the covered person or legislative employee accepting the scholarship shall be responsible for filing the report.

(e) This section shall not apply to any of the following:

(1) Lawful campaign contributions.

(2) Any gift from a family member to a covered person or legislative employee.

(3) Gifts associated primarily with the executive branch officer or that person's immediate family member's nonexecutive employment.

(4) Gifts, other than food, beverages, travel, and lodging, received by an executive branch officer which are received from a person who is a citizen of a country other than the United States or a state other than North Carolina and given during a ceremonial presentation or as a custom.

(5) A thing of value that is paid for by the State.

(f) Reports required by this section shall be filed by the end of the quarter following the gift with the Secretary of State in a manner prescribed by the Secretary of State, including electronically.

"**§ 147-54.42. Punishment for violation.**

(a) Whoever willfully violates any provision of this Article shall be guilty of a Class 1 misdemeanor. In addition, no executive lobbyist who is convicted of a violation of the provisions of this Article shall in any way act as an executive or legislative lobbyist for a period of two years following conviction.

(b) In addition to the criminal penalties set forth in this section, the Secretary of State may levy civil fines for willful false or incomplete reporting up to five thousand dollars ($5,000) per violation.

"**§ 147-54.43. Enforcement of Article by Attorney General.**

The Secretary of State shall report apparent violations of this Article to the Attorney General. The Attorney General shall, upon complaint, make an appropriate investigation thereof, and the Attorney General shall forward a copy of the investigation to the district attorney of the prosecutorial district as defined in G.S. 7A-60, of which Wake County is a part, who shall prosecute any person who violates any provisions of this Article.

"**§ 147-54.44. Rules and forms.**

The Secretary of State shall adopt any rules, orders, forms, and definitions as are necessary to carry out the provisions of this Article."

SECTION 3. Article 4 of Chapter 147 of the General Statutes is amended by adding a new section to read:

"**§ 147-54.8. No gifts registry.**

(a) The Secretary of State shall establish a 'No Gifts' registry for persons subject to Article 9A of Chapter 120 of the General Statutes or Article 4C of this Chapter. The 'No Gifts' registry shall be published and updated with the list of lobbyists and lobbyists' principals required under G.S. 120-47.2.

(b) Executive lobbyists, legislative lobbyists, and lobbyists' principals shall not give gifts to persons placing their names on the registry.

(c) The Secretary shall have the authority to adopt rules to implement this section in compliance with the following criteria:

(1) The registration is valid from the time the person registers until January 1 of the following year, unless the person requests in writing the removal of that person's name.

(2) The registration shall be in writing.

(d) For purposes of this section, the term "gift" means any payment, entertainment, advance, services, forgiveness of an obligation or debt, or thing of value, unless consideration of equal or greater value has been given therefor."

SECTION 4. There is appropriated from the General Fund to the Office of the Secretary of State the sum of two hundred thousand dollars ($200,000) for the 2005-2006 fiscal year to provide for the enforcement personnel, administrative staff, and expenses necessary to implement this act.

SECTION 5. There is appropriated from the General Fund to the Office of the Secretary of State the sum of one hundred twelve thousand dollars ($112,000) for the 2005-2006 fiscal year to provide for the implementation of electronic filing of all lobbyists' and lobbyists' principals' reports required under Article 9A of Chapter 120 of the General Statutes and to provide public access via the Internet to all these filings. The Secretary of State shall implement electronic filing of all lobbyists' and lobbyists'

principals' reports required under Article 9A of Chapter 120 of the General Statutes and provide public access via the Internet to all these filings as soon as practicable.

SECTION 6. Sections 4, 5, and 6 of this act become effective July 1, 2005. G.S. 120-47.7C(d), as enacted by Section 1 of this act, shall apply to appointments made on or after January 1, 2007. The remainder of this act becomes effective January 1, 2007.

House Judiciary I Committee

July 21, 2005
10:00 a.m.

Minutes

The House Judiciary I Committee met on Thursday, July 21, 2005 at 10:00 a. m. in Room 1228 in the Legislative Building. Chairman Joe Hackney called the meeting to order and the following members were present: Representative Alexander, Blust, Capps, Goodwin, Harrison, Insko, Miller, Ross, Stam, Stiller and West. A copy of the agenda and visitor registration is attached, (Attachments I and II).

Chairman Hackney welcomed the visitors and introduced the pages.

Representative Haire was recognized to comment on Senate Bill 796, AN ACT TO PROVIDE FOR CRIMINAL RECORD CHECKS OF APPLICANTS FOR PERMITS AND LICENSES TO CONDUCT ARCHAEOLOGICAL OPERATIONS AND INVESTIGATIONS, (Attachment III). The bill would require an applicant to submit to a criminal history check if required by the Department of Cultural Resources in order to obtain a permit to conduct certain exploration, recovery or salvage operations or archaeological investigation on State lands.

Mr. Brad Krehely, Committee Counsel, was recognized to offer further explanation.

Representative Capps moved that the bill be given a favorable report. The motion carried, (Attachment IV).

Senator Clodfelter was recognized for a continuation of the discussion of Senate Bill 1048, AN ACT ENACTING THE IDENTITY THEFT PROTECTION ACT OF 2005, (Attachment V). The bill was first discussed during the June 30 meeting of the Committee at which time a Proposed House Committee Substitute was adopted for the purpose of discussion. It was announced at that time that the bill was a work in progress. A bill analysis explaining that version of the bill is attached, (Attachment VI).

A new Proposed House Committee Substitute was distributed, (Attachment VII). Representative Insko moved its adoption for the purpose of discussion. The motion carried.

Representative Ross offered an amendment, (Attachment VIII) and moved its adoption. The motion carried.

Ms. Erika Churchill, Committee Counsel, was recognized to explain the new Committee Substitute. It provides for the protection of personal and credit information that might lead to identity theft by requiring businesses to protect social security

numbers, permitting a person to freeze access to credit reports, and requiring certain safeguards relating to the destruction of personal information records. Additional explanation may be found in the bill analysis prepared by Ms. Churchill, (Attachment IX).

Representative Stam offered an amendment, (Attachment X) and moved its adoption. The amendment would delete lines 19-38 on page 14. Senator Clodfelter stated no opposition to the amendment. Representative Miller spoke in support of the amendment. Representative Insko spoke in opposition to the amendment. Upon vote of the Committee, the amendment was adopted.

Representative Stam moved to incorporate the amendments into a new House Committee Substitute, that it be given a favorable report and the original bill and unfavorable report and that the bill be re-referred to the Committee on Finance. The motion carried, (Attachment XI). A copy of the final version is attached, (Attachment XII).

Senator Clodfelter was recognized for an explanation of Senate Bill 324, AN ACT TO MAKE VARIOUS CHANGES TO THE NORTH CAROLINA BUSINESS CORPORATION ACT AND TO MAKE CONFORMING CHANGES TO THE OTHER ENTITY ACTS, (Attachment XIII). An explanation of the bill is found in the bill summary prepared by Ms. Susan Sitze, Committee Counsel. The summary is attached to the minutes, (Attachment XIV).

Following brief discussion, Representative Ross moved that the bill be given a favorable report. The motion carried, (Attachment XV).

The meeting adjourned at 10:40 a.m.

Representative Joe Hackney
Chairman

Emily Reynolds Freeman
Committee Clerk

ATTACHMENT I

HOUSE COMMITTEE ON JUDICIARY I

July 21, 2005
10:00 a.m.

OPENING REMARKS

AGENDA ITEMS

Senate Bill 324 – Revise Business Corporation Act
Senator Clodfelter

Senate Bill 796 – Criminal Record Checks/Archaeological Operations
Senator Thomas

Senate Bill 1048 – Identity Theft Protection Act of 2005
Senator Clodfelter

ADJOURNMENT

ATTACHMENT II

VISITOR REGISTRATION SHEET

House Judiciary I — July 21, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
DOLORES HALL	CULTURAL RESOURCES
Jeffrey J Crow	DCR
Lynne Weaver	NC AG's Office
Edwards	NC AG's Office
Ashli Falla	NC AG
Anna Stein	
Kathy Edwards	UNC-CH Institute of Gov't
CURTIS WOODS	NCGA INTERN FOR REP. SUTTON
DOUG HERON	NC BAR ASSOC.
[illegible]	Poyner & Spruill
Matt Osborne	AOC

VISITOR REGISTRATION SHEET

House Judiciary I — July 21, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Dan Blau	ACLU-NC
Betty Boop	Cartoon Network
Chad Essick	H/M/A
L Bowley	LBA
Stephanie Simpson	NC Assn. of REALTORS
Phil Lehman	NC AGO
Suzanne Buckley	GA OFFICE
Dirk Carlton	attn
James Peace	Intern
Paula A. Wolf	El Pueblo
	Smith Anderson
	NCRA - NCWA

VISITOR REGISTRATION SHEET

House Judiciary I — July 21, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Randy Fraser	NC
Elizabeth Ouzts	NCPIRG
Cassie Gauh	NCPIRG
CLAUDE GILLIKIN	GSK
GARY SALAMIDA	GSK
TOMMY SUTER	WYETH
Kevin Leonard	WCSR
JOEL MAYNARD	GPMA ASSOC.
Henry Jones	
John McAf	GOO Office
Mary Thomsen	KCBSIC

VISITOR REGISTRATION SHEET

Judiciary I — 7/21/05

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Gene Ainsworth	Winston-Salem
Bill Scoggin	KCCA
Ron ~~Ottaviano~~	Wachovia
[illegible]	First Citizens Bank
Betty Turner	Bank of America
Paul Stahl	NCBA
Donna Rosefield	DCR
Andy Ellen	NCRMA
Caroline Farmer	AG
Jay Stewart	IFNC
Cam Cova	BPMHL
Anne Wine	AOC
Jack Grant	DCM

VISITOR REGISTRATION SHEET

Judiciary I — 7-21-05

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Andy Romanet	NCLM
Matt Mullaney	NCNV

VISITOR REGISTRATION SHEET

House Judiciary I — July 21, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Michael Wagner	Fay Observer
FRANK W. FOLGER	NCDOT

June 30 Version

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 1048

Judiciary I Committee Substitute Adopted 5/23/05

PROPOSED HOUSE COMMITTEE SUBSTITUTE S1048-CSRU-64 [v.4]

6/29/2005 4:46:37 PM

Short Title: Identity Theft Protection Act of 2005. (Public)

Sponsors:

Referred to:

March 24, 2005

A BILL TO BE ENTITLED

AN ACT ENACTING THE IDENTITY THEFT PROTECTION ACT OF 2005.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 75 of the General Statutes is amended by adding a new Article to read:

"Article 2A.

"Identity Theft Protection Act.

"**§ 75-60. Title.**

This Article shall be known and may be cited as the "Identity Theft Protection Act".

"**§ 75-61. Definitions.**

The following definitions apply in this Article:

(1) "Business". – A sole proprietorship, partnership, corporation, association, or other group, however organized and whether or not organized to operate at a profit. The term includes a financial institution organized, chartered, or holding a license or authorization certificate under the laws of this State, any other state, the United States, or any other country, or the parent or the subsidiary of any such financial institution. Business shall not include any government or governmental subdivision or agency.

(2) "Consumer". – An individual.

(3) "Consumer reporting agency". – Any person who, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties.

(4) "Consumer report" or "credit report". – Any written, oral, or other communication of any information by a consumer reporting agency

bearing on a consumer's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for any of the following:

a. Credit to be used primarily for personal, family, or household purposes.

b. Employment purposes.

c. Any other purpose authorized under 15 U.S.C. § 1681(b).

(5) "Credit card". – Has the same meaning as in section 103 of the Truth in Lending Act (15 U.S.C. § 160, et seq.).

(6) "Debit card". – Any card or device issued by a financial institution to a consumer for use in initiating an electronic fund transfer from the account holding assets of the consumer at such financial institution, for the purpose of transferring money between accounts or obtaining money, property, labor, or services.

(7) "Disposal" includes the following:

a. The discarding or abandonment of records containing personal information.

b. The sale, donation, discarding, or transfer of any medium, including computer equipment or computer media, containing records of personal information, or other nonpaper media upon which records of personal information are stored, or other equipment for nonpaper storage of information.

(8) "Encryption". – The use of an algorithmic process to transform data into a form in which the data is rendered unreadable or unusable without use of a confidential process or key.

(9) "Person". – Any individual, partnership, corporation, trust, estate, cooperative, association, government, or governmental subdivision or agency, or other entity.

(10) "Personal information". –A person's first name or first initial and last name in combination with identifying information as defined in G.S. 14-113.20(b). Personal information does not include publicly available directories containing information an individual has voluntarily consented to have publicly disseminated or listed, including name, address, and telephone number, and does not include records or reproductions of records made lawfully available to the general public from federal, state, or local government records. Personal information does including identifying information extracted from public records and aggregated by a business.

(11) "Proper identification". – Information generally deemed sufficient to identify a person. If a person is unable to reasonably identify himself or herself with the information described above, a consumer reporting agency may require additional information concerning the consumer's

employment and personal or family history in order to verify the consumer's identity.

(12) "Records". – Any material on which written, drawn, spoken, visual, or electromagnetic information is recorded or preserved, regardless of physical form or characteristics.

(13) "Redaction". – The rendering of data so that it is unreadable or is truncated so that no more than the last four digits of the identification number is accessible as part of the data.

(14) "Security breach". – An incident of unauthorized access to and acquisition of unencrypted or unredacted records or data containing personal information where unauthorized or illegal use of the personal information has occurred or is reasonably likely to occur or that creates a material risk of harm to a consumer. Any incident of unauthorized access to and acquisition of encrypted records or data containing personal information along with the confidential process or key shall constitute a security breach. Good faith acquisition of personal information by an employee or agent of the business for a legitimate purpose is not a security breach, provided that the personal information is not used for a purpose other than a lawful purpose of the business and is not subject to further unauthorized disclosure.

(15) "Security freeze". – Notice placed in a credit report, at the request of the consumer and subject to certain exceptions, that prohibits the consumer reporting agency from releasing all or any part of the consumer's credit report or any information derived from it without the express authorization of the consumer.

"**§ 75-62. Social security number protection.**

(a) Except as provided in subsection (b) of this section, a business may not do any of the following:

(1) Intentionally communicate or otherwise make available to the general public an individual's social security number.

(2) Intentionally print or imbed an individual's social security number on any card required for the individual to access products or services provided by the person or entity.

(3) Require an individual to transmit his or her social security number over the Internet, unless the connection is secure or the social security number is encrypted.

(4) Require an individual to use his or her social security number to access an Internet Web site, unless a password or unique personal identification number or other authentication device is also required to access the Internet Web site.

(5) Print an individual's social security number on any materials that are mailed to the individual, unless state or federal law requires the social security number to be on the document to be mailed.

(6) Sell, lease, loan, trade, rent, or otherwise intentionally disclose an individual's social security number to a third party without written consent to the disclosure from the individual, when the party making the disclosure knows or in the exercise of reasonable diligence would have reason to believe that the third party lacks a legitimate business purpose for obtaining the individual's social security number.

(b) Subsection (a) of this section shall not apply in the following instances:

(1) When a social security number is included in an application or in documents related to an enrollment process, or to establish an account, contract, or policy or to confirm the accuracy of the social security number for the purpose of obtaining a credit report pursuant to 15 U.S.C. § 1681(b)(2). A social security number that is permitted to be mailed under this section may not be printed, in whole or in part, on a postcard or other mailer not requiring an envelope, or visible on the envelope or without the envelope having been opened.

(2) To the collection, use, or release of a social security number for internal verification or administrative purposes.

(3) To the opening of an account or the provision of or payment for a product or service authorized by an individual.

(4) To the collection, use, or release of a social security number to investigate or prevent fraud, conduct background checks, conduct social or scientific research, collect a debt, obtain a credit report from or furnish data to a consumer reporting agency pursuant to the Fair Credit Reporting Act, 15 U.S.C. § 1681, et seq, undertake a permissible purpose enumerated under Gramm Leach Bliley, 12 CFR Sec. 216.13-15, or locate an individual who is missing, a lost relative, or due a benefit, such as a pension, insurance, or unclaimed property benefit.

(5) To a business acting pursuant to a court order, warrant, subpoena, or when otherwise required by law.

(6) To a business providing the social security number to a federal, state, or local government entity, including a law enforcement agency, court, or their agents or assigns.

(7) To a social security number that has been redacted.

(c) A business covered by this section shall make reasonable efforts to cooperate, through systems testing and other means, to ensure that the requirements of this Article are implemented on or before the dates specified in this section.

(d) A violation of this section is a violation of G.S. 75-1.1.

"**§ 75-63. Security freeze.**

(a) A consumer or the consumer's attorney-in-fact or legal guardian may place a security freeze on the consumer's credit report by making a request in writing by certified mail to a consumer reporting agency. A security freeze shall prohibit, subject to exceptions in subsection (l) of this section, the consumer reporting agency from releasing the consumer's credit report or any information from it without the express

authorization of the consumer. When a security freeze is in place, a consumer reporting agency may not release the consumer's credit report or information to a third party without prior express authorization from the consumer. This subsection does not prevent a consumer reporting agency from advising a third party that a security freeze is in effect with respect to the consumer's credit report.

(b) A consumer reporting agency shall place a security freeze on a consumer's credit report no later than five business days after receiving a written request from the consumer.

(c) The consumer reporting agency shall send a written confirmation of the security freeze to the consumer within 10 business days of placing the freeze and at the same time shall provide the consumer with a unique personal identification number or password, other than the consumer's social security number, to be used by the consumer when providing authorization for the release of the consumer's credit report for a specific period of time.

(d) If the consumer wishes to allow the consumer's credit report to be accessed for a specific period of time while a freeze is in place, the consumer shall contact the consumer reporting agency, request that the freeze be temporarily lifted, and provide all of the following:

(1) Proper identification.

(2) The unique personal identification number or password provided by the consumer reporting agency pursuant to subsection (c) of this section.

(3) The proper information regarding the time period for which the report shall be available to users of the credit report.

(e) A consumer reporting agency may develop procedures involving the use of telephone, fax, the Internet, or other electronic media to receive and process a request from a consumer to temporarily lift a freeze on a credit report pursuant to subsection (d) of this section in an expedited manner.

(f) A consumer reporting agency that receives a request from a consumer to temporarily lift a freeze on a credit report pursuant to subsection (d) of this section shall comply with the request no later than three business days after receiving the request.

(g) A consumer reporting agency shall remove or temporarily lift a freeze placed on a consumer's credit report only in the following cases:

(1) Upon the consumer's request, pursuant to subsections (d) or (j) of this section.

(2) If the consumer's credit report was frozen due to a material misrepresentation of fact by the consumer. If a consumer reporting agency intends to remove a freeze upon a consumer's credit report pursuant to this subdivision, the consumer reporting agency shall notify the consumer in writing prior to removing the freeze on the consumer's credit report.

(h) If a third party requests access to a consumer credit report on which a security freeze is in effect and this request is in connection with an application for credit or any

other use and the consumer does not allow the consumer's credit report to be accessed for that specific period of time, the third party may treat the application as incomplete.

(i) If a consumer requests a security freeze pursuant to this section, the consumer reporting agency shall disclose to the consumer the process of placing and temporarily lifting a security freeze and the process for allowing access to information from the consumer's credit report for a specific period of time while the security freeze is in place.

(j) A security freeze shall remain in place until the consumer requests that the security freeze be removed. A consumer reporting agency shall remove a security freeze within three business days of receiving a request for removal from the consumer, who provides all of the following:

(1) Proper identification.

(2) The unique personal identification number or password provided by the consumer reporting agency pursuant to subsection (c) of this section.

(k) A consumer reporting agency shall require proper identification of the person making a request to place or remove a security freeze.

(l) The provisions of this section do not apply to the use of a consumer credit report by any of the following:

(1) A person, or the person's subsidiary, affiliate, agent, subcontractor, or assignee with whom the consumer has, or prior to assignment had, an account, contract, or debtor-creditor relationship for the purposes of reviewing the active account or collecting the financial obligation owing for the account, contract, or debt.

(2) A subsidiary, affiliate, agent, assignee, or prospective assignee of a person to whom access has been granted under subsection (d) of this section for purposes of facilitating the extension of credit or other permissible use.

(3) Any person acting pursuant to a court order, warrant, or subpoena.

(4) A state or local agency, or its agents or assigns, which administers a program for establishing and enforcing child support obligations.

(5) A state or local agency, or its agents or assigns, acting to investigate fraud, including Medicaid fraud, or acting to investigate or collect delinquent taxes or assessments, including interest and penalties, unpaid court orders or to fulfill any of its other statutory responsibilities.

(6) A federal, state, or local governmental entity, including law enforcement agency, court, or their agent or assigns.

(7) A person for the purposes of prescreening as defined by the Fair Credit Reporting Act, 15 U.S.C. § 1681, et seq.

(8) Any person for the sole purpose of providing for a credit file monitoring subscription service to which the consumer has subscribed.

(9) A consumer reporting agency for the purpose of providing a consumer with a copy of the consumer's credit report upon the consumer's request.

(10) Any depository financial institution for checking, savings, and investment accounts.

(m) If a security freeze is in place, a consumer reporting agency shall not change any of the following official information in a credit report without sending a written confirmation of the change to the consumer within 30 days of the change being posted to the consumer's file: name, date of birth, social security number, and address. Written confirmation is not required for technical modifications of a consumer's official information, including name and street abbreviations, complete spellings, or transposition of numbers or letters. In the case of an address change, the written confirmation shall be sent to both the new address and the former address.

(n) The following persons are not required to place in a credit report a security freeze pursuant to this section provided, however, that any person that is not required to place a security freeze on a credit report under the provisions of subdivision (3) of this subsection shall be subject to any security freeze placed on a credit report by another consumer reporting agency from which it obtains information:

(1) A check services or fraud prevention services company, which reports on incidents of fraud or issues authorizations for the purpose of approving or processing negotiable instruments, electronic fund transfers, or similar methods of payment.

(2) A deposit account information service company, which issues reports regarding account closures due to fraud, substantial overdrafts, ATM abuse, or other similar negative information regarding a consumer to inquiring banks or other financial institutions for use only in reviewing a consumer request for a deposit account at the inquiring bank or financial institution.

(3) A consumer reporting agency that does all of the following:

a. Acts only to resell credit information by assembling and merging information contained in a database of one or more credit reporting agencies.

b. Does not maintain a permanent database of credit information from which new credit reports are produced.

(o) This section does not prevent a consumer reporting agency from charging a fee of no more than ten dollars ($10.00) to a consumer for each freeze, removal of the freeze, or temporary lifting of the freeze for a period of time, regarding access to a consumer credit report, except that a consumer reporting agency may not charge any fee to a victim of identity theft who has submitted a copy of a valid investigative or incident report or complaint with a law enforcement agency about the unlawful use of the victim's identifying information by another person.

(p) At any time that a consumer is required to receive a summary of rights required under section 609 of the federal Fair Credit Reporting Act, the following notice shall be included:

"**North Carolina Consumers Have the Right to Obtain a Security Freeze.**

You have a right to place a "security freeze" on your credit report pursuant to North Carolina law. The security freeze will prohibit a consumer reporting agency from releasing any information in your credit report without your express authorization. A security freeze must be requested in writing by certified mail.

The security freeze is designed to prevent credit, loans, and services from being approved in your name without your consent. However, you should be aware that using a security freeze to take control over who gains access to the personal and financial information in your credit report may delay, interfere with, or prohibit the timely approval of any subsequent request or application you make regarding new loans, credit, mortgage, insurance, rental housing, employment, investment, license, cellular phone, utilities, digital signature, Internet credit card transactions, or other services, including an extension of credit at point of sale.

The freeze will be placed within five business days. When you place a security freeze on your credit report, within 10 business days, you will be provided a personal identification number or a password to use when you want to remove or lift temporarily the security freeze.

A freeze does not apply when you have an existing account relationship and a copy of your report is requested by your existing creditor or its agents or affiliates for certain types of account review, collection, fraud control, or similar activities.

You should plan ahead and lift a freeze if you are actively seeking credit or services as a security freeze may slow your applications, as mentioned above.

You can remove a freeze or authorize temporary access for a specific period of time by contacting the consumer reporting agency and providing all of the following:

1. Your personal identification number or password,
2. Proper identification to verify your identity, and
3. Proper information regarding the period of time you want your report available to users of the credit report.

A consumer reporting agency that receives a request from you to temporarily lift a freeze on a credit report shall comply with the request no later than three business days after receiving the request. A consumer reporting agency may charge you up to ten dollars ($10.00) for each time you freeze, remove the freeze, or temporarily lift the freeze for a period of time, except a consumer reporting agency may not charge any amount to a victim of identify theft who has submitted a copy of a valid investigative or incident report or complaint with a law enforcement agency about the unlawful use of the victim's identifying information by another person.

You have a right to bring a civil action against someone who violates your rights under the credit reporting laws. The action can be brought against a consumer reporting agency or a user of your credit report."

(q) A violation of this section is a violation of G.S. 75-1.1.

"**§ 75-64. Destruction of personal information records.**

(a) Any business that conducts business in North Carolina and any business that maintains or otherwise possesses personal information of a resident of North Carolina

must take all reasonable measures to protect against unauthorized access to or use of the information in connection with or after its disposal.

(b) The reasonable measures must include:

(1) Implementing and monitoring compliance with policies and procedures that require the burning, pulverizing, or shredding of papers containing personal information so that information cannot be practicably read or reconstructed.

(2) Implementing and monitoring compliance with policies and procedures that require the destruction or erasure of electronic media and other nonpaper media containing personal information so that the information cannot practicably be read or reconstructed.

(3) Describing procedures relating to the adequate destruction or proper disposal of personal records as official policy in the writings of the business entity.

(c) A business may, after due diligence, enter into a written contract with, and monitor compliance by, another party engaged in the business of record destruction to destroy personal information in a manner consistent with this section. Due diligence should ordinarily include one or more of the following:

(1) Reviewing an independent audit of the disposal business's operations or its compliance with this statute or its equivalent.

(2) Obtaining information about the disposal business from several references or other reliable sources and requiring that the disposal business be certified by a recognized trade association or similar third party with a reputation for high standards of quality review.

(3) Reviewing and evaluating the disposal business's information security policies or procedures or taking other appropriate measures to determine the competency and integrity of the disposal business.

(d) A disposal business that conducts business in North Carolina or disposes of personal information of residents of North Carolina must take all reasonable measures to dispose of records containing personal information by implementing and monitoring compliance with policies and procedures that protect against unauthorized access to or use of personal information during or after the collection and transportation and disposing of such information.

(e) This section does not apply to any of the following:

(1) Any bank or financial institution that is subject to and in compliance with the privacy and security provision of the Gramm-Leach-Bliley Act, 15 U.S.C. § 6801, et seq., as amended.

(2) Any health insurer or health care facility that is subject to and in compliance with the standards for privacy of individually identifiable health information and the security standards for the protection of electronic health information of the Health Insurance Portability and Accountability Act of 1996.

(3) Any consumer reporting agency that is subject to and in compliance with the Federal Credit Reporting Act, 15 U.S.C. § 1681, et seq., as amended.

(f) A violation of this section is a violation of G.S. 75-1.1, but any damages assessed against a business because of the acts or omissions of its non-managerial employees shall not be trebled as provided in G.S. 75-16 unless the business was negligent in the training, supervision, or monitoring of those employees.

"**§ 75-65. Protection from security breaches.**

(a) Any business that owns or licenses personal information of residents of North Carolina or any business that conducts business in North Carolina that owns or licenses personal information in any form (whether computerized, paper, or otherwise) shall provide notice to the affected person that there has been a security breach following discovery or notification of the breach. The disclosure notification shall be made without unreasonable delay, consistent with the legitimate needs of law enforcement, as provided in subsection (c) of this section, or with any measures necessary to determine the scope of the breach and restore the reasonable integrity, security, and confidentiality of the data system. For the purposes of this section, personal information shall not include electronic identification numbers, electronic mail, Internet accounts or Internet identification, parent's legal surname prior to marriage, or a password unless this information would permit access to a person's financial account or resources.

(b) Any business that maintains or possesses records or data containing personal information of residents of North Carolina that the business does not own or license, or any business that conducts business in North Carolina that maintains or possesses records or data containing personal information that the business does not own or license shall notify the owner or licensee of the information of any security breach immediately following discovery of the breach, consistent with the legitimate needs of law enforcement as provided in subsection (c) of this section.

(c) The notice required by this section may be delayed if a law enforcement agency determines in writing that notification may impede a criminal investigation or jeopardize national or homeland security. The notice required by this section shall be provided immediately after the law enforcement agency determines that notice will no longer impede the investigation or jeopardize national or homeland security.

(d) The notice shall be clear and conspicuous. The notice shall include a description of the following:

(1) The incident in general terms.

(2) The type of personal information that was subject to the unauthorized access and acquisition.

(3) The general acts of the business to protect the personal information from further unauthorized access.

(4) A telephone number that the person may call for further information and assistance, if one exists.

(5) Advice that directs the person to remain vigilant by reviewing account statements and monitoring free credit reports.

(e) For purposes of this section, notice to affected persons may be provided by one of the following methods:

(1) Written notice.

(2) Electronic notice, for those persons for whom it has a valid e-mail address and who have agreed to receive communications electronically if the notice provided is consistent with the provisions regarding electronic records and signatures for notices legally required to be in writing set forth in 15 U.S.C. § 7001.

(3) Substitute notice, if the business demonstrates that the cost of providing notice would exceed two hundred fifty thousand dollars ($250,000) or that the affected class of subject persons to be notified exceeds 500,000, or if the business does not have sufficient contact information to satisfy subdivisions (1) or (2) of this subsection, for only those affected persons without sufficient contact information, or if the business is unable to identify particular affected persons, for only those unidentifiable affected persons. Substitute notice shall consist of all the following:

a. E-mail notice when the business has an electronic mail address for the subject persons.

b. Conspicuous posting of the notice on the Web site page of the business, if one is maintained.

c. Notification to major statewide media.

(4) Telephonic notice provided that contact is made directly with the affected persons.

(f) In the event a business provides notice to more than 1,000 persons at one time pursuant to this section, the business shall notify, without unreasonable delay, the Consumer Protection Division of the Attorney General's Office and all consumer reporting agencies that compile and maintain files on consumers on a nationwide basis, as defined in 15 U.S.C. § 1681a(p), of the timing, distribution, and content of the notice.

(g) Any waiver of the provisions of this Article is contrary to public policy and is void and unenforceable.

(h) A financial institution that is subject to and in compliance with the Federal Interagency Guidance Response Programs for Unauthorized Access to Consumer Information and Customer Notice, issued on March 7, 2005, by the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision, and any revisions, additions, or substitutions relating to said interagency guidance, shall be deemed to be in compliance with this section.

(i) A violation of this section is a violation of G.S. 75-1.1."

SECTION 2. G.S. 14-113.21 reads as rewritten:

"**§ 14-113.21. Venue of offenses.**

In any criminal proceeding brought under G.S. 14-113.20, the crime is considered to be committed in ~~any county in which~~ the county where the victim resides, where the perpetrator resides, where any part of the financial identity fraud took place, or in any

other county instrumental to the completion of the offense, regardless of whether the defendant was ever actually present in that county."

SECTION 3. Article 19C of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-113.21A. Investigation of offenses.**

(a) A person who has learned or reasonably suspects that the person has been the victim of identity theft may contact the local law enforcement agency that has jurisdiction over the person's actual residence. Notwithstanding the fact that jurisdiction may lie elsewhere for investigation and prosecution of a crime of identity theft, the local law enforcement agency may take the complaint, issue an incident report, and provide the complainant with a copy of the report and may refer the report to a law enforcement agency in that different jurisdiction.

(b) Nothing in this section interferes with the discretion of a local law enforcement agency to allocate resources for investigations of crimes. A complaint filed or report issued under this section is not required to be counted as an open case for purposes of compiling open case statistics."

SECTION 4. Chapter 132 of the General Statutes is amended by adding a new section to read:

"**§ 132-1.8. Social security numbers and other personal identifying information.**

(a) The General Assembly finds the following:

(1) The social security number can be used as a tool to perpetuate fraud against a person and to acquire sensitive personal, financial, medical, and familial information, the release of which could cause great financial or personal harm to an individual. While the social security number was intended to be used solely for the administration of the federal Social Security System, over time this unique numeric identifier has been used extensively for identity verification purposes and other legitimate consensual purposes.

(2) Although there are legitimate reasons for State and local government agencies to collect social security numbers and other personal identifying information from individuals, government should collect the information only for legitimate purposes or when required by law.

(3) When State and local government agencies possess social security numbers or other personal identifying information, the governments should minimize the instances this information is disseminated either internally within government or externally with the general public.

(b) Except as provided in subsections (c) and (d) of this section, no agency of the State or its political subdivisions, or any agent or employee of a government agency, shall do any of the following:

(1) Collect a social security number from an individual unless authorized by law to do so or unless the collection of the social security number is otherwise imperative for the performance of that agency's duties and responsibilities as prescribed by law. Social security numbers collected by an agency must be relevant to the purpose for which collected and

shall not be collected until and unless the need for social security numbers has been clearly documented.

(2) Fail, when collecting a social security number from an individual, to segregate that number on a separate page from the rest of the record, or as otherwise appropriate, in order that the social security number can be more easily redacted pursuant to a public records request.

(3) Fail, when collecting a social security number from an individual, to provide, at the time of or prior to the actual collection of the social security number by that agency, that individual, upon request, with a statement of the purpose or purposes for which the social security number is being collected and used.

(4) Use the social security number for any purpose other than the purpose stated.

(5) Intentionally communicate or otherwise make available to the general public a person's social security number or other identifying information. "Identifying information," as used in this section, shall have the same meaning as in G.S. 14-113.20(b), except it shall not include electronic identification names, including electronic mail addresses, or parent's legal surname prior to marriage.

(6) Intentionally print or imbed an individual's social security number on any card required for the individual to access government services.

(7) Require an individual to transmit the individual's social security number over the Internet, unless the connection is secure or the social security number is encrypted.

(8) Require an individual to use the individual's social security number to access an Internet Web site, unless a password or unique personal identification number or other authentication device is also required to access the Internet Web site.

(9) Print an individual's social security number on any materials that are mailed to the individual, unless state or federal law required that the social security number be on the document to be mailed.

(c) Subsection (b) of this section does not apply in the following circumstances:

(1) To social security numbers or other identifying information disclosed to another governmental entity or its agents, employees, or contractors if disclosure is necessary for the receiving entity to perform its duties and responsibilities. The receiving governmental entity and its agents, employees, and contractors shall maintain the confidential and exempt status of such numbers.

(2) To social security numbers or other identifying information disclosed pursuant to a court order, warrant, or subpoena.

(3) To social security numbers or other identifying information disclosed for public health purposes pursuant to and in compliance with Chapter 130A of the General Statutes.

(4) To social security numbers or other identifying information that have been redacted.

(5) To certified copies of vital records issued by the State Registrar and other authorized officials pursuant to G.S. 130A-93(c). The State Registrar may disclose any identifying information other than social security number on any uncertified vital record.

(6) To any recorded document in the official records of the register of deeds of the county.

(7) To any document filed in the official records of the courts.

(d) No State or local government agency shall deny a representative of a news media company as defined in G.S. 8-53.11(a)(3) access to identifying information if (i) the news media company will use the identifying information in the normal course of business for legitimate business purposes and (ii) the news media company makes a verified written request for the identifying information, legibly signed by an authorized officer, employee, or agent of the company. The verified request must contain the news media company's name, business mailing and location addresses, business telephone number, and a statement of the specific purposes for which it needs the identifying information and how the identifying information will be used for legitimate business purposes. A State or local government agency may request any other information as may be reasonably necessary to verify the identity of the news media company requesting the identifying information and the specific purposes for which the information will be used; however, an agency has no specific duty to inquire beyond the information contained in the verified written request. A legitimate business purpose includes use in matching, verifying, or retrieving information and in research activities. A legitimate business purpose shall not include the bulk sale or rental of identifying information to the general public. Any person who makes a false representation in order to obtain identifying information pursuant to this subsection is guilty of a Class F felony. For purposes of this subsection only, `identifying information' shall not include social security number.

(e) No person preparing or filing a document to be recorded or filed in the official records by the register of deeds or of the courts may include any person's social security, drivers license, state identification, passport, checking account, savings account, credit card, or debit card number, or personal identification (PIN) code or passwords in that document, unless otherwise expressly required by law or court order, adopted by the State Registrar on records of vital events, or redacted. Any loan closing instruction that requires the inclusion of a person's social security number on a document to be recorded shall be void. Any person who violates this subsection shall be guilty of an infraction, punishable by a fine not to exceed five hundred dollars ($500.00) for each violation.

(f) The validity of an instrument as between the parties to the instrument is not affected by the inclusion of personal information on a document recorded or filed with the official records of the register of deeds. The register of deeds may not reject an instrument presented for recording because the instrument contains an individual's personal information.

(g) Any person or the person's attorney-in-fact or legal guardian has the right to request that a register of deeds or clerk of court remove, from an image or copy of an official record placed on a register of deeds' or court's Internet website available to the general public or an Internet website available to the general public used by a register of deeds or court to display public records by the register of deeds or clerk of court, the person's social security, drivers license, state identification, passport, checking account, savings account, credit card, or debit card number, or personal identification (PIN) code or passwords contained in that official record. The request must be made in writing, legibly signed by the requester, and delivered by mail, facsimile, or electronic transmission, or delivered in person to the register of deeds or clerk of court. The request must specify the personal information to be redacted, information that identifies the document that contains the personal information, such as the identification page, and unique information that identifies the location within the document that contains the social security, drivers license, state identification, passport, checking account, savings account, credit card, or debit card number, or personal identification (PIN) code or passwords to be redacted. The request for redaction shall be considered a public record with access restricted to the register of deeds, register of deeds' staff and upon order of the court. The register of deeds or clerk of court shall have no duty to inquire beyond the written request to verify the identity of a person requesting redaction and shall have no duty to remove redaction for any reason upon subsequent request by an individual or by order of the court, if impossible to do so. No fee will be charged for the redaction pursuant to such request. Any person who requests a redaction without proper authority to do so shall be guilty of an infraction, punishable by a fine not to exceed five hundred dollars ($500) for each violation.

(h) A register of deeds or clerk of court shall immediately and conspicuously post signs throughout his or her offices for public viewing and shall immediately and conspicuously post a notice on any Internet website available to the general public used by a register of deeds or clerk of court a notice stating, in substantially similar form, the following:

(1) Any person preparing or filing a document for recordation or filing in the official records may not include a social security, drivers license, state identification, passport, checking account, savings account, credit card, or debit card number, or personal identification (PIN) code or passwords in the document, unless expressly required by law or court order, adopted by the State Registrar on records of vital events, or redacted so that no more than the last four digits of the identification number is included.

(2) Any person has a right to request a register of deeds or clerk of court to remove, from an image or copy of an official record placed on a register of deeds' or clerk of court's Internet website available to the general public or on an Internet website available to the general public used by a register of deeds or clerk of court to display public records, any social security, drivers license, state identification, passport, checking account, savings account, credit card, or debit card number,

or personal identification (PIN) code or passwords contained in an official record. The request must be made in writing and delivered by mail, facsimile, or electronic transmission, or delivered in person, to the register of deeds or clerk of court. The request must specify the personal information to be redacted, information that identifies the document that contains the personal information, such as the identification page, and unique information that identifies the location within the document that contains the social security, drivers license, state identification, passport, checking account, savings account, credit card, or debit card number, or personal identification (PIN) code or passwords to be redacted. No fee will be charged for the redaction pursuant to such a request. Any person who requests a redaction without proper authority to do so shall be guilty of an infraction, punishable by a fine not to exceed five hundred dollars ($500) for each violation.

(i) Any affected person may petition the court for an order directing compliance with this section. No liability shall accrue to a register of deeds or clerk of court or to his or her agent for any action related to provisions of this section or for any claims or damages that might result from a social security number or other identifying information on the public record or on a register of deeds' or clerk of court's Internet website available to the general public or an Internet website available to the general public used by a register of deeds or clerk of court."

SECTION 5. Chapter 120 of the General Statutes is amended by adding a new Article to read:

"Article 30.

"Miscellaneous.

"**§ 120-61. Report by State agencies to the General Assembly on ways to reduce incidence of identity theft.**

Agencies of the State shall evaluate and report annually by January 1 to the General Assembly about the agency's efforts to reduce the dissemination of personal identifying information, as defined in G.S. 14-113.20(b). The evaluation shall include the review of public forms, the use of random personal identification numbers, restriction of access to personal identifying information, and reduction of use of personal identifying information when it is not necessary. Special attention shall be given to the use, collection, and dissemination of social security numbers. If the collection of a social security number is found to be unwarranted, the State agency shall immediately discontinue the collection of social security numbers for that purpose."

SECTION 6. G.S. 14-113.20 reads as rewritten:

"**§ 14-113.20. ~~Financial identity fraud.~~Identity theft.**

(a) A person who knowingly obtains, possesses, or uses identifying information of another person, living or dead, with the intent to fraudulently represent that the person is the other person for the purposes of making financial or credit transactions in the other person's name, to obtain anything of value, benefit, or advantage, or for the

purpose of avoiding legal consequences is guilty of a felony punishable as provided in G.S. 14-113.22(a).

(b) The term "identifying information" as used in this Article includes the following:

(1) Social security numbers.
(2) Drivers ~~license~~ license, State identification card, or passport numbers.
(3) Checking account numbers.
(4) Savings account numbers.
(5) Credit card numbers.
(6) Debit card numbers.
(7) Personal Identification (PIN) Code as defined in G.S. 14-113.8(6).
(8) Electronic identification ~~numbers.~~numbers, electronic mail, Internet accounts, or Internet identification.
(9) Digital signatures.
(10) Any other numbers or information that can be used to access a person's financial resources.
(11) Biometric data.
(12) Fingerprints.
(13) Passwords.
(14) Parent's legal surname prior to marriage.

(c) It shall not be a violation under this Article for a person to do any of the following:

(1) Lawfully obtain credit information in the course of a bona fide consumer or commercial transaction.
(2) Lawfully exercise, in good faith, a security interest or a right of offset by a creditor or financial institution.
(3) Lawfully comply, in good faith, with any warrant, court order, levy, garnishment, attachment, or other judicial or administrative order, decree, or directive, when any party is required to do so."

SECTION 7. The Revisor of Statutes shall make the following technical and conforming corrections:

(1) Rename Article 19C of Chapter 14 of the General Statutes from "Financial Identity Fraud" to "Identity Theft."
(2) Replace the phrase "financial identity fraud" with the phrase "identity theft" wherever the terms appear throughout Article 19C of Chapter 14 of the General Statutes.

SECTION 8. G.S. 15A-147 reads as rewritten:

"**§ 15A-147. Expunction of records when charges are dismissed or there are findings of not guilty as a result of identity ~~fraud.~~theft.**

(a) If any person is named in a charge for an infraction or a crime, either a misdemeanor or a felony, as a result of another person using the identifying information of the named person ~~to commit an infraction or crime~~ and the charge against the named person is dismissed, a finding of not guilty is entered, or the conviction is set aside, the named person may apply by petition or written motion to the court where the charge

was last pending on a form approved by the Administrative Office of the Courts supplied by the clerk of court for an order to expunge from all official records any entries relating to the person's apprehension, charge, or trial. The court, after notice to the district attorney, shall hold a hearing on the motion or petition and, upon finding that the person's identity was used without permission and the charges were dismissed or the person was found not guilty, the court shall order the expunction."

SECTION 9. G.S. 1-539.2C reads as rewritten:

"**§ 1-539.2C. Damages for identity ~~fraud.~~theft.**

(a) Any person whose property or person is injured by reason of an act made unlawful by Article 19C of Chapter 14 of the General Statutes may sue for civil damages. Damages may be in an amount of up to five thousand dollars ($5,000) but no less than five hundred dollars ($500.00) for each incident, or three times the amount of actual damages, whichever amount is greater. A person seeking damages as set forth in this section may also institute a civil action to enjoin and restrain future acts that would constitute a violation of this section. The court, in an action brought under this section, may award reasonable attorneys' fees to the prevailing party."

SECTION 10. The provisions of this act are severable. If any phrase, clause, sentence, provision, or section is declared to be invalid or preempted by federal law or regulation, the validity of the remainder of this act shall not be affected thereby.

SECTION 11. G.S. 75-62(a)(2), (3), (4), and (5), as enacted in Section 1 of this act, become effective October 1, 2006. G.S. 132-1.8(b)(6), (7), (8), and (9), as enacted in Section 4 of this act, become effective July 1, 2007. Section 6 of this act becomes effective December 1, 2005, and applies to offenses committed, and to causes of action arising, on or after that date. The remainder of this act becomes effective October 1, 2005.

SENATE BILL 1048:
Identity Theft Protection Act of 2005

BILL ANALYSIS

Committee:	House Judiciary I	**Date:**	June 29, 2005
Introduced by:	Sen. Clodfelter	**Summary by:**	R. Erika Churchill
Version:	PCS to Second Edition S1048-CSRU-64		Committee Counsel

SUMMARY: ***The proposed committee substitute for Senate Bill 1048 provides for the protection of personal and credit information that might lead to identity theft by requiring businesses to protect individual social security numbers, permitting a person to freeze access to the person's credit report, requiring certain safeguards related to the destruction of personal information records, providing protections from security breaches of personal information databases, and by requiring State and local agencies to protect social security numbers and other personal identifying information.***

[As introduced, this bill was identical to H1248, as introduced by Reps. Goforth, Sutton, Kiser, Ray, which is currently in Senate Judiciary I.]

BILL ANALYSIS:

Section 1 of the bill enacts 6 new statutory sections to provide for numerous protections of personal and credit information as specified below:

G.S. 75-62. – Social security number protection. (Begins on Page 3, Line 26) would prevent a business from communicating social security numbers to the general public. It also prohibits a social security number from being printed on identification cards or used by the business in mailings to customers, requiring that a social security number be transmitted over the Internet or be required to access an Internet website, or to otherwise sell or disclose a social security number to a third party without the written consent of the person to whom the number belongs, except for legitimate business purposes. Certain business and public transactions are exempt. A violation of this provision would be considered an unfair or deceptive trade practice under Chapter 75 of the General Statutes, which would be subject to the recovery of treble damages and attorneys fees.

G.S. 75-63. – Security freeze. (Begins on Page 4, Line 39) would give a person the right to have access to their credit reports frozen, except when specifically authorized by the person. Once a security freeze is in place the credit reporting agency is prohibited from releasing all or part of the credit report without the express authorization of the person. A credit reporting agency may charge a fee of up to $10 for each establishment, removal or temporary lifting of a security freeze, except that a person shall not be charged a fee if the person is a victim of identity theft as evidence by a incident report filed with a law enforcement agency. A person injured by a violation of this section would be entitled to file an action for treble damages as an unfair or deceptive trade practice under Chapter 75.

G.S. 75-64. – Destruction of personal information records. (Begins on Page 8, line 41) requires that businesses that maintain or possess personal information of NC residents to protect this information from unauthorized access or use after the information is disposed of. This section would require that records contain personal information be properly destroyed and would require that third parties hired to destroy personal information be bound by the same requirements. A violation of this provision would be considered an unfair or deceptive trade practice under Chapter 75 of the General Statutes, which would be subject to the recovery of treble damages and attorneys fees.

G.S. 75-65. – Protection from security breaches. (Begins on Page 10, line 8) requires that any business that possesses personal information of NC residents that has had a security breach of its personal information database must notify persons whose personal information is released or compromised. A violation of this provision would

be considered an unfair or deceptive trade practice under Chapter 75 of the General Statutes, which would be subject to treble damages and attorneys fees.

Section 2 (Page 11, line 40) expands the venue in which victims of identity theft can bring criminal charges to include a county where the victim resides, where the perpetrator resides, or in any other county instrumental to the completion of the offense.

Section 3 (Page 12, line 3) adds a new section to the law to permit a person who reasonably suspects that they are the victim of identity fraud to file an incident report with law enforcement that has jurisdiction over the person's residence, regardless of where the crime may have been committed or will be required to be prosecuted.

Section 4 (Page 12, line 17) adds a new section amending the public records law to provide protection of social security numbers filed, recorded or maintained by a State or local governmental agency. This section prohibits the collection of social security numbers except in certain situations, requires that social security numbers be segregated from other public record information, and prohibits the release of social security numbers to the general public. This section does permit the use and sharing of the social security number for governmental and court purposes and exempts recorded documents and court records.

Subsection (d) of this section allow news media companies to get access to identifying information, except for social security numbers, if the information will be used in the company's normal course of business for legitimate business purposes and the company makes a verified written request. The information can be used for matching, verifying or retrieving information and in research activities. The information cannot be sold or rented. Any person who obtains information falsely under this section is guilty of a Class F felony.

This section also prohibits identifying information specified from being included on documents filed for recording in the register of deeds office and voids any loan closing instruction that a social security number must be included on a document to be recorded. This section also permits a person to ask the register of deeds to redact from any publicly available Internet website used by the register of deeds specified identifying information.

Section 5 (Page 16, line 23) requires State agencies to report annually by January 1st to the General Assembly on steps taken to protect personal information.

Section 6 (Page 16, line 38) amends the definition of identifying information for identity theft purposes to include State identification cards, passport numbers, email addresses, names and identification numbers.

Section 7 (Page 17, Line 30) directs the Revisor of Statutes to make specific technical changes

Section 8 (Page 17, line 37) clarifies that a person who is a victim of identity theft can get their criminal record expunged even if their stolen identity was not used to commit a crime.

Section 9 (Page 18, line 7) provides for minimum civil damages of $500 for a person who is injured by identity theft.

EFFECTIVE DATE: Most of the bill becomes effective October 1, 2005. Section 6 becomes effective December 1, 2005. Certain restrictions on the private use of social security numbers become effective October 1, 2006. Certain restrictions on the use of social security numbers held by governmental agencies become effective July 1, 2007.

S1048e1-SMRU-CSRU-25

S1048e2-SMST-CSRU-64

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GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 1048

Judiciary I Committee Substitute Adopted 5/23/05
PROPOSED HOUSE COMMITTEE SUBSTITUTE S1048-CSST-79 [v.3]

7/20/2005 5:37:28 PM

Short Title: Identity Theft Protection Act of 2005. (Public)

Sponsors:

Referred to:

March 24, 2005

A BILL TO BE ENTITLED

AN ACT ENACTING THE IDENTITY THEFT PROTECTION ACT OF 2005.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 75 of the General Statutes is amended by adding a new Article to read:

"Article 2A.

"Identity Theft Protection Act.

"**§ 75-60. Title.**

This Article shall be known and may be cited as the "Identity Theft Protection Act".

"**§ 75-61. Definitions.**

The following definitions apply in this Article:

(1) "Business". – A sole proprietorship, partnership, corporation, association, or other group, however organized and whether or not organized to operate at a profit. The term includes a financial institution organized, chartered, or holding a license or authorization certificate under the laws of this State, any other state, the United States, or any other country, or the parent or the subsidiary of any such financial institution. Business shall not include any government or governmental subdivision or agency.

(2) "Consumer". – An individual.

(3) "Consumer reporting agency". – Any person who, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties.

(4) "Consumer report" or "credit report". – Any written, oral, or other communication of any information by a consumer reporting agency

bearing on a consumer's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for any of the following:

a. Credit to be used primarily for personal, family, or household purposes.

b. Employment purposes.

c. Any other purpose authorized under 15 U.S.C. § 1681(b).

(5) "Credit card". – Has the same meaning as in section 103 of the Truth in Lending Act (15 U.S.C. § 160, et seq.).

(6) "Debit card". – Any card or device issued by a financial institution to a consumer for use in initiating an electronic fund transfer from the account holding assets of the consumer at such financial institution, for the purpose of transferring money between accounts or obtaining money, property, labor, or services.

(7) "Disposal" includes the following:

a. The discarding or abandonment of records containing personal information.

b. The sale, donation, discarding, or transfer of any medium, including computer equipment or computer media, containing records of personal information, or other nonpaper media upon which records of personal information are stored, or other equipment for nonpaper storage of information.

(8) "Encryption". – The use of an algorithmic process to transform data into a form in which the data is rendered unreadable or unusable without use of a confidential process or key.

(9) "Person". – Any individual, partnership, corporation, trust, estate, cooperative, association, government, or governmental subdivision or agency, or other entity.

(10) "Personal information". –A person's first name or first initial and last name in combination with identifying information as defined in G.S. 14-113.20(b). Personal information does not include publicly available directories containing information an individual has voluntarily consented to have publicly disseminated or listed, including name, address, and telephone number, and does not include information made lawfully available to the general public from federal, state, or local government records.

(11) "Proper identification". – Information generally deemed sufficient to identify a person. If a person is unable to reasonably identify himself or herself with the information described above, a consumer reporting agency may require additional information concerning the consumer's employment and personal or family history in order to verify the consumer's identity.

(12) "Records". – Any material on which written, drawn, spoken, visual, or electromagnetic information is recorded or preserved, regardless of physical form or characteristics.

(13) "Redaction". – The rendering of data so that it is unreadable or is truncated so that no more than the last four digits of the identification number is accessible as part of the data.

(14) "Security breach". – An incident of unauthorized access to and acquisition of unencrypted and unredacted records or data containing personal information where illegal use of the personal information has occurred or is reasonably likely to occur or that creates a material risk of harm to a consumer. Any incident of unauthorized access to and acquisition of encrypted records or data containing personal information along with the confidential process or key shall constitute a security breach. Good faith acquisition of personal information by an employee or agent of the business for a legitimate purpose is not a security breach, provided that the personal information is not used for a purpose other than a lawful purpose of the business and is not subject to further unauthorized disclosure.

(15) "Security freeze". – Notice placed in a credit report, at the request of the consumer and subject to certain exceptions, that prohibits the consumer reporting agency from releasing all or any part of the consumer's credit report or any information derived from it without the express authorization of the consumer.

"**§ 75-62. Social security number protection.**

(a) Except as provided in subsection (b) of this section, a business may not do any of the following:

(1) Intentionally communicate or otherwise make available to the general public an individual's social security number.

(2) Intentionally print or imbed an individual's social security number on any card required for the individual to access products or services provided by the person or entity.

(3) Require an individual to transmit his or her social security number over the Internet, unless the connection is secure or the social security number is encrypted.

(4) Require an individual to use his or her social security number to access an Internet Web site, unless a password or unique personal identification number or other authentication device is also required to access the Internet Web site.

(5) Print an individual's social security number on any materials that are mailed to the individual, unless state or federal law requires the social security number to be on the document to be mailed.

(6) Sell, lease, loan, trade, rent, or otherwise intentionally disclose an individual's social security number to a third party without written consent to the disclosure from the individual, when the party making

the disclosure knows or in the exercise of reasonable diligence would have reason to believe that the third party lacks a legitimate purpose for obtaining the individual's social security number.

(b) Subsection (a) of this section shall not apply in the following instances:

(1) When a social security number is included in an application or in documents related to an enrollment process, or to establish an account, contract, or policy; or to confirm the accuracy of the social security number for the purpose of obtaining a credit report pursuant to 15 U.S.C. § 1681(b)(2). A social security number that is permitted to be mailed under this section may not be printed, in whole or in part, on a postcard or other mailer not requiring an envelope, or visible on the envelope or without the envelope having been opened.

(2) To the collection, use, or release of a social security number for internal verification or administrative purposes.

(3) To the opening of an account or the provision of or payment for a product or service authorized by an individual.

(4) To the collection, use, or release of a social security number to investigate or prevent fraud, conduct background checks, conduct social or scientific research, collect a debt, obtain a credit report from or furnish data to a consumer reporting agency pursuant to the Fair Credit Reporting Act, 15 U.S.C. § 1681, et seq, undertake a permissible purpose enumerated under Gramm Leach Bliley, 12 CFR Sec. 216.13-15, or locate an individual who is missing, a lost relative, or due a benefit, such as a pension, insurance, or unclaimed property benefit.

(5) To a business acting pursuant to a court order, warrant, subpoena, or when otherwise required by law.

(6) To a business providing the social security number to a federal, state, or local government entity, including a law enforcement agency, court, or their agents or assigns.

(7) To a social security number that has been redacted.

(c) A business covered by this section shall make reasonable efforts to cooperate, through systems testing and other means, to ensure that the requirements of this Article are implemented on or before the dates specified in this section.

(d) A violation of this section is a violation of G.S. 75-1.1.

"**§ 75-63. Security freeze.**

(a) A consumer may place a security freeze on the consumer's credit report by making a request in writing by certified mail to a consumer reporting agency. A security freeze shall prohibit, subject to exceptions in subsection (l) of this section, the consumer reporting agency from releasing the consumer's credit report or any information from it without the express authorization of the consumer. When a security freeze is in place, a consumer reporting agency may not release the consumer's credit report or information to a third party without prior express authorization from the consumer. This subsection

does not prevent a consumer reporting agency from advising a third party that a security freeze is in effect with respect to the consumer's credit report.

(b) A consumer reporting agency shall place a security freeze on a consumer's credit report no later than five business days after receiving a written request from the consumer.

(c) The consumer reporting agency shall send a written confirmation of the security freeze to the consumer within 10 business days of placing the freeze and at the same time shall provide the consumer with a unique personal identification number or password, other than the consumer's social security number, to be used by the consumer when providing authorization for the release of the consumer's credit report for a specific period of time.

(d) If the consumer wishes to allow the consumer's credit report to be accessed for a specific period of time while a freeze is in place, the consumer shall contact the consumer reporting agency, request that the freeze be temporarily lifted, and provide all of the following:

(1) Proper identification.

(2) The unique personal identification number or password provided by the consumer reporting agency pursuant to subsection (c) of this section.

(3) The proper information regarding the time period for which the report shall be available to users of the credit report.

(e) A consumer reporting agency may develop procedures involving the use of telephone, fax, the Internet, or other electronic media to receive and process a request from a consumer to temporarily lift a freeze on a credit report pursuant to subsection (d) of this section in an expedited manner.

(f) A consumer reporting agency that receives a request from a consumer to temporarily lift a freeze on a credit report pursuant to subsection (d) of this section shall comply with the request no later than three business days after receiving the request.

(g) A consumer reporting agency shall remove or temporarily lift a freeze placed on a consumer's credit report only in the following cases:

(1) Upon the consumer's request, pursuant to subsections (d) or (j) of this section.

(2) If the consumer's credit report was frozen due to a material misrepresentation of fact by the consumer. If a consumer reporting agency intends to remove a freeze upon a consumer's credit report pursuant to this subdivision, the consumer reporting agency shall notify the consumer in writing prior to removing the freeze on the consumer's credit report.

(h) If a third party requests access to a consumer credit report on which a security freeze is in effect and this request is in connection with an application for credit or any other use and the consumer does not allow the consumer's credit report to be accessed for that specific period of time, the third party may treat the application as incomplete.

(i) If a consumer requests a security freeze pursuant to this section, the consumer reporting agency shall disclose to the consumer the process of placing and temporarily

lifting a security freeze and the process for allowing access to information from the consumer's credit report for a specific period of time while the security freeze is in place.

(j) A security freeze shall remain in place until the consumer requests that the security freeze be removed. A consumer reporting agency shall remove a security freeze within three business days of receiving a request for removal from the consumer, who provides all of the following:

(1) Proper identification.

(2) The unique personal identification number or password provided by the consumer reporting agency pursuant to subsection (c) of this section.

(k) A consumer reporting agency shall require proper identification of the person making a request to place or remove a security freeze.

(l) The provisions of this section do not apply to the use of a consumer credit report by any of the following:

(1) A person, or the person's subsidiary, affiliate, agent, subcontractor, or assignee with whom the consumer has, or prior to assignment had, an account, contract, or debtor-creditor relationship for the purposes of reviewing the active account or collecting the financial obligation owing for the account, contract, or debt.

(2) A subsidiary, affiliate, agent, assignee, or prospective assignee of a person to whom access has been granted under subsection (d) of this section for purposes of facilitating the extension of credit or other permissible use.

(3) Any person acting pursuant to a court order, warrant, or subpoena.

(4) A state or local agency, or its agents or assigns, which administers a program for establishing and enforcing child support obligations.

(5) A state or local agency, or its agents or assigns, acting to investigate fraud, including Medicaid fraud, or acting to investigate or collect delinquent taxes or assessments, including interest and penalties, unpaid court orders or to fulfill any of its other statutory responsibilities.

(6) A federal, state, or local governmental entity, including law enforcement agency, court, or their agent or assigns.

(7) A person for the purposes of prescreening as defined by the Fair Credit Reporting Act, 15 U.S.C. § 1681, et seq.

(8) Any person for the sole purpose of providing for a credit file monitoring subscription service to which the consumer has subscribed.

(9) A consumer reporting agency for the purpose of providing a consumer with a copy of the consumer's credit report upon the consumer's request.

(10) Any depository financial institution for checking, savings, and investment accounts.

(11) Any property and casualty insurance company for use in setting or adjusting a rate, adjusting a claim, or underwriting for property and casualty insurance purposes.

(m) If a security freeze is in place, a consumer reporting agency shall not change any of the following official information in a credit report without sending a written confirmation of the change to the consumer within 30 days of the change being posted to the consumer's file: name, date of birth, social security number, and address. Written confirmation is not required for technical modifications of a consumer's official information, including name and street abbreviations, complete spellings, or transposition of numbers or letters. In the case of an address change, the written confirmation shall be sent to both the new address and the former address.

(n) The following persons are not required to place in a credit report a security freeze pursuant to this section provided, however, that any person that is not required to place a security freeze on a credit report under the provisions of subdivision (3) of this subsection shall be subject to any security freeze placed on a credit report by another consumer reporting agency from which it obtains information:

(1) A check services or fraud prevention services company, which reports on incidents of fraud or issues authorizations for the purpose of approving or processing negotiable instruments, electronic fund transfers, or similar methods of payment.

(2) A deposit account information service company, which issues reports regarding account closures due to fraud, substantial overdrafts, ATM abuse, or other similar negative information regarding a consumer to inquiring banks or other financial institutions for use only in reviewing a consumer request for a deposit account at the inquiring bank or financial institution.

(3) A consumer reporting agency that does all of the following:

a. Acts only to resell credit information by assembling and merging information contained in a database of one or more credit reporting agencies.

b. Does not maintain a permanent database of credit information from which new credit reports are produced.

(o) This section does not prevent a consumer reporting agency from charging a fee of no more than ten dollars ($10.00) to a consumer for each freeze, removal of the freeze, or temporary lifting of the freeze for a period of time, regarding access to a consumer credit report, except that a consumer reporting agency may not charge any fee to a victim of identity theft who has submitted a copy of a valid investigative or incident report or complaint with a law enforcement agency about the unlawful use of the victim's identifying information by another person.

(p) At any time that a consumer is required to receive a summary of rights required under section 609 of the federal Fair Credit Reporting Act, the following notice shall be included:

"**North Carolina Consumers Have the Right to Obtain a Security Freeze.**

You have a right to place a "security freeze" on your credit report pursuant to North Carolina law. The security freeze will prohibit a consumer reporting agency from releasing any information in your credit report without your express authorization. A security freeze must be requested in writing by certified mail.

The security freeze is designed to prevent credit, loans, and services from being approved in your name without your consent. However, you should be aware that using a security freeze to take control over who gains access to the personal and financial information in your credit report may delay, interfere with, or prohibit the timely approval of any subsequent request or application you make regarding new loans, credit, mortgage, insurance, rental housing, employment, investment, license, cellular phone, utilities, digital signature, Internet credit card transactions, or other services, including an extension of credit at point of sale.

The freeze will be placed within five business days. When you place a security freeze on your credit report, within 10 business days, you will be provided a personal identification number or a password to use when you want to remove or lift temporarily the security freeze.

A freeze does not apply when you have an existing account relationship and a copy of your report is requested by your existing creditor or its agents or affiliates for certain types of account review, collection, fraud control, or similar activities.

You should plan ahead and lift a freeze if you are actively seeking credit or services as a security freeze may slow your applications, as mentioned above.

You can remove a freeze or authorize temporary access for a specific period of time by contacting the consumer reporting agency and providing all of the following:

1. Your personal identification number or password,
2. Proper identification to verify your identity, and
3. Proper information regarding the period of time you want your report available to users of the credit report.

A consumer reporting agency that receives a request from you to temporarily lift a freeze on a credit report shall comply with the request no later than three business days after receiving the request. A consumer reporting agency may charge you up to ten dollars ($10.00) for each time you freeze, remove the freeze, or temporarily lift the freeze for a period of time, except a consumer reporting agency may not charge any amount to a victim of identify theft who has submitted a copy of a valid investigative or incident report or complaint with a law enforcement agency about the unlawful use of the victim's identifying information by another person.

You have a right to bring a civil action against someone who violates your rights under the credit reporting laws. The action can be brought against a consumer reporting agency or a user of your credit report."

(q) A violation of this section is a violation of G.S. 75-1.1.

"**§ 75-64. Destruction of personal information records.**

(a) Any business that conducts business in North Carolina and any business that maintains or otherwise possesses personal information of a resident of North Carolina must take reasonable measures to protect against unauthorized access to or use of the information in connection with or after its disposal.

(b) The reasonable measures must include:

(1) Implementing and monitoring compliance with policies and procedures that require the burning, pulverizing, or shredding of papers containing personal information so that information cannot be practicably read or reconstructed.

(2) Implementing and monitoring compliance with policies and procedures that require the destruction or erasure of electronic media and other nonpaper media containing personal information so that the information cannot practicably be read or reconstructed.

(3) Describing procedures relating to the adequate destruction or proper disposal of personal records as official policy in the writings of the business entity.

(c) A business may, after due diligence, enter into a written contract with, and monitor compliance by, another party engaged in the business of record destruction to destroy personal information in a manner consistent with this section. Due diligence should ordinarily include one or more of the following:

(1) Reviewing an independent audit of the disposal business's operations or its compliance with this statute or its equivalent.

(2) Obtaining information about the disposal business from several references or other reliable sources and requiring that the disposal business be certified by a recognized trade association or similar third party with a reputation for high standards of quality review.

(3) Reviewing and evaluating the disposal business's information security policies or procedures or taking other appropriate measures to determine the competency and integrity of the disposal business.

(d) A disposal business that conducts business in North Carolina or disposes of personal information of residents of North Carolina must take all reasonable measures to dispose of records containing personal information by implementing and monitoring compliance with policies and procedures that protect against unauthorized access to or use of personal information during or after the collection and transportation and disposing of such information.

(e) This section does not apply to any of the following:

(1) Any bank or financial institution that is subject to and in compliance with the privacy and security provision of the Gramm-Leach-Bliley Act, 15 U.S.C. § 6801, et seq., as amended.

(2) Any health insurer or health care facility that is subject to and in compliance with the standards for privacy of individually identifiable health information and the security standards for the protection of electronic health information of the Health Insurance Portability and Accountability Act of 1996.

(3) Any consumer reporting agency that is subject to and in compliance with the Federal Credit Reporting Act, 15 U.S.C. § 1681, et seq., as amended.

(f) A violation of this section is a violation of G.S. 75-1.1, but any damages assessed against a business because of the acts or omissions of its non-managerial employees shall not be trebled as provided in G.S. 75-16 unless the business was negligent in the training, supervision, or monitoring of those employees. No private right of action may be brought by an individual for a violation of this section unless such individual is injured as a result of the violation.

"**§ 75-65. Protection from security breaches.**

(a) Any business that owns or licenses personal information of residents of North Carolina or any business that conducts business in North Carolina that owns or licenses personal information in any form (whether computerized, paper, or otherwise) shall provide notice to the affected person that there has been a security breach following discovery or notification of the breach. The disclosure notification shall be made without unreasonable delay, consistent with the legitimate needs of law enforcement, as provided in subsection (c) of this section and consistent with any measures necessary to determine sufficient contact information, determine the scope of the breach and restore the reasonable integrity, security, and confidentiality of the data system. For the purposes of this section, personal information shall not include electronic identification numbers, electronic mail, Internet accounts or Internet identification, parent's legal surname prior to marriage, or a password unless this information would permit access to a person's financial account or resources.

(b) Any business that maintains or possesses records or data containing personal information of residents of North Carolina that the business does not own or license, or any business that conducts business in North Carolina that maintains or possesses records or data containing personal information that the business does not own or license shall notify the owner or licensee of the information of any security breach immediately following discovery of the breach, consistent with the legitimate needs of law enforcement as provided in subsection (c) of this section.

(c) The notice required by this section shall be delayed if a law enforcement agency informs the business that notification may impede a criminal investigation or jeopardize national or homeland security, provided that such request is made in writing or the business documents such request contemporaneously in writing, including the name of the law enforcement officer making the request and the officer's law enforcement agency engaged in the investigation. The notice required by this section shall be provided without unreasonable delay after the law enforcement agency communicates to the business its determination that notice will no longer impede the investigation or jeopardize national or homeland security.

(d) The notice shall be clear and conspicuous. The notice shall include a description of the following:

(1) The incident in general terms.

(2) The type of personal information that was subject to the unauthorized access and acquisition.

(3) The general acts of the business to protect the personal information from further unauthorized access.

(4) A telephone number that the person may call for further information and assistance, if one exists.

(5) Advice that directs the person to remain vigilant by reviewing account statements and monitoring free credit reports.

(e) For purposes of this section, notice to affected persons may be provided by one of the following methods:

(1) Written notice.

(2) Electronic notice, for those persons for whom it has a valid e-mail address and who have agreed to receive communications electronically if the notice provided is consistent with the provisions regarding electronic records and signatures for notices legally required to be in writing set forth in 15 U.S.C. § 7001.

(3) Telephonic notice provided that contact is made directly with the affected persons.

(4) Substitute notice, if the business demonstrates that the cost of providing notice would exceed two hundred fifty thousand dollars ($250,000) or that the affected class of subject persons to be notified exceeds 500,000, or if the business does not have sufficient contact information or consent to satisfy subdivisions (1), (2), or (3) of this subsection, for only those affected persons without sufficient contact information or consent, or if the business is unable to identify particular affected persons, for only those unidentifiable affected persons. Substitute notice shall consist of all the following:

a. E-mail notice when the business has an electronic mail address for the subject persons.

b. Conspicuous posting of the notice on the Web site page of the business, if one is maintained.

c. Notification to major statewide media.

(f) In the event a business provides notice to more than 1,000 persons at one time pursuant to this section, the business shall notify, without unreasonable delay, the Consumer Protection Division of the Attorney General's Office and all consumer reporting agencies that compile and maintain files on consumers on a nationwide basis, as defined in 15 U.S.C. § 1681a(p), of the timing, distribution, and content of the notice.

(g) Any waiver of the provisions of this Article is contrary to public policy and is void and unenforceable.

(h) A financial institution that is subject to and in compliance with the Federal Interagency Guidance Response Programs for Unauthorized Access to Consumer Information and Customer Notice, issued on March 7, 2005, by the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision, and any revisions, additions, or substitutions relating to said interagency guidance, shall be deemed to be in compliance with this section.

(i) A violation of this section is a violation of G.S. 75-1.1. No private right of action may be brought by an individual for a violation of this section unless such individual is injured as a result of the violation.

(j) Causes of action arising under this Article may not be assigned."

SECTION 2. G.S. 14-113.21 reads as rewritten:

"**§ 14-113.21. Venue of offenses.**

In any criminal proceeding brought under G.S. 14-113.20, the crime is considered to be committed in ~~any county in which~~ the county where the victim resides, where the perpetrator resides, where any part of the financial identity fraud took place, or in any other county instrumental to the completion of the offense, regardless of whether the defendant was ever actually present in that county."

SECTION 3. Article 19C of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-113.21A. Investigation of offenses.**

(a) A person who has learned or reasonably suspects that the person has been the victim of identity theft may contact the local law enforcement agency that has jurisdiction over the person's actual residence. Notwithstanding the fact that jurisdiction may lie elsewhere for investigation and prosecution of a crime of identity theft, the local law enforcement agency may take the complaint, issue an incident report, and provide the complainant with a copy of the report and may refer the report to a law enforcement agency in that different jurisdiction.

(b) Nothing in this section interferes with the discretion of a local law enforcement agency to allocate resources for investigations of crimes. A complaint filed or report issued under this section is not required to be counted as an open case for purposes of compiling open case statistics."

SECTION 4. Chapter 132 of the General Statutes is amended by adding a new section to read:

"**§ 132-1.8. Social security numbers and other personal identifying information.**

(a) The General Assembly finds the following:

(1) The social security number can be used as a tool to perpetuate fraud against a person and to acquire sensitive personal, financial, medical, and familial information, the release of which could cause great financial or personal harm to an individual. While the social security number was intended to be used solely for the administration of the federal Social Security System, over time this unique numeric identifier has been used extensively for identity verification purposes and other legitimate consensual purposes.

(2) Although there are legitimate reasons for State and local government agencies to collect social security numbers and other personal identifying information from individuals, government should collect the information only for legitimate purposes or when required by law.

(3) When State and local government agencies possess social security numbers or other personal identifying information, the governments

should minimize the instances this information is disseminated either internally within government or externally with the general public.

(b) Except as provided in subsections (c) and (d) of this section, no agency of the State or its political subdivisions, or any agent or employee of a government agency, shall do any of the following:

(1) Collect a social security number from an individual unless authorized by law to do so or unless the collection of the social security number is otherwise imperative for the performance of that agency's duties and responsibilities as prescribed by law. Social security numbers collected by an agency must be relevant to the purpose for which collected and shall not be collected until and unless the need for social security numbers has been clearly documented.

(2) Fail, when collecting a social security number from an individual, to segregate that number on a separate page from the rest of the record, or as otherwise appropriate, in order that the social security number can be more easily redacted pursuant to a valid public records request.

(3) Fail, when collecting a social security number from an individual, to provide, at the time of or prior to the actual collection of the social security number by that agency, that individual, upon request, with a statement of the purpose or purposes for which the social security number is being collected and used.

(4) Use the social security number for any purpose other than the purpose stated.

(5) Intentionally communicate or otherwise make available to the general public a person's social security number or other identifying information. "Identifying information," as used in this section, shall have the same meaning as in G.S. 14-113.20(b), except it shall not include electronic identification names, including electronic mail addresses, or parent's legal surname prior to marriage.

(6) Intentionally print or imbed an individual's social security number on any card required for the individual to access government services.

(7) Require an individual to transmit the individual's social security number over the Internet, unless the connection is secure or the social security number is encrypted.

(8) Require an individual to use the individual's social security number to access an Internet Web site, unless a password or unique personal identification number or other authentication device is also required to access the Internet Web site.

(9) Print an individual's social security number on any materials that are mailed to the individual, unless state or federal law required that the social security number be on the document to be mailed.

(c) Subsection (b) of this section does not apply in the following circumstances:

(1) To social security numbers or other identifying information disclosed to another governmental entity or its agents, employees, or contractors

if disclosure is necessary for the receiving entity to perform its duties and responsibilities. The receiving governmental entity and its agents, employees, and contractors shall maintain the confidential and exempt status of such numbers.

(2) To social security numbers or other identifying information disclosed pursuant to a court order, warrant, or subpoena.

(3) To social security numbers or other identifying information disclosed for public health purposes pursuant to and in compliance with Chapter 130A of the General Statutes.

(4) To social security numbers or other identifying information that have been redacted.

(5) To certified copies of vital records issued by the State Registrar and other authorized officials pursuant to G.S. 130A-93(c). The State Registrar may disclose any identifying information other than social security number on any uncertified vital record.

(6) To any recorded document in the official records of the register of deeds of the county.

(7) To any document filed in the official records of the courts.

(d) No State or local government agency shall deny a representative of a news media company as defined in G.S. 8-53.11(a)(3) access to identifying information to the extent not otherwise specifically precluded by law if (i) the news media company will use the identifying information in the normal course of business for legitimate business purposes and (ii) the news media company makes a verified written request for the identifying information, legibly signed by an authorized officer, employee, or agent of the company. The verified request must contain the news media company's name, business mailing and location addresses, business telephone number, and a statement of the specific purposes for which it needs the identifying information and how the identifying information will be used for legitimate business purposes. A State or local government agency may request any other information as may be reasonably necessary to verify the identity of the news media company requesting the identifying information and the specific purposes for which the information will be used; however, an agency has no specific duty to inquire beyond the information contained in the verified written request. A legitimate business purpose includes use in matching, verifying, or retrieving information and in research activities. A legitimate business purpose shall not include the bulk sale or rental of identifying information to the general public. Any person who makes a false representation in order to obtain identifying information pursuant to this subsection is guilty of a Class 1 misdemeanor. In no case may a representative of a news media company obtain access to a social security number pursuant to this section.

(e) No person preparing or filing a document to be recorded or filed in the official records by the register of deeds or of the courts may include any person's social security, drivers license, state identification, passport, checking account, savings account, credit card, or debit card number, or personal identification (PIN) code or passwords in that document, unless otherwise expressly required by law or court order, adopted by the State Registrar on records of vital events, or redacted. Any loan closing

instruction that requires the inclusion of a person's social security number on a document to be recorded shall be void. Any person who violates this subsection shall be guilty of an infraction, punishable by a fine not to exceed five hundred dollars ($500.00) for each violation.

(f) The validity of an instrument as between the parties to the instrument is not affected by the inclusion of personal information on a document recorded or filed with the official records of the register of deeds. The register of deeds may not reject an instrument presented for recording because the instrument contains an individual's personal information.

(g) Any person has the right to request that a register of deeds or clerk of court remove, from an image or copy of an official record placed on a register of deeds' or court's Internet website available to the general public or an Internet website available to the general public used by a register of deeds or court to display public records by the register of deeds or clerk of court, the person's social security, drivers license, state identification, passport, checking account, savings account, credit card, or debit card number, or personal identification (PIN) code or passwords contained in that official record. The request must be made in writing, legibly signed by the requester, and delivered by mail, facsimile, or electronic transmission, or delivered in person to the register of deeds or clerk of court. The request must specify the personal information to be redacted, information that identifies the document that contains the personal information, such as the identification page, and unique information that identifies the location within the document that contains the social security, drivers license, state identification, passport, checking account, savings account, credit card, or debit card number, or personal identification (PIN) code or passwords to be redacted. The request for redaction shall be considered a public record with access restricted to the register of deeds, the clerk of court, their staff, or upon order of the court. The register of deeds or clerk of court shall have no duty to inquire beyond the written request to verify the identity of a person requesting redaction and shall have no duty to remove redaction for any reason upon subsequent request by an individual or by order of the court, if impossible to do so. No fee will be charged for the redaction pursuant to such request. Any person who requests a redaction without proper authority to do so shall be guilty of an infraction, punishable by a fine not to exceed five hundred dollars ($500) for each violation.

(h) A register of deeds or clerk of court shall immediately and conspicuously post signs throughout his or her offices for public viewing and shall immediately and conspicuously post a notice on any Internet website available to the general public used by a register of deeds or clerk of court a notice stating, in substantially similar form, the following:

(1) Any person preparing or filing a document for recordation or filing in the official records may not include a social security, drivers license, state identification, passport, checking account, savings account, credit card, or debit card number, or personal identification (PIN) code or passwords in the document, unless expressly required by law or court order, adopted by the State Registrar on records of vital events, or

redacted so that no more than the last four digits of the identification number is included.

(2) Any person has a right to request a register of deeds or clerk of court to remove, from an image or copy of an official record placed on a register of deeds' or clerk of court's Internet website available to the general public or on an Internet website available to the general public used by a register of deeds or clerk of court to display public records, any social security, drivers license, state identification, passport, checking account, savings account, credit card, or debit card number, or personal identification (PIN) code or passwords contained in an official record. The request must be made in writing and delivered by mail, facsimile, or electronic transmission, or delivered in person, to the register of deeds or clerk of court. The request must specify the personal information to be redacted, information that identifies the document that contains the personal information, such as the identification page, and unique information that identifies the location within the document that contains the social security, drivers license, state identification, passport, checking account, savings account, credit card, or debit card number, or personal identification (PIN) code or passwords to be redacted. No fee will be charged for the redaction pursuant to such a request. Any person who requests a redaction without proper authority to do so shall be guilty of an infraction, punishable by a fine not to exceed five hundred dollars ($500) for each violation.

(i) Any affected person may petition the court for an order directing compliance with this section. No liability shall accrue to a register of deeds or clerk of court or to his or her agent for any action related to provisions of this section or for any claims or damages that might result from a social security number or other identifying information on the public record or on a register of deeds' or clerk of court's Internet website available to the general public or an Internet website available to the general public used by a register of deeds or clerk of court."

SECTION 5. Chapter 120 of the General Statutes is amended by adding a new Article to read:

"Article 30.

"Miscellaneous.

"**§ 120-61. Report by State agencies to the General Assembly on ways to reduce incidence of identity theft.**

Agencies of the State shall evaluate and report annually by January 1 to the General Assembly about the agency's efforts to reduce the dissemination of personal identifying information, as defined in G.S. 14-113.20(b). The evaluation shall include the review of public forms, the use of random personal identification numbers, restriction of access to personal identifying information, and reduction of use of personal identifying information when it is not necessary. Special attention shall be given to the use, collection, and dissemination of social security numbers. If the collection of a social

security number is found to be unwarranted, the State agency shall immediately discontinue the collection of social security numbers for that purpose."

SECTION 6. G.S. 14-113.20 reads as rewritten:

"**§ 14-113.20. ~~Financial identity fraud.~~Identity theft.**

(a) A person who knowingly obtains, possesses, or uses identifying information of another person, living or dead, with the intent to fraudulently represent that the person is the other person for the purposes of making financial or credit transactions in the other person's name, to obtain anything of value, benefit, or advantage, or for the purpose of avoiding legal consequences is guilty of a felony punishable as provided in G.S. 14-113.22(a).

(b) The term "identifying information" as used in this Article includes the following:

(1) Social security or taxpayer identification numbers.
(2) Drivers ~~license~~ license, State identification card, or passport numbers.
(3) Checking account numbers.
(4) Savings account numbers.
(5) Credit card numbers.
(6) Debit card numbers.
(7) Personal Identification (PIN) Code as defined in G.S. 14-113.8(6).
(8) Electronic identification ~~numbers.~~numbers, electronic mail, Internet accounts, or Internet identification.
(9) Digital signatures.
(10) Any other numbers or information that can be used to access a person's financial resources.
(11) Biometric data.
(12) Fingerprints.
(13) Passwords.
(14) Parent's legal surname prior to marriage.

(c) It shall not be a violation under this Article for a person to do any of the following:

(1) Lawfully obtain credit information in the course of a bona fide consumer or commercial transaction.
(2) Lawfully exercise, in good faith, a security interest or a right of offset by a creditor or financial institution.
(3) Lawfully comply, in good faith, with any warrant, court order, levy, garnishment, attachment, or other judicial or administrative order, decree, or directive, when any party is required to do so."

SECTION 7. The Revisor of Statutes shall make the following technical and conforming corrections:

(1) Rename Article 19C of Chapter 14 of the General Statutes from "Financial Identity Fraud" to "Identity Theft."
(2) Replace the phrase "financial identity fraud" with the phrase "identity theft" wherever the terms appear throughout Article 19C of Chapter 14 of the General Statutes.

SECTION 8. G.S. 15A-147 reads as rewritten:

"**§ 15A-147. Expunction of records when charges are dismissed or there are findings of not guilty as a result of identity ~~fraud.~~theft.**

(a) If any person is named in a charge for an infraction or a crime, either a misdemeanor or a felony, as a result of another person using the identifying information of the named person ~~to commit an infraction or crime~~ and the charge against the named person is dismissed, a finding of not guilty is entered, or the conviction is set aside, the named person may apply by petition or written motion to the court where the charge was last pending on a form approved by the Administrative Office of the Courts supplied by the clerk of court for an order to expunge from all official records any entries relating to the person's apprehension, charge, or trial. The court, after notice to the district attorney, shall hold a hearing on the motion or petition and, upon finding that the person's identity was used without permission and the charges were dismissed or the person was found not guilty, the court shall order the expunction."

SECTION 9. G.S. 1-539.2C reads as rewritten:

"**§ 1-539.2C. Damages for identity ~~fraud.~~theft.**

(a) Any person whose property or person is injured by reason of an act made unlawful by Article 19C of Chapter 14 of the General Statutes may sue for civil damages. Damages may be in an amount of up to five thousand dollars ($5,000) but no less than five hundred dollars ($500.00) for each incident, or three times the amount of actual damages, whichever amount is greater. A person seeking damages as set forth in this section may also institute a civil action to enjoin and restrain future acts that would constitute a violation of this section. The court, in an action brought under this section, may award reasonable attorneys' fees to the prevailing party."

SECTION 10. The provisions of this act are severable. If any phrase, clause, sentence, provision, or section is declared to be invalid or preempted by federal law or regulation, the validity of the remainder of this act shall not be affected thereby.

SECTION 11. G.S. 75-62(a)(2), (3), (4), and (5), as enacted in Section 1 of this act, become effective October 1, 2006. G.S. 132-1.8(b)(6), (7), (8), and (9), as enacted in Section 4 of this act, become effective July 1, 2007. Section 6 of this act becomes effective December 1, 2005, and applies to offenses committed, and to causes of action arising, on or after that date. The remainder of this act becomes effective December 1, 2005.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1048

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

S1048-AST-61 [v.2]

Date _____,2005

Comm. Sub. [YES]
Amends Title [NO]
Second Edition

Representative Ross

moves to amend the bill on page 4, line 6 by inserting the following between "establish," and "an": "amend, or terminate";

and on page 4, line 34 by rewriting that line to read:

"are implemented.";

and on page 10, line 14 by inserting a comma following the phrase "section";

and on page 13, line 26 by deleting "section" and substituting "subdivision";

and on page 13, line 41 by inserting the following at the end of that line:
"A social security number that is permitted to be mailed under this subdivision may not be printed, in whole or in part, on a postcard or other mailer not requiring an envelope, or visible on the envelope or without the envelope having been opened.";

and on page 15, line 21 by rewriting that line to read:
"information and unique information that identifies the";

and on page 16, lines 15-16 by rewriting those lines to read:
"document that contains the personal information and unique information that identifies the location";

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1048

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

S1048-AST-61 [v.2]

and on page 17, line 13 by inserting "employer" between "or" and "taxpayer".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

SENATE BILL 1048:
Identity Theft Protection Act of 2005

BILL ANALYSIS

Committee:	House Judiciary I	**Date:**	July 20, 2005
Introduced by:	Sen. Clodfelter	**Summary by:**	R. Erika Churchill
Version:	PCS to Second Edition S1048-CSST-79		Committee Counsel

SUMMARY: ***The proposed committee substitute for Senate Bill 1048 provides for the protection of personal and credit information that might lead to identity theft by requiring businesses to protect individual social security numbers, permitting a person to freeze access to the person's credit report, requiring certain safeguards related to the destruction of personal information records, providing protections from security breaches of personal information databases, and by requiring State and local agencies to protect social security numbers and other personal identifying information.***

[As introduced, this bill was identical to H1248, as introduced by Reps. Goforth, Sutton, Kiser, Ray, which is currently in Senate Judiciary I.]

BILL ANALYSIS:

Section 1 of the bill enacts 6 new statutory sections to provide for numerous protections of personal and credit information as specified below:

G.S. 75-62. – Social security number protection. (Page 3, line 24) would prevent a business from communicating social security numbers to the general public. It also prohibits a social security number from being printed on identification cards or used by the business in mailings to customers, requiring that a social security number be transmitted over the Internet or be required to access an Internet website, or to otherwise sell or disclose a social security number to a third party without the written consent of the person to whom the number belongs, except for legitimate business purposes. Not included under these protections are social security numbers obtained from the public records. A violation of this provision would be considered an unfair or deceptive trade practice under Chapter 75 of the General Statutes, which would be subject to the recovery of treble damages and attorneys fees. **[Includes issues addressed in SB 935 – No SS# on Health ID Cards – Sen. Garrou and SB 1098 – No Third Party Release of SSN – Sen. Boseman]**

G.S. 75-63. – Security freeze. (Page 4, line 36) would give a person the right to have access to their credit reports frozen, except when specifically authorized by the person. Once a security freeze is in place the credit reporting agency is prohibited from releasing all or part of the credit report without the express authorization of the person. A credit reporting agency may charge a fee of up to $10 for the establishment, removal or temporary lifting of a security freeze, except that a person shall not be charged a fee if the person is a victim of identity theft as evidence by a incident report filed with a law enforcement agency. A person injured by a violation of this section would be entitled to file an action for treble damages as an unfair or deceptive trade practice under Chapter 75. **[Includes issues addressed in SB 921/ HB 608 – Consumer Protection Act – Sen. Jacumin/Rep. Moore.]**

G.S. 75-64. – Destruction of personal information records. (Page 8, line 40) requires that businesses that maintain or possess personal information of NC residents to protect this information from unauthorized access or use after the information is disposed of. This section would require that records contain personal information be properly destroyed and would require that third parties hired to destroy personal information be bound by the same requirements. A violation of this provision would be considered an unfair or deceptive trade practice under Chapter 75 of the General Statutes, which would be subject to the recovery of treble damages and attorneys fees.

G.S. 75-65. – Protection from security breaches. (Page 10, line 7) requires that any business that possesses personal information of NC residents that has had a security breach of its personal information database must notify persons whose personal information is released or compromised. A violation of this provision would be

considered an unfair or deceptive trade practice under Chapter 75 of the General Statutes, which would be subject to treble damages and attorneys fees. **[Includes issues addressed in SB 783 – Report Hacker/Fraudulent Access to ID – Sen. Forrester]**

Section 2 (Page 12, line 5) expands the venue in which victims of identity theft can bring criminal charges to include a county where the victim resides, where the perpetrator resides, or in any other county instrumental to the completion of the offense.

Section 3 (Page 12, line 12) adds a new section to the law to permit a person who reasonably suspects that they are the victim of identity fraud to file an incident report with law enforcement that has jurisdiction over the person's residence, regardless of where the crime may have been committed or will be required to be prosecuted.

Section 4 (Page 12, line 26) adds a new section amending the public records law to provide protection of social security numbers filed, recorded or maintained by a State or local governmental agency. This section prohibits the collection of social security numbers except in certain situations, requires that social security numbers be segregated from other public record information, and prohibits the release of social security numbers to the general public. This section does permit the use and sharing of the social security number for governmental and court purposes and exempts recorded documents and court records. **[Includes issues addressed in SB 793/HB 1447 – Government Agencies Limit Release of SSN's – Sen. Phil Berger/Rep. Blust; and SB 1098 – No Third Party Release of SSN – Sen. Boseman]**

Subsection (d) of this section allow news media companies to get access to identifying information, except for social security numbers, if the information will be used in the company's normal course of business for legitimate business purposes and the company makes a verified written request. The information can be used for matching, verifying or retrieving information and in research activities. The information cannot be sold or rented. Any person who obtains information falsely under this section is guilty of a Class F felony.

This section also prohibits identifying information specified from being included on documents filed for recording in the register of deeds office and voids any loan closing instruction that a social security number must be included on a document to be recorded. This section also permits a person to ask the register of deeds to redact from any publicly available Internet website used by the register of deeds specified identifying information.

Section 5 (Page 16, line 32) requires State agencies to report annually to the General Assembly on steps taken to protect personal information.

Section 6 (Page 17, line 3) amends the definition of identifying information for identity theft purposes to include State identification cards, passport numbers, email addresses, names and identification numbers.

Section 8 (Page 18, line 1) clarifies that a person who is a victim of identity theft can get their criminal record expunged even if their stolen identity was not used to commit a crime.

Section 9 (Page 18, line 15) provides for minimum civil damages of $500 for a person who is injured by identity theft.

EFFECTIVE DATE: Most of the bill becomes effective December 1, 2005. Section 6 becomes effective December 1, 2005. Certain restrictions on the private use of social security numbers become effective October 1, 2006. Certain restrictions on the use of social security numbers held by governmental agencies become effective July 1, 2007.

Walker Reagan contributed substantially to this summary.

S1048e2-SMST-CSST-79

ATTACHMENT X

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 7-21-05

S. B. No. 1048 Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE ✓

Rep.) Stam
Sen.)

moves to amend the bill on page 14, lines 19-38

( ) WHICH CHANGES THE TITLE

by deleting those lines and renumbering the remaining subsections in the new G.S. 132-1.8 accordingly.

SIGNED Stam

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:

By Representative Hackney (Chair) for the Committee on JUDICIARY I.

☒Committee Substitute for

SB 1048 A BILL TO BE ENTITLED AN ACT ENACTING THE IDENTITY THEFT PROTECTION ACT OF 2005.

☒ With a favorable report as to the House committee substitute bill, unfavorable as to the Senate Committee Substitute bill, and recommendation that the House committee substitute bill be re-referred to the Committee on Finance.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

_____ Pursuant to Rule 36(b), the (House/Senate) committee substitute bill/(joint) resolution (No._____) is placed on the Calendar of _____. (The original bill resolution No._____) is placed on the Unfavorable Calendar.

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

7-21-05
Final version passed by Committee

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 1048

Judiciary I Committee Substitute Adopted 5/23/05

PROPOSED HOUSE COMMITTEE SUBSTITUTE S1048-PCS35256-ST-79

Short Title: Identity Theft Protection Act of 2005. (Public)

Sponsors:

Referred to:

March 24, 2005

A BILL TO BE ENTITLED

AN ACT ENACTING THE IDENTITY THEFT PROTECTION ACT OF 2005.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 75 of the General Statutes is amended by adding a new Article to read:

"Article 2A.

"Identity Theft Protection Act.

"**§ 75-60. Title.**

This Article shall be known and may be cited as the "Identity Theft Protection Act".

"**§ 75-61. Definitions.**

The following definitions apply in this Article:

(1) "Business". – A sole proprietorship, partnership, corporation, association, or other group, however organized and whether or not organized to operate at a profit. The term includes a financial institution organized, chartered, or holding a license or authorization certificate under the laws of this State, any other state, the United States, or any other country, or the parent or the subsidiary of any such financial institution. Business shall not include any government or governmental subdivision or agency.

(2) "Consumer". – An individual.

(3) "Consumer reporting agency". – Any person who, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties.

(4) "Consumer report" or "credit report". – Any written, oral, or other communication of any information by a consumer reporting agency

bearing on a consumer's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for any of the following:

a. Credit to be used primarily for personal, family, or household purposes.

b. Employment purposes.

c. Any other purpose authorized under 15 U.S.C. § 168l(b).

(5) "Credit card". – Has the same meaning as in section 103 of the Truth in Lending Act (15 U.S.C. § 160, et seq.).

(6) "Debit card". – Any card or device issued by a financial institution to a consumer for use in initiating an electronic fund transfer from the account holding assets of the consumer at such financial institution, for the purpose of transferring money between accounts or obtaining money, property, labor, or services.

(7) "Disposal" includes the following:

a. The discarding or abandonment of records containing personal information.

b. The sale, donation, discarding, or transfer of any medium, including computer equipment or computer media, containing records of personal information, or other nonpaper media upon which records of personal information are stored, or other equipment for nonpaper storage of information.

(8) "Encryption". – The use of an algorithmic process to transform data into a form in which the data is rendered unreadable or unusable without use of a confidential process or key.

(9) "Person". – Any individual, partnership, corporation, trust, estate, cooperative, association, government, or governmental subdivision or agency, or other entity.

(10) "Personal information". – A person's first name or first initial and last name in combination with identifying information as defined in G.S. 14-113.20(b). Personal information does not include publicly available directories containing information an individual has voluntarily consented to have publicly disseminated or listed, including name, address, and telephone number, and does not include information made lawfully available to the general public from federal, state, or local government records.

(11) "Proper identification". – Information generally deemed sufficient to identify a person. If a person is unable to reasonably identify himself or herself with the information described above, a consumer reporting agency may require additional information concerning the consumer's employment and personal or family history in order to verify the consumer's identity.

(12) "Records". – Any material on which written, drawn, spoken, visual, or electromagnetic information is recorded or preserved, regardless of physical form or characteristics.

(13) "Redaction". – The rendering of data so that it is unreadable or is truncated so that no more than the last four digits of the identification number is accessible as part of the data.

(14) "Security breach". – An incident of unauthorized access to and acquisition of unencrypted and unredacted records or data containing personal information where illegal use of the personal information has occurred or is reasonably likely to occur or that creates a material risk of harm to a consumer. Any incident of unauthorized access to and acquisition of encrypted records or data containing personal information along with the confidential process or key shall constitute a security breach. Good faith acquisition of personal information by an employee or agent of the business for a legitimate purpose is not a security breach, provided that the personal information is not used for a purpose other than a lawful purpose of the business and is not subject to further unauthorized disclosure.

(15) "Security freeze". – Notice placed in a credit report, at the request of the consumer and subject to certain exceptions, that prohibits the consumer reporting agency from releasing all or any part of the consumer's credit report or any information derived from it without the express authorization of the consumer.

"**§ 75-62. Social security number protection.**

(a) Except as provided in subsection (b) of this section, a business may not do any of the following:

(1) Intentionally communicate or otherwise make available to the general public an individual's social security number.

(2) Intentionally print or imbed an individual's social security number on any card required for the individual to access products or services provided by the person or entity.

(3) Require an individual to transmit his or her social security number over the Internet, unless the connection is secure or the social security number is encrypted.

(4) Require an individual to use his or her social security number to access an Internet Web site, unless a password or unique personal identification number or other authentication device is also required to access the Internet Web site.

(5) Print an individual's social security number on any materials that are mailed to the individual, unless state or federal law requires the social security number to be on the document to be mailed.

(6) Sell, lease, loan, trade, rent, or otherwise intentionally disclose an individual's social security number to a third party without written consent to the disclosure from the individual, when the party making

the disclosure knows or in the exercise of reasonable diligence would have reason to believe that the third party lacks a legitimate purpose for obtaining the individual's social security number.

(b) Subsection (a) of this section shall not apply in the following instances:

(1) When a social security number is included in an application or in documents related to an enrollment process, or to establish, amend, or terminate an account, contract, or policy; or to confirm the accuracy of the social security number for the purpose of obtaining a credit report pursuant to 15 U.S.C. § 1681(b)(2). A social security number that is permitted to be mailed under this section may not be printed, in whole or in part, on a postcard or other mailer not requiring an envelope, or visible on the envelope or without the envelope having been opened.

(2) To the collection, use, or release of a social security number for internal verification or administrative purposes.

(3) To the opening of an account or the provision of or payment for a product or service authorized by an individual.

(4) To the collection, use, or release of a social security number to investigate or prevent fraud, conduct background checks, conduct social or scientific research, collect a debt, obtain a credit report from or furnish data to a consumer reporting agency pursuant to the Fair Credit Reporting Act, 15 U.S.C. § 1681, et seq., undertake a permissible purpose enumerated under Gramm Leach Bliley, 12 C.F.R. § 216.13-15, or locate an individual who is missing, a lost relative, or due a benefit, such as a pension, insurance, or unclaimed property benefit.

(5) To a business acting pursuant to a court order, warrant, subpoena, or when otherwise required by law.

(6) To a business providing the social security number to a federal, state, or local government entity, including a law enforcement agency, court, or their agents or assigns.

(7) To a social security number that has been redacted.

(c) A business covered by this section shall make reasonable efforts to cooperate, through systems testing and other means, to ensure that the requirements of this Article are implemented.

(d) A violation of this section is a violation of G.S. 75-1.1.

"**§ 75-63. Security freeze.**

(a) A consumer may place a security freeze on the consumer's credit report by making a request in writing by certified mail to a consumer reporting agency. A security freeze shall prohibit, subject to exceptions in subsection (l) of this section, the consumer reporting agency from releasing the consumer's credit report or any information from it without the express authorization of the consumer. When a security freeze is in place, a consumer reporting agency may not release the consumer's credit report or information to a third party without prior express authorization from the consumer. This subsection

does not prevent a consumer reporting agency from advising a third party that a security freeze is in effect with respect to the consumer's credit report.

(b) A consumer reporting agency shall place a security freeze on a consumer's credit report no later than five business days after receiving a written request from the consumer.

(c) The consumer reporting agency shall send a written confirmation of the security freeze to the consumer within 10 business days of placing the freeze and at the same time shall provide the consumer with a unique personal identification number or password, other than the consumer's social security number, to be used by the consumer when providing authorization for the release of the consumer's credit report for a specific period of time.

(d) If the consumer wishes to allow the consumer's credit report to be accessed for a specific period of time while a freeze is in place, the consumer shall contact the consumer reporting agency, request that the freeze be temporarily lifted, and provide all of the following:

(1) Proper identification.

(2) The unique personal identification number or password provided by the consumer reporting agency pursuant to subsection (c) of this section.

(3) The proper information regarding the time period for which the report shall be available to users of the credit report.

(e) A consumer reporting agency may develop procedures involving the use of telephone, fax, the Internet, or other electronic media to receive and process a request from a consumer to temporarily lift a freeze on a credit report pursuant to subsection (d) of this section in an expedited manner.

(f) A consumer reporting agency that receives a request from a consumer to temporarily lift a freeze on a credit report pursuant to subsection (d) of this section shall comply with the request no later than three business days after receiving the request.

(g) A consumer reporting agency shall remove or temporarily lift a freeze placed on a consumer's credit report only in the following cases:

(1) Upon the consumer's request, pursuant to subsections (d) or (j) of this section.

(2) If the consumer's credit report was frozen due to a material misrepresentation of fact by the consumer. If a consumer reporting agency intends to remove a freeze upon a consumer's credit report pursuant to this subdivision, the consumer reporting agency shall notify the consumer in writing prior to removing the freeze on the consumer's credit report.

(h) If a third party requests access to a consumer credit report on which a security freeze is in effect and this request is in connection with an application for credit or any other use and the consumer does not allow the consumer's credit report to be accessed for that specific period of time, the third party may treat the application as incomplete.

(i) If a consumer requests a security freeze pursuant to this section, the consumer reporting agency shall disclose to the consumer the process of placing and temporarily

lifting a security freeze and the process for allowing access to information from the consumer's credit report for a specific period of time while the security freeze is in place.

(j) A security freeze shall remain in place until the consumer requests that the security freeze be removed. A consumer reporting agency shall remove a security freeze within three business days of receiving a request for removal from the consumer, who provides all of the following:

(1) Proper identification.

(2) The unique personal identification number or password provided by the consumer reporting agency pursuant to subsection (c) of this section.

(k) A consumer reporting agency shall require proper identification of the person making a request to place or remove a security freeze.

(l) The provisions of this section do not apply to the use of a consumer credit report by any of the following:

(1) A person, or the person's subsidiary, affiliate, agent, subcontractor, or assignee with whom the consumer has, or prior to assignment had, an account, contract, or debtor-creditor relationship for the purposes of reviewing the active account or collecting the financial obligation owing for the account, contract, or debt.

(2) A subsidiary, affiliate, agent, assignee, or prospective assignee of a person to whom access has been granted under subsection (d) of this section for purposes of facilitating the extension of credit or other permissible use.

(3) Any person acting pursuant to a court order, warrant, or subpoena.

(4) A state or local agency, or its agents or assigns, which administers a program for establishing and enforcing child support obligations.

(5) A state or local agency, or its agents or assigns, acting to investigate fraud, including Medicaid fraud, or acting to investigate or collect delinquent taxes or assessments, including interest and penalties, unpaid court orders, or to fulfill any of its other statutory responsibilities.

(6) A federal, state, or local governmental entity, including law enforcement agency, court, or their agent or assigns.

(7) A person for the purposes of prescreening as defined by the Fair Credit Reporting Act, 15 U.S.C. § 1681, et seq.

(8) Any person for the sole purpose of providing for a credit file monitoring subscription service to which the consumer has subscribed.

(9) A consumer reporting agency for the purpose of providing a consumer with a copy of the consumer's credit report upon the consumer's request.

(10) Any depository financial institution for checking, savings, and investment accounts.

(11) Any property and casualty insurance company for use in setting or adjusting a rate, adjusting a claim, or underwriting for property and casualty insurance purposes.

(m) If a security freeze is in place, a consumer reporting agency shall not change any of the following official information in a credit report without sending a written confirmation of the change to the consumer within 30 days of the change being posted to the consumer's file: name, date of birth, social security number, and address. Written confirmation is not required for technical modifications of a consumer's official information, including name and street abbreviations, complete spellings, or transposition of numbers or letters. In the case of an address change, the written confirmation shall be sent to both the new address and the former address.

(n) The following persons are not required to place in a credit report a security freeze pursuant to this section provided, however, that any person that is not required to place a security freeze on a credit report under the provisions of subdivision (3) of this subsection shall be subject to any security freeze placed on a credit report by another consumer reporting agency from which it obtains information:

(1) A check services or fraud prevention services company, which reports on incidents of fraud or issues authorizations for the purpose of approving or processing negotiable instruments, electronic fund transfers, or similar methods of payment.

(2) A deposit account information service company, which issues reports regarding account closures due to fraud, substantial overdrafts, ATM abuse, or other similar negative information regarding a consumer to inquiring banks or other financial institutions for use only in reviewing a consumer request for a deposit account at the inquiring bank or financial institution.

(3) A consumer reporting agency that does all of the following:

a. Acts only to resell credit information by assembling and merging information contained in a database of one or more credit reporting agencies.

b. Does not maintain a permanent database of credit information from which new credit reports are produced.

(o) This section does not prevent a consumer reporting agency from charging a fee of no more than ten dollars ($10.00) to a consumer for each freeze, removal of the freeze, or temporary lifting of the freeze for a period of time, regarding access to a consumer credit report, except that a consumer reporting agency may not charge any fee to a victim of identity theft who has submitted a copy of a valid investigative or incident report or complaint with a law enforcement agency about the unlawful use of the victim's identifying information by another person.

(p) At any time that a consumer is required to receive a summary of rights required under section 609 of the federal Fair Credit Reporting Act, the following notice shall be included:

"**North Carolina Consumers Have the Right to Obtain a Security Freeze.**

You have a right to place a "security freeze" on your credit report pursuant to North Carolina law. The security freeze will prohibit a consumer reporting agency from releasing any information in your credit report without your express authorization. A security freeze must be requested in writing by certified mail.

The security freeze is designed to prevent credit, loans, and services from being approved in your name without your consent. However, you should be aware that using a security freeze to take control over who gains access to the personal and financial information in your credit report may delay, interfere with, or prohibit the timely approval of any subsequent request or application you make regarding new loans, credit, mortgage, insurance, rental housing, employment, investment, license, cellular phone, utilities, digital signature, Internet credit card transactions, or other services, including an extension of credit at point of sale.

The freeze will be placed within five business days. When you place a security freeze on your credit report, within 10 business days, you will be provided a personal identification number or a password to use when you want to remove or lift temporarily the security freeze.

A freeze does not apply when you have an existing account relationship and a copy of your report is requested by your existing creditor or its agents or affiliates for certain types of account review, collection, fraud control, or similar activities.

You should plan ahead and lift a freeze if you are actively seeking credit or services as a security freeze may slow your applications, as mentioned above.

You can remove a freeze or authorize temporary access for a specific period of time by contacting the consumer reporting agency and providing all of the following:

(1) Your personal identification number or password,

(2) Proper identification to verify your identity, and

(3) Proper information regarding the period of time you want your report available to users of the credit report.

A consumer reporting agency that receives a request from you to temporarily lift a freeze on a credit report shall comply with the request no later than three business days after receiving the request. A consumer reporting agency may charge you up to ten dollars ($10.00) for each time you freeze, remove the freeze, or temporarily lift the freeze for a period of time, except a consumer reporting agency may not charge any amount to a victim of identify theft who has submitted a copy of a valid investigative or incident report or complaint with a law enforcement agency about the unlawful use of the victim's identifying information by another person.

You have a right to bring a civil action against someone who violates your rights under the credit reporting laws. The action can be brought against a consumer reporting agency or a user of your credit report."

(q) A violation of this section is a violation of G.S. 75-1.1.

"**§ 75-64. Destruction of personal information records.**

(a) Any business that conducts business in North Carolina and any business that maintains or otherwise possesses personal information of a resident of North Carolina must take reasonable measures to protect against unauthorized access to or use of the information in connection with or after its disposal.

(b) The reasonable measures must include:

(1) Implementing and monitoring compliance with policies and procedures that require the burning, pulverizing, or shredding of papers containing personal information so that information cannot be practicably read or reconstructed.

(2) Implementing and monitoring compliance with policies and procedures that require the destruction or erasure of electronic media and other nonpaper media containing personal information so that the information cannot practicably be read or reconstructed.

(3) Describing procedures relating to the adequate destruction or proper disposal of personal records as official policy in the writings of the business entity.

(c) A business may, after due diligence, enter into a written contract with, and monitor compliance by, another party engaged in the business of record destruction to destroy personal information in a manner consistent with this section. Due diligence should ordinarily include one or more of the following:

(1) Reviewing an independent audit of the disposal business's operations or its compliance with this statute or its equivalent.

(2) Obtaining information about the disposal business from several references or other reliable sources and requiring that the disposal business be certified by a recognized trade association or similar third party with a reputation for high standards of quality review.

(3) Reviewing and evaluating the disposal business's information security policies or procedures or taking other appropriate measures to determine the competency and integrity of the disposal business.

(d) A disposal business that conducts business in North Carolina or disposes of personal information of residents of North Carolina must take all reasonable measures to dispose of records containing personal information by implementing and monitoring compliance with policies and procedures that protect against unauthorized access to or use of personal information during or after the collection and transportation and disposing of such information.

(e) This section does not apply to any of the following:

(1) Any bank or financial institution that is subject to and in compliance with the privacy and security provision of the Gramm-Leach-Bliley Act, 15 U.S.C. § 6801, et seq., as amended.

(2) Any health insurer or health care facility that is subject to and in compliance with the standards for privacy of individually identifiable health information and the security standards for the protection of electronic health information of the Health Insurance Portability and Accountability Act of 1996.

(3) Any consumer reporting agency that is subject to and in compliance with the Federal Credit Reporting Act, 15 U.S.C. § 1681, et seq., as amended.

(f) A violation of this section is a violation of G.S. 75-1.1, but any damages assessed against a business because of the acts or omissions of its nonmanagerial employees shall not be trebled as provided in G.S. 75-16 unless the business was negligent in the training, supervision, or monitoring of those employees. No private right of action may be brought by an individual for a violation of this section unless such individual is injured as a result of the violation.

"**§ 75-65. Protection from security breaches.**

(a) Any business that owns or licenses personal information of residents of North Carolina or any business that conducts business in North Carolina that owns or licenses personal information in any form (whether computerized, paper, or otherwise) shall provide notice to the affected person that there has been a security breach following discovery or notification of the breach. The disclosure notification shall be made without unreasonable delay, consistent with the legitimate needs of law enforcement, as provided in subsection (c) of this section, and consistent with any measures necessary to determine sufficient contact information, determine the scope of the breach and restore the reasonable integrity, security, and confidentiality of the data system. For the purposes of this section, personal information shall not include electronic identification numbers, electronic mail, Internet accounts or Internet identification, parent's legal surname prior to marriage, or a password unless this information would permit access to a person's financial account or resources.

(b) Any business that maintains or possesses records or data containing personal information of residents of North Carolina that the business does not own or license, or any business that conducts business in North Carolina that maintains or possesses records or data containing personal information that the business does not own or license shall notify the owner or licensee of the information of any security breach immediately following discovery of the breach, consistent with the legitimate needs of law enforcement as provided in subsection (c) of this section.

(c) The notice required by this section shall be delayed if a law enforcement agency informs the business that notification may impede a criminal investigation or jeopardize national or homeland security, provided that such request is made in writing or the business documents such request contemporaneously in writing, including the name of the law enforcement officer making the request and the officer's law enforcement agency engaged in the investigation. The notice required by this section shall be provided without unreasonable delay after the law enforcement agency communicates to the business its determination that notice will no longer impede the investigation or jeopardize national or homeland security.

(d) The notice shall be clear and conspicuous. The notice shall include a description of the following:

(1) The incident in general terms.

(2) The type of personal information that was subject to the unauthorized access and acquisition.

(3) The general acts of the business to protect the personal information from further unauthorized access.

(4) A telephone number that the person may call for further information and assistance, if one exists.

(5) Advice that directs the person to remain vigilant by reviewing account statements and monitoring free credit reports.

(e) For purposes of this section, notice to affected persons may be provided by one of the following methods:

(1) Written notice.

(2) Electronic notice, for those persons for whom it has a valid e-mail address and who have agreed to receive communications electronically if the notice provided is consistent with the provisions regarding electronic records and signatures for notices legally required to be in writing set forth in 15 U.S.C. § 7001.

(3) Telephonic notice provided that contact is made directly with the affected persons.

(4) Substitute notice, if the business demonstrates that the cost of providing notice would exceed two hundred fifty thousand dollars ($250,000) or that the affected class of subject persons to be notified exceeds 500,000, or if the business does not have sufficient contact information or consent to satisfy subdivisions (1), (2), or (3) of this subsection, for only those affected persons without sufficient contact information or consent, or if the business is unable to identify particular affected persons, for only those unidentifiable affected persons. Substitute notice shall consist of all the following:

a. E-mail notice when the business has an electronic mail address for the subject persons.

b. Conspicuous posting of the notice on the Web site page of the business, if one is maintained.

c. Notification to major statewide media.

(f) In the event a business provides notice to more than 1,000 persons at one time pursuant to this section, the business shall notify, without unreasonable delay, the Consumer Protection Division of the Attorney General's Office and all consumer reporting agencies that compile and maintain files on consumers on a nationwide basis, as defined in 15 U.S.C. § 1681a(p), of the timing, distribution, and content of the notice.

(g) Any waiver of the provisions of this Article is contrary to public policy and is void and unenforceable.

(h) A financial institution that is subject to and in compliance with the Federal Interagency Guidance Response Programs for Unauthorized Access to Consumer Information and Customer Notice, issued on March 7, 2005, by the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision, and any revisions, additions, or substitutions relating to said interagency guidance, shall be deemed to be in compliance with this section.

(i) A violation of this section is a violation of G.S. 75-1.1. No private right of action may be brought by an individual for a violation of this section unless such individual is injured as a result of the violation.

(j) Causes of action arising under this Article may not be assigned."

SECTION 2. G.S. 14-113.21 reads as rewritten:

"**§ 14-113.21. Venue of offenses.**

In any criminal proceeding brought under G.S. 14-113.20, the crime is considered to be committed in ~~any county in which~~ the county where the victim resides, where the perpetrator resides, where any part of the financial identity fraud took place, or in any other county instrumental to the completion of the offense, regardless of whether the defendant was ever actually present in that county."

SECTION 3. Article 19C of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-113.21A. Investigation of offenses.**

(a) A person who has learned or reasonably suspects that the person has been the victim of identity theft may contact the local law enforcement agency that has jurisdiction over the person's actual residence. Notwithstanding the fact that jurisdiction may lie elsewhere for investigation and prosecution of a crime of identity theft, the local law enforcement agency may take the complaint, issue an incident report, and provide the complainant with a copy of the report and may refer the report to a law enforcement agency in that different jurisdiction.

(b) Nothing in this section interferes with the discretion of a local law enforcement agency to allocate resources for investigations of crimes. A complaint filed or report issued under this section is not required to be counted as an open case for purposes of compiling open case statistics."

SECTION 4. Chapter 132 of the General Statutes is amended by adding a new section to read:

"**§ 132-1.8. Social security numbers and other personal identifying information.**

(a) The General Assembly finds the following:

(1) The social security number can be used as a tool to perpetuate fraud against a person and to acquire sensitive personal, financial, medical, and familial information, the release of which could cause great financial or personal harm to an individual. While the social security number was intended to be used solely for the administration of the federal Social Security System, over time this unique numeric identifier has been used extensively for identity verification purposes and other legitimate consensual purposes.

(2) Although there are legitimate reasons for State and local government agencies to collect social security numbers and other personal identifying information from individuals, government should collect the information only for legitimate purposes or when required by law.

(3) When State and local government agencies possess social security numbers or other personal identifying information, the governments

should minimize the instances this information is disseminated either internally within government or externally with the general public.

(b) Except as provided in subsections (c) and (d) of this section, no agency of the State or its political subdivisions, or any agent or employee of a government agency, shall do any of the following:

(1) Collect a social security number from an individual unless authorized by law to do so or unless the collection of the social security number is otherwise imperative for the performance of that agency's duties and responsibilities as prescribed by law. Social security numbers collected by an agency must be relevant to the purpose for which collected and shall not be collected until and unless the need for social security numbers has been clearly documented.

(2) Fail, when collecting a social security number from an individual, to segregate that number on a separate page from the rest of the record, or as otherwise appropriate, in order that the social security number can be more easily redacted pursuant to a valid public records request.

(3) Fail, when collecting a social security number from an individual, to provide, at the time of or prior to the actual collection of the social security number by that agency, that individual, upon request, with a statement of the purpose or purposes for which the social security number is being collected and used.

(4) Use the social security number for any purpose other than the purpose stated.

(5) Intentionally communicate or otherwise make available to the general public a person's social security number or other identifying information. "Identifying information", as used in this subdivision, shall have the same meaning as in G.S. 14-113.20(b), except it shall not include electronic identification names, including electronic mail addresses, or parent's legal surname prior to marriage.

(6) Intentionally print or imbed an individual's social security number on any card required for the individual to access government services.

(7) Require an individual to transmit the individual's social security number over the Internet, unless the connection is secure or the social security number is encrypted.

(8) Require an individual to use the individual's social security number to access an Internet Web site, unless a password or unique personal identification number or other authentication device is also required to access the Internet Web site.

(9) Print an individual's social security number on any materials that are mailed to the individual, unless state or federal law required that the social security number be on the document to be mailed. A social security number that is permitted to be mailed under this subdivision may not be printed, in whole or in part, on a postcard or other mailer

not requiring an envelope, or visible on the envelope or without the envelope having been opened.

(c) Subsection (b) of this section does not apply in the following circumstances:

(1) To social security numbers or other identifying information disclosed to another governmental entity or its agents, employees, or contractors if disclosure is necessary for the receiving entity to perform its duties and responsibilities. The receiving governmental entity and its agents, employees, and contractors shall maintain the confidential and exempt status of such numbers.

(2) To social security numbers or other identifying information disclosed pursuant to a court order, warrant, or subpoena.

(3) To social security numbers or other identifying information disclosed for public health purposes pursuant to and in compliance with Chapter 130A of the General Statutes.

(4) To social security numbers or other identifying information that have been redacted.

(5) To certified copies of vital records issued by the State Registrar and other authorized officials pursuant to G.S. 130A-93(c). The State Registrar may disclose any identifying information other than social security numbers on any uncertified vital record.

(6) To any recorded document in the official records of the register of deeds of the county.

(7) To any document filed in the official records of the courts.

(d) No person preparing or filing a document to be recorded or filed in the official records by the register of deeds or of the courts may include any person's social security, drivers license, state identification, passport, checking account, savings account, credit card, or debit card number, or personal identification (PIN) code or passwords in that document, unless otherwise expressly required by law or court order, adopted by the State Registrar on records of vital events, or redacted. Any loan closing instruction that requires the inclusion of a person's social security number on a document to be recorded shall be void. Any person who violates this subsection shall be guilty of an infraction, punishable by a fine not to exceed five hundred dollars ($500.00) for each violation.

(e) The validity of an instrument as between the parties to the instrument is not affected by the inclusion of personal information on a document recorded or filed with the official records of the register of deeds. The register of deeds may not reject an instrument presented for recording because the instrument contains an individual's personal information.

(f) Any person has the right to request that a register of deeds or clerk of court remove, from an image or copy of an official record placed on a register of deeds' or court's Internet Web site available to the general public or an Internet Web site available to the general public used by a register of deeds or court to display public records by the register of deeds or clerk of court, the person's social security, drivers license, state identification, passport, checking account, savings account, credit card, or debit card

number, or personal identification (PIN) code or passwords contained in that official record. The request must be made in writing, legibly signed by the requester, and delivered by mail, facsimile, or electronic transmission, or delivered in person to the register of deeds or clerk of court. The request must specify the personal information to be redacted, information that identifies the document that contains the personal information and unique information that identifies the location within the document that contains the social security, drivers license, state identification, passport, checking account, savings account, credit card, or debit card number, or personal identification (PIN) code or passwords to be redacted. The request for redaction shall be considered a public record with access restricted to the register of deeds, the clerk of court, their staff, or upon order of the court. The register of deeds or clerk of court shall have no duty to inquire beyond the written request to verify the identity of a person requesting redaction and shall have no duty to remove redaction for any reason upon subsequent request by an individual or by order of the court, if impossible to do so. No fee will be charged for the redaction pursuant to such request. Any person who requests a redaction without proper authority to do so shall be guilty of an infraction, punishable by a fine not to exceed five hundred dollars ($500.00) for each violation.

(g) A register of deeds or clerk of court shall immediately and conspicuously post signs throughout his or her offices for public viewing and shall immediately and conspicuously post a notice on any Internet Web site available to the general public used by a register of deeds or clerk of court a notice stating, in substantially similar form, the following:

(1) Any person preparing or filing a document for recordation or filing in the official records may not include a social security, drivers license, state identification, passport, checking account, savings account, credit card, or debit card number, or personal identification (PIN) code or passwords in the document, unless expressly required by law or court order, adopted by the State Registrar on records of vital events, or redacted so that no more than the last four digits of the identification number is included.

(2) Any person has a right to request a register of deeds or clerk of court to remove, from an image or copy of an official record placed on a register of deeds' or clerk of court's Internet Web site available to the general public or on an Internet Web site available to the general public used by a register of deeds or clerk of court to display public records, any social security, drivers license, state identification, passport, checking account, savings account, credit card, or debit card number, or personal identification (PIN) code or passwords contained in an official record. The request must be made in writing and delivered by mail, facsimile, or electronic transmission, or delivered in person, to the register of deeds or clerk of court. The request must specify the personal information to be redacted, information that identifies the document that contains the personal information and unique information that identifies the location within the document

that contains the social security, drivers license, state identification, passport, checking account, savings account, credit card, or debit card number, or personal identification (PIN) code or passwords to be redacted. No fee will be charged for the redaction pursuant to such a request. Any person who requests a redaction without proper authority to do so shall be guilty of an infraction, punishable by a fine not to exceed five hundred dollars ($500.00) for each violation.

(h) Any affected person may petition the court for an order directing compliance with this section. No liability shall accrue to a register of deeds or clerk of court or to his or her agent for any action related to provisions of this section or for any claims or damages that might result from a social security number or other identifying information on the public record or on a register of deeds' or clerk of court's Internet website available to the general public or an Internet Web site available to the general public used by a register of deeds or clerk of court."

SECTION 5. Chapter 120 of the General Statutes is amended by adding a new Article to read:

"Article 30.

"Miscellaneous.

"**§ 120-61. Report by State agencies to the General Assembly on ways to reduce incidence of identity theft.**

Agencies of the State shall evaluate and report annually by January 1 to the General Assembly about the agency's efforts to reduce the dissemination of personal identifying information, as defined in G.S. 14-113.20(b). The evaluation shall include the review of public forms, the use of random personal identification numbers, restriction of access to personal identifying information, and reduction of use of personal identifying information when it is not necessary. Special attention shall be given to the use, collection, and dissemination of social security numbers. If the collection of a social security number is found to be unwarranted, the State agency shall immediately discontinue the collection of social security numbers for that purpose."

SECTION 6. G.S. 14-113.20 reads as rewritten:

"**§ 14-113.20. ~~Financial identity fraud.~~Identity theft.**

(a) A person who knowingly obtains, possesses, or uses identifying information of another person, living or dead, with the intent to fraudulently represent that the person is the other person for the purposes of making financial or credit transactions in the other person's name, to obtain anything of value, benefit, or advantage, or for the purpose of avoiding legal consequences is guilty of a felony punishable as provided in G.S. 14-113.22(a).

(b) The term "identifying information" as used in this Article includes the following:

(1) Social security or employer taxpayer identification numbers.

(2) Drivers ~~license~~ license, State identification card, or passport numbers.

(3) Checking account numbers.

(4) Savings account numbers.

(5) Credit card numbers.

(6) Debit card numbers.
(7) Personal Identification (PIN) Code as defined in G.S. 14-113.8(6).
(8) Electronic identification ~~numbers.~~numbers, electronic mail, Internet accounts, or Internet identification.
(9) Digital signatures.
(10) Any other numbers or information that can be used to access a person's financial resources.
(11) Biometric data.
(12) Fingerprints.
(13) Passwords.
(14) Parent's legal surname prior to marriage.

(c) It shall not be a violation under this Article for a person to do any of the following:

(1) Lawfully obtain credit information in the course of a bona fide consumer or commercial transaction.
(2) Lawfully exercise, in good faith, a security interest or a right of offset by a creditor or financial institution.
(3) Lawfully comply, in good faith, with any warrant, court order, levy, garnishment, attachment, or other judicial or administrative order, decree, or directive, when any party is required to do so."

SECTION 7. The Revisor of Statutes shall make the following technical and conforming corrections:

(1) Rename Article 19C of Chapter 14 of the General Statutes from "Financial Identity Fraud" to "Identity Theft".
(2) Replace the phrase "financial identity fraud" with the phrase "identity theft" wherever the terms appear throughout Article 19C of Chapter 14 of the General Statutes.

SECTION 8. G.S. 15A-147(a) reads as rewritten:

"**§ 15A-147. Expunction of records when charges are dismissed or there are findings of not guilty as a result of identity ~~fraud.~~theft.**

(a) If any person is named in a charge for an infraction or a crime, either a misdemeanor or a felony, as a result of another person using the identifying information of the named person ~~to commit an infraction or crime~~ and the charge against the named person is dismissed, a finding of not guilty is entered, or the conviction is set aside, the named person may apply by petition or written motion to the court where the charge was last pending on a form approved by the Administrative Office of the Courts supplied by the clerk of court for an order to expunge from all official records any entries relating to the person's apprehension, charge, or trial. The court, after notice to the district attorney, shall hold a hearing on the motion or petition and, upon finding that the person's identity was used without permission and the charges were dismissed or the person was found not guilty, the court shall order the expunction."

SECTION 9. G.S. 1-539.2C reads as rewritten:

"**§ 1-539.2C. Damages for identity ~~fraud.~~theft.**

(a) Any person whose property or person is injured by reason of an act made unlawful by Article 19C of Chapter 14 of the General Statutes may sue for civil damages. Damages may be in an amount of up to five thousand dollars ($5,000) but no less than five hundred dollars ($500.00) for each incident, or three times the amount of actual damages, whichever amount is greater. A person seeking damages as set forth in this section may also institute a civil action to enjoin and restrain future acts that would constitute a violation of this section. The court, in an action brought under this section, may award reasonable attorneys' fees to the prevailing party."

SECTION 10. The provisions of this act are severable. If any phrase, clause, sentence, provision, or section is declared to be invalid or preempted by federal law or regulation, the validity of the remainder of this act shall not be affected thereby.

SECTION 11. G.S. 75-62(a)(2), (3), (4), and (5), as enacted in Section 1 of this act, become effective October 1, 2006. G.S. 132-1.8(b)(6), (7), (8), and (9), as enacted in Section 4 of this act, become effective July 1, 2007. Section 6 of this act becomes effective December 1, 2005, and applies to offenses committed, and to causes of action arising, on or after that date. The remainder of this act becomes effective December 1, 2005.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

S 3

SENATE BILL 796
Judiciary II Committee Substitute Adopted 6/14/05
Finance Committee Substitute Adopted 6/23/05

Short Title: Criminal Record Checks/Archaeological Ops. (Public)

Sponsors:

Referred to:

March 23, 2005

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR CRIMINAL RECORD CHECKS OF APPLICANTS FOR PERMITS AND LICENSES TO CONDUCT ARCHAEOLOGICAL OPERATIONS AND INVESTIGATIONS.

The General Assembly of North Carolina enacts:

SECTION 1. Part 2 of Article 4 of Chapter 114 of the General Statutes is amended by adding a new section to read:

"**§ 114-19.16. Criminal record checks of applicants for permit or license to conduct exploration, recovery, or salvage operations and archaeological investigations.**

The Department of Justice may provide to the Department of Cultural Resources from the State and National Repositories of Criminal Histories the criminal history of any applicant for a permit or license under Article 3 of Chapter 121 of the General Statutes or Article 2 of Chapter 70 of the General Statutes. Along with the request, the Department of Cultural Resources shall provide to the Department of Justice the fingerprints of the applicant, a form signed by the applicant consenting to the criminal history 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 Department of Cultural Resources shall keep all information obtained under 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 2. G.S. 121-25 reads as rewritten:

"**§ 121-25. License to conduct exploration, recovery or salvage operations.**

Any qualified person, firm or corporation desiring to conduct any type of exploration, recovery or salvage operations, in the course of which any part of a derelict vessel or its contents or other archaeological site may be removed, displaced or destroyed, shall first make application to the Department of Cultural Resources ~~for~~ and obtain a permit or license to conduct such operations. If the Department of Cultural Resources shall find that the granting of such permit or license is in the best interest of the State, it may grant such applicant a permit or license for such a period of time and under such conditions as the Department may deem to be in the best interest of the State. Such permit or license may include but need not be limited to the following:

(1) Payment of monetary fee to be set by the Department;

(2) That a portion or all of the historic material or artifacts be delivered to custody and possession of the Department;

(3) That a portion of all of such relics or artifacts may be sold or retained by the licensee;

(4) That a portion or all of such relics or artifacts may be sold or traded by the Department.

Permits or licenses may be renewed upon or prior to expiration upon such terms as the applicant and the Department may mutually agree. Holders of permits or licenses shall be responsible for obtaining permission of any federal agencies having jurisdiction, including the United States Coast Guard, the United States Department of the Navy and the United States Army Corps of Engineers prior to conducting any salvaging operations."

SECTION 3. Article 3 of Chapter 121 of the General Statutes is amended by adding a new section to read:

"**§ 121-25.1. Criminal record checks of applicants for permit or license.**

(a) The following definitions apply to this section:

(1) Applicant. – A person or entity applying for a permit or license under G.S. 121-25 to conduct any type of exploration, recovery, or salvage operations of any part of a derelict vessel or its contents or other archaeological site.

(2) Criminal history. – A history of conviction of a state or federal crime, whether a misdemeanor or felony, that bears upon an applicant's fitness to conduct activities related to the surveillance, protection, preservation, and archaeological recovery of property subject to the exclusive dominion and control of the State under G.S. 121-22. The crimes include the criminal offenses set forth in any of the following Articles of Chapter 14 of the General Statutes: Article 5, Counterfeiting and Issuing Monetary Substitutes; Article 5A, Endangering Executive and Legislative Officers and Court Officers; Article 6, Homicide; Article 7A, Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17,

Robbery; Article 18, Embezzlement; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 19B, Financial Transaction Card Crime Act; Article 19C, Financial Identity Fraud; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, Riots and Civil Disorders; Article 39, Protection of Minors; Article 40, Protection of the Family; Article 59, Public Intoxication; and Article 60, Computer-Related Crime. The crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses such as sale to underage persons in violation of G.S. 18B-302, or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5.

(b) All applicants shall consent to a criminal history record check. Refusal to consent to a criminal history record check or to the use of fingerprints or other identifying information may constitute grounds for the Department of Cultural Resources to deny a permit or a license to an applicant. The Department of Cultural Resources shall be responsible for providing to the North Carolina Department of Justice the fingerprints of the applicant to be checked, a form signed by the applicant consenting to the criminal record check and the use of fingerprints and other identifying information required by the State or National Repositories of Criminal Histories, and any additional information required by the Department of Justice. If the applicant is not an individual, the applicant shall provide fingerprints for the principals, officers, directors, and controlling persons of the applicant. Each set of fingerprints shall be certified by an authorized law enforcement officer. The Department of Cultural Resources shall keep all information obtained under this section confidential.

(c) If an applicant's criminal history record check reveals one or more convictions listed under subdivision (a)(2) of this section, the conviction shall not automatically bar the issuance of a permit or a license. When determining whether to issue a permit or license to an applicant, the Department of Cultural Resources shall consider all of the following factors regarding the conviction:

(1) The level and seriousness of the crime.
(2) The date of the crime.
(3) The age of the person at the time of conviction.
(4) The circumstances surrounding the commission of the crime, if known.
(5) The nexus between the criminal conduct of the person and the person's responsibilities pursuant to the application.
(6) The incarceration, probation, parole, rehabilitation, and employment records of the person since the date the crime was committed.
(7) The subsequent commission by the person of a crime."

SECTION 4. Article 2 of Chapter 70 of the General Statutes is amended by adding a new section to read:

"**§ 70-13.1. Criminal record checks of applicants for permit or license.**

(a) The following definitions apply to this section:

(1) Applicant. – A person or entity applying for a permit or license under G.S. 70-13 to conduct any type of archaeological investigation on State lands.

(2) Criminal history. – A history of conviction of a state or federal crime, whether a misdemeanor or felony, that bears upon an applicant's fitness to conduct archaeological investigations under G.S. 70-13. The crimes include the criminal offenses set forth in any of the following Articles of Chapter 14 of the General Statutes: Article 5, Counterfeiting and Issuing Monetary Substitutes; Article 5A, Endangering Executive and Legislative Officers and Court Officers; Article 6, Homicide; Article 7A, Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 19B, Financial Transaction Card Crime Act; Article 19C, Financial Identity Fraud; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, Riots and Civil Disorders; Article 39, Protection of Minors; Article 40, Protection of the Family; Article 59, Public Intoxication; and Article 60, Computer-Related Crime. The crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses such as sale to underage persons in violation of G.S. 18B-302, or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5.

(b) All applicants shall consent to a criminal history record check. Refusal to consent to a criminal history record check or to the use of fingerprints or other identifying information may constitute grounds for the Department of Cultural Resources to deny a permit or a license to an applicant. The Department of Cultural Resources shall be responsible for providing to the North Carolina Department of Justice the fingerprints of the applicant to be checked, a form signed by the applicant consenting to the criminal record check and the use of fingerprints and other identifying information required by the State or National Repositories of Criminal Histories, and

any additional information required by the Department of Justice. If the applicant is not an individual, the applicant shall provide fingerprints for the principals, officers, directors, and controlling persons of the applicant. Each set of fingerprints shall be certified by an authorized law enforcement officer. The Department of Cultural Resources shall keep all information obtained under this section confidential.

(c) If an applicant's criminal history record check reveals one or more convictions listed under subdivision (a)(2) of this section, the conviction shall not automatically bar the issuance of a permit or a license. When determining whether to issue a permit or license to an applicant, the Department of Cultural Resources shall consider all of the following factors regarding the conviction:

(1) The level and seriousness of the crime.

(2) The date of the crime.

(3) The age of the person at the time of conviction.

(4) The circumstances surrounding the commission of the crime, if known.

(5) The nexus between the criminal conduct of the person and the person's responsibilities pursuant to the application.

(6) The incarceration, probation, parole, rehabilitation, and employment records of the person since the date the crime was committed.

(7) The subsequent commission by the person of a crime."

SECTION 5. This act becomes effective October 1, 2005, and applies to applications for permits or licenses submitted to the Department of Cultural Resources on or after that date.

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative Hackney (Chair) for the Committee on JUDICIARY I.

☒Committee Substitute for
SB 796 A BILL TO BE ENTITLED AN ACT TO PROVIDE FOR CRIMINAL RECORD CHECKS OF APPLICANTS FOR PERMITS AND LICENSES TO CONDUCT ARCHAEOLOGICAL OPERATIONS AND INVESTIGATIONS.

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

_____ Pursuant to Rule 36(b), the bill/resolution is placed on the Calendar of _____.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 2

SENATE BILL 324

Judiciary I Committee Substitute Adopted 4/13/05

Short Title: Revise Business Corporation Act. (Public)

Sponsors:

Referred to:

March 3, 2005

A BILL TO BE ENTITLED

AN ACT TO MAKE VARIOUS CHANGES TO THE NORTH CAROLINA BUSINESS CORPORATION ACT AND TO MAKE CONFORMING CHANGES TO THE OTHER ENTITY ACTS.

The General Assembly of North Carolina enacts:

PART I. AMENDMENTS TO THE NORTH CAROLINA BUSINESS CORPORATION ACT.

SECTION 1. G.S. 55-6-31 reads as rewritten:

"**§ 55-6-31. Corporation's acquisition of its own shares.**

(a) A corporation may acquire its own shares and shares so acquired constitute authorized but unissued shares.

(b) If the articles of incorporation prohibit the reissue of the acquired shares, the number of authorized shares is reduced by the number of shares acquired, effective upon amendment of the articles of incorporation.

~~(c) Articles of amendment required by subsection (b) may be adopted by the board of directors without shareholder action and shall be delivered to the Secretary of State for filing. The articles must set forth:~~

~~(1) The name of the corporation;~~

~~(2) The reduction in the number of authorized shares, itemized by class and series; and~~

~~(3) The total number of authorized shares, itemized by class and series, remaining after reduction of the shares.~~"

SECTION 2. G.S. 55-7-04(a) reads as rewritten:

"(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 unrevoked 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 or revocation thereof may be in electronic form and delivered by electronic means."

SECTION 3. G.S. 55-7-04(b) reads as rewritten:

"(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 unrevoked 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. A shareholder may only revoke a written consent if such shareholder delivers to the corporation a written revocation prior to the corporation's receipt of unrevoked written consents sufficient under subsection (a) of this section to take the action."

SECTION 4. G.S. 55-7-24(b)(4) reads as rewritten:

"(4) The name signed purports to be that of a ~~beneficial owner~~ pledgee, beneficial owner, or attorney-in-fact of the shareholder and, if the corporation requests, evidence acceptable to the corporation of the signatory's authority to sign for the shareholder has been presented with respect to the vote, consent, waiver, or proxy appointment;".

SECTION 5. G.S. 55-7-24(d) reads as rewritten:

"(d) The corporation and its officer or agent who accepts or rejects a vote, consent, waiver, or proxy appointment in good faith and in accordance with the standards of this section or G.S. 55-7-22(b) are not liable in damages to the shareholder for the consequences of the acceptance or rejection."

SECTION 6. G.S. 55-8-01(b) reads as rewritten:

"(b) All corporate powers shall be exercised by or under the authority of, and the business and affairs of the corporation managed by or under the direction of, its board of directors, except as otherwise provided in the articles of incorporation or in an agreement valid under G.S. 55-7-31(b)."

SECTION 7. G.S. 55-8-03 reads as rewritten:

"**§ 55-8-03. Number and election of directors.**

(a) A board of directors must consist of one or more individuals, with the number specified in or fixed in accordance with the articles of incorporation or bylaws.

(b) ~~The shareholders may from time to time increase or decrease the number of directors by amendment to the articles of incorporation or the bylaws, but no such decrease shall be made~~ The number of directors may be increased or decreased from time to time by amendment to, or in the manner provided in, the articles of

incorporation or the bylaws, but for a corporation to which G.S. 55-7-28(e) ~~is applicable when~~ applies, the number of directors shall not be decreased unless one of the following applies:

(1) The decrease is approved by the shareholders in a vote in which the number of shares voting against the proposal for decrease would not be sufficient to elect a director by cumulative ~~voting if such shares are entitled to be voted cumulatively for the election of directors.~~voting.

(2) ~~If a board of directors has power under the articles of incorporation or bylaws to fix or change the number of directors and if the shareholders do not have the right to cumulate their votes for directors, the board may increase or decrease the number of directors by not more than thirty percent (30%) during any 12-month period.~~The decrease is made pursuant to a provision of the articles of incorporation or bylaws fixing a minimum and maximum number of directors and authorizing the number of directors to be fixed or changed from time to time, within the maximum and the minimum, by the shareholders or, unless the articles of incorporation or an agreement valid under G.S. 55-7-31 provides otherwise, the board of directors.

~~(c) The articles of incorporation or bylaws may establish a variable range for the size of the board of directors by fixing a minimum and maximum number of directors. If a variable range is established, the number of directors may be fixed or changed from time to time, within the minimum and maximum, by the shareholders or (unless the articles of incorporation or an agreement valid under G.S. 55-7-31 shall otherwise provide) the board of directors. After shares are issued, only the shareholders may change the range for the size of the board or change from a fixed to a variable range size board or vice versa.~~

(d) Directors are elected at the first annual shareholders' meeting and at each annual meeting thereafter unless their terms are staggered under G.S. 55-8-06."

SECTION 8. G.S. 55-8-06 reads as rewritten:

"**§ 55-8-06. Staggered terms for directors.**

~~If the number of directors is fixed at nine or more directors, the~~ The articles of incorporation or bylaws adopted by the shareholders may provide for staggering ~~their~~ the terms of directors by dividing the total number of directors into two, three, or four groups, with each group containing one-half, one-third, or one-fourth of the total, as near as may be. In that event, the terms of directors in the first group expire at the first annual shareholders' meeting after their election, the terms of the second group expire at the second annual shareholders' meeting after their election, the terms of the third group, if any, expire at the third annual shareholders' meeting after their election, and the terms of the fourth group, if any, expire at the fourth annual shareholders' meeting after their election. At each annual shareholders' meeting held thereafter, directors shall be chosen for a term of two, three, or four years, as the case may be, to succeed those whose terms expire."

SECTION 9. G.S. 55-8-21 reads as rewritten:

"**§ 55-8-21. Action without meeting.**

(a) Unless the articles of incorporation or bylaws provide otherwise, action required or permitted by this Chapter to be taken at a board of directors' meeting may be taken without a meeting if the action is taken by all members of the board. The action must be evidenced by one or more unrevoked written consents signed by each director before or after such action, describing the action taken, and included in the minutes or filed with the corporate records. To the extent the corporation has agreed pursuant to G.S. 55-1-50, a director's consent to action taken without meeting or revocation thereof may be in electronic form and delivered by electronic means.

(b) Action taken under this section is effective when ~~the last director signs the consent,~~ one or more unrevoked consents signed by all of the directors are delivered to the corporation, unless the ~~consent specifies~~ consents specify a different effective date. A director's consent to action may be revoked in a writing signed by the director and delivered to the corporation prior to the action becoming effective.

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

SECTION 10. G.S. 55-8-25 reads as rewritten:

"**§ 55-8-25. Committees.**

(a) Unless this Chapter, the articles of ~~incorporation~~ incorporation, or the bylaws provide otherwise, a board of directors may create one or more committees and appoint one or more members of the board of directors to serve on ~~them. Each committee must have two or more members, who serve at the pleasure of the board of directors.~~ any such committee.

(b) ~~The~~ Unless this Chapter provides otherwise, the creation of a committee and appointment of members to it must be approved by the greater of:

(1) A majority of all the directors in office when the action is taken; or

(2) The number of directors required by the articles of incorporation or bylaws to take action under G.S. 55-8-24.

(b1) The creation and appointment of a committee pursuant to G.S. 55-7-44(b)(2) may be approved in the manner set forth in G.S. 55-7-44(b)(2).

(c) G.S. 55-8-20 through ~~G.S. 55-8-24, which govern meetings, action without meetings, notice and waiver of notice, and quorum and voting requirements of the board of directors,~~ G.S. 55-8-24 apply both to committees of the board of directors and to their ~~members as well.~~ members.

(d) To the extent specified by the board of directors or in the articles of incorporation or bylaws, each committee may exercise the authority of the board of directors under G.S. 55-8-01.

(e) A committee ~~may not, however:~~ shall not, however, do any of the following:

(1) Authorize ~~distributions;~~ distributions.

(2) Approve or propose to shareholders action that this act requires be approved by ~~shareholders;~~ shareholders.

(3) Fill vacancies on the board of directors or on any of its ~~committees;~~ committees.

(4) Amend articles of incorporation pursuant to ~~G.S. 55-10-02;~~ G.S. 55-10-02.

(5) Adopt, amend, or repeal ~~bylaws;~~ bylaws.

(6) Approve a plan of merger not requiring shareholder ~~approval;~~ approval.

~~(7) Authorize or approve reacquisition of shares, except according to a formula or method prescribed by the board of directors; or~~

~~(8) Authorize or approve the issuance or sale or contract for sale of shares, or determine the designation and relative rights, preferences, and limitations of a class or series of shares, except that the board of directors may authorize a committee (or a senior executive officer of the corporation) to do so within limits specifically prescribed by the board of directors.~~

(f) The creation of, delegation of authority to, or action by a committee does not alone constitute compliance by a director with the standards of conduct described in G.S. 55-8-30."

SECTION 11. G.S. 55-8-31(c) reads as rewritten:

"(c) For purposes of subsection (a)(1) of this section, a conflict of interest transaction is authorized, approved, or ratified if it receives the affirmative vote of a majority of the directors on the board of directors (or on the committee) who have no direct or indirect interest in the ~~transaction, but a transaction may not be authorized, approved, or ratified under this section by a single director.~~transaction. If a majority of the directors who have no direct or indirect interest in the transaction vote to authorize, approve, or ratify the transaction, a quorum is present for the purpose of taking action under this section. The presence of, or a vote cast by, a director with a direct or indirect interest in the transaction does not affect the validity of any action taken under subsection (a)(1) of this section if the transaction is otherwise authorized, approved, or ratified as provided in that subsection."

SECTION 12. G.S. 55-8-43 reads as rewritten:

"**§ 55-8-43. Resignation and removal of officers.**

(a) An officer may resign at any time by communicating his resignation to the corporation. A resignation is effective when it is communicated unless it specifies in writing a later effective ~~date.~~ time. If a resignation is made effective at a later ~~date~~ time and the corporation accepts the future effective ~~date,~~ time, its board of directors or the appointing officer may fill the pending vacancy before the effective ~~date~~ time if the board of directors or the appointing officer provides that the successor does not take office until the effective ~~date.~~ time.

(b) ~~A board of directors may remove any officer at any time with or without cause.~~ An officer may be removed at any time with or without cause by (i) the board of directors, (ii) the appointing officer, unless the bylaws or the board of directors provide otherwise, or (iii) any other officer if authorized by the bylaws or the board of directors.

(c) In this section, "appointing officer" means the officer, including any successor to that officer, who appointed the officer resigning or being removed."

SECTION 13. G.S. 55-10-02 reads as rewritten:

"**§ 55-10-02. Amendment by board of directors.**

Unless the articles of incorporation provide otherwise, a corporation's board of directors may adopt ~~one or more~~ any of the following amendments to the corporation's articles of incorporation without shareholder ~~action:~~ approval:

(1) Reserved for future codification ~~purposes;~~ purposes.

(2) To delete the names and addresses of the initial ~~directors;~~ directors.

(3) To delete the name and address of the initial registered agent or registered office, if a statement of change is on file with the Secretary of ~~State;~~ State.

(4) If the corporation has only one class of shares outstanding:

a. To change each issued and unissued authorized share of ~~an outstanding~~ the class into a greater number of whole shares ~~if the corporation has only shares of that class outstanding;~~ of the class; or

b. To increase the number of authorized shares of the class to the extent necessary to permit the issuance of shares as a share dividend.

(5) To change the corporate name by substituting the word "corporation", "incorporated", "company", "limited", or the abbreviation "corp.", "inc.", "co.", or "ltd.", for a similar word or abbreviation in the name, or by adding, deleting, or changing a geographical attribution for the ~~name; or~~ name.

(5a) To reflect a reduction in authorized shares pursuant to G.S. 55-6-31(b) when the corporation has acquired its own shares and the articles of incorporation prohibit the reissue of the acquired shares.

(5b) To delete a class of shares from the articles of incorporation, as a result of the operation of G.S. 55-6-31(b), when there are no remaining authorized shares of the class because the corporation has acquired all authorized shares of the class and the articles of incorporation prohibit the reissue of the acquired shares.

(6) To make any other change expressly permitted by this ~~act~~ Chapter to be made without shareholder ~~action.~~approval."

SECTION 14. G.S. 55-10-03 reads as rewritten:

"**§ 55-10-03. Amendment by board of directors and shareholders.**

(a) If a corporation has issued shares, an amendment to the articles of incorporation shall be adopted pursuant to this section. Except as provided in G.S. 55-14A-01, the proposed amendment must be adopted by the board of directors. ~~A corporation's board of directors may propose one or more amendments to the articles of incorporation for submission to the shareholders.~~

(b) ~~For the amendment to be adopted:~~

~~(1) The board of directors must recommend the amendment to the shareholders unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation, in which event the board of directors must~~

~~communicate the basis for its lack of a recommendation to the shareholders with the amendment; and~~

~~(2) The shareholders entitled to vote on the amendment must approve the amendment as provided in subsection (e).~~

Except as provided in G.S. 55-10-02, 55-10-07, and 55-14A-01, after adopting the proposed amendment the board of directors must submit the amendment to the shareholders for their approval. The board of directors must also transmit to the shareholders a recommendation that the shareholders approve the amendment, unless the board of directors determines that, because of conflict of interest or other special circumstances, it should not make such a recommendation, in which event the board of directors must communicate the basis for that determination to the shareholders with the amendment.

(c) The board of directors may condition its submission of the ~~proposed~~ amendment to the shareholders on any basis.

(d) ~~The~~ If the amendment must be approved by the shareholders and the approval is to be given at a meeting, the corporation ~~shall~~ must notify each ~~shareholder,~~ shareholder in accordance with G.S. 55-7-05, whether or not the shareholder is entitled to vote, of the ~~proposed shareholders'~~ meeting ~~in accordance with G.S. 55-7-05.~~ of shareholders at which the amendment is to be submitted for approval. The notice of meeting must state that the purpose, or one of the purposes, of the meeting is to consider the ~~proposed~~ amendment and the notice must contain or be accompanied by a copy or summary of the amendment. If the amendment is required to be approved by the shareholders and the approval is to be obtained through action without meeting, the corporation must notify shareholders if required by G.S. 55-7-04(d).

(e) Unless this Chapter, the articles of incorporation, a bylaw adopted by the shareholders, or the board of directors (acting pursuant to subsection (c)) require a greater vote or a vote by voting groups, the amendment to be adopted must be approved by:

(1) A majority of the votes entitled to be cast on the amendment by any voting group with respect to which the amendment would create dissenters' rights; and

(2) The votes required by G.S. 55-7-25 and G.S. 55-7-26 by every other voting group entitled to vote on the amendment."

SECTION 15. G.S. 55-10-07 reads as rewritten:

"**§ 55-10-07. Restated articles of incorporation.**

(a) A corporation's board of directors may restate its articles of incorporation at any ~~time~~ time, with or without shareholder ~~action.~~ approval, to consolidate all amendments into a single document.

(b) The restated articles of incorporation may include one or more new amendments to the articles. If the restated articles of incorporation include ~~an~~ a new amendment requiring shareholder approval, it must be adopted and approved as provided in G.S. 55-10-03. The restated articles of incorporation may include a statement of the address of the current registered office and the name of the current registered agent of the corporation, and no other.

~~(c) If the board of directors submits restated articles of incorporation for shareholder action, the corporation shall notify each shareholder entitled to vote, of the proposed shareholders' meeting in accordance with G.S. 55-7-05. The notice must also (i) state that the purpose, or one of the purposes, of the meeting is to consider the proposed restated articles of incorporation, (ii) contain or be accompanied by a copy of the proposed restated articles of incorporation, and (iii) identify any amendment or other change they would make in the articles.~~

(d) A corporation restating its articles of incorporation shall deliver to the Secretary of State for filing articles of restatement which shall:

(1) Set forth the name of the corporation;

(2) Attach as an exhibit thereto the text of the restated articles of incorporation;

(3) State ~~whether~~ that the restated articles of incorporation ~~contain an amendment to the articles requiring shareholder approval and, if they do not, that the board of directors adopted the restated articles of incorporation;~~ consolidate all amendments into a single document; and

(4) If the restated articles of incorporation contain ~~an~~ a new amendment to the ~~articles requiring shareholder approval, state that shareholder approval was obtained as required by this Chapter.~~ articles, include the statements required by G.S. 55-10-06.

(e) Duly adopted restated articles of incorporation supersede the original articles of incorporation and all amendments ~~to them.~~ to the original articles of incorporation.

(f) The Secretary of State may certify restated articles of ~~incorporation,~~ incorporation as the articles of incorporation currently in ~~effect,~~ effect without including the other information required by subsection ~~(d).~~ (d) of this section."

SECTION 16. G.S. 55-11-01 is amended by adding the following new subsection to read:

"(d) The provisions of the plan of merger, other than the provisions referred to in subdivisions (b)(1) and (c)(1) of this section, may be made dependent on facts objectively ascertainable outside the plan of merger if the plan of merger sets forth the manner in which the facts will operate upon the affected provisions. The facts may include any of the following:

(1) Statistical or market indices, market prices of any security or group of securities, interest rates, currency exchange rates, or similar economic or financial data.

(2) A determination or action by the corporation or by any other person, group, or body.

(3) The terms of, or actions taken under, an agreement to which the corporation is a party, or any other agreement or document."

SECTION 17. G.S. 55-11-02 reads as rewritten:

"**§ 55-11-02. Share exchange.**

(a) A corporation may acquire all of the outstanding shares of one or more classes or series of another corporation if the board of directors of each corporation adopts and its shareholders (if required by G.S. 55-11-03) approve the exchange.

(b) The plan of exchange must set forth:

(1) The name of the corporation whose shares will be acquired and the name of the acquiring corporation;

(2) The terms and conditions of the exchange;

(3) The manner and basis of exchanging the shares to be acquired for shares, obligations, or other securities of the acquiring or any other corporation or for cash or other property in whole or part.

(c) The plan of exchange may set forth other provisions relating to the exchange.

(c1) The provisions of the plan of share exchange, other than the provision required by subdivision (b)(1) of this section, may be made dependent on facts objectively ascertainable outside the plan of share exchange if the plan of share exchange sets forth the manner in which the facts will operate upon the affected provisions. The facts may include any of the following:

(1) Statistical or market indices, market prices of any security or group of securities, interest rates, currency exchange rates, or similar economic or financial data.

(2) A determination or action by the corporation or by any other person, group, or body.

(3) The terms of, or actions taken under, an agreement to which the corporation is a party, or any other agreement or document.

(d) This section does not limit ~~the power of a corporation to acquire~~ the acquisition of all or part of the shares of one or more classes or series of ~~another~~ a corporation through a voluntary exchange or otherwise."

SECTION 18. G.S. 55-11-03(e) reads as rewritten:

"(e) Unless this Chapter, the articles of incorporation, a bylaw adopted by the ~~shareholders~~ shareholders, or the board of directors (acting pursuant to subsection (c)) require a greater ~~vote or a vote by voting groups,~~ vote, the plan of merger or share exchange to be authorized must be approved by each voting group entitled to vote separately on the plan by a majority of all the votes entitled to be cast on the plan by that voting group and, for the purpose of Article 9 or any provision in the articles of incorporation or bylaws adopted prior to July 1, 1990, a merger shall be deemed to include a share exchange. If any shareholder of a merging corporation has or will have personal liability for any existing or future obligation of the surviving corporation in the merger solely as a result of owning one or more shares in the surviving corporation, then, in addition to the requirements of this subsection, authorization of the plan of merger by the merging corporation shall require the affirmative vote or written consent of that shareholder."

SECTION 19. G.S. 55-11-03(g) reads as rewritten:

"(g) ~~Action~~ Unless the articles of incorporation provide otherwise, approval by the surviving corporation's shareholders of ~~the surviving corporation on~~ a plan of merger is not required ~~if:~~ if all of the following conditions are met:

(1) ~~The~~ Except for amendments permitted by G.S. 55-10-02, its articles of incorporation ~~of the surviving corporation~~ will not ~~differ (except for~~

~~amendments enumerated in G.S. 55-10-02) from its articles before the merger;~~ be changed.

(2) Each shareholder of the ~~surviving~~ corporation whose shares were outstanding immediately before the effective date of the merger will hold the same shares, with identical ~~designations,~~ preferences, limitations, and relative rights, immediately after the effective date of the ~~merger;~~ merger.

(3) The number of voting shares outstanding immediately after the merger, plus the number of voting shares issuable as a result of the merger (either by the conversion of securities issued pursuant to the merger or the exercise of rights and warrants issued pursuant to the merger), will not exceed by more than twenty percent (20%) the total number of voting shares of the surviving corporation outstanding immediately before the ~~merger; and~~ merger.

(4) The number of participating shares outstanding immediately after the merger, plus the number of participating shares issuable as a result of the merger (either by the conversion of securities issued pursuant to the merger or the exercise of rights and warrants issued pursuant to the merger), will not exceed by more than twenty percent (20%) the total number of participating shares outstanding immediately before the merger."

SECTION 20. G.S. 55-11-03(i) reads as rewritten:

"(i) After a plan of merger or share exchange is authorized, ~~and at any time~~ but before the articles of merger or share exchange ~~are filed,~~ become effective, the ~~planned~~ plan of merger or share exchange (i) may be amended as provided in the plan of merger or share exchange, or (ii) may be ~~abandoned (subject to any contractual rights), without further shareholder action, in accordance with the procedure set forth~~ abandoned, subject to any contractual rights, as provided in the plan of merger or share exchange or, if ~~none is set forth, in the manner~~ there is no such provision, as determined by the board of ~~directors.~~directors without further shareholder action."

SECTION 21. G.S. 55-11-04 reads as rewritten:

"**§ 55-11-04. Merger with subsidiary.**

(a) Subject to Article 9, a parent corporation owning at least ~~90~~ ninety percent (90%) of the outstanding shares of each class of a subsidiary corporation may merge the subsidiary into itself without approval of the shareholders of the parent ~~or subsidiary.~~ corporation unless the articles of incorporation of the parent corporation require approval of the shareholders or the plan of merger contains one or more amendments to the articles of incorporation of the parent corporation for which shareholder approval is required by G.S. 55-10-03, and without approval of the board of directors or shareholders of the subsidiary corporation unless the articles of incorporation of the subsidiary corporation require approval of the shareholders of the subsidiary corporation. Subject to Article 9, a parent corporation owning at least ninety percent (90%) of the outstanding shares of each class of a subsidiary corporation may merge itself into the subsidiary corporation without approval of the board of directors or

shareholders of the subsidiary ~~if the merger is approved by the directors and shareholders of the parent corporation in accordance with G.S. 55-11-01 and G.S. 55-11-03.~~ corporation unless the articles of incorporation of the subsidiary corporation provide otherwise or the plan of merger contains one or more amendments to the articles of incorporation of the subsidiary corporation for which shareholder approval is required by G.S. 55-10-03. Except as otherwise provided in this subsection, the provisions of G.S. 55-11-01 and G.S. 55-11-03 apply to any merger described in this subsection.

(b) ~~The board of directors of the parent shall adopt a plan of merger that sets forth:~~

~~(1) The names of the parent and subsidiary; and~~

~~(2) The manner and basis of converting the shares of each corporation into shares, obligations, or other securities of the surviving or any other corporation or into cash or other property in whole or part.~~

If a merger is consummated without approval of the subsidiary corporation's shareholders, the parent corporation shall, within 10 days after the effective date of the merger, notify each shareholder of the subsidiary corporation as of the effective date of the merger, that the merger has become effective.

~~(c) The parent shall mail a copy or summary of the plan of merger to each shareholder of the subsidiary who does not waive the mailing requirement in writing.~~

~~(d) The parent may not deliver articles of merger to the Secretary of State for filing until at least 30 days after the date it mailed a copy or summary of the plan of merger to each shareholder of the subsidiary who did not waive the mailing requirement. This subsection does not apply to a merger in which the subsidiary was a public corporation before becoming a subsidiary qualifying for a merger under this section and is still a public corporation on the effective date of the merger.~~

~~(e) Articles of merger under this section may not contain amendments to the articles of incorporation of the surviving corporation (except for amendments enumerated in G.S. 55-10-02).~~

(f) The provisions of G.S. 55-13-02(c) do not apply to subsidiary corporations that are parties to mergers consummated under this section."

SECTION 22. G.S. 55-11-05 reads as rewritten:

"**§ 55-11-05. Articles of merger or share exchange.**

(a) After a plan of merger or a plan of share exchange ~~is approved by the shareholders, or adopted by the board of directors if shareholder approval is not required,~~ for the acquisition of shares of a domestic corporation has been authorized as required by this Chapter, the surviving or acquiring corporation shall deliver to the Secretary of State for filing articles of merger or share ~~exchange setting forth:~~ exchange.

~~(1) The plan of merger or share exchange;~~

~~(2) If shareholder approval was not required, a statement to that effect;~~

~~(3) If approval of the shareholders of one or more corporations party to the merger or share exchange was required, a statement that the merger or share exchange was approved by the shareholders as required by this Chapter.~~

In the case of a merger, the articles of merger shall set forth (i) the name and state or country of incorporation of each merging corporation, (ii) the name of the merging corporation that will survive the merger and, if the surviving corporation is not authorized to transact business or conduct affairs in this State, a designation of its mailing address and a commitment to file with the Secretary of State a statement of any subsequent change in its mailing address, (iii) any amendments to the articles of incorporation of the surviving corporation provided in the plan of merger if the surviving corporation is a domestic corporation, and (iv) a statement that the plan of merger has been approved by each merging corporation in the manner required by law.

In the case of a share exchange, the articles of share exchange shall set forth (i) the name of the corporation whose shares will be acquired, (ii) the name and state or country of incorporation of the acquiring corporation, (iii) a designation of its mailing address and a commitment to file with the Secretary of State a statement of any subsequent change in its mailing address if the acquiring corporation is not authorized to transact business or conduct affairs in this State, and (iv) a statement that the plan of share exchange has been approved by the corporation whose shares will be acquired and by the acquiring corporation in the manner required by law.

(a1) If the plan of merger or share exchange is amended after the articles of merger or share exchange have been filed but before the articles of merger or share exchange become effective and any statement in the articles of merger or share exchange becomes incorrect as a result of the amendment, the surviving or acquiring corporation shall deliver to the Secretary of State for filing prior to the time the articles of merger or share exchange become effective an amendment to the articles of merger or share exchange correcting the incorrect statement. If the articles of merger or share exchange are abandoned after the articles of merger or share exchange are filed but before the articles of merger or share exchange become effective, the surviving or acquiring corporation shall deliver to the Secretary of State for filing prior to the time the articles of merger or share exchange become effective an amendment reflecting abandonment of the plan of merger or share exchange.

(b) A merger or share exchange takes effect ~~upon the effective date of~~ when the articles of merger or share ~~exchange.~~ exchange become effective.

(c) Certificates of merger shall also be registered as provided in G.S. 47-18.1.

(d) In the case of a merger or share exchange pursuant to G.S. 55-11-07 or G.S. 55-11-09, references in subsections (a) and (b) of this section to "corporation" shall include a domestic corporation, a domestic nonprofit corporation, a foreign corporation, and a foreign nonprofit corporation as applicable."

SECTION 23. G.S. 55-11-06 reads as rewritten:

"**§ 55-11-06. Effect of merger or share exchange.**

(a) When a merger pursuant to G.S. 55-11-01, 55-11-04, 55-11-07, or 55-11-09 takes effect:

(1) ~~Every other~~ Each merging corporation ~~party to the merger~~ merges into the surviving corporation and the separate existence of ~~every~~ each merging corporation except the surviving corporation ~~ceases;~~ ceases.

(2) The title to all real estate and other property owned by each merging corporation ~~party to the merger~~ is vested in the surviving corporation without reversion or ~~impairment;~~ impairment.

(3) The surviving corporation has all liabilities of each ~~corporation party to the merger;~~ merging corporation.

(4) A proceeding pending by or against any merging corporation ~~party to the merger~~ may be continued as if the merger did not occur or the surviving corporation may be substituted in the proceeding for ~~the~~ a merging corporation whose separate existence ~~ceased;~~ ceases in the merger.

(5) ~~The~~ If a domestic corporation survives the merger, its articles of incorporation ~~of the surviving corporation~~ are amended to the extent provided in the ~~plan~~ articles of ~~merger; and~~ merger.

(6) The shares of each merging corporation ~~party to the merger~~ that are to be converted into shares, obligations, or other securities of the surviving or any other corporation or into the right to receive cash or other property are thereupon converted, and the former holders of the shares are entitled only to the rights provided ~~in the articles of merger or to their rights under Article 13.~~ to them in the plan of merger or, in the case of former holders of shares in a domestic corporation, any right they may have under Article 13 of this Chapter.

(7) If a foreign corporation or foreign nonprofit corporation survives the merger, it is deemed:

a. To agree that it will promptly pay to dissenting shareholders of any merging domestic corporation the amount, if any, to which they are entitled under Article 13 of this Chapter and otherwise to comply with the requirements of Article 13 as if it were a surviving domestic corporation in the merger.

b. To agree that it may be served with process in this State in any proceeding for enforcement (i) of any obligation of any merging domestic corporation, (ii) of the rights of dissenting shareholders of any merging domestic corporation under Article 13 of this Chapter, and (iii) of any obligation of the surviving foreign corporation or foreign nonprofit corporation arising from the merger.

c. To have appointed the Secretary of State as its agent for service of process in any proceeding for enforcement as specified in sub-subdivision b. of this subdivision. Service of process on the Secretary of State shall be made by delivering to, and leaving with, the Secretary of State, or with any clerk authorized by the Secretary of State to accept service of process, duplicate copies of the process and the fee required by G.S. 55-1-22(b). Upon receipt of service of process on behalf of a surviving foreign corporation or foreign nonprofit corporation in the manner

provided for in this section, the Secretary of State shall immediately mail a copy of the process by registered or certified mail, return receipt requested, to the surviving foreign corporation or foreign nonprofit corporation. If the surviving foreign corporation or foreign nonprofit corporation is authorized to transact business or conduct affairs in this State, the address for mailing shall be its principal office designated in the latest document filed with the Secretary of State that is authorized by law to designate the principal office, or, if there is no principal office on file, its registered office. If the surviving foreign corporation or foreign nonprofit corporation is not authorized to transact business or conduct affairs in this State, the address for mailing shall be the mailing address designated pursuant to G.S. 55-11-05(a).

The merger shall not affect the liability or absence of liability of any holder of shares in a merging corporation for any acts, omissions, or obligations of any merging corporation made or incurred prior to the effectiveness of the merger.

(b) When a share exchange for the acquisition of shares of a domestic corporation pursuant to G.S. 55-11-02 or G.S. 55-11-07 takes ~~effect, the~~ effect:

(1) The shares of ~~each~~ the acquired corporation are exchanged as provided in the ~~plan,~~ plan of share exchange, and the former holders of the shares are entitled only to the exchange rights provided in the ~~articles~~ plan of share exchange or ~~to their rights~~ any right they may have under Article ~~13.~~ 13 of this Chapter.

(2) If the acquiring corporation is not a domestic corporation, it is deemed to agree that it will promptly pay to dissenting shareholders of the acquired corporation the amount, if any, to which they are entitled under Article 13 of this Chapter and otherwise to comply with the requirements of Article 13 as if it were an acquiring domestic corporation in the share exchange.

(3) If the acquiring corporation is not a domestic corporation, the acquiring corporation is deemed:

a. To agree that it may be served with process in this State in any proceeding for enforcement (i) of the rights of dissenting shareholders of the acquired corporation under Article 13 of this Chapter and (ii) of any obligation of the acquiring corporation arising from the share exchange; and

b. To have appointed the Secretary of State as its agent for service of process in any proceeding for enforcement as specified in sub-subdivision a. of this subdivision. Service of process on the Secretary of State shall be made by delivering to, and leaving with, the Secretary of State, or with any clerk authorized by the Secretary of State to accept service of process, duplicate copies of the process and the fee required by G.S. 55-1-22(b). Upon

receipt of service of process on behalf of an acquiring corporation in the manner provided for in this section, the Secretary of State shall immediately mail a copy of the process by registered or certified mail, return receipt requested, to the acquiring corporation. If the acquiring corporation is authorized to transact business or conduct affairs in this State, the address for mailing shall be its principal office designated in the latest document filed with the Secretary of State that is authorized by law to designate the principal office or, if there is no principal office on file, its registered office. If the acquiring corporation is not authorized to transact business or conduct affairs in this State, the address for mailing shall be the mailing address designated pursuant to G.S. 55-11-05(a).

(c) In the case of a merger pursuant to G.S. 55-11-07 or G.S. 55-11-09 or a share exchange pursuant to G.S. 55-11-07, references in subsections (a) and (b) of this section to "corporation" shall include a domestic corporation, a domestic nonprofit corporation, a foreign corporation, and a foreign nonprofit corporation as applicable."

SECTION 24. G.S. 55-11-07 reads as rewritten:

"**§ 55-11-07. Merger or share exchange with foreign corporation.**

(a) One or more foreign corporations may merge ~~or enter into a share exchange~~ with one or more domestic corporations, and a foreign corporation may enter into a share exchange with a domestic corporation if:

(1) In a merger, the merger is permitted by the law of the state or country under whose law each foreign corporation is incorporated ~~and each~~ and, to the extent applicable, each domestic or foreign corporation complies with that law in effecting the merger;

(2) In a share exchange, if the corporation whose shares will be acquired is a ~~domestic~~ foreign corporation, ~~whether or not a~~ the share exchange is permitted by the law of the state or country under whose law the ~~acquiring~~ foreign corporation is ~~incorporated;~~ incorporated and the foreign corporation and the acquiring domestic corporation comply with that law in effecting the share exchange;

(3) The foreign corporation complies with G.S. 55-11-05 if it is the surviving corporation of the merger or acquiring corporation of the share ~~exchange and, if the foreign corporation is not authorized to transact business in this State, includes in the articles of merger or articles of share exchange filed pursuant to G.S. 55-11-05 a designation of the foreign corporation's mailing address and a commitment to file with the Secretary of State a statement of any subsequent change in its mailing address;~~ exchange; and

(4) Each domestic corporation complies with the applicable provisions of G.S. 55-11-01 through G.S. 55-11-04 and, if it is the surviving corporation of the ~~merger or acquiring corporation of the share exchange,~~ merger with G.S. 55-11-05.

~~(b) Upon the merger or share exchange taking effect, the surviving foreign corporation of a merger and the acquiring foreign corporation of a share exchange is deemed:~~

~~(1) To appoint the Secretary of State as its agent for service of process in a proceeding to enforce any obligation or the rights of dissenting shareholders of each domestic corporation party to the merger or share exchange; and~~

~~(2) To agree that it will promptly pay to the dissenting shareholders of each domestic corporation party to the merger or share exchange the amount, if any, to which they are entitled under Article 13.~~

~~Service on the Secretary of State of any process authorized by this subsection shall be made by delivering to and leaving with the Secretary of State, or with any clerk authorized by the Secretary of State to accept service of process, duplicate copies of the process and the fee required by G.S. 55-1-22(b). Upon receipt of service of process in the manner provided in this subsection, the Secretary of State shall immediately mail a copy of the process by registered or certified mail, return receipt requested, to the foreign corporation. If the foreign corporation is authorized to transact business in this State, the address for mailing shall be its principal office or, if there is no mailing address for the principal office on file, its registered office. If the foreign corporation is not authorized to transact business in this State, the address for mailing shall be the mailing address designated pursuant to subdivision (3) of subsection (a) of this section.~~

(c) This section does not limit the power of a foreign corporation to acquire all or part of the shares of one or more classes or series of a domestic corporation through a voluntary exchange or ~~otherwise.~~ otherwise, or the power of a domestic corporation to acquire all or part of the shares of one or more classes or series of a foreign corporation through a voluntary exchange or otherwise."

SECTION 25. G.S. 55-11-09 reads as rewritten:

"**§ 55-11-09. Merger with nonprofit corporation.**

(a) One or more domestic or foreign nonprofit corporations may merge with one or more domestic corporations if:

(1) Each domestic nonprofit corporation complies with the applicable provisions of G.S. 55A-11-01 through G.S. 55A-11-03;

(2) In a merger involving one or more foreign nonprofit corporations, the merger is permitted by law of the state or country under whose law each foreign nonprofit corporation is incorporated ~~and each~~ and, to the extent applicable, each domestic corporation and each domestic or foreign nonprofit corporation complies with that law in effecting the merger;

(3) The domestic or foreign nonprofit corporation complies with G.S. 55-11-05 if it is the surviving ~~corporation and, in the case of a foreign nonprofit corporation not authorized to conduct affairs in this State, includes in the articles of merger filed pursuant to G.S. 55-11-05 a designation of the foreign nonprofit corporation's mailing address~~

~~and a commitment to file with the Secretary of State a statement of any subsequent change in its mailing address;~~ corporation; and

(4) Each domestic corporation complies with the applicable provisions of G.S. 55-11-01, 55-11-03, and 55-11-04 and, if it is the surviving corporation, with G.S. 55-11-05.

~~(b) Upon the merger taking effect, if a foreign nonprofit corporation is the surviving corporation, then it is deemed:~~

~~(1) To appoint the Secretary of State as its agent for service of process in a proceeding to enforce any obligation or the rights of dissenting shareholders of each domestic corporation party to the merger; and~~

~~(2) To agree that it will promptly pay to the dissenting shareholders of each domestic corporation party to the merger or share exchange the amount, if any, to which they are entitled under Article 13 of this Chapter.~~

~~Service on the Secretary of State of any process authorized by this subsection shall be made by delivering to and leaving with the Secretary of State, or with any clerk authorized by the Secretary of State to accept service of process, duplicate copies of the process and the fee required by G.S. 55-1-22(b). Upon receipt of service of process in the manner provided in this subsection, the Secretary of State shall immediately mail a copy of the process by registered or certified mail, return receipt requested, to the foreign nonprofit corporation. If the foreign nonprofit corporation is authorized to conduct affairs in this State, the address for mailing shall be its principal office as defined in G.S. 55A-1-40(20), or, if there is no mailing address for the principal office on file, its registered office. If the foreign nonprofit corporation is not authorized to conduct affairs in this State, the address for mailing shall be the mailing address designated pursuant to subdivision (3) of subsection (a) of this section.~~

(c) This section does not limit the power of a domestic or foreign nonprofit corporation to acquire all or part of the shares of one or more classes or series of a domestic corporation through a voluntary exchange or otherwise."

SECTION 26. G.S. 55-11-10 reads as rewritten:

"...

(c) Each merging domestic corporation and each other merging business entity shall approve a written plan of merger containing:

(1) For each merging business entity, its name, type of business entity, and the state or country whose laws govern its organization and internal affairs;

(2) The name of the merging business entity that shall survive the merger;

(3) The terms and conditions of the merger;

(4) The manner and basis for converting the interests in each merging business entity into interests, obligations, or securities of the surviving business entity or into cash or other property in whole or in part; and

(5) If the surviving business entity is a domestic corporation, any amendments to its articles of incorporation that are to be made in connection with the merger.

(c1) The plan of merger may contain other provisions relating to the merger.

(c2) The provisions of the plan of merger, other than the provisions referred to in subdivisions (1), (2), and (5) of subsection (c) of this section, may be made dependent on facts objectively ascertainable outside the plan of merger if the plan of merger sets forth the manner in which the facts will operate upon the affected provisions. The facts may include any of the following:

(1) Statistical or market indices, market prices of any security or group of securities, interest rates, currency exchange rates, or similar economic or financial data.

(2) A determination or action by the corporation or by any other person, group, or body.

(3) The terms of, or actions taken under, an agreement to which the corporation is a party, or any other agreement or document.

(c3) In the case of a domestic corporation, approval of the plan of merger requires that the plan of merger be adopted by its board of directors as provided in G.S. 55-11-03 and, unless shareholder approval is not required under subsection (g) of G.S. 55-11-03, be approved by its shareholders as provided in G.S. 55-11-03. If any shareholder of a merging domestic corporation has or will have personal liability for any existing or future obligation of the surviving business entity solely as a result of holding an interest in the surviving business entity, then in addition to the requirements of the preceding sentence, approval of the plan of merger by the domestic corporation shall require the affirmative vote or written consent of that shareholder. In the case of each other merging business entity, the plan of merger must be approved in accordance with the laws of the state or country governing the organization and internal affairs of that merging business entity.

(c4) After a plan of merger has been approved by a domestic corporation but before the articles of merger become effective, the plan of merger (i) may be amended as provided in the plan of merger, or (ii) may be abandoned (subject to any contractual rights) as provided in the plan of merger or, if there is no such provision, as determined by the board of directors without further shareholder action.

...."

SECTION 27. G.S. 55-11-10(d) reads as rewritten:

"(d) After a plan of merger has been approved by each merging domestic corporation and each other merging business entity as provided in subsection (c) of this section, the surviving business entity shall deliver articles of merger to the Secretary of State for filing. The articles of merger shall set ~~forth:~~ forth all of the following:

~~(1) The plan of merger;~~

(2) For each merging business entity, its name, type of business entity, and the state or country whose laws govern its organization and internal ~~affairs;~~ affairs.

(3) The name of the ~~surviving~~ merging business entity that shall survive the merger and, if the surviving business entity is not authorized to transact business or conduct affairs in this State, a designation of its

mailing address and a commitment to file with the Secretary of State a statement of any subsequent change in its mailing ~~address;~~ address.

(3a) If the surviving business entity is a domestic corporation, any amendment to its articles of incorporation as provided in the plan of merger.

(4) A statement that the plan of merger has been approved by each merging business entity in the manner required by ~~law; and~~ law.

~~(5) The effective date and time of merger if it is not to be effective at the time of filing of the articles of merger.~~

If the plan of merger is amended ~~or abandoned~~ after the articles of merger have been filed but before the articles of merger become ~~effective,~~ effective, and any statement in the articles of merger becomes incorrect as a result of the amendment, the surviving business entity shall deliver to the Secretary of State for filing prior to the time the articles of merger become effective an amendment to the articles of merger ~~reflecting the amendment or abandonment of the plan of merger.~~ correcting the incorrect statement. If the articles of merger are abandoned after the articles of merger are filed but before the articles of merger become effective, the surviving business entity shall deliver to the Secretary of State for filing prior to the time the articles of merger become effective an amendment reflecting abandonment of the plan of merger.

Certificates of merger shall also be registered as provided in G.S. 47-18.1."

SECTION 28. G.S. 55-11-10(e)(5) reads as rewritten:

"(5) If a domestic corporation is the surviving business entity, its articles of incorporation shall be amended to the extent provided in the ~~plan~~ articles of merger;".

SECTION 29. G.S. 55-11A-02 reads as rewritten:

"(a) The converting business entity shall approve a written plan of conversion containing:

(1) The name of the converting business entity, its type of business entity, and the state or country whose laws govern its organization and internal affairs;

(2) The name of the resulting domestic corporation into which the converting business entity shall convert;

(3) The terms and conditions of the conversion; and

(4) The manner and basis for converting the interests in the converting business entity into shares, obligations, or other securities of the resulting domestic corporation or into cash or other property in whole or in part.

(a1) The plan of conversion may contain other provisions relating to the conversion.

(a2) The provisions of the plan of conversion, other than the provisions required by subdivisions (1) and (2) of subsection (a) of this section, may be made dependent on facts objectively ascertainable outside the plan of conversion if the plan of conversion sets forth the manner in which the facts will operate upon the affected provisions. The facts may include any of the following:

(1) Statistical or market indices, market prices of any security or group of securities, interest rates, currency exchange rates, or similar economic or financial data.
(2) A determination or action by the converting business entity or by any other person, group, or body.
(3) The terms of, or actions taken under, an agreement to which the converting business entity is a party, or any other agreement or document.

...."

SECTION 30. G.S. 55-11A-11 reads as rewritten:

"(a) The converting domestic corporation shall approve a written plan of conversion containing:

(1) The name of the converting domestic corporation;
(2) The name of the resulting business entity into which the domestic corporation shall convert, its type of business entity, and the state or country whose laws govern its organization and internal affairs;
(3) The terms and conditions of the conversion; and
(4) The manner and basis for converting the shares of the domestic corporation into interests, obligations, or securities of the resulting business entity or into cash or other property in whole or in part.

(a1) The plan of conversion may contain other provisions relating to the conversion.

(a2) The provisions of the plan of conversion, other than the provisions required by subdivisions (1) and (2) of subsection (a) of this section, may be made dependent on facts objectively ascertainable outside the plan of conversion if the plan of conversion sets forth the manner in which the facts will operate upon the affected provisions. The facts may include any of the following:

(1) Statistical or market indices, market prices of any security or group of securities, interest rates, currency exchange rates, or similar economic or financial data.
(2) A determination or action by the converting domestic corporation or by any other person, group, or body.
(3) The terms of, or actions taken under, an agreement to which the converting domestic corporation is a party, or any other agreement or document.

...."

SECTION 31. G.S. 55-14-03 is amended by adding a new subsection to read:

"(c) For purposes of this Chapter, a dissolved corporation is a corporation whose articles of dissolution have become effective and includes a successor entity to which the remaining assets of the corporation are transferred subject to its liabilities for purposes of a liquidation."

SECTION 32. G.S. 55-14-08(a) reads as rewritten:

"(a) A claim under G.S. 55-14-06 or G.S. 55-14-07 may be enforced:

(1) Against the dissolved corporation, to the extent of its undistributed assets, including coverage under any applicable insurance policy, or

(2) ~~If~~ Except as provided in G.S. 55-14-09(d), if the assets have been distributed in liquidation, against a shareholder of the dissolved corporation to the extent of ~~his~~ the shareholder's pro rata share of the claim or the corporate assets distributed to ~~him~~ the shareholder in liquidation, whichever is less, but a shareholder's total liability for all claims under this section may not exceed the total amount of assets distributed to ~~him.~~the shareholder."

SECTION 33. Article 14 of Chapter 55 of the General Statutes is amended by adding a new section to read:

"**§ 55-14-09. Court proceedings.**

(a) A dissolved corporation that has published a notice under G.S. 55-14-07 may file an application with the superior court of the county where the dissolved corporation's principal office, or its registered office if the corporation does not have a principal office in this State, is located for a determination of the amount and form of security to be provided for payments of claims that are contingent or have not been made known to the dissolved corporation or that are based on an event occurring after the effective date of dissolution but that, based on the facts known to the dissolved corporation, are reasonably estimated to arise after the effective date of dissolution. Provisions need not be made for any claim that is or is reasonably anticipated to be barred under G.S. 55-14-07(c).

(b) Within 10 days after the filing of the application, notice of the proceeding shall be given by the dissolved corporation to each claimant holding a contingent claim whose contingent claim is shown on the records of the dissolved corporation.

(c) The court may appoint a guardian ad litem to represent all claimants whose identities are unknown in any proceeding brought under this section. The reasonable fees and expenses of the guardian, including all reasonable expert witness fees, shall be paid by the dissolved corporation.

(d) Provision by the dissolved corporation for security in the amount and the form ordered by the court under subsection (a) of this section shall satisfy the dissolved corporation's obligations with respect to claims that are contingent, have not been made known to the dissolved corporation, or are based on an event occurring after the effective date of dissolution, and the claims shall not be enforced against a shareholder who received assets in liquidation."

SECTION 34. G.S. 55-14A-01(b) reads as rewritten:

"(b) Any articles of amendment, statement of change of registered office or registered agent, ~~certificate of reduction of capital, restated articles of incorporation,~~ articles of restatement, articles of merger or share exchange, articles of conversion, articles of dissolution, or any other document appropriate to complete any action permitted by this section shall be executed and filed in accordance with the provisions of this ~~act~~ Chapter on behalf of the corporation by such person or persons as may be authorized to take such action pursuant to subsection ~~(a)~~(a) of this section. The document shall set forth the statements required by this Chapter to be included in the

document, except any statement that the action taken by the document was adopted by the incorporators or board of directors or was approved by the shareholders, and also shall set forth:

(1) The date of the court's order or decree approving the action.

(2) The title of the reorganization proceeding in which the order or decree was entered.

(3) A statement that the court had jurisdiction of the proceeding under a federal statute of the United States."

SECTION 35. G.S. 55-16-03 reads as rewritten:

"**§ 55-16-03. Scope of inspection right.**

(a) A shareholder's agent or attorney has the same inspection and copying rights as the shareholder ~~he represents.~~represented.

(b) The right to copy records under G.S. 55-16-02 includes, if reasonable, the right to receive copies ~~made by photographic, xerographic, or other means.~~ by xerographic or other means, including copies through an electronic transmission if available and so requested by the shareholder.

(c) The corporation may impose a reasonable charge, covering the costs of labor and material, for producing for inspection or copying any records provided to the shareholder. The charge may not exceed the estimated cost of ~~production or reproduction~~ production, reproduction, or transmission of the records.

(d) The corporation may comply with a shareholder's demand to inspect the record of shareholders under G.S. 55-16-02(b)(3) by providing ~~him~~ the shareholder with a list of its shareholders that was compiled no earlier than the date of the shareholder's demand."

SECTION 36. Article 16 of Chapter 55 of the General Statutes is amended by adding the following new sections to read:

"**§ 55-16-05. Inspection of records by directors.**

(a) A director of a corporation is entitled to inspect and copy the books, records, and documents of the corporation at any reasonable time to the extent reasonably related to the performance of the director's duties as a director, including duties as a member of a committee, but not for any other purpose or in any manner that would violate any duty to the corporation.

(b) The superior court of the county where the corporation's principal office, or its registered office if the corporation does not have a principal office in this State, is located may order inspection and copying of the books, records, and documents at the corporation's expense, upon application of a director who has been refused inspection rights, unless the corporation establishes that the director is not entitled to inspection rights. The court shall dispose of an application under this subsection on an expedited basis.

(c) If an order is issued, the court may include provisions protecting the corporation from undue burden or expense, and prohibiting the director from using information obtained upon exercise of the inspection rights in a manner that would violate a duty to the corporation, and may also order the corporation to reimburse the

director for the director's costs, including reasonable counsel fees, incurred in connection with the application.

"**§ 55-16-06. Exception to notice requirements.**

(a) Whenever notice is required to be given under any provision of this Chapter to a shareholder, the notice shall not be required to be given if either of the following applies:

(1) Notice of two consecutive annual meetings, and all notices of meetings during the period between those two consecutive annual meetings, have been sent to the shareholder at the shareholder's address as shown on the records of the corporation and have been returned undeliverable.

(2) All, but not less than two, payments of dividends on securities during a 12-month period, or two consecutive payments of dividends on securities during a period of more than 12 months, have been sent to the shareholder at the shareholder's address as shown on the records of the corporation and have been returned undeliverable.

(b) If a shareholder delivers to the corporation a written notice setting forth that shareholder's current address, the requirement that notice be given to the shareholder shall be reinstated."

SECTION 37. G.S. 55-16-21 is repealed.

PART II. CONFORMING AMENDMENTS TO CHAPTER 55A, CHAPTER 57C, AND CHAPTER 59 OF THE GENERAL STATUTES.

SECTION 38. G.S. 55A-11-01 is amended by adding the following new subsection to read:

"(d) The provisions of the plan of merger, other than the provisions referred to in subdivisions (b)(1) and (c)(1) of this section, may be made dependent on facts objectively ascertainable outside the plan of merger if the plan of merger sets forth the manner in which the facts will operate upon the affected provisions. The facts may include any of the following:

(1) Statistical or market indices, market prices of any security or group of securities, interest rates, currency exchange rates, or similar economic or financial data.

(2) A determination or action by the corporation or by any other person, group, or body.

(3) The terms of, or actions taken under, an agreement to which the corporation is a party, or any other agreement or document."

SECTION 39. G.S. 55A-11-03(g) reads as rewritten:

"(g) After a merger is ~~adopted, and at any time before articles of merger are filed, the merger may be abandoned (subject to any contractual rights), without further action by members or other persons who approved the plan, in accordance with the procedure set forth in the plan of merger or, if none is set forth, in the manner determined by the board of directors.~~adopted but before the articles of merger become effective, the plan of merger (i) may be amended as provided in the plan of merger, or (ii) may be abandoned, subject to any contractual rights, as provided in the plan of merger, or, if

there is no such provision, as determined by the board of directors without further action by the members or other persons who approved the plan of merger."

SECTION 40. G.S. 55A-11-04 reads as rewritten:

"**§ 55A-11-04. Articles of merger.**

(a) After a plan of merger ~~is approved by the board of directors, and if required by G.S. 55A-11-03, by the members and any other persons,~~ has been authorized as required by this Chapter, the surviving corporation shall deliver to the Secretary of State for filing articles of merger setting forth:

(1) The ~~plan of merger;~~ name and state or country of incorporation of each merging corporation.

(2) ~~If approval by members was not required, a statement to that effect and a statement that the plan was approved by a sufficient vote of the board of directors;~~ The name of the merging corporation that will survive the merger and, if the surviving corporation is not authorized to transact business or conduct affairs in this State, a designation of its mailing address and a commitment to file with the Secretary of State a statement of any subsequent change in its mailing address.

(3) If ~~approval by members was required, a statement that the merger was approved by the members as required by this Chapter;~~ the surviving corporation is a domestic corporation, any amendment to the articles of incorporation of the corporation provided in the plan of merger.

(4) ~~If approval by some person or persons other than the members or the board was required pursuant to G.S. 55A-11-03(a)(3), a statement that the approval was obtained.~~ A statement that the plan of merger has been approved by each merging corporation in the manner required by law.

(a1) If the plan of merger is amended after the articles of merger have been filed but before the articles of merger become effective and any statement in the articles of merger becomes incorrect as a result of the amendment, the surviving corporation shall deliver to the Secretary of State for filing prior to the time the articles of merger become effective an amendment to the articles of merger correcting the incorrect statement. If the articles of merger are abandoned after the articles of merger are filed but before the articles of merger become effective, the surviving corporation shall deliver to the Secretary of State for filing prior to the time the articles of merger become effective an amendment reflecting abandonment of the plan of merger.

(b) A merger takes effect ~~upon the effective date of~~ when the articles of ~~merger.~~ merger become effective.

(c) Certificates of merger shall also be registered as provided in G.S. 47-18.1.

(d) In the case of a merger pursuant to G.S. 55A-11-06 or G.S. 55A-11-08, references in subsections (a) and (b) of this section to "corporation", other than references to "domestic corporation", shall include a foreign nonprofit corporation, a domestic business corporation, and a foreign business corporation, as applicable."

SECTION 41. G.S. 55A-11-05 reads as rewritten:

"**§ 55A-11-05. Effect of merger.**

When a merger pursuant to G.S. 55A-11-01, 55A-11-06, or 55A-11-08 takes effect:

(1) ~~Every other~~ Each merging corporation ~~party to the merger~~ merges into the surviving corporation and the separate existence of ~~every~~ each merging corporation except the surviving corporation ~~ceases;~~ ceases.

(2) The title to all real estate and other property owned by each merging corporation ~~party to the merger~~ is vested in the surviving corporation without reversion or impairment subject to any and all conditions to which the property was subject prior to the ~~merger;~~ merger.

(3) The surviving corporation has all liabilities and obligations of each ~~corporation party to the merger;~~ merging corporation.

(4) A proceeding pending by or against any merging corporation ~~party to the merger~~ may be continued as if the merger did not occur or the surviving corporation may be substituted in the proceeding for ~~the~~ a merging corporation whose separate existence ~~ceased; and~~ ceases in the merger.

(5) ~~The~~ If a domestic corporation survives the merger, its articles of incorporation ~~and bylaws of the surviving corporation~~ are amended to the extent provided in the ~~plan~~ articles of merger.

(6) If a foreign corporation or a foreign business corporation survives the merger, it is deemed:

a. To agree that it may be served with process in this State in any proceeding for enforcement (i) of any obligation of any merging domestic corporation and (ii) of any obligation of the surviving foreign corporation or foreign business corporation arising from the merger.

b. To have appointed the Secretary of State as its agent for service of process in any proceeding for enforcement as specified in sub-subdivision a. of this subdivision. Service of process on the Secretary of State shall be made by delivering to, and leaving with, the Secretary of State, or with any clerk authorized by the Secretary of State to accept service of process, duplicate copies of the process and the fee required by G.S. 55A-1-22(b). Upon receipt of service of process on behalf of a surviving foreign corporation or foreign business corporation in the manner provided for in this section, the Secretary of State shall immediately mail a copy of the process by registered or certified mail, return receipt requested, to the surviving foreign corporation or foreign business corporation. If the surviving foreign corporation or foreign business corporation is authorized to transact business or conduct affairs in this State, the address for mailing shall be its principal office designated in the latest document filed with the Secretary of State that is authorized by law to designate the principal office, or if there is no principal office on file, its registered office. If the surviving

foreign corporation or foreign business corporation is not authorized to transact business or conduct affairs in this State, the address for mailing shall be the mailing address designated pursuant to G.S. 55A-11-04(a)(2).

The merger shall not affect the liability or absence of liability of any member of a merging corporation for acts, omissions, or obligations of any merging corporation made or incurred prior to the effectiveness of the merger.

(b) In the case of a merger pursuant to G.S. 55A-11-06 or G.S. 55A-11-08, references in subsection (a) of this section to "corporation" shall include a domestic corporation, a foreign nonprofit corporation, a domestic business corporation, and a foreign business corporation, as applicable."

SECTION 42. G.S. 55A-11-06 reads as rewritten:

"**§ 55A-11-06. Merger with foreign corporation.**

(a) Except as provided in G.S. 55A-11-02, one or more foreign ~~nonprofit~~ corporations may merge with one or more domestic nonprofit corporations if:

(1) The merger is permitted by the law of the state or country under whose law each foreign corporation is incorporated and each foreign corporation complies with that law in effecting the merger;

(2) The foreign corporation complies with G.S. 55A-11-04 if it is the surviving corporation of the ~~merger and, if the foreign corporation is not authorized to conduct affairs in this State, includes in the articles of merger filed with the Secretary of State pursuant to G.S. 55A-11-04 a designation of the foreign corporation's mailing address and a commitment to file with the Secretary of State a statement of any subsequent change in its mailing address;~~ merger; and

(3) Each domestic nonprofit corporation complies with the applicable provisions of G.S. 55A-11-01 through G.S. 55A-11-03 and, if it is the surviving corporation of the merger, with G.S. 55A-11-04.

~~(b) Upon the merger taking effect, if the surviving corporation is a foreign corporation, it shall be deemed to have appointed the Secretary of State as its agent for service of process in a proceeding to enforce any obligation of a domestic corporation party to the merger. Service on the Secretary of State of any such process shall be made by delivering to and leaving with the Secretary of State, or with any clerk authorized by the Secretary of State to accept service of process, duplicate copies of the process and the fee required by G.S. 55A-1-22(b). Upon receipt of service of process in the manner provided in this subsection, the Secretary of State shall immediately mail a copy of the process by registered or certified mail, return receipt requested, to the foreign corporation. If the foreign corporation is authorized to conduct affairs in this State, the address for mailing shall be its principal office or, if there is no mailing address for the principal office on file, its registered office. If the foreign corporation is not authorized to conduct affairs in this State, the address for mailing shall be the mailing address designated pursuant to subdivision (2) of subsection (a) of this section.~~

(c) This section does not limit the power of a foreign corporation to acquire all or part of the shares of one or more classes or series of a domestic nonprofit corporation through a voluntary exchange or otherwise."

SECTION 43. G.S. 55A-11-08 reads as rewritten:

"**§ 55A-11-08. Merger with business corporation.**

(a) One or more domestic or foreign business corporations may merge with one or more domestic nonprofit corporations if:

(1) Each domestic business corporation complies with the applicable provisions of G.S. 55-11-01, 55-11-03, and 55-11-04;

(2) In a merger involving one or more foreign business corporations, the merger is permitted by the law of the state or country under whose law each foreign business corporation is incorporated and each foreign business corporation complies with that law in effecting the merger;

(3) The domestic or foreign business corporation complies with G.S. 55A-11-04 if it is the surviving ~~corporation and, in the case of a foreign business corporation not authorized to transact business in this State, includes in the articles of merger filed pursuant to G.S. 55A-11-04 a designation of the foreign business corporation's mailing address and a commitment to file with the Secretary of State a statement of any subsequent change in its mailing address;~~ corporation; and

(4) Each domestic nonprofit corporation complies with the applicable provisions of G.S. 55A-11-01 through G.S. 55A-11-03 and, if it is the surviving corporation, with G.S. 55A-11-04.

~~(b) Upon the merger taking effect, if the surviving corporation is a foreign business corporation, it shall be deemed to have appointed the Secretary of State as its agent for service of process in a proceeding to enforce any obligation of a domestic nonprofit corporation party to the merger. Service on the Secretary of State of any such process shall be made by delivering to and leaving with the Secretary of State, or with any clerk authorized by the Secretary of State to accept service of process, duplicate copies of the process and the fee required by G.S. 55A-1-22(b). Upon receipt of service of process in the manner provided in this subsection, the Secretary of State shall immediately mail a copy of the process by registered or certified mail, return receipt requested, to the foreign business corporation. If the foreign business corporation is authorized to transact business in this State, the address for mailing shall be its principal office as defined in G.S. 55-1-40(17) or, if there is no mailing address for the principal office on file, its registered office. If the foreign business corporation is not authorized to transact business in this State, the address for mailing shall be the mailing address designated pursuant to subdivision (3) of subsection (a) of this section.~~

(c) This section does not limit the power of a domestic or foreign business corporation to acquire all or part of the memberships of one or more classes of a domestic nonprofit corporation through a voluntary exchange or otherwise."

SECTION 44. G.S. 55A-11-09 reads as rewritten:

"...

(c) Each merging domestic nonprofit corporation and each other merging business entity shall approve a written plan of merger containing:

(1) For each merging business entity, its name, type of business entity, and the state or country whose laws govern its organization and internal affairs;

(2) The name of the merging business entity that shall survive the merger;

(3) The terms and conditions of the merger;

(4) The manner and basis for converting the interests in each merging business entity into interests, obligations, or securities of the surviving business entity or into cash or other property in whole or in part; and

(5) If the surviving business entity is a domestic nonprofit corporation, any amendments to its articles of incorporation that are to be made in connection with the merger.

(c1) The plan of merger may contain other provisions relating to the merger.

(c2) The provisions of the plan of merger, other than the provisions referred to in subdivisions (1), (2), and (5) of subsection (c) of this section, may be made dependent on facts objectively ascertainable outside the plan of merger if the plan of merger sets forth the manner in which the facts will operate upon the affected provisions. The facts may include any of the following:

(1) Statistical or market indices, market prices of any security or group of securities, interest rates, currency exchange rates, or similar economic or financial data.

(2) A determination or action by the domestic nonprofit corporation or by any other person, group, or body.

(3) The terms of, or actions taken under, an agreement to which the domestic nonprofit corporation is a party, or any other agreement or document.

(c3) In the case of a merging domestic nonprofit corporation, approval of the plan of merger requires that the plan of merger be adopted as provided in G.S. 55A-11-03. If any member of a merging domestic nonprofit corporation has or will have personal liability for any existing or future obligation of the surviving business entity solely as a result of holding an interest in the surviving business entity, then in addition to the requirements of G.S. 55A-11-03, approval of the plan of merger by the domestic nonprofit corporation shall require the affirmative vote or written consent of the member. In the case of each other merging business entity, the plan of merger must be approved in accordance with the laws of the state or country governing the organization and internal affairs of such merging business entity.

(c4) After a plan of merger has been approved by a domestic nonprofit corporation but before the articles of merger become effective, the plan of merger (i) may be amended as provided in the plan of merger, or (ii) may be abandoned (subject to any contractual rights) as provided in the plan of merger or, if there is no such provision, as determined by the board of directors.

...."

SECTION 45. G.S. 55A-11-09(d) reads as rewritten:

"(d) After a plan of merger has been approved by each merging domestic nonprofit corporation and each other merging business entity as provided in subsection (c) of this section, the surviving business entity shall deliver articles of merger to the Secretary of State for filing. The articles of merger shall set forth:

~~(1) The plan of merger;~~

(2) For each merging business entity, its name, type of business entity, and the state or country whose laws govern its organization and internal ~~affairs;~~ affairs.

(3) The name of the ~~surviving~~ merging business entity that will survive the merger and, if the surviving business entity is not authorized to transact business or conduct affairs in this State, a designation of its mailing address and a commitment to file with the Secretary of State a statement of any subsequent change in its mailing ~~address;~~ address.

(3a) If the surviving business entity is a domestic corporation, any amendment to its articles of incorporation as provided in the plan of merger.

(4) A statement that the plan of merger has been approved by each merging business entity in the manner required by ~~law; and~~ law.

~~(5) The effective date and time of merger if it is not to be effective at the time of filing of the articles of merger.~~

If the plan of merger is amended ~~or abandoned~~ after the articles of merger have been filed but before the articles of merger become ~~effective,~~ effective, and any statement in the articles of merger becomes incorrect as a result of the amendment, the surviving business entity shall deliver to the Secretary of State for filing prior to the time the articles of merger become effective an amendment to the articles of merger ~~reflecting the amendment or abandonment of the plan of merger.~~ correcting the incorrect statement. If the articles of merger are abandoned after the articles of merger are filed but before the articles of merger become effective, the surviving business entity shall deliver to the Secretary of State for filing prior to the time the articles of merger become effective an amendment reflecting abandonment of the plan of merger.

Certificates of merger shall also be registered as provided in G.S. 47-18.1."

SECTION 46. G.S. 55A-11-09(e)(5) reads as rewritten:

"(5) If a domestic nonprofit corporation is the surviving business entity, its articles of incorporation shall be amended to the extent provided in the ~~plan~~ articles of merger;".

SECTION 47. G.S. 57C-9A-02 reads as rewritten:

"(a) The converting business entity shall approve a written plan of conversion containing:

(1) The name of the resulting domestic limited liability company into which the converting business entity shall convert;

(1a) The name of the converting business entity, its type of business entity, and the state or country whose laws govern its organization and internal affairs;

(2) The terms and conditions of the conversion; and

(3) The manner and basis for converting the interests in the converting business entity into interests, obligations, or securities of the resulting domestic limited liability company or into cash or other property in whole or in part.

(a1) The plan of conversion may contain other provisions relating to the conversion.

(a2) The provisions of the plan of conversion, other than the provisions required by subdivisions (1) and (2) of subsection (a) of this section, may be made dependent on facts objectively ascertainable outside the plan of conversion if the plan of conversion sets forth the manner in which the facts will operate upon the affected provisions. The facts may include any of the following:

(1) Statistical or market indices, market prices of any security or group of securities, interest rates, currency exchange rates, or similar economic or financial data.

(2) A determination or action by the converting business entity or by any other person, group, or body.

(3) The terms of, or actions taken under, an agreement to which the converting business entity is a party, or any other agreement or document.

...."

SECTION 48. G.S. 57C-9A-11 reads as rewritten:

"(a) The converting domestic limited liability company shall approve a written plan of conversion containing:

(1) The name of the converting domestic limited liability company;

(2) The name of the resulting business entity into which the domestic limited liability company shall convert, its type of business entity, and the state or country whose laws govern its organization and internal affairs;

(3) The terms and conditions of the conversion; and

(4) The manner and basis for converting the interests in the domestic limited liability company into interests, obligations, or securities of the resulting business entity or into cash or other property in whole or in part.

(a1) The plan of conversion may contain other provisions relating to the conversion.

(a2) The provisions of the plan of conversion, other than the provisions required by subdivisions (1) and (2) of subsection (a) of this section, may be made dependent on facts objectively ascertainable outside the plan of conversion if the plan of conversion sets forth the manner in which the facts will operate upon the affected provisions. The facts may include any of the following:

(1) Statistical or market indices, market prices of any security or group of securities, interest rates, currency exchange rates, or similar economic or financial data.

(2) A determination or action by the converting domestic limited liability company or by any other person, group, or body.

(3) The terms of, or actions taken under, an agreement to which the converting domestic limited liability company is a party, or any other agreement or document.

...."

SECTION 49. G.S. 57C-9A-21 reads as rewritten:

"(a) Each merging domestic limited liability company and each other merging business entity shall approve a written plan of merger containing:

(1) For each merging business entity, its name, type of business entity, and the state or country whose laws govern its organization and internal affairs;

(2) The name of the merging business entity that shall survive the merger;

(3) The terms and conditions of the merger;

(4) The manner and basis for converting the interests in each merging business entity into interests, obligations, or securities of the surviving business entity or into cash or other property in whole or in part; and

(5) If the surviving business entity is a domestic limited liability company, any amendments to its articles of organization that are to be made in connection with the merger.

(a1) The plan of merger may contain other provisions relating to the merger.

(a2) The provisions of the plan of merger, other than the provisions referred to in subdivisions (1), (2), and (5) of subsection (a) of this section, may be made dependent on facts objectively ascertainable outside the plan of merger if the plan of merger sets forth the manner in which the facts will operate upon the affected provisions. The facts may include any of the following:

(1) Statistical or market indices, market prices of any security or group of securities, interest rates, currency exchange rates, or similar economic or financial data.

(2) A determination or action by the domestic limited liability company or by any other person, group, or body.

(3) The terms of, or actions taken under, an agreement to which the domestic limited liability company is a party, or any other agreement or document.

...."

SECTION 50. G.S. 57C-9A-22(a) reads as rewritten:

"(a) After a plan of merger has been approved by each merging domestic limited liability company and each other merging business entity as provided in G.S. 57C-9A-21, the surviving business entity shall deliver articles of merger to the Secretary of State for filing. The articles of merger shall set forth:

~~(1) The plan of merger;~~

(2) For each merging business entity, its name, type of business entity, and the state or country whose laws govern its organization and internal ~~affairs;~~affairs.

(3) The name of the ~~surviving~~ merging business entity that will survive the merger and, if the surviving business entity is not authorized to transact business or conduct affairs in this State, a designation of its mailing address and a commitment to file with the Secretary of State a statement of any subsequent change in its mailing ~~address;~~ address.

(3a) If the surviving business entity is a domestic limited liability company, any amendment to its articles of organization as provided in the plan of merger.

(4) A statement that the plan of merger has been approved by each merging business entity in the manner required by ~~law; and~~ law.

~~(5) The effective date and time of the merger if it is not to be effective at the time of filing of the articles of merger.~~

If the plan of merger is amended ~~or abandoned~~ after the articles of merger have been filed but before the articles of merger become ~~effective,~~ effective, and any statement in the articles of merger becomes incorrect as a result of the amendment, the surviving business entity shall deliver to the Secretary of State for filing prior to the time the articles of merger become effective an amendment to the articles of merger ~~reflecting the amendment or abandonment of the plan of merger.~~ correcting the incorrect statement. If the articles of merger are abandoned after the articles of merger are filed but before the articles of merger become effective, the surviving business entity shall deliver to the Secretary of State for filing prior to the time the articles of merger become effective an amendment reflecting abandonment of the plan of merger."

SECTION 51. G.S. 57C-9A-23(a)(5) reads as rewritten:

"(5) If a domestic limited liability company is the surviving business entity, its articles of organization shall be amended to the extent provided in the ~~plan~~ articles of merger;".

SECTION 52. G.S. 59-73.11 reads as rewritten:

"(a) The converting business entity shall approve a written plan of conversion containing:

(1) The name of the converting business entity, its type of business entity, and the state or country whose laws govern its organization and internal affairs;

(2) The name of the resulting domestic partnership into which the converting business entity shall convert;

(3) The terms and conditions of the conversion; and

(4) The manner and basis for converting the interests in the converting business entity into interests, obligations, or securities of the resulting domestic partnership or into cash or other property in whole or in part.

(a1) The plan of conversion may contain other provisions relating to the conversion.

(a2) The provisions of the plan of conversion, other than the provisions required by subdivisions (1) and (2) of subsection (a) of this section, may be made dependent on facts objectively ascertainable outside the plan of conversion if the plan of conversion

sets forth the manner in which the facts will operate upon the affected provisions. The facts may include any of the following:

(1) Statistical or market indices, market prices of any security or group of securities, interest rates, currency exchange rates, or similar economic or financial data.

(2) A determination or action by the converting business entity or by any other person, group.

(3) The terms of, or actions taken under, an agreement to which the converting business entity is a party, or any other agreement or document.

...."

SECTION 53. G.S. 59-73.21 reads as rewritten:

"(a) The converting domestic partnership shall approve a written plan of conversion containing:

(1) The name of the converting domestic partnership;

(2) The name of the resulting business entity into which the domestic partnership shall convert, its type of business entity, and the state or country whose laws govern its organization and internal affairs;

(3) The terms and conditions of the conversion; and

(4) The manner and basis for converting the interests in the domestic partnership into interests, obligations, or securities of the resulting business entity or into cash or other property in whole or in part.

(a1) The plan of conversion may contain other provisions relating to the conversion.

(a2) The provisions of the plan of conversion, other than the provisions required by subdivisions (1) and (2) of subsection (a) of this section, may be made dependent on facts objectively ascertainable outside the plan of conversion if the plan of conversion sets forth the manner in which the facts will operate upon the affected provisions. The facts may include any of the following:

(1) Statistical or market indices, market prices of any security or group of securities, interest rates, currency exchange rates, or similar economic or financial data.

(2) A determination or action by the converting domestic partnership or by any other person, group, or body.

(3) The terms of, or actions taken under, an agreement to which the converting domestic partnership is a party, or any other agreement or document.

...."

SECTION 54. G.S. 59-73.31 reads as rewritten:

"(a) Each merging domestic partnership and each other merging business entity shall approve a written plan of merger containing:

(1) For each merging business entity, its name, type of business entity, and the state or country whose laws govern its organization and internal affairs;

(2) The name of the merging business entity that shall survive the merger;
(3) The terms and conditions of the merger; and
(4) The manner and basis for converting the interests in each merging business entity into interests, obligations, or securities of the surviving business entity or into cash or other property in whole or in part.

(a1) The plan of merger may contain other provisions relating to the merger.

(a2) The provisions of the plan of merger, other than the provisions referred to in subdivisions (1) and (2) of subsection (a) of this section, may be made dependent on facts objectively ascertainable outside the plan of merger if the plan of merger sets forth the manner in which the facts will operate upon the affected provisions. The facts may include any of the following:

(1) Statistical or market indices, market prices of any security or group of securities, interest rates, currency exchange rates, or similar economic or financial data.
(2) A determination or action by the domestic partnership or by any other person, group, or body.
(3) The terms of, or actions taken under, an agreement to which the domestic partnership is a party, or any other agreement or document.

...."

SECTION 55. G.S. 59-73.32(a) reads as rewritten:

"(a) After a plan of merger has been approved by each merging domestic partnership and each other merging business entity as provided in G.S. 59-73.31, the surviving business entity shall deliver articles of merger to the Secretary of State for filing. The articles of merger shall set forth:

~~(1) The plan of merger;~~
(2) For each merging business entity, its name, type of business entity, and the state or country whose laws govern its organization and internal ~~affairs;~~ affairs.
(3) The name of the ~~surviving~~ merging business entity that will survive the merger and, if the surviving business entity is not authorized to transact business or conduct affairs in this State, a designation of its mailing address and a commitment to file with the Secretary of State a statement of any subsequent change in its mailing ~~address;~~ address.
(4) A statement that the plan of merger has been approved by each merging business entity in the manner required by ~~law; and~~ law.
~~(5) The effective date and time of the merger if it is not to be effective at the time of filing of the articles of merger.~~

If the plan of merger is amended ~~or abandoned~~ after the articles of merger have been filed but before the articles of merger become ~~effective,~~ effective, and any statement in the articles of merger becomes incorrect as a result of the amendment, the surviving business entity shall deliver to the Secretary of State for filing prior to the time the articles of merger become effective ~~become~~ an amendment to the articles of merger ~~reflecting the amendment or abandonment of the plan of merger.~~ correcting the incorrect statement. If the articles of merger are abandoned after the articles of merger

are filed but before the articles of merger become effective, the surviving business entity shall deliver to the Secretary of State for filing prior to the time the articles of merger become effective an amendment reflecting the abandonment of the plan of merger."

SECTION 56. G.S. 59-1051 reads as rewritten:

"(a) The converting business entity shall approve a written plan of conversion containing:

(1) The name of the converting business entity, its type of business entity, and the state or country whose laws govern its organization and internal affairs;

(2) The name of the resulting domestic limited partnership into which the converting business entity shall convert;

(3) The terms and conditions of the conversion; and

(4) The manner and basis for converting the interests in the converting business entity into interests, obligations, or securities of the resulting domestic limited partnership or into cash or other property in whole or in part.

(a1) The plan of conversion may contain other provisions relating to the conversion.

(a2) The provisions of the plan of conversion, other than the provisions required by subdivisions (1) and (2) of subsection (a) of this section, may be made dependent on facts objectively ascertainable outside the plan of conversion if the plan of conversion sets forth the manner in which the facts will operate upon the affected provisions. The facts may include any of the following:

(1) Statistical or market indices, market prices of any security or group of securities, interest rates, currency exchange rates, or similar economic or financial data.

(2) A determination or action by the converting business entity or by any other person, group, or body.

(3) The terms of, or actions taken under, an agreement to which the converting business entity is a party, or any other agreement or document.

...."

SECTION 57. G.S. 59-1061 reads as rewritten:

"(a) The converting domestic limited partnership shall approve a written plan of conversion containing:

(1) The name of the converting domestic limited partnership;

(2) The name of the resulting business entity into which the domestic limited partnership shall convert, its type of business entity, and the state or country whose laws govern its organization and internal affairs;

(3) The terms and conditions of the conversion; and

(4) The manner and basis for converting the interests in the domestic limited partnership into interests, obligations, or securities of the

resulting business entity or into cash or other property in whole or in part.

(a1) The plan of conversion may contain other provisions relating to the conversion.

(a2) The provisions of the plan of conversion, other than the provisions required by subdivisions (1) and (2) of subsection (a) of this section, may be made dependent on facts objectively ascertainable outside the plan of conversion if the plan of conversion sets forth the manner in which the facts will operate upon the affected provisions. The facts may include any of the following:

(1) Statistical or market indices, market prices of any security or group of securities, interest rates, currency exchange rates, or similar economic or financial data.

(2) A determination or action by the converting domestic limited partnership or by any other person, group, or body.

(3) The terms of, or actions taken under, an agreement to which the converting domestic limited partnership is a party, or any other agreement or document.

...."

SECTION 58. G.S. 59-1071 reads as rewritten:

"(a) Each merging domestic limited partnership and each other merging business entity shall approve a written plan of merger containing:

(1) For each merging business entity, its name, type of business entity, and the state or country whose laws govern its organization and internal affairs;

(2) The name of the merging business entity that shall survive the merger;

(3) The terms and conditions of the merger;

(4) The manner and basis for converting the interests in each merging business entity into interests, obligations, or securities of the surviving business entity or into cash or other property in whole or in part; and

(5) If the surviving business entity is a domestic limited partnership, any amendments to its certificate of limited partnership that are to be made in connection with the merger.

(a1) The plan of merger may contain other provisions relating to the merger.

(a2) The provisions of the plan of merger, other than the provisions referred to in subdivisions (1), (2), and (5) of subsection (a) of this section, may be made dependent on facts objectively ascertainable outside the plan of merger if the plan of merger sets forth the manner in which the facts will operate upon the affected provisions. The facts may include any of the following:

(1) Statistical or market indices, market prices of any security or group of securities, interest rates, currency exchange rates, or similar economic or financial data.

(2) A determination or action by the domestic limited partnership or by any other person, group, or body.

(3) The terms of, or actions taken under, an agreement to which the domestic limited partnership is a party, or any other agreement or document.

...."

SECTION 59. G.S. 59-1072(a) reads as rewritten:

"(a) After a plan of merger has been approved by each merging domestic limited partnership and each other merging business entity as provided in G.S. 59-1071, the surviving business entity shall deliver articles of merger to the Secretary of State for filing. The articles of merger shall set forth:

~~(1) The plan of merger;~~

(2) For each merging business entity, its name, type of business entity, and the state or country whose laws govern its organization and internal ~~affairs;~~ affairs.

(3) The name of the ~~surviving~~ merging business entity that will survive the merger and, if the surviving business entity is not authorized to transact business or conduct affairs in this State, a designation of its mailing address and a commitment to file with the Secretary of State a statement of any subsequent change in its mailing ~~address;~~ address.

(3a) If the surviving business entity is a domestic limited partnership, any amendment to its certificate of limited partnership as provided in the plan of merger.

(4) A statement that the plan of merger has been approved by each merging business entity in the manner required by ~~law; and~~ law.

~~(5) The effective date and time of the merger if it is not to be effective at the time of filing of the articles of merger.~~

If the plan of merger is amended ~~or abandoned~~ after the articles of merger have been filed but before the articles of merger become ~~effective,~~ effective, and any statement in the articles of merger becomes incorrect as a result of the amendment, the surviving business entity promptly shall deliver to the Secretary of State for filing prior to the time the articles of merger become effective an amendment to the articles of merger ~~reflecting the amendment or abandonment of the plan of merger.~~ correcting the incorrect statement. If the articles of merger are abandoned after the articles of merger are filed but before the articles of merger become effective, the surviving business entity shall deliver to the Secretary of State for filing prior to the time the articles of merger become effective an amendment reflecting abandonment of the plan of merger."

SECTION 60. G.S. 59-1073(a)(5) reads as rewritten:

"(5) If a domestic limited partnership is the surviving business entity, its certificate of limited partnership shall be amended to the extent provided in the ~~plan~~ articles of merger;".

SECTION 61. The Revisor of Statutes may cause to be printed all explanatory comments of the drafters of this act as the Revisor deems appropriate.

SECTION 62. This act becomes effective October 1, 2005.

SENATE BILL 324:
Revise Business Corporation Act

BILL ANALYSIS

Committee:	House Judiciary I	**Date:**	July 21, 2005
Introduced by:	Sen. Clodfelter	**Summary by:**	Susan Sitze
Version:	Second Edition		Committee Counsel

SUMMARY: ***Senate Bill 324 would make various amendments to the Business Corporation Act. These amendments are intended to modernize NC's law to reflect additional revisions that have been made to the Revised Model Business Corporation Act since the law was adopted in NC in 1989. These changes will make NC's corporation law more consistent with the laws of many other states. The changes being recommended are generally limited to the use of extrinsic facts in articles of merger and share exchanges, shareholder and director voting, directors and officers matters, processes for fundamental changes to corporations, and inspection rights and shareholder reports. The bill also makes conforming changes to the Nonprofit Corporation Act, the Limited Liability Company Act and the Partnership and Limited Partnership acts. The bill is a recommendation of the NC Bar Association.***

BILL ANALYSIS:

Fundamental Changes. – Sections 1, 13, 14, and 15 of the bill modify the provisions for amending articles of incorporation including permitting amendments by action of the board of director without a vote of shareholders to effect stock splits and to increase shares for dividend purposes. These sections also clarify that proposed amendments that must be approved by shareholders have to first be approved by the board of directors.

Sections 18, 19, 22, 23, 24, 25, 26 27 and 28 amend provisions governing mergers to simplify mergers where the parent company owns 90 % or more of the stock in the subsidiary, and also eliminates the requirement that plans of merger be incorporated into articles of merger. These sections also allow plans of merger to be amended as provided in the plan of merger after the plan of merger is approved but before the merger becomes effective. Also provided is the requirement that if as a result of merger shareholders will have personal liability for existing or future obligations of the surviving corporation, the shareholders must consent to the merger. Sections 39, 40, 41, 42, 44, 45, 46, 50 and 51 make corresponding changes in the nonprofit corporation statutes and the limited liability company statutes.

Sections 32 and 33 simplify the process for corporate dissolution.

Shareholder and Director Voting. – Sections 2, 3, 4, 5 and 9 revise the law to permit a shareholder or director who has consented to action without a meeting to withdraw his or her consent provided the withdrawal is done prior to the consent becoming effective.

Directors and Officers. – Sections 6, 7, 8, 10, and 12 remove restrictions on the minimum size of boards of directors with staggered terms, gives greater flexibility to shareholders to vary the size of the board, and authorizes the board to designate an officer authorized to appoint and dismiss other officers.

Use of Extrinsic Facts. – Sections 16, 17, 29 and 30 permit articles of merger and articles of stock exchanges to include references to facts outside of the documents themselves. Sections 38, 47, 48, 49, 52, 53, 54, 56, 57, and 58 make the corresponding changes in the law governing nonprofit corporations, limited liability companies, partnerships, and limited partnerships.

Inspection Rights and Shareholder Reports. – Sections 35 and 36 give members of the board of directors rights to inspect the corporation's records. These sections also allow inspecting shareholders to view records electronically. The new G.S. 55-16-06 eliminates the requirements that the corporation give notices to a shareholders if notices to that shareholder of annual meetings and dividends for the past two years have been returned undeliverable for that shareholder.

EFFECTIVE DATE: The bill becomes effective October 1, 2005.

**O. Walker Reagan substantially contributed to this summary.*

S0324e2-SMSA

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative Hackney (Chair) for the Committee on JUDICIARY I.

☒Committee Substitute for
SB 324 A BILL TO BE ENTITLED AN ACT TO MAKE VARIOUS CHANGES TO THE NORTH CAROLINA BUSINESS CORPORATION ACT AND TO MAKE CONFORMING CHANGES TO THE OTHER ENTITY ACTS.

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

_____ Pursuant to Rule 36(b), the bill/resolution is placed on the Calendar of _____.

House Judiciary I Committee

July 26, 2005
10:00 a.m.

Minutes

The House Judiciary I Committee met on Tuesday, July 26, 2005 at 10:00 a. m. in Room 1228 in the Legislative Building. Chairman Joe Hackney called the meeting to order and the following members were present: Representative Alexander, Blust, Capps, Goodwin, Harrison, Insko, Miller, Ross, Stam, Stiller and West. A copy of the agenda and visitor registration is attached, (Attachments I and II).

Chairman Hackney welcomed the visitors and introduced the pages.

Representative Holliman was recognized to explain House Bill 788, AN ACT TO IMPROVE THE COLLECTION AND DISTRIBUTION OF RESTITUTION FOR CRIME VICTIMS IN NORTH CAROLINA AND TO DIRECT THE ADMINISTRATIVE OFFICE OF THE COURTS TO STUDY THIRD-PARTY COLLECTION FOR THE COLLECTION OF RESTITUTION AND OTHER COURT COSTS, (Attachment III). The bill was first explained during the June 30 meeting of the Committee. A Proposed Committee Substitute was distributed, (Attachment IV). Representative Stiller moved its adoption for the purpose of discussion. The motion carried. Representative Holliman was recognized for comment. He reminded that Committee that the bill is a result of a study commission who looked at ways to improve the rate of restitution that is actually paid in the State. Currently about 60% of restitution is actually paid.

Mr. Brad Krehely, Committee Counsel, was recognized to offer further explanation of the bill. He said that the Proposed Committee Substitute mostly made technical changes. He pointed out a change substantive change on page 7, lines 24-25 noting that the sentence was deleted. Mr. Krehely said there had been a concern that if a judge made a mathematical error, he or she would not be able to remit payment pursuant to that line. He said that this change would allow a judge to remit payment when there had been a mathematical error, but that it does not change anything with the overall purpose of the section. A bill analysis prepared by Ms. Erika Churchill, Committee Counsel, is attached to the minutes and offers additional explanation, (Attachment V).

Representative Stam suggested that a will rather than next of kin should determine the restitution payments. Representative Holliman said he had no objection to that.

Mr. Doug Holbrook, Fiscal Research Division was recognized to comment on the fiscal impact of the bill to the courts system or to collections of the Administrative Office of the Courts. He stated that there would be an expectation for some increase in need for clerk's staff and increased needs for programs to update information systems to tract payments.

Mr. Tom Andrews, General Counsel, Administrative Office of the Courts commented on estimated costs to AOC saying that they do not view the expenses to be substantial.

The bill was deferred to allow time for the preparation of an amendment.

Senator Albertson was recognized to explain Senate Bill 1130, AN ACT TO PROHIBIT SMOKING IN STATE CORRECTIONAL INSTITUTIONS, (Attachment VI). A Proposed House Committee Substitute was distributed, (Attachment VII). Representative Capps moved its adoption for the purpose of discussion. The motion carried. Senator Albertson was recognized for comment on the bill. He said that the high cost of inmate health care in the State ($145 million) prompted him to look into tobacco use in prisons. He said that there is a total ban of smoking in prisons in 24 states across the country and a partial ban in 15 states. He noted that in 2004, there were 127 separate fire incidents in our correctional institutions and that a number of those required the evacuation of the inmates. He further stated that there are 8,821 inmates (25%) in our correction facilities who have been diagnosed with chronic illness.

Senator Albertson said that the bill would ban the use of tobacco products inside the correctional facilities effective January 1, 2006, permit a pilot program banning the use of tobacco on all correctional facility grounds, and require a study on the banning the use of tobacco products on all correctional facility grounds. He said that the Department of Corrections would like to offer a few changes regarding the reporting and when the bill would take effect to allow more time to get the program in place.

Ms. Erika Churchill, Committee Counsel, was recognized to give further explanation of the bill. A copy of the bill analysis prepared by Ms. Churchill is attached to the minutes, (Attachment VIII).

Mr. Boyd Bennett, Department of Corrections, spoke in support of the bill.

Ms. Annie Butsen, North Carolina Alliance for Health, spoke of the dangers of second-hand smoking and noted that addressing health issues in prisons has become a part of a national trend.

Representative Alexander offered an amendment for page 2, line 29 and page 2,line 39 that would change dates in the bill, (Attachment IX). She moved adoption of the amendment. The motion carried.

There was discussion regarding the impact that a sudden ban on smoking might have on the prison population.

Representative Stam suggested a possible need for an amendment to address smoking for "authorized religious purposes." Senator Albertson objected to such an amendment.

Representative Alexander moved a favorable report for a new House Committee Substitute incorporating the amendment that was adopted and an unfavorable report for the original bill. The motion carried, (Attachment X). A copy of the new House Committee Substitute is attached, (Attachment XI).

The Committee then returned to the discussion of House Bill 788.

Representative Stam offered an amendment, (Attachment XII) and moved its adoption. The amendment would allow for restitution to be paid to the people who receive the residuary under the will, if there is a will. If there were no will, payment would be by intestate succession. Representative Miller spoke in support of the amendment. Upon vote of the Committee, the amendment was adopted. The Chair voted against the amendment.

Representative Alexander moved that the amendment be rolled into a new House Committee Substitute, that it be given a favorable report and the original bill be given an unfavorable report and that the bill be re-referred to the Committee on Appropriations. The motion carried, (Attachment XIII). A copy of the Committee Substitute is attached, (Attachment XIV).

The meeting was adjourned at 10:45 a. m.

Representative Joe Hackney
Chairman

Emily Reynolds Freeman
Committee Clerk

ATTACHMENT I

HOUSE COMMITTEE ON JUDICIARY I

July 26, 2005
10:00 a.m.

OPENING REMARKS

AGENDA ITEMS

House Bill 788 – Crime Victims Restitution Improvement Act
Representatives Eddins and Holliman

Senate Bill 1130 – No Smoking in Prisons
Senator Albertson

ADJOURNMENT

ATTACHMENT II

VISITOR REGISTRATION SHEET

House Judiciary I — July 26, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Chad Heaton	Civitas Institute
Barbara Carsley	BSEGR
Reggie Howard	MCIC
John McMillan	MFOS
Pat A. Yancey	ACLU
Paula A. Wolf	El Pueblo
Patricia Woolard	NCACC
Gene Ainsworth	Ainsworth & Associates
Lisa Rentz	CJK

VISITOR REGISTRATION SHEET

House Judiciary I — July 26, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
EMMA JAKOB	intern
John H. Cyrus	NCS Grange
Hal Miller	NCAECT
Mel Chilton	NCVAN
Jim Blackburn	Association of County Commissioners
Annie Butzen	NC Alliance for Health
Elizabeth Outten	American Cancer Society
Susan Phillips	Rep Eddins Office
John Thompson	American Cancer Society
Mary Merrimon	Bonner & Jarrell
Mark Bibbs	NCAA

VISITOR REGISTRATION SHEET

House Judiciary I — **Name of Committee**

July 26, 2005 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Cam Cuer	BPMHL
Tom Rudolph	AOC
Tim Moore	NC DOC
Tye Hunter	IDS
Jana Johnson	DHHS
Melanie Davis	DHHS
Sally H. Walker	DHHS
Joe Pearce	DOC
John Bowdish	AOC
Karen Johnson	Smith Anderson
Kathleen Edwards	UNC-CH Institute of Gov't

VISITOR REGISTRATION SHEET

House Judiciary I — July 26, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
MELITA GROOMES	PAROLE COMMISSION
Boyd Bennett	Dept. of Corrections
Mildred Spearman	NCDOC
[illegible]	[illegible]
[illegible]	Bar Asso.
Russ Dubisky	CCPS
[illegible]	Bar Assoc.
Lynette Folson	An Heart
Michael Nelson	CCNC
Paige Johnson	Planned Parenthood
[illegible]	[illegible]

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

HOUSE BILL 788

Short Title:	Crime Victims Restitution Improvement Act.	(Public)
Sponsors:	Representatives Eddins, Holliman (Primary Sponsors); Faison, LaRoque, Pate, and Setzer.	
Referred to:	Judiciary I.	

March 17, 2005

A BILL TO BE ENTITLED

AN ACT TO IMPROVE THE COLLECTION AND DISTRIBUTION OF RESTITUTION FOR CRIME VICTIMS IN NORTH CAROLINA AND TO DIRECT THE ADMINISTRATIVE OFFICE OF THE COURTS TO STUDY THIRD-PARTY COLLECTION FOR THE COLLECTION OF RESTITUTION AND OTHER COURT COSTS.

The General Assembly of North Carolina enacts:

RESTITUTION FOR FUNERAL EXPENSES MANDATORY

SECTION 1. G.S. 15A-1340.36(b) reads as rewritten:

"(b) ~~The court may require the defendant to make full restitution no later than a certain date or, if the circumstances warrant, may allow the defendant to make restitution in installments over a specified time period.~~Funeral and Burial Expenses Mandatory. – When a defendant is convicted of an offense that proximately resulted in the death of a victim, the amount of restitution shall always include all necessary expenses incurred by or on behalf of the victim's estate for funeral and burial expenses and related services, including the cost of a headstone, if any."

ABILITY TO PAY NOT A FACTOR IN DETERMINING AMOUNT OF RESTITUTION

SECTION 2.1. G.S. 15A-1340.34 reads as rewritten:

"**§ 15A-1340.34. Restitution generally.**

(a) When sentencing a defendant convicted of a criminal offense, the court shall determine whether the defendant shall be ordered to make restitution to any victim of the offense in question. For purposes of this Article, the term "victim" means a person directly and proximately harmed as a result of the defendant's commission of the criminal offense.

(b) If the defendant is being sentenced for an offense for which the victim is entitled to restitution under Article 46 of this Chapter, the court shall, in addition to any penalty authorized by ~~law, require that the defendant make restitution to the victim or~~

~~the victim's estate for any injuries or damages arising directly and proximately out of the offense committed by the defendant. If the defendant is placed on probation or post-release supervision, any restitution ordered under this subsection shall be a condition of probation as provided in G.S. 15A-1343(d) or a condition of post-release supervision as provided in G.S. 148-57.1.~~law:

(1) Enter a judgment against the defendant in favor of the victim or the victim's estate under G.S. 15A-1340.38 for the full amount of the restitution, which shall be determined in accordance with G.S. 15A-1340.35 and G.S. 15A-1340.36(a);

(2) If the defendant is placed on probation, require payment of restitution as a condition of probation, in the amount which the court determines the defendant is able to pay as provided in G.S. 15A-1340.36(b) and (c); and

(3) If the defendant is sentenced to active punishment, recommend that the defendant be required to pay restitution out of work release earnings and as a condition of post-release supervision.

(c) When subsection (b) of this section does not apply, the court may, in addition to any other penalty authorized by law, require that the defendant make restitution to ~~the victim or the victim's estate~~ any other person for any injuries or damages arising directly and proximately out of the offense committed by the ~~defendant.~~ defendant, but no judgment shall be entered under G.S. 15A-1340.38 in favor of the person and the remedies in G.S. 15A-1340.39 and G.S. 15A-1340.40 shall not apply."

SECTION 2.2. G.S. 15A-1340.36, as amended by Section 1 of this act, reads as rewritten:

"**§ 15A-1340.36. Determination of ~~restitution.~~the amount of restitution due each victim; entry of civil judgment.**

(a) Amount of Restitution. – ~~In determining the amount of restitution to be made, the court shall take into consideration the resources of the defendant including all real and personal property owned by the defendant and the income derived from the property, 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, but the court is not required to make findings of fact or conclusions of law on these matters. The amount of restitution must be limited to that supported by the record, and the court may order partial restitution when it appears that the damage or loss caused by the offense is greater than that which the defendant is able to pay. If the court orders partial restitution, the court shall state on the record the reasons for such an order.~~The court shall determine the total amount of restitution to which each victim is entitled considering only the factors specified in G.S. 15A-1340.35. The court shall not consider the defendant's ability to pay in making this determination. The total amount of the restitution must be limited to that supported by the record.

(b) Funeral and Burial Expenses Mandatory. – When a defendant is convicted of an offense that proximately resulted in the death of a victim, the amount of restitution shall always include all necessary expenses incurred by or on behalf of the victim's

estate for funeral and burial expenses and related services, including the cost of a headstone, if any.

(c) ~~When an active sentence is imposed, the court shall consider whether it should recommend to the Secretary of Correction that restitution be made by the defendant out of any earnings gained by the defendant if the defendant is granted work release privileges, as provided in G.S. 148-33.2. The court shall also consider whether it should recommend to the Post Release Supervision and Parole Commission that restitution by the defendant be made a condition of any parole or post release supervision granted the defendant, as provided in G.S. 148-57.1.~~Entry of Judgment. – Upon determining the total amount of restitution owed to each victim, the court shall enter a judgment in accordance with G.S. 15A-1340.38 in favor of each victim and against the defendant for that amount."

SECTION 2.3. Article 81C of Chapter 15A of the General Statutes is amended by adding a new section to read:

"**§ 15A-1340.36.1. Determination of restitution payment schedule.**

(a) Payment Upon Sentencing. – If the defendant is able to pay the total amount of restitution ordered at the time of sentencing, the court shall require payment of that total by 5:00 P.M. of the day on which the defendant is sentenced. If the defendant is able to pay only a portion of that total, the court shall require payment of that entire portion by 5:00 P.M. of the day on which the defendant is sentenced and establish a schedule of payments for the remainder of the total in accordance with this section.

(b) Payment While on Probation. – If the defendant is placed on supervised or unsupervised probation, the court shall:

(1) Determine the portion of the total amount of restitution ordered that the defendant will be able to pay during the term of probation.

(2) Require as a condition of probation that the defendant pay the entire portion that the defendant is able to pay. If the defendant is able to pay the total amount of restitution ordered, the court shall require payment of that total. If the defendant is able to pay only a portion of that total, the court shall require payment of that entire portion.

(3) Establish a schedule of payments or other method of payment that assures that the defendant will, before the end of the term of probation, pay the entire portion that the defendant is able to pay or delegate to a probation officer the authority to do so.

(c) Payment While Serving Active Sentence. – If the defendant is sentenced to an active sentence and the court recommends that the defendant pay restitution out of work release earnings, the court shall enter in the sentencing judgment the total amount of restitution, as determined under G.S. 15A-1340.36, but shall not specify the portion to be paid out of work release earnings. At the time when the defendant is granted work release privileges, the Department of Correction shall:

(1) Determine the portion of the total restitution that the defendant will be able to pay from work release earnings.

(2) Deduct from the defendant's work release earnings and apply, as provided in G.S. 148-33.2, the entire portion of restitution that the

defendant is able to pay. If the defendant is able to pay the total amount of restitution, the Department shall require payment of that total. If the defendant is able to pay only a portion of that total, the Department shall require payment of that entire portion.

(d) Payment While on Post-Release Supervision. – If the defendant is sentenced to an active sentence and the court recommends that the defendant pay restitution as a condition of release under post-release supervision, the court shall enter in the sentencing judgment the total amount of restitution, as determined under G.S. 15A-1340.36, but shall not specify the portion to be paid as a condition of release under post-release supervision. At the time when the defendant is released under post-release supervision, the Parole and Post-Release Supervision Commission shall:

(1) Determine the portion of the total restitution that the defendant will be able to pay during the term of post-release supervision.

(2) Require as a condition of release under post-release supervision that the defendant pay the entire portion that the defendant is able to pay. If the defendant is able to pay the total amount ordered, the Commission shall require payment of that total. If the defendant is able to pay only a portion of that total, the Commission shall require payment of that entire portion.

(3) Establish a schedule of payments or other method of payment that assures that the defendant will, before the end of the term of post-release supervision, pay the entire amount that the defendant is able to pay or delegate to a post-release supervision officer the authority to do so.

(e) Factors for Determining Ability to Pay and Payment Schedule. – In determining the defendant's ability to pay restitution and the manner in which the restitution is to be made, all the resources of the defendant shall be taken into consideration, including without limitation:

(1) All real and personal property owned by the defendant and the income derived from the property,

(2) The defendant's present and potential future ability to earn,

(3) The defendant's obligation to support dependents,

(4) Restitution owed to other victims, and

(5) Any other matters that pertain to the defendant's ability to make restitution.

The court is not required to make findings of fact or conclusions of law under this subsection."

SECTION 2.4. G.S. 15A-1343(d) reads as rewritten:

"(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~~ entitled to restitution under Article 46 of this Chapter is a condition imposed, the court shall ~~take into consideration the factors set out~~ determine and require payment

of restitution as provided in ~~G.S. 15A-1340.35 and G.S. 15A-1340.36.~~G.S. 15A-1340.35, 15A-1340.36, and 15A-1340.36.1. 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."

SECTION 2.5. G.S. 148-33.2 reads as rewritten:

"**§ 148-33.2. Restitution by prisoners with work-release privileges.**

(a) Repealed by Session Laws 1985, c. 474, s. 4.

(b) As a rehabilitative measure, the Secretary of the Department of Correction is authorized to require any prisoner granted work-release privileges to make restitution or reparation to an aggrieved party from any earnings gained by the defendant while on work release when the sentencing court recommends that restitution or reparation be paid by the defendant out of any earnings gained by the defendant if he is granted work-release privileges and out of other resources of the defendant, including all real and personal property owned by the defendant and the income derived from such property. ~~The~~ Except when restitution is recommended for a victim entitled to restitution under Article 46 of Chapter 15A of the General Statutes, the Secretary shall not be bound by such recommendation, but if they elect not to implement the recommendation, they shall state in writing the reasons therefor, and shall forward the same to the sentencing court.

(c) When an active sentence is imposed, the court shall consider whether, as a rehabilitative measure, it should recommend to the Secretary of Correction that restitution or reparation be made by the defendant out of any earnings gained by the defendant if he is granted work-release privileges and out of other resources of the defendant, including all real and personal property owned by the defendant, and income derived from such property. If the court determines that restitution or reparation should not be recommended, it shall so indicate on the commitment. If, however, the court determines that restitution or reparation should be recommended, the court shall make its recommendation a part of the order committing the defendant to custody. The recommendation shall be in accordance with the applicable provisions of G.S. 15A-1343(d) and Article 81C of Chapter 15A of the General Statutes. If the offense is one in which there is evidence of physical, mental or sexual abuse of a minor, the court may order the defendant to pay from work release earnings the cost of rehabilitative treatment for the minor. The Administrative Office of the Courts shall prepare and distribute forms which provide ample space to make restitution or reparation recommendations incident to commitments, which forms shall be conveniently structured to enable the sentencing court to make its recommendation.

(d) The Secretary of the Department of Correction shall establish rules and regulations to implement this section, which shall include adequate notice to the prisoner that the payment of restitution or reparation from any earnings gained by the prisoner while on work release is being considered as a condition of any work-release privileges granted the prisoner, and opportunity for the prisoner to be heard. Such rules and regulations shall also provide additional methods whereby facts may be obtained to supplement the recommendation of the sentencing court. When work release privileges are granted to a prisoner who has been ordered to pay restitution to a victim entitled to restitution under Article 46 of Chapter 15A of the General Statutes, the amount to be deducted from the prisoner's work release earnings shall be determined as provided in G.S. 15A-1340.35, 15A-1340.36, and 15A-1340.36.1, and that amount shall be so deducted."

SECTION 2.6. G.S. 148-57.1 reads as rewritten:

"**§ 148-57.1. Restitution as a condition of parole or post-release supervision.**

(a) Repealed by Session Laws 1985, c. 474, s. 5.

(b) As a rehabilitative measure, the Post-Release Supervision and Parole Commission is authorized to require a prisoner to whom parole or post-release supervision is granted to make restitution or reparation to an aggrieved party as a condition of parole or post-release supervision when the sentencing court recommends that restitution or reparation to an aggrieved party be made a condition of any parole or post-release supervision granted the defendant. When imposing restitution as a condition and setting up a payment schedule for the restitution, the Post-Release Supervision and Parole Commission shall take into consideration the resources of the defendant, including all real and personal property owned by the defendant and the income derived from such property, his ability to earn, and his obligation to support dependents. ~~The~~ Except when restitution is recommended for a victim entitled to restitution under Article 46 of Chapter 15A of the General Statutes, the Post-Release Supervision and Parole Commission shall not be bound by such recommendation, but if it elects not to implement the recommendation, it shall state in writing the reasons therefor, and shall forward the same to the sentencing court.

(c) When an active sentence is imposed, the court shall consider whether, as a rehabilitative measure, it should recommend to the Post-Release Supervision and Parole Commission that restitution or reparation by the defendant be made a condition of any parole or post-release supervision granted the defendant. If the court determines that restitution or reparation should not be recommended, it shall so indicate on the commitment. If, however, the court determines that restitution or reparation should be recommended, the court shall make its recommendation a part of the order committing the defendant to custody. The recommendation shall be in accordance with the applicable provisions of Article 81C of Chapter 15A of the General Statutes. The Administrative Office of the Courts shall prepare and distribute forms which provide ample space to make restitution or reparation recommendations incident to commitments, which forms shall be conveniently structured to enable the sentencing court to make its recommendation.

If the offense is one in which there is evidence of physical, mental or sexual abuse of a minor, the court may order, as a condition of parole or post-release supervision, that the defendant pay the cost of any rehabilitative treatment for the minor.

(d) The Post-Release Supervision and Parole Commission shall establish rules and regulations to implement this section, which shall include adequate notice to the prisoner that the payment of restitution or reparation by the prisoner is being considered as a condition of any parole or post-release supervision granted the prisoner, and opportunity for the prisoner to be heard. Such rules and regulations shall also provide additional methods whereby facts may be obtained to supplement the recommendation of the sentencing court. When a prisoner is released under post-release supervision, the Commission shall determine and require payment of restitution as provided in G.S. 15A-1340.35, 15A-1340.36, and 15A-1340.36.1."

NO EARLY TERMINATION OF PROBATION UNTIL COMPLETION OF RESTITUTION OBLIGATION

SECTION 3. G.S. 15A-1342(b) reads as rewritten:

"(b) Early Termination. – The court may terminate a period of probation and discharge the defendant at any time earlier than that provided in subsection (a) if warranted by the conduct of the defendant and the ends of ~~justice.~~ justice, provided that the court shall not terminate a period of probation or discharge the defendant at any time earlier than that provided in subsection (a) unless the defendant has paid in full all restitution payable, as a condition of probation, to a victim entitled to restitution under Article 46 of this Chapter. Any order remitting any unpaid portion of such restitution is null and void."

DISTRIBUTION OF RESTITUTION PAYMENTS TO VICTIM'S NEXT OF KIN AFTER CLOSING OF ESTATE

SECTION 4. Article 21 of Chapter 28A of the General Statutes is amended by adding a new section to read:

"**§ 28A-21-3.2. Restitution payments; list of next of kin.**

(a) The following definitions apply in this section:

(1) "Victim" means a victim as defined in G.S. 15A-830(a)(7).

(2) "Restitution payment" means any amount payable to a victim pursuant to Article 81C of Chapter 15A of the General Statutes.

(b) A personal representative or collector of the estate of a victim may file, along with a final account, a list of the victim's next of kin who are entitled to exercise the victim's rights pursuant to G.S. 15A-830(b) if all of the following conditions are met:

(1) There are no unsatisfied creditors.

(2) There are no unsatisfied general monetary bequests.

(3) All assets other than any potential future restitution payments have been distributed.

(c) A list of next of kin, signed under oath, must contain the following information:

(1) The name and address of the personal representative or collector.

(2) The name and social security number of the decedent.

(3) The name and address, if known, of all next of kin who are entitled to exercise the victim's rights pursuant to G.S. 15A-830(b).

(4) The share of each next of kin in the restitution payable to the victim.

(d) The clerk of superior court must review the list of next of kin to determine if the listed next of kin and their shares of potential future restitution payments are in accordance with the Intestate Succession Act. If so, the clerk shall accept the list of next of kin for filing and endorse the clerk's approval thereon, which shall be prima facie evidence of correctness.

(e) Upon determination by the clerk of superior court that the estate of a victim has been closed, all restitution payments may be paid directly to those next of kin and in those shares set forth on a list of next of kin filed under this section, without the estate's having to be reopened under G.S. 28A-23-5.

(f) The estate of a decedent who is entitled to any restitution payment may be reopened, if necessary, in accordance with G.S. 28A-23-5 in order to file a list of next of kin under this section.

INCOME WITHHOLDING

SECTION 5.1. G.S. 15A-832 is amended by adding a new subsection to read:

"(h) In order to aid the court in ordering income withholding under G.S. 15A-1340.39, the prosecuting attorney shall make reasonable efforts to identify all of the defendant's sources of disposable income as defined in that section and shall, at the sentencing hearing, provide the court with the name and address of each employer paying disposable income to the defendant and the amount of the defendant's disposable income from each such employer."

SECTION 5.2. Article 81C of Chapter 15A of the General Statutes is amended by adding a new section to read:

"**§ 15A-1340.39. Income withholding to enforce restitution as a condition of probation.**

(a) Definitions. – The following definitions apply in this section:

(1) "Defendant" means a person who is convicted of a crime to which the Crime Victims' Rights Act applies, and who is required to pay restitution as a condition of probation.

(2) "Disposable income" means any form of periodic payment to an individual, regardless of sources, including but not limited to wages, salary, commission, self-employment income, bonus pay, severance pay, sick pay, incentive pay, vacation pay, compensation as an independent contractor, worker's compensation, disability, annuity, survivor's benefits, pension and retirement benefits, interest, dividends, rents, royalties, trust income and other similar payments, which remain after the deduction of amounts for federal, State, and local taxes, Social Security, and involuntary retirement contributions. However, Supplemental Security Income, Work First Family Assistance, and other public assistance payments shall be excluded from disposable

income. For wage payors, disposable income means "wage" as it is defined by G.S. 95-25.2(16).

(3) "Division" means the Division of Community Correction of the Department of Correction.

(4) "Employer" means any employer or other payor of disposable income.

(b) Entry of Income Withholding Order. – Whenever the court places a defendant on supervised or unsupervised probation and requires payment of restitution as a condition of probation, the court shall enter an order for income withholding pursuant to this section, if both of the following conditions are also met:

(1) The term of probation is six months or longer.

(2) The defendant is required to make periodic payments throughout the term of probation, according to a schedule set by the court or by a probation officer.

(c) Determinations by Court. – Before entering an order for income withholding, the court shall determine all of the following:

(1) The defendant's total disposable income from all sources.

(2) The names and addresses of the defendant's employers.

(3) The defendant's pay period for each employer (e.g. weekly, bi-weekly, semi-monthly or monthly).

(4) The amount to be withheld by each employer for each pay period.

(d) Multiple Withholding Orders. – If, at the time of sentencing, a defendant is already subject to one or more withholding orders under this section:

(1) The defendant shall so notify the court at the time of sentencing.

(2) The court shall then determine whether the defendant has enough disposable income so that, after all prior withholding orders are complied with, further amounts may be withheld under this section without exceeding the aggregate withholding limits specified in section 303(b) of the Consumer Credit Protection Act, 15 U.S.C. § 1673(b).

(3) If so, the court shall order that any available amount be withheld from the defendant's disposable income.

(4) If not, the court shall deny withholding.

(e) Amount Withheld. – The amount to be withheld shall include:

(1) The lesser of:

a. The amount of the periodic payment that the defendant is required to make as a condition of probation, pro rated if necessary per pay period,

b. The amount ordered withheld pursuant to subsection (d) of this section,

c. The maximum withholding allowable under section 303(b) of the Consumer Credit Protection Act, 15 U.S.C. § 1673(b), and

(2) A processing fee of two dollars ($2.00) to cover the cost of withholding, to be retained by the employer for each withholding unless waived by the employer.

(f) Notice to Employers. – Immediately upon entry of an income withholding order under this section, a notice of obligation to withhold shall be served on each employer, subject to the following provisions:

(1) The notice shall include all of the following:

a. The amount of disposable income upon which the withholding is based.

b. The pay period upon which the withholding is based.

c. The amount to be withheld each pay period.

d. The maximum percentage of the defendant's disposable income that may be withheld under section 303(b) of the Consumer Credit Protection Act, 15 U.S.C. §1673(b).

e. The address of the clerk of superior court to which the amounts withheld shall be remitted.

f. All of the employer's duties under subsections (g), (n), and (o) of this section and the penalties for failing to perform those duties.

g. The case number of the case in which the income withholding has been ordered.

(2) The notice shall be served pursuant to Rule 5 of the North Carolina Rules of Civil Procedure, G.S. 1A-1, Rule 5. If the notice is mailed, service shall be effective upon mailing.

(3) If the defendant is placed on supervised probation, the Division shall serve the notice.

(4) If the defendant is placed on unsupervised probation, the clerk of superior court shall service the notice.

(g) Employer's Responsibilities. – Upon service of a notice of obligation to withhold, each employer shall do all of the following:

(1) If the defendant's disposable income is equal to or greater than that specified in the notice, withhold the amount specified in the notice from the defendant's disposable income.

(2) If a lesser amount of disposable income is available for any pay period, withhold a proportionate part of the lesser amount.

(3) Begin withholding from the defendant's disposable income for the first pay period that begins 14 or more days after service of the notice.

(4) Remit the amount withheld to the clerk of superior court at the address provided in the notice.

(5) Include with the remission the name of the defendant, the amount remitted and the case number of the case in which the withholding was ordered.

(6) Continue withholding until further notice from the court.

(7) Withhold under this section after withholding for child support and before withholding for any other obligation.

(8) Promptly notify the court, in writing, if the employer has been served with one or more other orders to withhold income under this section.

(9) Notify the court immediately when the defendant terminates employment or otherwise ceases to be entitled to disposable income from the employer and provide the defendant's last known address and the name and address of the defendant's new employer, if known.

(h) Proceeding to Impose Sanctions. – The court shall impose sanctions as provided in subsection (i) of this section if it finds that an employer has failed to comply with any of its duties under subsection (g) of this section. The procedure shall be as follows:

(1) A proceeding to impose sanctions shall be commenced by filing a motion in the criminal case in which the judgment containing the withholding order was entered.

(2) A motion under this subsection may be filed by the following:

a. The Division, if the defendant is on supervised probation.

b. The clerk of superior court, if the defendant is on unsupervised probation.

c. The victim, if the victim has verified information showing that the employer has failed to comply with any of its duties under subsection (g) of this section, and no motion has been filed by the Division or the clerk of superior court.

(3) When filed, each motion shall be placed on the civil motion calendar for the trial division in which the judgment was entered and scheduled for the earliest available date that is not less than 30 days after the motion is filed.

(4) The moving party shall immediately serve a copy of the motion and a notice of the hearing on the employer.

(5) Service shall be made pursuant to Rule 4 of the North Carolina Rules of Civil Procedure, G.S. 1A-1, Rule 4.

(6) If, after the hearing, the court finds by a preponderance of the evidence that the employer has, willfully and without justification or excuse, failed to perform one or more of its duties under subsection (g) of this section, the court shall impose sanctions as provided in subsection (i) of this section.

(i) Sanctions. – The sanctions that may be imposed upon an employer for failure to perform one or more of its duties under subsection (g) of this section are:

(1) First incident:

a. An order that the employer commence withholding beginning with the first pay period that commences after the order, and

b. An order to comply promptly with any other duty under subsection (g) of this section.

(2) Second incident:

a. Any sanction authorized under subdivision (1) of this subsection, and

b. Civil or criminal contempt.

(3) Third and subsequent incidents:

a. Any sanction authorized under subdivisions (1) or (2) of this subsection, and

b. For cases of failure to withhold, a civil penalty not greater than the total amount that has not been withheld since original service of the notice, which penalty shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

(j) Modification or Termination. – The court may modify or terminate an income withholding order entered under this section, as follows:

(1) The following are grounds for modification or termination:

a. An employer is unable for any reason to comply with withholding as ordered by the court.

b. The defendant's employer or disposable income has changed since an order for withholding was most recently entered in the case.

c. Any other good cause shown.

(2) A motion under this section may be filed by an employer, the victim, the Division, or a prosecuting attorney.

(3) When filed, each motion shall be placed on the civil motion calendar for the trial division in which the judgment was entered and scheduled for the earliest available date that is not less than 30 days after the motion is filed.

(4) The moving party shall serve a copy of the motion and a notice of the hearing on the other parties specified in subdivision (1).

(5) Service shall be made pursuant to Rule 5 of the North Carolina Rules of Civil Procedure, G.S. 1A-1, Rule 5. If service is made by mail, service is effective upon mailing.

(6) If, after the hearing, the court finds by a preponderance of the evidence that one or more grounds for modification or termination of withholding exist, it shall terminate or appropriately modify the withholding.

(k) Change in Employment. – When a defendant changes employers after service on a current employer of a notice of obligation to withhold under this section:

(1) The defendant shall promptly provide the following information:

a. The name and street address of the new employer,

b. The defendant's disposable income from that employer.

(2) The information shall be provided to:

a. The Division, if the defendant is on supervised probation,

b. The clerk of superior court, if the defendant is on unsupervised probation.

(3) Upon receipt of new employer information under this subsection, a notice of obligation to withhold shall be served on the new employer as provided in subsection (h) of this section.

(l) Termination Upon Completion of Probation. – All income withholding orders entered under this section shall terminate when the defendant's probation is revoked or terminated or expires at the end of the term of probation. Notice of termination shall be given to each employer that is under a current obligation to withhold under this section. Notice shall be given by:

(1) The Division, if the defendant is on supervised probation.

(2) The clerk of superior court, if the defendant is on unsupervised probation.

(m) Clerk's Responsibilities. – Upon receipt of any funds remitted by an employer under this section, the clerk of superior court shall enter the amount remitted as a partial payment on all of the defendant's monetary conditions of probation and shall disburse those funds as provided by law. If a restitution judgment has been docketed in favor of the victim pursuant to G.S. 15A-1340.38, payments received through income withholding shall be applied to that judgment as provided in subsection (c) of that section.

(n) Civil Penalty for Wrongful Violation by Employer. – An employer shall not discharge from employment, refuse to employ, or otherwise take disciplinary action against any defendant solely because the defendant is subject to withholding under this section. When an employer violates this subsection:

(1) The employer shall be liable, in a proceeding pursuant to subsection (h) of this section, for a civil penalty as follows:

a. For a first offense, the civil penalty shall be one hundred dollars ($100.00).

b. For second offense, the civil penalty shall be five hundred dollars ($500.00).

c. For the third and each subsequent offense, the civil penalty shall be one thousand dollars ($1,000), respectively.

d. The clear proceeds of a civil penalties collected pursuant to this subdivision shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

(2) Any employer shall also be liable, in a civil action, for reasonable damages suffered by a defendant as a result of the violation, and a defendant discharged or demoted in violation of this paragraph shall be entitled to be reinstated to his former position. The statute of limitations for actions under this subdivision shall be one year pursuant to G.S. 1-54.

(o) Criminal Penalty for Wrongful Violation by Employer. – An employer that withholds any amount from the disposable income of a defendant, and fails to remit any portion of the amount so withheld as required by this section, is guilty of a Class 1 misdemeanor, provided that the employer shall not be found guilty under this subsection if the employer remits the total amount so withheld promptly after being charged with the misdemeanor."

SECTION 5.3. G.S. 15A-1343(b) is amended by adding a new subdivision to read:

"(9a) If income withholding is ordered under G.S. 1340.39, comply with all the duties of the defendant that are specified in that section."

SETOFF DEBT COLLECTION OF RESTITUTION JUDGMENTS

SECTION 6.1. G.S. 105A-2(2) reads as rewritten:

"(2) Debt. – Any of the following:

a. A sum owed to a claimant agency that has accrued through contract, subrogation, tort, operation of law, or any other legal theory regardless of whether there is an outstanding judgment for the sum.

b. A sum a claimant agency is authorized or required by law to collect, such as child support payments collectible under Title IV, Part D of the Social Security ~~Act.~~Act or restitution collectible under G.S. 15A-1340.40.

c. A sum owed as a result of an intentional program violation or a violation due to inadvertent household error under the Food Stamp Program enabled by Chapter 108A, Article 2, Part 5.

d. Reserved for future codification purposes.

e. A sum owed as a result of having obtained public assistance payments under any of the following programs through an intentional false statement, intentional misrepresentation, intentional failure to disclose a material fact, or inadvertent household error:

1. The Work First Program provided in Article 2 of Chapter 108A of the General Statutes.

2. The State-County Special Assistance for Adults Program enabled by Part 3 of Article 2 of Chapter 108A of the General Statutes.

3. A successor program of one of these programs."

SECTION 6.2. G.S. 105A-13(a) reads as rewritten:

"(a) State Setoff. – To recover the costs incurred by the Department in collecting debts under this Chapter, a collection assistance fee of five dollars ($5.00) is imposed on each debt collected through setoff. The Department must collect this fee as part of the debt and retain it. The collection assistance fee shall not be added to child support debts or debts for restitution collected under G.S. 15A-1340.40, or collected as part of child support ~~debts.~~ debts or of debts for restitution collected pursuant to G.S. 15A-1340.40. Instead, the Department shall retain from collections under Division II of Article 4 of Chapter 105 of the General Statutes the cost of collecting child support debts under this Chapter.

SECTION 6.3. G.S. 15A-1340.38(d) reads as rewritten:

"(d) An appeal of the conviction upon which the order of restitution is based shall stay execution on the judgment and setoff debt collection of the judgment until the appeal is completed. If the conviction is overturned, the judgment shall be cancelled."

SECTION 6.4. G.S. 15A-1340.38 is amended by adding a new subsection to read:

"(e) The court, before entering an order for restitution that is to be docketed as a civil judgment under this section, shall require the defendant to provide the defendant's complete, current and correct social security number or other taxpayer identification number. Failure to comply with this requirement is punishable as a contempt of court. The defendant's social security number or other taxpayer identification shall be entered in the records of the court for the purpose of collecting the judgment through setoff debt collection pursuant to G.S. 15A-1340.40."

SECTION 6.5. G.S. Article 81C of Chapter 15A of the General Statutes is amended by adding a new section to read:

"**§ 15A-1340.40 Setoff debt collection.**

(a) The Administrative Office of the Courts, as a claimant agency under Chapter 105A of the General Statutes, is authorized to collect the amount of each restitution judgment docketed pursuant to G.S. 15A-1340.38, though use of the setoff debt collection procedures specified in that Chapter, subject to the following conditions:

(b) The Administrative Office of the Courts shall initiate setoff debt collection to collect each restitution judgment upon the later of the following:

(1) If the defendant, upon conviction, is sentenced to an active sentence, immediately upon entry of the judgment imposing the sentence,

(2) If the defendant, upon conviction, is placed in probation, whether supervised or unsupervised, immediately upon revocation or termination of the probation or expiration of the probation term.

(c) The total amount of each restitution judgment, less all payments credited against the judgment from other sources, shall be collectible though setoff debt collection.

(d) The total amount collected from each defendant through setoff debt collection shall be credited against all judgments for attorneys' fees docketed against the defendant under G.S. 7A-455 and for restitution docketed against the defendant under G.S. 15A-1340.38, in the order in which the judgments were docketed pursuant to G.S. 1-234.

(e) The Administrative Office of the Courts shall disburse all amounts collected on each restitution judgment directly to the victim named in the judgment and shall immediately notify the clerk of superior court of the county in which the judgment is docketed of the full amount so disbursed. The clerk shall then enter the amount so disbursed in full or partial satisfaction of the restitution judgment.

(f) For each restitution judgment, setoff debt collection shall continue until the earliest of the following:

(1) The date upon which the judgment is fully paid and satisfied,

(2) The date upon which the judgment becomes unenforceable under G.S. 1-306.

(g) Neither a clerk of superior court, nor the Administrative Office of the Courts, nor the State of North Carolina, nor any officer or employee of any of them, shall be liable to any person for any error or omission made in carrying out setoff debt collection pursuant to this section."

SECTION 6.6. The Administrative Office of the Courts shall, as promptly as is reasonably possible considering its available technology resources and the other demands on their use, adapt its current setoff debt collection technology so that it is also able to collect restitution pursuant to this section. This section shall become effective as of the date on which the Administrative Office of the Courts certifies in writing to the Joint Committee on Governmental Operations that it has done so and shall apply to all restitution judgments docketed on and after that date.

SECTION 6.7. There is appropriated to the Judicial Department in the current operating budget for the 2005-2007 biennium an amount sufficient to cover all costs to be incurred in implementing the setoff debt collection of restitution under this section.

SECTION 6.8. There is appropriated to the Office of Indigent Defense Services in the current operations budget for the 2005-2007 biennium an amount sufficient to compensate it for the amount that is currently being collected through setoff debt collection on attorneys' fee judgments, and that will be transferred to restitution judgments as a result of the enactment of this section.

AOC STUDY ON THIRD-PARTY COLLECTION

SECTION 7. The Administrative Office of the Courts shall study the use of third-party collection as a means to improve the collection of restitution and other court fines, fees, and costs. The Administrative Office of the Courts shall report its findings and recommendations to the 2006 Regular Session of the 2005 General Assembly upon its convening.

EFFECTIVE DATE

SECTION 8. Sections 7 and 8 of this act become effective when they become law. Sections 6.1 through 6.6 of this act become effective and apply as provided in Section 6.6 of this act. The remainder of this act becomes effective December 1, 2005, and applies to all offenses committed on and after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

H **D**

HOUSE BILL 788
PROPOSED COMMITTEE SUBSTITUTE H788-CSRN-7 [v.3]

7/21/2005 3:02:56 PM

Short Title: Crime Victims Restitution Improvement Act. (Public)

Sponsors:

Referred to:

March 17, 2005

A BILL TO BE ENTITLED

AN ACT TO IMPROVE THE COLLECTION AND DISTRIBUTION OF RESTITUTION FOR CRIME VICTIMS IN NORTH CAROLINA AND TO DIRECT THE ADMINISTRATIVE OFFICE OF THE COURTS TO STUDY THIRD-PARTY COLLECTION FOR THE COLLECTION OF RESTITUTION AND OTHER COURT COSTS.

The General Assembly of North Carolina enacts:

RESTITUTION FOR FUNERAL EXPENSES MANDATORY

SECTION 1. G.S. 15A-1340.36(b) reads as rewritten:

"(b) ~~The court may require the defendant to make full restitution no later than a certain date or, if the circumstances warrant, may allow the defendant to make restitution in installments over a specified time period.~~Funeral and Burial Expenses Mandatory. – When a defendant is convicted of an offense that proximately resulted in the death of a victim, the amount of restitution shall always include all necessary expenses incurred by or on behalf of the victim's estate for funeral and burial expenses and related services, including the cost of a headstone, if any."

ABILITY TO PAY NOT A FACTOR IN DETERMINING AMOUNT OF RESTITUTION

SECTION 2.1. G.S. 15A-1340.34 reads as rewritten:

"**§ 15A-1340.34. Restitution generally.**

(a) When sentencing a defendant convicted of a criminal offense, the court shall determine whether the defendant shall be ordered to make restitution to any victim of the offense in question. For purposes of this Article, the term "victim" means a person directly and proximately harmed as a result of the defendant's commission of the criminal offense.

(b) If the defendant is being sentenced for an offense for which the victim is entitled to restitution under Article 46 of this Chapter, the court shall, in addition to any penalty authorized by ~~law, require that the defendant make restitution to the victim or~~

~~the victim's estate for any injuries or damages arising directly and proximately out of the offense committed by the defendant. If the defendant is placed on probation or post-release supervision, any restitution ordered under this subsection shall be a condition of probation as provided in G.S. 15A-1343(d) or a condition of post-release supervision as provided in G.S. 148-57.1.~~law:

(1) Enter a judgment against the defendant in favor of the victim or the victim's estate under G.S. 15A-1340.38 for the full amount of the restitution, which shall be determined in accordance with G.S. 15A-1340.35 and G.S. 15A-1340.36(a);

(2) If the defendant is placed on probation, require payment of restitution as a condition of probation, in the amount which the court determines the defendant is able to pay as provided in G.S. 15A-1340.36.1(b) ~~and (c);~~ and

(3) If the defendant is sentenced to active punishment, recommend that the defendant be required to pay restitution out of work release earnings and as a condition of post-release supervision.

(c) When subsection (b) of this section does not apply, the court may, in addition to any other penalty authorized by law, require that the defendant make restitution to ~~the victim or the victim's estate~~ any other person for any injuries or damages arising directly and proximately out of the offense committed by the ~~defendant.~~ defendant, but no judgment shall be entered under G.S. 15A-1340.38 in favor of the person and the remedies in G.S. 15A-1340.39 and G.S. 15A-1340.40 shall not apply."

SECTION 2.2. G.S. 15A-1340.36, as amended by Section 1 of this act, reads as rewritten:

"**§ 15A-1340.36. Determination of ~~restitution.~~the amount of restitution due each victim; entry of civil judgment.**

(a) Amount of Restitution. – ~~In determining the amount of restitution to be made, the court shall take into consideration the resources of the defendant including all real and personal property owned by the defendant and the income derived from the property, 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, but the court is not required to make findings of fact or conclusions of law on these matters. The amount of restitution must be limited to that supported by the record, and the court may order partial restitution when it appears that the damage or loss caused by the offense is greater than that which the defendant is able to pay. If the court orders partial restitution, the court shall state on the record the reasons for such an order.~~The court shall determine the total amount of restitution to which each victim is entitled considering only the factors specified in G.S. 15A-1340.35. The court shall not consider the defendant's ability to pay in making this determination. The total amount of the restitution must be limited to that supported by the record.

(b) Funeral and Burial Expenses Mandatory. – When a defendant is convicted of an offense that proximately resulted in the death of a victim, the amount of restitution shall always include all necessary expenses incurred by or on behalf of the victim's

estate for funeral and burial expenses and related services, including the cost of a headstone, if any.

(c) ~~When an active sentence is imposed, the court shall consider whether it should recommend to the Secretary of Correction that restitution be made by the defendant out of any earnings gained by the defendant if the defendant is granted work release privileges, as provided in G.S. 148-33.2. The court shall also consider whether it should recommend to the Post-Release Supervision and Parole Commission that restitution by the defendant be made a condition of any parole or post-release supervision granted the defendant, as provided in G.S. 148-57.1.~~Entry of Judgment. – Upon determining the total amount of restitution owed to each victim, the court shall enter a judgment in accordance with G.S. 15A-1340.38 in favor of each victim and against the defendant for that amount."

SECTION 2.3. Article 81C of Chapter 15A of the General Statutes is amended by adding a new section to read:

"**§ 15A-1340.36.1. Determination of restitution payment schedule.**

(a) Payment Upon Sentencing. – If, at the time of sentencing, the defendant is able to pay all or any portion of the total amount of restitution ordered pursuant to G.S. 15A-1340.36, ~~at the time of sentencing,~~ the court shall require payment of that amount ~~total~~ by 5:00 P.M. of the day on which the defendant is sentenced. ~~If the defendant is able to pay only a portion of that total, the court shall require payment of that entire portion by 5:00 P.M. of the day on which the defendant is sentenced and establish a schedule of payments for the remainder of the total in accordance with this section.~~ The court shall establish a schedule of payments for the remainder of that total in accordance with this section.

(b) Payment While on Probation. – If the defendant is placed on supervised or unsupervised probation, the court shall:

(1) Determine the portion of the total amount of restitution ordered that the defendant will be able to pay during the term of probation.

(2) Require as a condition of probation that the defendant pay the entire portion that the defendant is able to pay. If the defendant is able to pay the total amount of restitution ordered, the court shall require payment of that total. If the defendant is able to pay only a portion of that total, the court shall require payment of that entire portion.

(3) Establish a schedule of payments or other method of payment that assures that the defendant will, before the end of the term of probation, pay the entire portion that the defendant is able to pay or delegate to a probation officer the authority to do so.

(c) Payment While Serving Active Sentence. – If the defendant is sentenced to an active sentence and the court recommends that the defendant pay restitution out of work release earnings, the court shall enter in the sentencing judgment the total amount of restitution, as determined under G.S. 15A-1340.36, but shall not specify the portion to be paid out of work release earnings. At the time when the defendant is granted work release privileges, the Department of Correction shall:

(1) Determine the portion of the total restitution that the defendant will be able to pay from work release earnings.

(2) Deduct from the defendant's work release earnings and apply, as provided in G.S. 148-33.2, the entire portion of restitution that the defendant is able to pay. If the defendant is able to pay the total amount of restitution, the Department shall require payment of that total. If the defendant is able to pay only a portion of that total, the Department shall require payment of that entire portion.

(d) Payment While on Post-Release Supervision. – If the defendant is sentenced to an active sentence and the court recommends that the defendant pay restitution as a condition of release under post-release supervision, the court shall enter in the sentencing judgment the total amount of restitution, as determined under G.S. 15A-1340.36, but shall not specify the portion to be paid as a condition of release under post-release supervision. At the time when the defendant is released under post-release supervision, the Parole and Post-Release Supervision Commission shall:

(1) Determine the portion of the total restitution that the defendant will be able to pay during the term of post-release supervision.

(2) Require as a condition of release under post-release supervision that the defendant pay the entire portion that the defendant is able to pay. If the defendant is able to pay the total amount ordered, the Commission shall require payment of that total. If the defendant is able to pay only a portion of that total, the Commission shall require payment of that entire portion.

(3) Establish a schedule of payments or other method of payment that assures that the defendant will, before the end of the term of post-release supervision, pay the entire amount that the defendant is able to pay or delegate to a post-release supervision officer the authority to do so.

(e) Factors for Determining Ability to Pay and Payment Schedule. – In determining the defendant's ability to pay restitution and the manner in which the restitution is to be made, all the resources of the defendant shall be taken into consideration, including without limitation:

(1) All real and personal property owned by the defendant and the income derived from the property,

(2) The defendant's present and potential future ability to earn,

(3) The defendant's obligation to support dependents,

(4) Restitution owed to other victims, and

(5) Any other matters that pertain to the defendant's ability to make restitution.

The court is not required to make findings of fact or conclusions of law under this subsection."

SECTION 2.4. G.S. 15A-1343(d) reads as rewritten:

"(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 a person is ~~restitution or reparation~~ entitled to restitution under Article 46 of this Chapter ~~is a condition imposed~~, the court shall ~~take into consideration the factors set out~~ determine and require payment of restitution as provided in ~~G.S. 15A-1340.35 and G.S. 15A-1340.36.~~G.S. 15A-1340.35, 15A-1340.36, and 15A-1340.36.1. 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."

SECTION 2.5. G.S. 148-33.2 reads as rewritten:

"**§ 148-33.2. Restitution by prisoners with work-release privileges.**

(a) Repealed by Session Laws 1985, c. 474, s. 4.

(b) As a rehabilitative measure, the Secretary of the Department of Correction is authorized to require any prisoner granted work-release privileges to make restitution or reparation to an aggrieved party from any earnings gained by the defendant while on work release when the sentencing court recommends that restitution or reparation be paid by the defendant out of any earnings gained by the defendant if he is granted work-release privileges and out of other resources of the defendant, including all real and personal property owned by the defendant and the income derived from such property. ~~The~~ Except when restitution is recommended for a victim entitled to restitution under Article 46 of Chapter 15A of the General Statutes, the Secretary shall not be bound by such recommendation, but if they elect not to implement the recommendation, they shall state in writing the reasons therefor, and shall forward the same to the sentencing court.

(c) When an active sentence is imposed, the court shall consider whether, as a rehabilitative measure, it should recommend to the Secretary of Correction that restitution or reparation be made by the defendant out of any earnings gained by the defendant if he is granted work-release privileges and out of other resources of the defendant, including all real and personal property owned by the defendant, and income derived from such property. If the court determines that restitution or reparation should not be recommended, it shall so indicate on the commitment. If, however, the court determines that restitution or reparation should be recommended, the court shall make its recommendation a part of the order committing the defendant to custody. The recommendation shall be in accordance with the applicable provisions of G.S. 15A-1343(d) and Article 81C of Chapter 15A of the General Statutes. If the offense is one in which there is evidence of physical, mental or sexual abuse of a minor, the court may order the defendant to pay from work release earnings the cost of rehabilitative treatment for the minor. The Administrative Office of the Courts shall

prepare and distribute forms which provide ample space to make restitution or reparation recommendations incident to commitments, which forms shall be conveniently structured to enable the sentencing court to make its recommendation.

(d) The Secretary of the Department of Correction shall establish rules and regulations to implement this section, which shall include adequate notice to the prisoner that the payment of restitution or reparation from any earnings gained by the prisoner while on work release is being considered as a condition of any work-release privileges granted the prisoner, and opportunity for the prisoner to be heard. Such rules and regulations shall also provide additional methods whereby facts may be obtained to supplement the recommendation of the sentencing court. When work release privileges are granted to a prisoner who has been ordered to pay restitution to a victim entitled to restitution under Article 46 of Chapter 15A of the General Statutes, the amount to be deducted from the prisoner's work release earnings shall be determined as provided in G.S. 15A-1340.35, 15A-1340.36, and 15A-1340.36.1, and that amount shall be so deducted."

SECTION 2.6. G.S. 148-57.1 reads as rewritten:

"**§ 148-57.1. Restitution as a condition of parole or post-release supervision.**

(a) Repealed by Session Laws 1985, c. 474, s. 5.

(b) As a rehabilitative measure, the Post-Release Supervision and Parole Commission is authorized to require a prisoner to whom parole or post-release supervision is granted to make restitution or reparation to an aggrieved party as a condition of parole or post-release supervision when the sentencing court recommends that restitution or reparation to an aggrieved party be made a condition of any parole or post-release supervision granted the defendant. When imposing restitution as a condition and setting up a payment schedule for the restitution, the Post-Release Supervision and Parole Commission shall take into consideration the resources of the defendant, including all real and personal property owned by the defendant and the income derived from such property, his ability to earn, and his obligation to support dependents. ~~The~~ Except when restitution is recommended for a victim entitled to restitution under Article 46 of Chapter 15A of the General Statutes, the Post-Release Supervision and Parole Commission shall not be bound by such recommendation, but if it elects not to implement the recommendation, it shall state in writing the reasons therefor, and shall forward the same to the sentencing court.

(c) When an active sentence is imposed, the court shall consider whether, as a rehabilitative measure, it should recommend to the Post-Release Supervision and Parole Commission that restitution or reparation by the defendant be made a condition of any parole or post-release supervision granted the defendant. If the court determines that restitution or reparation should not be recommended, it shall so indicate on the commitment. If, however, the court determines that restitution or reparation should be recommended, the court shall make its recommendation a part of the order committing the defendant to custody. The recommendation shall be in accordance with the applicable provisions of Article 81C of Chapter 15A of the General Statutes. The Administrative Office of the Courts shall prepare and distribute forms which provide ample space to make restitution or reparation recommendations incident to

commitments, which forms shall be conveniently structured to enable the sentencing court to make its recommendation.

If the offense is one in which there is evidence of physical, mental or sexual abuse of a minor, the court may order, as a condition of parole or post-release supervision, that the defendant pay the cost of any rehabilitative treatment for the minor.

(d) The Post-Release Supervision and Parole Commission shall establish rules and regulations to implement this section, which shall include adequate notice to the prisoner that the payment of restitution or reparation by the prisoner is being considered as a condition of any parole or post-release supervision granted the prisoner, and opportunity for the prisoner to be heard. Such rules and regulations shall also provide additional methods whereby facts may be obtained to supplement the recommendation of the sentencing court. When a prisoner is released under post-release supervision, the Commission shall determine and require payment of restitution as provided in G.S. 15A-1340.35, 15A-1340.36, and 15A-1340.36.1."

NO EARLY TERMINATION OF PROBATION UNTIL COMPLETION OF RESTITUTION OBLIGATION

SECTION 3. G.S. 15A-1342(b) reads as rewritten:

"(b) Early Termination. – The court may terminate a period of probation and discharge the defendant at any time earlier than that provided in subsection (a) if warranted by the conduct of the defendant and the ends of ~~justice.~~ justice, provided that the court shall not terminate a period of probation or discharge the defendant at any time earlier than that provided in subsection (a) unless the defendant has paid in full all restitution payable, as a condition of probation, to a victim entitled to restitution under Article 46 of this Chapter. ~~Any order remitting any unpaid portion of such restitution is null and void.~~"

DISTRIBUTION OF RESTITUTION PAYMENTS TO VICTIM'S NEXT OF KIN AFTER CLOSING OF ESTATE

SECTION 4. Article 21 of Chapter 28A of the General Statutes is amended by adding a new section to read:

"**§ 28A-21-3.2. Restitution payments; list of next of kin.**

(a) The following definitions apply in this section:

(1) "Victim" means a victim as defined in G.S. 15A-830(a)(7).

(2) "Restitution payment" means any amount payable to a victim pursuant to Article 81C of Chapter 15A of the General Statutes.

(b) A personal representative or collector of the estate of a victim may file, along with a final account, a list of the victim's next of kin who are entitled to exercise the victim's rights pursuant to G.S. 15A-830(b) if all of the following conditions are met:

(1) There are no unsatisfied creditors.

(2) There are no unsatisfied general monetary bequests.

(3) All assets other than any potential future restitution payments have been distributed.

(c) A list of next of kin, signed under oath, must contain the following information:

(1) The name and address of the personal representative or collector.

(2) The name and social security number of the decedent.
(3) The name and address, if known, of all next of kin who are entitled to exercise the victim's rights pursuant to G.S. 15A-830(b).
(4) The share of each next of kin in the restitution payable to the victim.

(d) The clerk of superior court must review the list of next of kin to determine if the listed next of kin and their shares of potential future restitution payments are in accordance with the Intestate Succession Act. If so, the clerk shall accept the list of next of kin for filing and endorse the clerk's approval thereon, which shall be prima facie evidence of correctness.

(e) Upon determination by the clerk of superior court that the estate of a victim has been closed, all restitution payments may be paid directly to those next of kin and in those shares set forth on a list of next of kin filed under this section, without the estate's having to be reopened under G.S. 28A-23-5.

(f) The estate of a decedent who is entitled to any restitution payment may be reopened, if necessary, in accordance with G.S. 28A-23-5 in order to file a list of next of kin under this section.

INCOME WITHHOLDING

SECTION 5.1. G.S. 15A-832 is amended by adding a new subsection to read:

"(h) In order to aid the court in ordering income withholding under G.S. 15A-1340.39, the prosecuting attorney shall make reasonable efforts to identify all of the defendant's sources of disposable income as defined in that section and shall, at the sentencing hearing, provide the court with the name and address of each employer paying disposable income to the defendant and the amount of the defendant's disposable income from each such employer."

SECTION 5.2. Article 81C of Chapter 15A of the General Statutes is amended by adding a new section to read:

"**§ 15A-1340.39. Income withholding to enforce restitution as a condition of probation.**

(a) Definitions. – The following definitions apply in this section:
(1) "Defendant" means a person who is convicted of a crime to which the Crime Victims' Rights Act applies, and who is required to pay restitution as a condition of probation.
(2) "Disposable income" means any form of periodic payment to an individual, regardless of sources, including but not limited to wages, salary, commission, self-employment income, bonus pay, severance pay, sick pay, incentive pay, vacation pay, compensation as an independent contractor, worker's compensation, disability, annuity, survivor's benefits, pension and retirement benefits, interest, dividends, rents, royalties, trust income and other similar payments, which remain after the deduction of amounts for federal, State, and local taxes, Social Security, and involuntary retirement contributions. However, Supplemental Security Income, Work First Family Assistance, and other public assistance payments shall be excluded from disposable

income. For wage payors, disposable income means "wage" as it is defined by G.S. 95-25.2(16).

(3) "Division" means the Division of Community Correction of the Department of Correction.

(4) "Employer" means any employer or other payor of disposable income.

(b) Entry of Income Withholding Order. – Whenever the court places a defendant on supervised or unsupervised probation and requires payment of restitution as a condition of probation, the court shall enter an order for income withholding pursuant to this section, if both of the following conditions are also met:

(1) The term of probation is six months or longer.

(2) The defendant is required to make periodic payments throughout the term of probation, according to a schedule set by the court or by a probation officer.

(c) Determinations by Court. – Before entering an order for income withholding, the court shall determine all of the following:

(1) The defendant's total disposable income from all sources.

(2) The names and addresses of the defendant's employers.

(3) The defendant's pay period for each employer (e.g. weekly, bi-weekly, semi-monthly or monthly).

(4) The amount to be withheld by each employer for each pay period.

(d) Multiple Withholding Orders. – If, at the time of sentencing, a defendant is already subject to one or more withholding orders under this section:

(1) The defendant shall so notify the court at the time of sentencing.

(2) The court shall then determine whether the defendant has enough disposable income so that, after all prior withholding orders are complied with, further amounts may be withheld under this section without exceeding the aggregate withholding limits specified in section 303(b) of the Consumer Credit Protection Act, 15 U.S.C. § 1673~~(b)~~.

(3) If so, the court shall order that any available amount be withheld from the defendant's disposable income.

(4) If not, the court shall deny withholding.

(e) Amount Withheld. – The amount to be withheld shall include:

(1) The lesser of:

a. The amount of the periodic payment that the defendant is required to make as a condition of probation, pro rated if necessary per pay period,

b. The amount ordered withheld pursuant to subsection (d) of this section,

c. The maximum withholding allowable under section 303(b) of the Consumer Credit Protection Act, 15 U.S.C. § 1673~~(b)~~, and

(2) A processing fee of two dollars ($2.00) to cover the cost of withholding, to be retained by the employer for each withholding unless waived by the employer.

(f) Notice to Employers. – Immediately upon entry of an income withholding order under this section, a notice of obligation to withhold shall be served on each employer, subject to the following provisions:

(1) The notice shall include all of the following:

a. The amount of disposable income upon which the withholding is based.

b. The pay period upon which the withholding is based.

c. The amount to be withheld each pay period.

d. The maximum percentage of the defendant's disposable income that may be withheld under section 303(b) of the Consumer Credit Protection Act, 15 U.S.C. §1673~~(b)~~.

e. The address of the clerk of superior court to which the amounts withheld shall be remitted.

f. All of the employer's duties under subsections (g), (n), and (o) of this section and the penalties for failing to perform those duties.

g. The case number of the case in which the income withholding has been ordered.

(2) The notice shall be served pursuant to Rule 5 of the North Carolina Rules of Civil Procedure, G.S. 1A-1, Rule 5. If the notice is mailed, service shall be effective upon mailing.

(3) If the defendant is placed on supervised probation, the Division shall serve the notice.

(4) If the defendant is placed on unsupervised probation, the clerk of superior court shall service the notice.

(g) Employer's Responsibilities. – Upon service of a notice of obligation to withhold, each employer shall do all of the following:

(1) If the defendant's disposable income is equal to or greater than that specified in the notice, withhold the amount specified in the notice from the defendant's disposable income.

(2) If a lesser amount of disposable income is available for any pay period, withhold a proportionate part of the lesser amount.

(3) Begin withholding from the defendant's disposable income for the first pay period that begins 14 or more days after service of the notice.

(4) Remit the amount withheld to the clerk of superior court at the address provided in the notice.

(5) Include with the remission the name of the defendant, the amount remitted and the case number of the case in which the withholding was ordered.

(6) Continue withholding until further notice from the court.

(7) Withhold under this section after withholding for child support and before withholding for any other obligation.

(8) Promptly notify the court, in writing, if the employer has been served with one or more other orders to withhold income under this section.

(9) Notify the court immediately when the defendant terminates employment or otherwise ceases to be entitled to disposable income from the employer and provide the defendant's last known address and the name and address of the defendant's new employer, if known.

(h) Proceeding to Impose Sanctions. – The court shall impose sanctions as provided in subsection (i) of this section if it finds that an employer has failed to comply with any of its duties under subsection (g) of this section. The procedure shall be as follows:

(1) A proceeding to impose sanctions shall be commenced by filing a motion in the criminal case in which the judgment containing the withholding order was entered.

(2) A motion under this subsection may be filed by the following:

a. The Division, if the defendant is on supervised probation.

b. The clerk of superior court, if the defendant is on unsupervised probation.

c. The victim, if the victim has verified information showing that the employer has failed to comply with any of its duties under subsection (g) of this section, and no motion has been filed by the Division or the clerk of superior court.

(3) When filed, each motion shall be placed on the civil motion calendar for the trial division in which the judgment was entered and scheduled for the earliest available date that is not less than 30 days after the motion is filed.

(4) The moving party shall immediately serve a copy of the motion and a notice of the hearing on the employer.

(5) Service shall be made pursuant to Rule 4 of the North Carolina Rules of Civil Procedure, G.S. 1A-1, Rule 4.

(6) If, after the hearing, the court finds by a preponderance of the evidence that the employer has, willfully and without justification or excuse, failed to perform one or more of its duties under subsection (g) of this section, the court shall impose sanctions as provided in subsection (i) of this section.

(i) Sanctions. – The sanctions that may be imposed upon an employer for failure to perform one or more of its duties under subsection (g) of this section are:

(1) First incident:

a. An order that the employer commence withholding beginning with the first pay period that commences after the order, and

b. An order to comply promptly with any other duty under subsection (g) of this section.

(2) Second incident:

a. Any sanction authorized under subdivision (1) of this subsection, and

b. Civil or criminal contempt.

(3) Third and subsequent incidents:

a. Any sanction authorized under subdivisions (1) or (2) of this subsection, and

b. For cases of failure to withhold, a civil penalty not greater than the total amount that has not been withheld since original service of the notice, which penalty shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

(j) Modification or Termination. – The court may modify or terminate an income withholding order entered under this section, as follows:

(1) The following are grounds for modification or termination:

a. An employer is unable for any reason to comply with withholding as ordered by the court.

b. The defendant's employer or disposable income has changed since an order for withholding was most recently entered in the case.

c. Any other good cause shown.

(2) A motion under this section may be filed by an employer, the victim, the Division, or a prosecuting attorney.

(3) When filed, each motion shall be placed on the civil motion calendar for the trial division in which the judgment was entered and scheduled for the earliest available date that is not less than 30 days after the motion is filed.

(4) The moving party shall serve a copy of the motion and a notice of the hearing on the other parties specified in subdivision (1).

(5) Service shall be made pursuant to Rule 5 of the North Carolina Rules of Civil Procedure, G.S. 1A-1, Rule 5. If service is made by mail, service is effective upon mailing.

(6) If, after the hearing, the court finds by a preponderance of the evidence that one or more grounds for modification or termination of withholding exist, it shall terminate or appropriately modify the withholding.

(k) Change in Employment. – When a defendant changes employers after service on a current employer of a notice of obligation to withhold under this section:

(1) The defendant shall promptly provide the following information:

a. The name and street address of the new employer,

b. The defendant's disposable income from that employer.

(2) The information shall be provided to:

a. The Division, if the defendant is on supervised probation,

b. The clerk of superior court, if the defendant is on unsupervised probation.

(3) Upon receipt of new employer information under this subsection, a notice of obligation to withhold shall be served on the new employer as provided in subsection (h) of this section.

(l) Termination Upon Completion of Probation. – All income withholding orders entered under this section shall terminate when the defendant's probation is revoked or terminated or expires at the end of the term of probation. Notice of termination shall be given to each employer that is under a current obligation to withhold under this section. Notice shall be given by:

(1) The Division, if the defendant is on supervised probation.

(2) The clerk of superior court, if the defendant is on unsupervised probation.

(m) Clerk's Responsibilities. – Upon receipt of any funds remitted by an employer under this section, the clerk of superior court shall enter the amount remitted as a partial payment on all of the defendant's monetary conditions of probation and shall disburse those funds as provided by law. If a restitution judgment has been docketed in favor of the victim pursuant to G.S. 15A-1340.38, payments received through income withholding shall be applied to that judgment as provided in subsection (c) of that section.

(n) Civil Penalty for Wrongful Violation by Employer. – An employer shall not discharge from employment, refuse to employ, or otherwise take disciplinary action against any defendant solely because the defendant is subject to withholding under this section. When an employer violates this subsection:

(1) The employer shall be liable, in a proceeding pursuant to subsection (h) of this section, for a civil penalty as follows:

a. For a first offense, the civil penalty shall be one hundred dollars ($100.00).

b. For second offense, the civil penalty shall be five hundred dollars ($500.00).

c. For the third and each subsequent offense, the civil penalty shall be one thousand dollars ($1,000), respectively.

d. The clear proceeds of a civil penalties collected pursuant to this subdivision shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

(2) Any employer shall also be liable, in a civil action, for reasonable damages suffered by a defendant as a result of the violation, and a defendant discharged or demoted in violation of this paragraph shall be entitled to be reinstated to his former position. The statute of limitations for actions under this subdivision shall be one year pursuant to G.S. 1-54.

(o) Criminal Penalty for Wrongful Violation by Employer. – An employer that withholds any amount from the disposable income of a defendant, and fails to remit any portion of the amount so withheld as required by this section, is guilty of a Class 1 misdemeanor, provided that the employer shall not be found guilty under this subsection if the employer remits the total amount so withheld promptly after being charged with the misdemeanor."

SECTION 5.3. G.S. 15A-1343(b) is amended by adding a new subdivision to read:

"(9a) If income withholding is ordered under G.S. 1340.39, comply with all the duties of the defendant that are specified in that section."

SETOFF DEBT COLLECTION OF RESTITUTION JUDGMENTS

SECTION 6.1. G.S. 105A-2(2) reads as rewritten:

"(2) Debt. – Any of the following:

a. A sum owed to a claimant agency that has accrued through contract, subrogation, tort, operation of law, or any other legal theory regardless of whether there is an outstanding judgment for the sum.

b. A sum a claimant agency is authorized or required by law to collect, such as child support payments collectible under Title IV, Part D of the Social Security ~~Act.~~Act or restitution collectible under G.S. 15A-1340.40.

c. A sum owed as a result of an intentional program violation or a violation due to inadvertent household error under the Food Stamp Program enabled by Chapter 108A, Article 2, Part 5.

d. Reserved for future codification purposes.

e. A sum owed as a result of having obtained public assistance payments under any of the following programs through an intentional false statement, intentional misrepresentation, intentional failure to disclose a material fact, or inadvertent household error:

1. The Work First Program provided in Article 2 of Chapter 108A of the General Statutes.

2. The State-County Special Assistance for Adults Program enabled by Part 3 of Article 2 of Chapter 108A of the General Statutes.

3. A successor program of one of these programs."

SECTION 6.2. G.S. 105A-13(a) reads as rewritten:

"(a) State Setoff. – To recover the costs incurred by the Department in collecting debts under this Chapter, a collection assistance fee of five dollars ($5.00) is imposed on each debt collected through setoff. The Department must collect this fee as part of the debt and retain it. The collection assistance fee shall not be added to child support debts or debts for restitution collected under G.S. 15A-1340.40, or collected as part of child support ~~debts.~~ debts or of debts for restitution collected pursuant to G.S. 15A-1340.40. Instead, the Department shall retain from collections under Division II of Article 4 of Chapter 105 of the General Statutes the cost of collecting child support debts under this Chapter.

SECTION 6.3. G.S. 15A-1340.38(d) reads as rewritten:

"(d) An appeal of the conviction upon which the order of restitution is based shall stay execution on the judgment and setoff debt collection of the judgment until the appeal is completed. If the conviction is overturned, the judgment shall be cancelled."

SECTION 6.4. G.S. 15A-1340.38 is amended by adding a new subsection to read:

"(e) The court, before entering an order for restitution that is to be docketed as a civil judgment under this section, shall require the defendant to provide the defendant's complete, current and correct social security number or other taxpayer identification number. Failure to comply with this requirement is punishable as a contempt of court. The defendant's social security number or other taxpayer identification shall be entered in the records of the court for the purpose of collecting the judgment through setoff debt collection pursuant to G.S. 15A-1340.40."

SECTION 6.5. G.S. Article 81C of Chapter 15A of the General Statutes is amended by adding a new section to read:

"**§ 15A-1340.40 Setoff debt collection.**

(a) The Administrative Office of the Courts, as a claimant agency under Chapter 105A of the General Statutes, is authorized to collect the amount of each restitution judgment docketed pursuant to G.S. 15A-1340.38, though use of the setoff debt collection procedures specified in that Chapter, subject to the following conditions:

(b) The Administrative Office of the Courts shall initiate setoff debt collection to collect each restitution judgment upon the later of the following:

(1) If the defendant, upon conviction, is sentenced to an active sentence, immediately upon entry of the judgment imposing the sentence,

(2) If the defendant, upon conviction, is placed in probation, whether supervised or unsupervised, immediately upon revocation or termination of the probation or expiration of the probation term.

(c) The total amount of each restitution judgment, less all payments credited against the judgment from other sources, shall be collectible though setoff debt collection.

(d) The total amount collected from each defendant through setoff debt collection shall be credited against all judgments for attorneys' fees docketed against the defendant under G.S. 7A-455 and for restitution docketed against the defendant under G.S. 15A-1340.38, in the order in which the judgments were docketed pursuant to G.S. 1-234.

(e) The Administrative Office of the Courts shall disburse all amounts collected on each restitution judgment directly to the victim named in the judgment and shall immediately notify the clerk of superior court of the county in which the judgment is docketed of the full amount so disbursed. The clerk shall then enter the amount so disbursed in full or partial satisfaction of the restitution judgment.

(f) For each restitution judgment, setoff debt collection shall continue until the earliest of the following:

(1) The date upon which the judgment is fully paid and satisfied,

(2) The date upon which the judgment becomes unenforceable under G.S. 1-306.

(g) Neither a clerk of superior court, nor the Administrative Office of the Courts, nor the State of North Carolina, nor any officer or employee of any of them, shall be liable to any person for any error or omission made in carrying out setoff debt collection pursuant to this section."

SECTION 6.6. The Administrative Office of the Courts shall, as promptly as is reasonably possible considering its available technology resources and the other demands on their use, adapt its current setoff debt collection technology so that it is also able to collect restitution pursuant to this section. This section shall become effective as of the date on which the Administrative Office of the Courts certifies in writing to the Joint Committee on Governmental Operations that it has done so and shall apply to all restitution judgments docketed on and after that date.

SECTION 6.7. There is appropriated to the Judicial Department in the current operating budget for the 2005-2007 biennium an amount sufficient to cover all costs to be incurred in implementing the setoff debt collection of restitution under this section.

SECTION 6.8. There is appropriated to the Office of Indigent Defense Services in the current operations budget for the 2005-2007 biennium an amount sufficient to compensate it for the amount that is currently being collected through setoff debt collection on attorneys' fee judgments, and that will be transferred to restitution judgments as a result of the enactment of this section.

AOC STUDY ON THIRD-PARTY COLLECTION

SECTION 7. The Administrative Office of the Courts shall study the use of third-party collection as a means to improve the collection of restitution and other court fines, fees, and costs. The Administrative Office of the Courts shall report its findings and recommendations to the 2006 Regular Session of the 2005 General Assembly upon its convening.

EFFECTIVE DATE

SECTION 8. Sections 7 and 8 of this act become effective when they become law. Sections 6.1 through 6.6 of this act become effective and apply as provided in Section 6.6 of this act. The remainder of this act becomes effective December 1, 2005, and applies to all offenses committed on and after that date.

HOUSE BILL 788:
Crime Victims Restitution Improvement Act

BILL ANALYSIS

Committee:	House Judiciary I	**Date:**	June 24, 2005
Introduced by:	Reps. Eddins, Holliman	**Summary by:**	R. Erika Churchill
Version:	First Edition		Committee Counsel

SUMMARY: House Bill 788 would amend the determination of restitution and the collection of the amount ordered as restitution, appropriate funds to implement the collection procedures and require the Administrative Office of the Courts to study third party collections for restitution.

BILL ANALYSIS:

Section 1. The bill amends G.S. 15A-1340.36(b) to require that court order the defendant whose actions resulted in victim's death to pay necessary funeral and burial expenses. Formerly, court was given discretion to order payment of burial expenses.

Section 2. The bill amends G.S. 15A-1340.34(b) to require that if criminal defendant is sentenced to active punishment, court must recommend that defendant be required to pay restitution out of work release earnings and as a condition to post-release supervision. The bill also amends G.S. 15A-1340.36 to delete the requirement that the court consider the defendant's ability to pay in determining amount of restitution, and requires instead that the court consider only the injury and property damage endured by the victim. The bill enacts the new G.S. 15A-1340.36.1 which establishes a restitution payment schedule for defendants and sets forth factors for determining the defendant's ability to pay and the payment schedule.

Section 3. The bill amends G.S. 15A-1342(b) to prohibit the court from terminating the defendant's period of probation early unless the defendant has paid all restitution owed to victim.

Section 4. The bill enacts the new G.S. 28A-21-3.2 creating a procedure for making restitution payments to the victim's family if the victim is deceased and the estate is ready to be closed.

Section 5. The bill enacts the new G.S. 15A-832(h) requiring that the prosecuting attorney make reasonable efforts to identify the defendant's sources of disposable income and provide the court with the name and address of defendant's employers at sentencing hearing. The bill also enacts the new G.S. 15A-1340.39 to establish procedures for income withholding to enforce restitution as a condition of probation and to impose sanctions and civil and criminal penalties for an employer's failure to comply with those requirements.

Section 6. The bill authorizes the Administrative Office of the Courts (AOC) to collect the amount of each restitution judgment ordered under G.S. 15A-1340.38 and requires that AOC initiate setoff debt collection upon the later of defendant's sentencing to an active sentence, or, if defendant is placed on probation, the revocation, expiration, or termination of the probation term. The bill also appropriates to the Judicial Department a sum sufficient to cover costs incurred in implementing setoff debt collect for '05-'06 fiscal biennium and to the Office of Indigent Defense an amount sufficient to compensate it for the amount currently collected through setoff debt collection on attorneys' fees judgments and that will be transferred to restitution judgments under act.

Section 7. The bill requires that AOC study use of third-party collection to improve collection of restitution and other court fines, fees, and costs and report findings to the 2006 General Assembly.

EFFECTIVE DATE: Except for setoff debt collection amendments to Chapter 15A and study requirement, the act becomes effective December 1, 2005, applies to offenses committed on or after that date. The setoff debt collection becomes effective when the Administrative Office of the Courts certifies to the Joint Committee on Governmental Operations that AOC has adapted its current setoff debt collection technology to be able to collect restitution also. The study becomes effective when the act becomes law.

H0788e1-SMST

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 2

SENATE BILL 1130

State and Local Government Committee Substitute Adopted 5/25/05

Short Title: No Smoking in Prisons. (Public)

Sponsors:

Referred to:

March 24, 2005

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT SMOKING IN STATE CORRECTIONAL INSTITUTIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-599 reads as rewritten:

"**§ 143-599. Exemptions.**

All of the following facilities shall be exempt from the provisions of this Article:

(1) Any primary or secondary school or child care center, except for a teacher's lounge.

(2) An enclosed elevator.

(3) Public school bus.

(4) Hospital, nursing home, rest home, and State facility operated under the authority of G.S. 122C-181.

(5) Local health department.

(6) Any nonprofit organization or corporation whose primary purpose is to discourage the use of tobacco products by the general public.

(7) Tobacco manufacturing, processing, and administrative facilities.

(8) State correctional facilities operated by the Department of Correction."

SECTION 2. Article 2 of Chapter 148 of the General Statutes is amended by adding a new section to read:

"**§ 148-23.1. Smoking prohibited in State correctional facilities.**

(a) The General Assembly finds that in order to protect the health, welfare, and comfort of inmates in the custody of the Department of Correction and to reduce the costs of inmate health care, it is necessary to prohibit inmates from using tobacco products inside State correctional facilities and to ensure that employees and visitors do not use tobacco products inside those facilities.

(b) No person may use tobacco products inside of a State correctional facility, except for authorized religious purposes.

(c) The Department of Correction may adopt rules to implement the provisions of this section. Inmates in violation of this section are subject to disciplinary measures

to be determined by the Department, including the potential loss of sentence credits earned prior to that violation. Employees in violation of this section are subject to disciplinary action by the Department. Visitors in violation of this section are subject to removal from the facility and loss of visitation privileges.

(d) As used in this section, the following terms mean:

(1) State correctional facility. – All buildings of a State correctional institution operated by the Department of Correction.

(2) Tobacco products. – Cigars, cigarettes, snuff, loose tobacco, or similar goods made with any part of the tobacco plant that are prepared or used for smoking, chewing, dipping, or other personal use."

SECTION 3. The Department of Correction shall conduct one or more pilot programs banning smoking both inside buildings and on the grounds of State correctional institutions and administering smoking cessation programs for staff and inmates. The pilot smoking cessation programs shall be available to inmates and staff on a volunteer basis, and no person shall be compelled or coerced to participate. The smoking cessation program shall include instructions and education that will help inmates and staff cease the use of tobacco products and remain smoke free. The cost of administering the pilot smoking cessation program shall be paid from existing funds available to the Department of Correction. The Department of Correction may use services, personnel, and resources donated by nongovernmental agencies and organizations to implement this program. The Department of Correction shall report to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee on or before April 1, 2006, on the progress and status of the pilot programs.

SECTION 4. The Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee shall study and make legislative recommendations on the feasibility and implementation of a two-year phase-in program banning smoking by all inmates, personnel, and visitors in all buildings and on all grounds of State correctional institutions operated by the Department of Correction. This study shall examine methods to assist with smoking cessation, including the use of nongovernmental agencies, organizations, and corporations for counseling, training, cessation aids, and interventions. The Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee shall report the results of this study to the General Assembly prior to the convening of the 2006 Session of the 2005 General Assembly.

SECTION 5. Sections 1 and 2 of this act become effective January 1, 2006. The remainder of this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 1130

State and Local Government Committee Substitute Adopted 5/25/05
PROPOSED HOUSE COMMITTEE SUBSTITUTE S1130-CSST-65 [v.2]

7/22/2005 11:04:07 AM

Short Title: No Tobacco Use in Prisons. (Public)

Sponsors:

Referred to:

March 24, 2005

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT THE USE OF TOBACCO IN STATE CORRECTIONAL INSTITUTIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-599, as amended by S.L. 2005-19, reads as rewritten:

"**§ 143-599. Exemptions.**

All of the following facilities shall be exempt from the provisions of this Article:

(1) Any primary or secondary school or child care center, except for a teacher's lounge.
(2) An enclosed elevator.
(3) Public school bus.
(4) Hospital, nursing home, rest home, and State facility operated under the authority of G.S. 122C-181.
(5) Local health department and the building and grounds where the local health department is located. For the purposes of this subdivision, "grounds" means the area located within 50 linear feet of a local health department.
(6) Any nonprofit organization or corporation whose primary purpose is to discourage the use of tobacco products by the general public.
(7) Tobacco manufacturing, processing, and administrative facilities.
(8) State correctional facilities operated by the Department of Correction."

SECTION 2. Article 2 of Chapter 148 of the General Statutes is amended by adding a new section to read:

"**§ 148-23.1. Tobacco use prohibited in State correctional facilities.**

(a) The General Assembly finds that in order to protect the health, welfare, and comfort of inmates in the custody of the Department of Correction and to reduce the costs of inmate health care, it is necessary to prohibit inmates from using tobacco

products inside State correctional facilities and to ensure that employees and visitors do not use tobacco products inside those facilities.

(b) No person may use tobacco products inside of a State correctional facility, except for authorized religious purposes.

(c) The Department of Correction may adopt rules to implement the provisions of this section. Inmates in violation of this section are subject to disciplinary measures to be determined by the Department, including the potential loss of sentence credits earned prior to that violation. Employees in violation of this section are subject to disciplinary action by the Department. Visitors in violation of this section are subject to removal from the facility and loss of visitation privileges.

(d) As used in this section, the following terms mean:

(1) State correctional facility. – All buildings of a State correctional institution operated by the Department of Correction.

(2) Tobacco products. – Cigars, cigarettes, snuff, loose tobacco, or similar goods made with any part of the tobacco plant that are prepared or used for smoking, chewing, dipping, or other personal use."

SECTION 3. The Department of Correction shall conduct one or more pilot programs banning tobacco use both inside buildings and on the grounds of State correctional institutions and administering tobacco use cessation programs for staff and inmates. The pilot tobacco use cessation programs shall be available to inmates and staff on a volunteer basis, and no person shall be compelled or coerced to participate. The tobacco use cessation program shall include instructions and education that will help inmates and staff cease the use of tobacco products. The cost of administering the pilot tobacco use cessation program shall be paid from existing funds available to the Department of Correction. The Department of Correction may use services, personnel, and resources donated by nongovernmental agencies and organizations to implement this program. The Department of Correction shall report to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee on or before April 1, 2006, on the progress and status of the pilot programs.

SECTION 4. The Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee shall study and make legislative recommendations on the feasibility and implementation of a two-year phase-in program banning tobacco use by all inmates, personnel, and visitors in all buildings and on all grounds of State correctional institutions operated by the Department of Correction. This study shall examine methods to assist with tobacco use cessation, including the use of nongovernmental agencies, organizations, and corporations for counseling, training, cessation aids, and interventions. The Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee shall report the results of this study to the General Assembly prior to the convening of the 2006 Session of the 2005 General Assembly.

SECTION 5. Sections 1 and 2 of this act become effective January 1, 2006. The remainder of this act is effective when it becomes law.

SENATE BILL 1130: No Tobacco Use in Prisons

BILL ANALYSIS

Committee:	House Judiciary I	**Date:**	July 22, 2005
Introduced by:	Sen. Albertson	**Summary by:**	R. Erika Churchill
Version:	PCS to Second Edition S1130-CSST-65v2		Committee Counsel

SUMMARY: The proposed committee substitute would ban tobacco use inside correctional facilities effective January 1, 2006, permit a pilot program banning the use of tobacco on all correctional facility grounds, and require a study on the banning the use of tobacco products on all correctional facility grounds.

CURRENT LAW: Article 64 of Chapter 143 the General Statutes addresses smoking in public places by providing for designated smoking and nonsmoking areas. A list of buildings owned, leased or occupied by state government which may be designated as nonsmoking areas is set forth, including: museums, libraries, UNC health services facilities. Nonsmoking areas must be visibly posted as such, and requirements for separate ventilation systems and physical barriers between nonsmoking and adjacent smoking areas are provided for in the statute.

Violation by continuing to smoke in a nonsmoking area after having been given notice to stop smoking is an infraction punishable by a fine of not more than $25.00.

An itemized list of facilities is specifically exempted from regulation by the provisions of Article 64 includes the following: any primary or secondary school, child care center (teacher's lounge excepted), enclosed elevators, public school buses, hospitals, nursing homes, rest homes, local health departments, organizations intended to discourage tobacco use, and tobacco manufacturing, processing and administrative facilities.

BILL ANALYSIS: The proposed committee substitute would exempt State correctional facilities operated by the Department of Correction from Article 64 of Chapter 143, and statutorily set forth a tobacco use policy for State correctional facilities in Chapter 148. No person would be permitted to use tobacco products inside of a State correctional facility, except for authorized religious purposes. Tobacco products are defined as: "cigars, cigarettes, snuff, loose tobacco, or similar goods made with any part of the tobacco plant that are prepared or used for smoking, chewing, dipping, or other personal use." ***Effective January 1, 2006.***

The Department of Correction is authorized to adopt rules to implement to no tobacco use inside the facilities policy. Violators of the policy would be subject to the following:

- Inmates would be subject to disciplinary measures to be determined by the Department, including potential loss of sentence credits
- Employees would be subject to disciplinary action.
- Visitors would be subject to removal and loss of visitation privileges.

The proposed committee substitute would also require the Department of Correction to conduct a pilot program banning tobacco use both inside the buildings and on the grounds of the facility for staff and inmates. The pilot program must provide tobacco use cessation programs for staff and inmates on a volunteer basis. The Department of Correction is to report on or before April 1, 2006, to the Joint

Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee on the status of the pilot program. ***Effective when the act becomes law.***

The Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee is to study the feasibility of a two year phase-in program banning tobacco use inside the buildings and on the grounds of the facilities by all inmates, personnel, and visitors. That report is to be submitted to the General Assembly prior to its' convening in 2006. ***Effective when the act becomes law.***

S1130e2-SMST-CSST-65v2

ATTACHMENT IX

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE _____

S. B. No. 1130 ✓ Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE ✓

(Rep.) Alexander
Sen.)

moves to amend the bill on page 2, line 29

( ) WHICH CHANGES THE TITLE

by deleting "April" and substituting "October";

and on page 2, line 39 by rewriting that line to read:

"Assembly prior to the convening of the 2007 Session."

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

ATTACHMENT X

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative Hackney (Chair) for the Committee on JUDICIARY I.

☒Committee Substitute for
SB 1130 A BILL TO BE ENTITLED AN ACT TO PROHIBIT SMOKING IN STATE CORRECTIONAL INSTITUTIONS.

☒ With a favorable report as to House committee substitute bill, which changes the title, unfavorable as to Senate committee substitute bill.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

_____ Pursuant to Rule 36(b), the (House/Senate) committee substitute bill/(joint) resolution (No._____) is placed on the Calendar of _____. (The original bill resolution No._____) is placed on the Unfavorable Calendar.

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 1130

State and Local Government Committee Substitute Adopted 5/25/05
PROPOSED HOUSE COMMITTEE SUBSTITUTE S1130-PCS75350-ST-65

Short Title: No Tobacco Use in Prisons. (Public)

Sponsors:

Referred to:

March 24, 2005

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT THE USE OF TOBACCO IN STATE CORRECTIONAL INSTITUTIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-599, as amended by S.L. 2005-19, reads as rewritten:

"**§ 143-599. Exemptions.**

All of the following facilities shall be exempt from the provisions of this Article:

(1) Any primary or secondary school or child care center, except for a teacher's lounge.
(2) An enclosed elevator.
(3) Public school bus.
(4) Hospital, nursing home, rest home, and State facility operated under the authority of G.S. 122C-181.
(5) Local health department and the building and grounds where the local health department is located. For the purposes of this subdivision, "grounds" means the area located within 50 linear feet of a local health department.
(6) Any nonprofit organization or corporation whose primary purpose is to discourage the use of tobacco products by the general public.
(7) Tobacco manufacturing, processing, and administrative facilities.
(8) State correctional facilities operated by the Department of Correction."

SECTION 2. Article 2 of Chapter 148 of the General Statutes is amended by adding a new section to read:

"**§ 148-23.1. Tobacco use prohibited in State correctional facilities.**

(a) The General Assembly finds that in order to protect the health, welfare, and comfort of inmates in the custody of the Department of Correction and to reduce the costs of inmate health care, it is necessary to prohibit inmates from using tobacco

products inside State correctional facilities and to ensure that employees and visitors do not use tobacco products inside those facilities.

(b) No person may use tobacco products inside of a State correctional facility, except for authorized religious purposes.

(c) The Department of Correction may adopt rules to implement the provisions of this section. Inmates in violation of this section are subject to disciplinary measures to be determined by the Department, including the potential loss of sentence credits earned prior to that violation. Employees in violation of this section are subject to disciplinary action by the Department. Visitors in violation of this section are subject to removal from the facility and loss of visitation privileges.

(d) As used in this section, the following terms mean:

(1) State correctional facility. – All buildings of a State correctional institution operated by the Department of Correction.

(2) Tobacco products. – Cigars, cigarettes, snuff, loose tobacco, or similar goods made with any part of the tobacco plant that are prepared or used for smoking, chewing, dipping, or other personal use."

SECTION 3. The Department of Correction shall conduct one or more pilot programs banning tobacco use both inside buildings and on the grounds of State correctional institutions and administering tobacco use cessation programs for staff and inmates. The pilot tobacco use cessation programs shall be available to inmates and staff on a volunteer basis, and no person shall be compelled or coerced to participate. The tobacco use cessation program shall include instructions and education that will help inmates and staff cease the use of tobacco products. The cost of administering the pilot tobacco use cessation program shall be paid from existing funds available to the Department of Correction. The Department of Correction may use services, personnel, and resources donated by nongovernmental agencies and organizations to implement this program. The Department of Correction shall report to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee on or before October 1, 2006, on the progress and status of the pilot programs.

SECTION 4. The Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee shall study and make legislative recommendations on the feasibility and implementation of a two-year phase-in program banning tobacco use by all inmates, personnel, and visitors in all buildings and on all grounds of State correctional institutions operated by the Department of Correction. This study shall examine methods to assist with tobacco use cessation, including the use of nongovernmental agencies, organizations, and corporations for counseling, training, cessation aids, and interventions. The Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee shall report the results of this study to the General Assembly prior to the convening of the 2007 Session.

SECTION 5. Sections 1 and 2 of this act become effective January 1, 2006. The remainder of this act is effective when it becomes law.

ATTACHMENT XII

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 788 DATE _____

S. B. No. _____ Amendment No. _____ (to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE H788-CSRN-7[v.3]

(Rep.) Sen.) Starn

moves to amend the bill on page 7, lines 34-35

( ) WHICH CHANGES THE TITLE

by inserting between those lines the following:

"(3) "Next of kin" means any ~~named~~ residuary beneficiary under the victim's will, if any. If no will exists, then "next of kin" means the same as defined in G.S. 15A-830(a)(6)."

And on page 8, line 7

by rewriting that line to read:

"accordance with the provisions of the victim's will, if any, and if no will exists, then in accordance with the Intestate Succession Act. If so, the clerk shall accept the list of next"

SIGNED Starn

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative Hackney (Chair) for the Committee on JUDICIARY I.

☐ Committee Substitute for
HB 788 A BILL TO BE ENTITLED AN ACT TO IMPROVE THE COLLECTION AND DISTRIBUTION OF RESTITUTION FOR CRIME VICTIMS IN NORTH CAROLINA AND TO DIRECT THE ADMINISTRATIVE OFFICE OF THE COURTS TO STUDY THIRD-PARTY COLLECTION FOR THE COLLECTION OF RESTITUTION AND OTHER COURT COSTS.

☒ With a favorable report as to the committee substitute bill, unfavorable as to the original bill, and recommendation that the committee substitute bill be re-referred to the Committee on Appropriations.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

_____ Pursuant to Rule 36(b), the (House/Senate) committee substitute bill/(joint) resolution (No._____) is placed on the Calendar of _____. (The original bill resolution No._____) is placed on the Unfavorable Calendar.

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 788
PROPOSED COMMITTEE SUBSTITUTE H788-PCS10384-RN-7

Short Title: Crime Victims Restitution Improvement Act. (Public)

Sponsors:

Referred to:

March 17, 2005

A BILL TO BE ENTITLED

AN ACT TO IMPROVE THE COLLECTION AND DISTRIBUTION OF RESTITUTION FOR CRIME VICTIMS IN NORTH CAROLINA AND TO DIRECT THE ADMINISTRATIVE OFFICE OF THE COURTS TO STUDY THIRD-PARTY COLLECTION FOR THE COLLECTION OF RESTITUTION AND OTHER COURT COSTS.

The General Assembly of North Carolina enacts:

RESTITUTION FOR FUNERAL EXPENSES MANDATORY

SECTION 1. G.S. 15A-1340.36(b) reads as rewritten:

"(b) ~~The court may require the defendant to make full restitution no later than a certain date or, if the circumstances warrant, may allow the defendant to make restitution in installments over a specified time period.~~Funeral and Burial Expenses Mandatory. – When a defendant is convicted of an offense that proximately resulted in the death of a victim, the amount of restitution shall always include all necessary expenses incurred by or on behalf of the victim's estate for funeral and burial expenses and related services, including the cost of a headstone, if any."

ABILITY TO PAY NOT A FACTOR IN DETERMINING AMOUNT OF RESTITUTION

SECTION 2.1. G.S. 15A-1340.34 reads as rewritten:

"**§ 15A-1340.34. Restitution generally.**

(a) When sentencing a defendant convicted of a criminal offense, the court shall determine whether the defendant shall be ordered to make restitution to any victim of the offense in question. For purposes of this Article, the term "victim" means a person directly and proximately harmed as a result of the defendant's commission of the criminal offense.

(b) If the defendant is being sentenced for an offense for which the victim is entitled to restitution under Article 46 of this Chapter, the court shall, in addition to any penalty authorized by ~~law, require that the defendant make restitution to the victim or~~

~~the victim's estate for any injuries or damages arising directly and proximately out of the offense committed by the defendant. If the defendant is placed on probation or post-release supervision, any restitution ordered under this subsection shall be a condition of probation as provided in G.S. 15A-1343(d) or a condition of post-release supervision as provided in G.S. 148-57.1.~~law:

(1) Enter a judgment against the defendant in favor of the victim or the victim's estate under G.S. 15A-1340.38 for the full amount of the restitution, which shall be determined in accordance with G.S. 15A-1340.35 and G.S. 15A-1340.36(a);

(2) If the defendant is placed on probation, require payment of restitution as a condition of probation, in the amount which the court determines the defendant is able to pay as provided in G.S. 15A-1340.36.1(b); and

(3) If the defendant is sentenced to active punishment, recommend that the defendant be required to pay restitution out of work release earnings and as a condition of post-release supervision.

(c) When subsection (b) of this section does not apply, the court may, in addition to any other penalty authorized by law, require that the defendant make restitution to ~~the victim or the victim's estate~~ any other person for any injuries or damages arising directly and proximately out of the offense committed by the ~~defendant.~~ defendant, but no judgment shall be entered under G.S. 15A-1340.38 in favor of the person and the remedies in G.S. 15A-1340.39 and G.S. 15A-1340.40 shall not apply."

SECTION 2.2. G.S. 15A-1340.36, as amended by Section 1 of this act, reads as rewritten:

"**§ 15A-1340.36. Determination of ~~restitution.~~the amount of restitution due each victim; entry of civil judgment.**

(a) Amount of Restitution. – ~~In determining the amount of restitution to be made, the court shall take into consideration the resources of the defendant including all real and personal property owned by the defendant and the income derived from the property, 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, but the court is not required to make findings of fact or conclusions of law on these matters. The amount of restitution must be limited to that supported by the record, and the court may order partial restitution when it appears that the damage or loss caused by the offense is greater than that which the defendant is able to pay. If the court orders partial restitution, the court shall state on the record the reasons for such an order.~~The court shall determine the total amount of restitution to which each victim is entitled considering only the factors specified in G.S. 15A-1340.35. The court shall not consider the defendant's ability to pay in making this determination. The total amount of the restitution must be limited to that supported by the record.

(b) Funeral and Burial Expenses Mandatory. – When a defendant is convicted of an offense that proximately resulted in the death of a victim, the amount of restitution shall always include all necessary expenses incurred by or on behalf of the victim's estate for funeral and burial expenses and related services, including the cost of a headstone, if any.

~~(c) When an active sentence is imposed, the court shall consider whether it should recommend to the Secretary of Correction that restitution be made by the defendant out of any earnings gained by the defendant if the defendant is granted work release privileges, as provided in G.S. 148-33.2. The court shall also consider whether it should recommend to the Post-Release Supervision and Parole Commission that restitution by the defendant be made a condition of any parole or post-release supervision granted the defendant, as provided in G.S. 148-57.1.~~Entry of Judgment. – Upon determining the total amount of restitution owed to each victim, the court shall enter a judgment in accordance with G.S. 15A-1340.38 in favor of each victim and against the defendant for that amount."

SECTION 2.3. Article 81C of Chapter 15A of the General Statutes is amended by adding a new section to read:

"**§ 15A-1340.36.1. Determination of restitution payment schedule.**

(a) Payment Upon Sentencing. – If, at the time of sentencing, the defendant is able to pay all or any portion of the total amount of restitution ordered pursuant to G.S. 15A-1340.36, the court shall require payment of that amount by 5:00 P.M. of the day on which the defendant is sentenced. The court shall establish a schedule of payments for the remainder of that total in accordance with this section.

(b) Payment While on Probation. – If the defendant is placed on supervised or unsupervised probation, the court shall:

(1) Determine the portion of the total amount of restitution ordered that the defendant will be able to pay during the term of probation.

(2) Require as a condition of probation that the defendant pay the entire portion that the defendant is able to pay. If the defendant is able to pay the total amount of restitution ordered, the court shall require payment of that total. If the defendant is able to pay only a portion of that total, the court shall require payment of that entire portion.

(3) Establish a schedule of payments or other method of payment that assures that the defendant will, before the end of the term of probation, pay the entire portion that the defendant is able to pay or delegate to a probation officer the authority to do so.

(c) Payment While Serving Active Sentence. – If the defendant is sentenced to an active sentence and the court recommends that the defendant pay restitution out of work release earnings, the court shall enter in the sentencing judgment the total amount of restitution, as determined under G.S. 15A-1340.36, but shall not specify the portion to be paid out of work release earnings. At the time when the defendant is granted work release privileges, the Department of Correction shall:

(1) Determine the portion of the total restitution that the defendant will be able to pay from work release earnings.

(2) Deduct from the defendant's work release earnings and apply, as provided in G.S. 148-33.2, the entire portion of restitution that the defendant is able to pay. If the defendant is able to pay the total amount of restitution, the Department shall require payment of that

total. If the defendant is able to pay only a portion of that total, the Department shall require payment of that entire portion.

(d) Payment While on Post-Release Supervision. – If the defendant is sentenced to an active sentence and the court recommends that the defendant pay restitution as a condition of release under post-release supervision, the court shall enter in the sentencing judgment the total amount of restitution, as determined under G.S. 15A-1340.36, but shall not specify the portion to be paid as a condition of release under post-release supervision. At the time when the defendant is released under post-release supervision, the Parole and Post-Release Supervision Commission shall:

(1) Determine the portion of the total restitution that the defendant will be able to pay during the term of post-release supervision.

(2) Require as a condition of release under post-release supervision that the defendant pay the entire portion that the defendant is able to pay. If the defendant is able to pay the total amount ordered, the Commission shall require payment of that total. If the defendant is able to pay only a portion of that total, the Commission shall require payment of that entire portion.

(3) Establish a schedule of payments or other method of payment that assures that the defendant will, before the end of the term of post-release supervision, pay the entire amount that the defendant is able to pay or delegate to a post-release supervision officer the authority to do so.

(e) Factors for Determining Ability to Pay and Payment Schedule. – In determining the defendant's ability to pay restitution and the manner in which the restitution is to be made, all the resources of the defendant shall be taken into consideration, including without limitation:

(1) All real and personal property owned by the defendant and the income derived from the property,

(2) The defendant's present and potential future ability to earn,

(3) The defendant's obligation to support dependents,

(4) Restitution owed to other victims, and

(5) Any other matters that pertain to the defendant's ability to make restitution.

The court is not required to make findings of fact or conclusions of law under this subsection."

SECTION 2.4. G.S. 15A-1343(d) reads as rewritten:

"(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~~ When a person is entitled to restitution under Article 46 of this Chapter, the court shall ~~take into consideration the factors set out~~ determine and require payment of restitution as provided in ~~G.S. 15A-1340.35 and G.S. 15A-1340.36.~~G.S.15A-1340.35, 15A-1340.36, and 15A-1340.36.1. 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."

SECTION 2.5. G.S. 148-33.2 reads as rewritten:

"**§ 148-33.2. Restitution by prisoners with work-release privileges.**

(a) Repealed by Session Laws 1985, c. 474, s. 4.

(b) As a rehabilitative measure, the Secretary of the Department of Correction is authorized to require any prisoner granted work-release privileges to make restitution or reparation to an aggrieved party from any earnings gained by the defendant while on work release when the sentencing court recommends that restitution or reparation be paid by the defendant out of any earnings gained by the defendant if he is granted work-release privileges and out of other resources of the defendant, including all real and personal property owned by the defendant and the income derived from such property. ~~The~~ Except when restitution is recommended for a victim entitled to restitution under Article 46 of Chapter 15A of the General Statutes, the Secretary shall not be bound by such recommendation, but if they elect not to implement the recommendation, they shall state in writing the reasons therefor, and shall forward the same to the sentencing court.

(c) When an active sentence is imposed, the court shall consider whether, as a rehabilitative measure, it should recommend to the Secretary of Correction that restitution or reparation be made by the defendant out of any earnings gained by the defendant if he is granted work-release privileges and out of other resources of the defendant, including all real and personal property owned by the defendant, and income derived from such property. If the court determines that restitution or reparation should not be recommended, it shall so indicate on the commitment. If, however, the court determines that restitution or reparation should be recommended, the court shall make its recommendation a part of the order committing the defendant to custody. The recommendation shall be in accordance with the applicable provisions of G.S. 15A-1343(d) and Article 81C of Chapter 15A of the General Statutes. If the offense is one in which there is evidence of physical, mental or sexual abuse of a minor, the court may order the defendant to pay from work release earnings the cost of rehabilitative treatment for the minor. The Administrative Office of the Courts shall prepare and distribute forms which provide ample space to make restitution or reparation recommendations incident to commitments, which forms shall be conveniently structured to enable the sentencing court to make its recommendation.

(d) The Secretary of the Department of Correction shall establish rules and regulations to implement this section, which shall include adequate notice to the prisoner that the payment of restitution or reparation from any earnings gained by the

prisoner while on work release is being considered as a condition of any work-release privileges granted the prisoner, and opportunity for the prisoner to be heard. Such rules and regulations shall also provide additional methods whereby facts may be obtained to supplement the recommendation of the sentencing court. When work release privileges are granted to a prisoner who has been ordered to pay restitution to a victim entitled to restitution under Article 46 of Chapter 15A of the General Statutes, the amount to be deducted from the prisoner's work release earnings shall be determined as provided in G.S. 15A-1340.35, 15A-1340.36, and 15A-1340.36.1, and that amount shall be so deducted."

SECTION 2.6. G.S. 148-57.1 reads as rewritten:

"**§ 148-57.1. Restitution as a condition of parole or post-release supervision.**

(a) Repealed by Session Laws 1985, c. 474, s. 5.

(b) As a rehabilitative measure, the Post-Release Supervision and Parole Commission is authorized to require a prisoner to whom parole or post-release supervision is granted to make restitution or reparation to an aggrieved party as a condition of parole or post-release supervision when the sentencing court recommends that restitution or reparation to an aggrieved party be made a condition of any parole or post-release supervision granted the defendant. When imposing restitution as a condition and setting up a payment schedule for the restitution, the Post-Release Supervision and Parole Commission shall take into consideration the resources of the defendant, including all real and personal property owned by the defendant and the income derived from such property, his ability to earn, and his obligation to support dependents. ~~The~~ Except when restitution is recommended for a victim entitled to restitution under Article 46 of Chapter 15A of the General Statutes, the Post-Release Supervision and Parole Commission shall not be bound by such recommendation, but if it elects not to implement the recommendation, it shall state in writing the reasons therefor, and shall forward the same to the sentencing court.

(c) When an active sentence is imposed, the court shall consider whether, as a rehabilitative measure, it should recommend to the Post-Release Supervision and Parole Commission that restitution or reparation by the defendant be made a condition of any parole or post-release supervision granted the defendant. If the court determines that restitution or reparation should not be recommended, it shall so indicate on the commitment. If, however, the court determines that restitution or reparation should be recommended, the court shall make its recommendation a part of the order committing the defendant to custody. The recommendation shall be in accordance with the applicable provisions of Article 81C of Chapter 15A of the General Statutes. The Administrative Office of the Courts shall prepare and distribute forms which provide ample space to make restitution or reparation recommendations incident to commitments, which forms shall be conveniently structured to enable the sentencing court to make its recommendation.

If the offense is one in which there is evidence of physical, mental or sexual abuse of a minor, the court may order, as a condition of parole or post-release supervision, that the defendant pay the cost of any rehabilitative treatment for the minor.

(d) The Post-Release Supervision and Parole Commission shall establish rules and regulations to implement this section, which shall include adequate notice to the prisoner that the payment of restitution or reparation by the prisoner is being considered as a condition of any parole or post-release supervision granted the prisoner, and opportunity for the prisoner to be heard. Such rules and regulations shall also provide additional methods whereby facts may be obtained to supplement the recommendation of the sentencing court. When a prisoner is released under post-release supervision, the Commission shall determine and require payment of restitution as provided in G.S. 15A-1340.35, 15A-1340.36, and 15A-1340.36.1."

NO EARLY TERMINATION OF PROBATION UNTIL COMPLETION OF RESTITUTION OBLIGATION

SECTION 3. G.S. 15A-1342(b) reads as rewritten:

"(b) Early Termination. – The court may terminate a period of probation and discharge the defendant at any time earlier than that provided in subsection (a) if warranted by the conduct of the defendant and the ends of ~~justice.~~ justice, provided that the court shall not terminate a period of probation or discharge the defendant at any time earlier than that provided in subsection (a) unless the defendant has paid in full all restitution payable, as a condition of probation, to a victim entitled to restitution under Article 46 of this Chapter."

DISTRIBUTION OF RESTITUTION PAYMENTS TO VICTIM'S NEXT OF KIN AFTER CLOSING OF ESTATE

SECTION 4. Article 21 of Chapter 28A of the General Statutes is amended by adding a new section to read:

"**§ 28A-21-3.2. Restitution payments; list of next of kin.**

(a) The following definitions apply in this section:

(1) "Victim" means a victim as defined in G.S. 15A-830(a)(7).

(2) "Restitution payment" means any amount payable to a victim pursuant to Article 81C of Chapter 15A of the General Statutes.

(3) "Next of kin" means any residuary beneficiary under the victim's will, if any. If no will exists, then "next of kin" means the same as defined in G.S. 15A-830(a)(6).

(b) A personal representative or collector of the estate of a victim may file, along with a final account, a list of the victim's next of kin who are entitled to exercise the victim's rights pursuant to G.S. 15A-830(b) if all of the following conditions are met:

(1) There are no unsatisfied creditors.

(2) There are no unsatisfied general monetary bequests.

(3) All assets other than any potential future restitution payments have been distributed.

(c) A list of next of kin, signed under oath, must contain the following information:

(1) The name and address of the personal representative or collector.

(2) The name and social security number of the decedent.

(3) The name and address, if known, of all next of kin who are entitled to exercise the victim's rights pursuant to G.S. 15A-830(b).

(4) The share of each next of kin in the restitution payable to the victim.

(d) The clerk of superior court must review the list of next of kin to determine if the listed next of kin and their shares of potential future restitution payments are in accordance with the provisions of the victim's will, if any, and if no will exists, then in accordance with the Intestate Succession Act. If so, the clerk shall accept the list of next of kin for filing and endorse the clerk's approval thereon, which shall be prima facie evidence of correctness.

(e) Upon determination by the clerk of superior court that the estate of a victim has been closed, all restitution payments may be paid directly to those next of kin and in those shares set forth on a list of next of kin filed under this section, without the estate's having to be reopened under G.S. 28A-23-5.

(f) The estate of a decedent who is entitled to any restitution payment may be reopened, if necessary, in accordance with G.S. 28A-23-5 in order to file a list of next of kin under this section."

INCOME WITHHOLDING

SECTION 5.1. G.S. 15A-832 is amended by adding a new subsection to read:

"(h) In order to aid the court in ordering income withholding under G.S. 15A-1340.39, the prosecuting attorney shall make reasonable efforts to identify all of the defendant's sources of disposable income as defined in that section and shall, at the sentencing hearing, provide the court with the name and address of each employer paying disposable income to the defendant and the amount of the defendant's disposable income from each such employer."

SECTION 5.2. Article 81C of Chapter 15A of the General Statutes is amended by adding a new section to read:

"**§ 15A-1340.39. Income withholding to enforce restitution as a condition of probation.**

(a) Definitions. – The following definitions apply in this section:

(1) "Defendant" means a person who is convicted of a crime to which the Crime Victims' Rights Act applies, and who is required to pay restitution as a condition of probation.

(2) "Disposable income" means any form of periodic payment to an individual, regardless of sources, including but not limited to wages, salary, commission, self-employment income, bonus pay, severance pay, sick pay, incentive pay, vacation pay, compensation as an independent contractor, worker's compensation, disability, annuity, survivor's benefits, pension and retirement benefits, interest, dividends, rents, royalties, trust income and other similar payments, which remain after the deduction of amounts for federal, State, and local taxes, Social Security, and involuntary retirement contributions. However, Supplemental Security Income, Work First Family Assistance, and other public assistance payments shall be excluded from disposable income. For wage payors, disposable income means "wage" as it is defined by G.S. 95-25.2(16).

(3) "Division" means the Division of Community Correction of the Department of Correction.

(4) "Employer" means any employer or other payor of disposable income.

(b) Entry of Income Withholding Order. – Whenever the court places a defendant on supervised or unsupervised probation and requires payment of restitution as a condition of probation, the court shall enter an order for income withholding pursuant to this section, if both of the following conditions are also met:

(1) The term of probation is six months or longer.

(2) The defendant is required to make periodic payments throughout the term of probation, according to a schedule set by the court or by a probation officer.

(c) Determinations by Court. – Before entering an order for income withholding, the court shall determine all of the following:

(1) The defendant's total disposable income from all sources.

(2) The names and addresses of the defendant's employers.

(3) The defendant's pay period for each employer (e.g. weekly, biweekly, semimonthly or monthly).

(4) The amount to be withheld by each employer for each pay period.

(d) Multiple Withholding Orders. – If, at the time of sentencing, a defendant is already subject to one or more withholding orders under this section:

(1) The defendant shall so notify the court at the time of sentencing.

(2) The court shall then determine whether the defendant has enough disposable income so that, after all prior withholding orders are complied with, further amounts may be withheld under this section without exceeding the aggregate withholding limits specified in section 303(b) of the Consumer Credit Protection Act, 15 U.S.C. § 1673.

(3) If so, the court shall order that any available amount be withheld from the defendant's disposable income.

(4) If not, the court shall deny withholding.

(e) Amount Withheld. – The amount to be withheld shall include:

(1) The lesser of:

a. The amount of the periodic payment that the defendant is required to make as a condition of probation, prorated if necessary per pay period,

b. The amount ordered withheld pursuant to subsection (d) of this section,

c. The maximum withholding allowable under section 303(b) of the Consumer Credit Protection Act, 15 U.S.C. § 1673, and

(2) A processing fee of two dollars ($2.00) to cover the cost of withholding, to be retained by the employer for each withholding unless waived by the employer.

(f) Notice to Employers. – Immediately upon entry of an income withholding order under this section, a notice of obligation to withhold shall be served on each employer, subject to the following provisions:

(1) The notice shall include all of the following:

a. The amount of disposable income upon which the withholding is based.

b. The pay period upon which the withholding is based.

c. The amount to be withheld each pay period.

d. The maximum percentage of the defendant's disposable income that may be withheld under section 303(b) of the Consumer Credit Protection Act, 15 U.S.C. §1673.

e. The address of the clerk of superior court to which the amounts withheld shall be remitted.

f. All of the employer's duties under subsections (g), (n), and (o) of this section and the penalties for failing to perform those duties.

g. The case number of the case in which the income withholding has been ordered.

(2) The notice shall be served pursuant to Rule 5 of the North Carolina Rules of Civil Procedure, G.S. 1A-1, Rule 5. If the notice is mailed, service shall be effective upon mailing.

(3) If the defendant is placed on supervised probation, the Division shall serve the notice.

(4) If the defendant is placed on unsupervised probation, the clerk of superior court shall service the notice.

(g) Employer's Responsibilities. – Upon service of a notice of obligation to withhold, each employer shall do all of the following:

(1) If the defendant's disposable income is equal to or greater than that specified in the notice, withhold the amount specified in the notice from the defendant's disposable income.

(2) If a lesser amount of disposable income is available for any pay period, withhold a proportionate part of the lesser amount.

(3) Begin withholding from the defendant's disposable income for the first pay period that begins 14 or more days after service of the notice.

(4) Remit the amount withheld to the clerk of superior court at the address provided in the notice.

(5) Include with the remission the name of the defendant, the amount remitted and the case number of the case in which the withholding was ordered.

(6) Continue withholding until further notice from the court.

(7) Withhold under this section after withholding for child support and before withholding for any other obligation.

(8) Promptly notify the court, in writing, if the employer has been served with one or more other orders to withhold income under this section.

(9) Notify the court immediately when the defendant terminates employment or otherwise ceases to be entitled to disposable income from the employer and provide the defendant's last known address and the name and address of the defendant's new employer, if known.

(h) Proceeding to Impose Sanctions. – The court shall impose sanctions as provided in subsection (i) of this section if it finds that an employer has failed to comply with any of its duties under subsection (g) of this section. The procedure shall be as follows:

(1) A proceeding to impose sanctions shall be commenced by filing a motion in the criminal case in which the judgment containing the withholding order was entered.

(2) A motion under this subsection may be filed by the following:

a. The Division, if the defendant is on supervised probation.

b. The clerk of superior court, if the defendant is on unsupervised probation.

c. The victim, if the victim has verified information showing that the employer has failed to comply with any of its duties under subsection (g) of this section, and no motion has been filed by the Division or the clerk of superior court.

(3) When filed, each motion shall be placed on the civil motion calendar for the trial division in which the judgment was entered and scheduled for the earliest available date that is not less than 30 days after the motion is filed.

(4) The moving party shall immediately serve a copy of the motion and a notice of the hearing on the employer.

(5) Service shall be made pursuant to Rule 4 of the North Carolina Rules of Civil Procedure, G.S. 1A-1, Rule 4.

(6) If, after the hearing, the court finds by a preponderance of the evidence that the employer has, willfully and without justification or excuse, failed to perform one or more of its duties under subsection (g) of this section, the court shall impose sanctions as provided in subsection (i) of this section.

(i) Sanctions. – The sanctions that may be imposed upon an employer for failure to perform one or more of its duties under subsection (g) of this section are:

(1) First incident:

a. An order that the employer commence withholding beginning with the first pay period that commences after the order, and

b. An order to comply promptly with any other duty under subsection (g) of this section.

(2) Second incident:

a. Any sanction authorized under subdivision (1) of this subsection, and

b. Civil or criminal contempt.

(3) Third and subsequent incidents:

a. Any sanction authorized under subdivisions (1) or (2) of this subsection, and

b. For cases of failure to withhold, a civil penalty not greater than the total amount that has not been withheld since original service of the notice, which penalty shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

(j) Modification or Termination. – The court may modify or terminate an income withholding order entered under this section, as follows:

(1) The following are grounds for modification or termination:

a. An employer is unable for any reason to comply with withholding as ordered by the court.

b. The defendant's employer or disposable income has changed since an order for withholding was most recently entered in the case.

c. Any other good cause shown.

(2) A motion under this section may be filed by an employer, the victim, the Division, or a prosecuting attorney.

(3) When filed, each motion shall be placed on the civil motion calendar for the trial division in which the judgment was entered and scheduled for the earliest available date that is not less than 30 days after the motion is filed.

(4) The moving party shall serve a copy of the motion and a notice of the hearing on the other parties specified in subdivision (1).

(5) Service shall be made pursuant to Rule 5 of the North Carolina Rules of Civil Procedure, G.S. 1A-1, Rule 5. If service is made by mail, service is effective upon mailing.

(6) If, after the hearing, the court finds by a preponderance of the evidence that one or more grounds for modification or termination of withholding exist, it shall terminate or appropriately modify the withholding.

(k) Change in Employment. – When a defendant changes employers after service on a current employer of a notice of obligation to withhold under this section:

(1) The defendant shall promptly provide the following information:

a. The name and street address of the new employer,

b. The defendant's disposable income from that employer.

(2) The information shall be provided to:

a. The Division, if the defendant is on supervised probation,

b. The clerk of superior court, if the defendant is on unsupervised probation.

(3) Upon receipt of new employer information under this subsection, a notice of obligation to withhold shall be served on the new employer as provided in subsection (h) of this section.

(l) Termination Upon Completion of Probation. – All income withholding orders entered under this section shall terminate when the defendant's probation is revoked or terminated or expires at the end of the term of probation. Notice of termination shall be given to each employer that is under a current obligation to withhold under this section. Notice shall be given by:

(1) The Division, if the defendant is on supervised probation.

(2) The clerk of superior court, if the defendant is on unsupervised probation.

(m) Clerk's Responsibilities. – Upon receipt of any funds remitted by an employer under this section, the clerk of superior court shall enter the amount remitted as a partial payment on all of the defendant's monetary conditions of probation and shall disburse those funds as provided by law. If a restitution judgment has been docketed in favor of the victim, payments received through income withholding shall be applied to that judgment as provided in G.S. 15A-1340.38(c).

(n) Civil Penalty for Wrongful Violation by Employer. – An employer shall not discharge from employment, refuse to employ, or otherwise take disciplinary action against any defendant solely because the defendant is subject to withholding under this section. When an employer violates this subsection:

(1) The employer shall be liable, in a proceeding pursuant to subsection (h) of this section, for a civil penalty as follows:

a. For a first offense, the civil penalty shall be one hundred dollars ($100.00).

b. For the second offense, the civil penalty shall be five hundred dollars ($500.00).

c. For the third and each subsequent offense, the civil penalty shall be one thousand dollars ($1,000), respectively.

d. The clear proceeds of a civil penalty collected pursuant to this subdivision shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

(2) Any employer shall also be liable, in a civil action, for reasonable damages suffered by a defendant as a result of the violation, and a defendant discharged or demoted in violation of this paragraph shall be entitled to be reinstated to his former position. The statute of limitations for actions under this subdivision shall be one year pursuant to G.S. 1-54.

(o) Criminal Penalty for Wrongful Violation by Employer. – An employer that withholds any amount from the disposable income of a defendant, and fails to remit any portion of the amount so withheld as required by this section, is guilty of a Class 1 misdemeanor, provided that the employer shall not be found guilty under this subsection if the employer remits the total amount so withheld promptly after being charged with the misdemeanor."

SECTION 5.3. G.S. 15A-1343(b) is amended by adding a new subdivision to read:

"(9a) If income withholding is ordered under G.S. 1340.39, comply with all the duties of the defendant that are specified in that section."

SETOFF DEBT COLLECTION OF RESTITUTION JUDGMENTS

SECTION 6.1. G.S. 105A-2(2) reads as rewritten:

"(2) Debt. – Any of the following:

a. A sum owed to a claimant agency that has accrued through contract, subrogation, tort, operation of law, or any other legal theory regardless of whether there is an outstanding judgment for the sum.

b. A sum a claimant agency is authorized or required by law to collect, such as child support payments collectible under Title IV, Part D of the Social Security ~~Act.~~Act or restitution collectible under G.S. 15A-1340.40.

c. A sum owed as a result of an intentional program violation or a violation due to inadvertent household error under the Food Stamp Program enabled by Chapter 108A, Article 2, Part 5.

d. Reserved for future codification purposes.

e. A sum owed as a result of having obtained public assistance payments under any of the following programs through an intentional false statement, intentional misrepresentation, intentional failure to disclose a material fact, or inadvertent household error:

1. The Work First Program provided in Article 2 of Chapter 108A of the General Statutes.

2. The State-County Special Assistance for Adults Program enabled by Part 3 of Article 2 of Chapter 108A of the General Statutes.

3. A successor program of one of these programs."

SECTION 6.2. G.S. 105A-13(a) reads as rewritten:

"(a) State Setoff. – To recover the costs incurred by the Department in collecting debts under this Chapter, a collection assistance fee of five dollars ($5.00) is imposed on each debt collected through setoff. The Department must collect this fee as part of the debt and retain it. The collection assistance fee shall not be added to child support debts or debts for restitution collected under G.S. 15A-1340.40 or collected as part of child support ~~debts.~~ debts or of debts for restitution collected pursuant to G.S. 15A-1340.40. Instead, the Department shall retain from collections under Division II of Article 4 of Chapter 105 of the General Statutes the cost of collecting child support debts under this Chapter."

SECTION 6.3. G.S. 15A-1340.38(d) reads as rewritten:

"(d) An appeal of the conviction upon which the order of restitution is based shall stay execution on the judgment and setoff debt collection of the judgment until the appeal is completed. If the conviction is overturned, the judgment shall be cancelled."

SECTION 6.4. G.S. 15A-1340.38 is amended by adding a new subsection to read:

"(e) The court, before entering an order for restitution that is to be docketed as a civil judgment under this section, shall require the defendant to provide the defendant's complete, current, and correct social security number or other taxpayer identification number. Failure to comply with this requirement is punishable as a contempt of court. The defendant's social security number or other taxpayer identification shall be entered in the records of the court for the purpose of collecting the judgment through setoff debt collection pursuant to G.S. 15A-1340.40."

SECTION 6.5. Article 81C of Chapter 15A of the General Statutes is amended by adding a new section to read:

"**§ 15A-1340.40. Setoff debt collection.**

(a) The Administrative Office of the Courts, as a claimant agency under Chapter 105A of the General Statutes, is authorized to collect the amount of each restitution judgment docketed pursuant to G.S. 15A-1340.38, through use of the setoff debt collection procedures specified in that Chapter, subject to the following conditions:

(b) The Administrative Office of the Courts shall initiate setoff debt collection to collect each restitution judgment upon the later of the following:

(1) If the defendant, upon conviction, is sentenced to an active sentence, immediately upon entry of the judgment imposing the sentence.

(2) If the defendant, upon conviction, is placed on probation, whether supervised or unsupervised, immediately upon revocation or termination of the probation or expiration of the probation term.

(c) The total amount of each restitution judgment, less all payments credited against the judgment from other sources, shall be collectible through setoff debt collection.

(d) The total amount collected from each defendant through setoff debt collection shall be credited against all judgments for attorneys' fees docketed against the defendant under G.S. 7A-455 and for restitution docketed against the defendant under G.S. 15A-1340.38, in the order in which the judgments were docketed pursuant to G.S. 1-234.

(e) The Administrative Office of the Courts shall disburse all amounts collected on each restitution judgment directly to the victim named in the judgment and shall immediately notify the clerk of superior court of the county in which the judgment is docketed of the full amount so disbursed. The clerk shall then enter the amount so disbursed in full or partial satisfaction of the restitution judgment.

(f) For each restitution judgment, setoff debt collection shall continue until the earliest of the following:

(1) The date upon which the judgment is fully paid and satisfied,

(2) The date upon which the judgment becomes unenforceable under G.S. 1-306.

(g) Neither a clerk of superior court, nor the Administrative Office of the Courts, nor the State of North Carolina, nor any officer or employee of any of them, shall be liable to any person for any error or omission made in carrying out setoff debt collection pursuant to this section."

SECTION 6.6. The Administrative Office of the Courts shall, as promptly as is reasonably possible considering its available technology resources and the other demands on their use, adapt its current setoff debt collection technology so that it is also able to collect restitution pursuant to this section. This section shall become effective as of the date on which the Administrative Office of the Courts certifies in writing to the Joint Legislative Committee on Governmental Operations that it has done so and shall apply to all restitution judgments docketed on and after that date.

SECTION 6.7. There is appropriated to the Judicial Department in the current operating budget for the 2005-2007 fiscal biennium an amount sufficient to cover all costs to be incurred in implementing the setoff debt collection of restitution under this section.

SECTION 6.8. There is appropriated to the Office of Indigent Defense Services in the current operations budget for the 2005-2007 fiscal biennium an amount sufficient to compensate it for the amount that is currently being collected through setoff debt collection on attorneys' fee judgments and that will be transferred to restitution judgments as a result of the enactment of this section.

AOC STUDY ON THIRD-PARTY COLLECTION

SECTION 7. The Administrative Office of the Courts shall study the use of third-party collection as a means to improve the collection of restitution and other court fines, fees, and costs. The Administrative Office of the Courts shall report its findings and recommendations to the 2006 Regular Session of the 2005 General Assembly upon its convening.

EFFECTIVE DATE

SECTION 8. Sections 7 and 8 of this act are effective when they become law. Sections 6.1 through 6.6 of this act are effective and apply as provided in Section 6.6 of this act. The remainder of this act becomes effective December 1, 2005, and applies to all offenses committed on and after that date.

House Judiciary I Committee

July 28, 2005
10:00 a.m.

Minutes

The House Judiciary I Committee met on Thursday, July 28, 2005 at 10:00 a.m. in Room 1228 in the Legislative Building. Vice Chair Deborah Ross called the meeting to order and the following members were present: Representatives Alexander, Blust, Capps, Goodwin, Harrison, Insko, Miller, Stam, Stiller and West. A copy of the agenda and the visitor's registration is attached, (Attachments I and II).

Senator Cowell was recognized to continue the discussion of Senate Bill 1029, AN ACT TO CLARIFY AND ENHANCE THE LAWS RELATING TO DOMESTIC VIOLENCE, TO ENACT LAWS REGARDING DOMESTIC VIOLENCE VICTIMS AND TENANCY, TO CLARIFY THAT THE FAILURE TO FILE A COUNTERCLAIM IN A SMALL CLAIMS ACTION DOES NOT BAR THE CLAIM IN A SEPARATE ACTION AND TO MAKE CHANGES TO LANDLORD TENANT LAW. The bill was previously before the Committee on July 7 at which time a proposed committee substitute, (Attachment III), was adopted for the purpose of discussion. An explanation of the bill was offered by Ms. Susan Sitze (see July 7 minutes).

A new proposed House committee substitute was distributed to the Committee, (Attachment IV), and Representative West moved that it be adopted for the purpose of discussion. The motion carried.

Senator Cowell reminded the committee that the bill had been presented at a previous meeting and that as a result of that discussion several technical corrections had been made. She thanked representatives from the Domestic Violence Coalition, the Apartment Association, realtors and the Justice Center for their help with the bill

Ms. Susan Sitze, Committee Counsel, was recognized to explain the changes made in the new committee substitute. Those changes are included in the bill summary prepared by Ms. Sitze and is attached to the minutes, (Attachment V).

Following brief discussion, Representative Goodwin moved a favorable report for the House committee substitute and an unfavorable report for the Senate committee substitute. The motion carried, (Attachment VI).

Senator Dorsett was recognized to explain Senate Bill 590, AN ACT TO FURTHER PROTECT CONSUMERS SEEKING ASSISTANCE WITH MANAGING THEIR DEBTS, (Attachment VII). A proposed House committee substitute was distributed, (Attachment VIII), and Representative Insko moved that it be adopted for the purpose of discussion. The motion carried.

Senator Dorsett explained that the bill was a consumer protection bill designed to protect consumers seeking assistance with debt. She said that over 1,000 complaints had been received by the Office of the Attorney General regarding debt adjusting and foreclosure assistance practices since 2002. She stated that the bill does not prohibit foreclosure assistance agencies from doing business, but prohibits the collection of the up-front fees before the service has been rendered. She noted that the bill is supported by a large number of organizations from around the state.

Ms. Karen Cochrane-Brown, Research Division Attorney, was recognized to make further comment. She said that under current criminal law it is a Class 2 misdemeanor to engage in the business or practice of debt adjusting. She pointed out that the bill amends the list of persons and organizations exempt from the law. They are listed in the bill summary prepared by Ms. Cochrane-Brown that is attached to the minutes, (Attachment IX). She noted that the bill amends the current law with regard to the definition of debt adjusting. The definition is expanded to include the business or practice of debt settlement or foreclosure assistance by one who is acting as an intermediary between the debtor and the debtor's creditors for the purposes of reducing, settling or altering terms of payment of debts regardless of whether the person is compensated in advance or actually distributes the debtor's funds to creditors. Additional provisions of the bill are outlined in the summary.

Mr. Josh Stein, Office of the Attorney General, was recognized and spoke briefly in support of the bill. He said that the bill addresses foreclosure assistance only when the fee is paid in advance. Mr. Stein stated that passage of this bill would be following the recommendations of the US Department of Justice, the US Trustee program, the National Community Law Center, and the states of Maryland and Minnesota who have banned foreclosure assistance when the fee is taken in advance.

Committee discussion followed and Representative Blust questioned the up-front payment provision.

Mr. Phillip Lehman, Office of the Attorney General, was recognized to respond to questions. He noted a precedent regarding this type of prohibition on advance fees in the area credit repair and loan brokers, because these are highly problematic areas where there is widespread evidence of consumer fraud and consumer abuse. He added that the purpose of the assistance is to attempt to keep people out of bankruptcy.

Representative Goodwin asked why the foreclosure assistance practices could not be highly regulated? Mr. Lehman replied that this alternative had been explored, but that it would require too much in the way of resources and funding, and that for most of the entities who are nonprofit with limited budgets, it would be too costly to have licensing fees, examinations, etc.

Representative Stiller expressed concern regarding the up-front $40 fee saying that this may make the process so restrictive that attorneys may not be willing to take on clients.

Mr. Peter Larache, President, Consumer Credit Counseling Service of Forsyth County, and the Credit Counseling Association of North Carolina was recognized to respond to questions. He said that there is a network of HUD approved housing counseling agencies that have certified counselors that provide foreclosure prevention assistance for free. He said that HUD grants provide funding for these agencies, along with other resources such as United Way and donations from individuals.

Vice Chair Ross announced that the Committee would consider the bill further at a future meeting and the meeting was adjourned at 10:50 a.m.

Representative Deborah Ross
Vice Chairman

Emily Reynolds Freeman
Committee Clerk

HOUSE COMMITTEE ON JUDICIARY I

July 28, 2005
10:00 a.m.

OPENING REMARKS

AGENDA ITEMS

Senate Bill 590 – Consumer Credit Counseling/Debt Management
Senator Dorsett

Senate Bill 1029 – Clarify/Enhance Domestic Violence & Tenancy Laws
Senator Cowell

ADJOURNMENT

ATTACHMENT II

VISITOR REGISTRATION SHEET

House Judiciary I — **Name of Committee**

July 28, 2005 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jana Estes	Rep. Stam
Rick Webb	NCGA
Matt Latrick	NCGA
Milton Alford	OSBM
David Moakler	HSJ
Brad Lamb	NC Consumers Council
Peter Skillern	CRA-NC
Peter Laroche	CCCS of Forsyth County
Josh Stein	NCAGO
Lynne Weaver	NCAGO
Phil Lehman	NC AGO

VISITOR REGISTRATION SHEET

House Judiciary I — July 28, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Teresa Pell	NC Council for Women / DV Commission
Jo McCants	AOC
Stephanie Simpson	NC Association of REALTORS
Rick Zechini	NC Assoc. of REALTORS
Leslie Bevacqua Cowen	The Freedom Point
JEANANN WOLFNER	NCAGO
Will Polk	NCAGO
Mary Campbell Smith	324 E. Allenton St. Mt. Gilead, NC 27306
Emily Smith	324 E. Allenton St. Mt. Gilead, NC. 27306
Archie Smith	324 E Allenton St Mt. Gilead, NC 27306

VISITOR REGISTRATION SHEET

House Judiciary I — July 28, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Lu-Ann Cole	CFSA
Eddie Caldwell	NC Sheriffs Assn
Paul Stock	NC Bankers Assn.
B Nash	Mann Tatum PA
Jeana E. Blackmarr	NCDOT - law clerk
Marcil Chestnut	Sp Dep AG. for the Comm. Pls.
Hal Miller	NC AFCT
Al Ripley	NC Justice Ctr
Josh Stein	NCAGO
Connie Wilson	SSI
Lee Hedgepeth	KCLH

VISITOR REGISTRATION SHEET

House Judiciary I — July 28, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
JOHN WALL	Attorney 1803 Carmel Rd Greensboro NC 27408
[signature]	NMRS
Russ Dubisky	CCPS
Nadia Bhatti	Poyner + Spruill
Bria Bartholomy	Poyner + Spruill
DAVID BARNES	Poyner + Spruill
Betty Boop	Cartoon Network

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 1029
Judiciary I Committee Substitute Adopted 5/31/05
PROPOSED HOUSE COMMITTEE SUBSTITUTE S1029-CSSA-22 [v.5]

7/6/2005 7:39:00 PM

Short Title: Clarify/Enhance Domestic Vio. & Tenancy Laws. (Public)

Sponsors:

Referred to:

March 24, 2005

A BILL TO BE ENTITLED

AN ACT TO CLARIFY AND ENHANCE THE LAWS RELATING TO DOMESTIC VIOLENCE, TO ENACT LAWS REGARDING DOMESTIC VIOLENCE VICTIMS AND TENANCY, TO CLARIFY THAT THE FAILURE TO FILE A COUNTERCLAIM IN A SMALL CLAIMS ACTION DOES NOT BAR THE CLAIM IN A SEPARATE ACTION AND TO MAKE CHANGES TO LANDLORD TENANT LAW.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 50B-3 reads as rewritten:

"**§ 50B-3. Relief.**

(a) ~~The~~ If the court, including magistrates as authorized under G.S. 50B-2(c1), ~~may grant any~~finds that an act of domestic violence has occurred, the court shall grant a protective order ~~to bring about a cessation of acts of domestic violence. The orders may:~~restraining the defendant from further acts of domestic violence. A protective order may also be entered by consent of the parties. A protective order may include any of the following types of relief:

(1) Direct a party to refrain from such ~~acts;~~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;~~household.

(3) Require a party to provide a spouse and his or her children suitable alternate ~~housing;~~housing.

(4) Award temporary custody of minor children and establish temporary visitation 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;~~process.

(5) Order the eviction of a party from the residence or household and assistance to the victim in returning to ~~it;~~it.
(6) Order either party to make payments for the support of a minor child as required by ~~law;~~law.
(7) Order either party to make payments for the support of a spouse as required by ~~law;~~law.
(8) Provide for possession of personal property of the ~~parties;~~parties.
(9) Order a party to refrain from doing any or all of the following:
a. Threatening, abusing, or following the other ~~party;~~party.
b. Harassing the other party, including by telephone, visiting the home or workplace, or other ~~means, or~~means.
c. Otherwise interfering with the other ~~party;~~party.
(10) Award attorney's fees to either ~~party;~~party.
(11) Prohibit a party from purchasing a firearm for a time fixed in the ~~order;~~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~~Commission.
(13) Include any additional prohibitions or requirements the court deems necessary to protect any party or any minor child.

(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.

(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,~~two years, including an order that previously has been renewed, upon a motion by the aggrieved party filed before the expiration of the current 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.

(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. If the defendant is ordered to stay away from the child's school, a copy of the order shall be delivered promptly by the sheriff to the principal or, in the principal's absence, the assistant principal or the principal's designee of each school named in the order.

(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, renewals, and dismissals of the order shall also be promptly entered."

SECTION 2. G.S. 50B-3.1(f) reads as rewritten:

"(f) 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 or final disposition of any pending criminal charges and not later than 90 days after the expiration of the current ~~order.~~order or final disposition of any pending criminal charges. 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;~~renewed.

(2) Whether the defendant is subject to any other protective ~~orders; or~~orders.

(3) Whether the defendant is disqualified from owning or possessing a firearm pursuant to 18 U.S.C. § 922 or any State law.

(4) Whether the defendant has any pending criminal charges, in either State or federal court, committed against a person with whom the defendant has a personal relationship as defined in G.S. 50B-1(b).

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 ~~law.~~law or if the defendant has any pending criminal charges, in either State or federal court, committed against a person with whom the defendant has a personal relationship as defined in G.S. 50B-1(b) until the final disposition of those charges."

SECTION 3. G.S. 50B-3.1(g) reads as rewritten:

"(g) Motion for Return by Third-Party Owner. – A third-party owner of firearms, ammunition, or permits who is otherwise eligible to possess such items may file a motion requesting the return to said third party of any such items in the possession of the sheriff seized as a result of the entry of a domestic violence protective order. The motion must be filed not later than 30 days after the seizure of the items by the sheriff. Upon receipt of the third party's motion, the court shall schedule a hearing and provide written notice to all parties and the sheriff. The court shall order return of the items to the third party unless the court determines that the third party is disqualified from owning or possessing said items pursuant to State or federal ~~law.~~law or the third party has pending criminal charges, in either State or federal court, committed against a person with whom the third party has a personal relationship as defined in G.S. 50B-1(b). No firearms shall be returned while the criminal charges are pending. If the court denies the return of said items to the third party, the items shall be disposed of by the sheriff as provided in subsection (h) of this section."

SECTION 4. G.S. 50-13.1(c) reads as rewritten:

"(c) For good cause, on the motion of either party or on the court's own motion, the court may waive the mandatory setting under Article 39A of Chapter 7A of the General Statutes of a contested custody or visitation matter for mediation. Good cause may include, but is not limited to, the following: a showing of undue hardship to a party; an agreement between the parties for voluntary mediation, subject to court approval; allegations of abuse or neglect of the minor child; allegations of alcoholism, drug abuse, or ~~spouse abuse;~~domestic violence between the parents in common; or allegations of severe psychological, psychiatric, or emotional problems. A showing by either party that the party resides more than fifty miles from the court shall be considered good cause."

SECTION 5. G.S. 42-40 reads as rewritten:

"**§ 42-40. Definitions.**

For the purpose of this Article, the following definitions shall apply:

...

(4) "Protected tenant" means a tenant or household member who is a victim of domestic violence under Chapter 50B of the General Statutes, or sexual assault or stalking under Chapter 14 of the General Statutes."

SECTION 6. Article 5 of Chapter 42 of the General Statutes is amended by adding the following new sections to read:

"§ 42-42.1. Victim protection – nondiscrimination.

A landlord shall not terminate a tenancy, fail to renew a tenancy, refuse to enter into a rental agreement, or otherwise retaliate in the rental of a dwelling based on: (i) the tenant, applicant, or a household member's status as a victim of domestic violence, sexual assault, or stalking; or (ii) the tenant or applicant having terminated a rental agreement under G.S. 42-45.1. Evidence provided to the landlord of domestic violence, sexual assault, or stalking may include any of the following:

(1) Law enforcement, court, or federal agency records or files.

(2) Documentation from a domestic violence or sexual assault program.

(3) Documentation from a religious, medical, or other professional.

"§ 42-42.2. Victim protection – change locks.

(a) If the perpetrator of domestic violence, sexual assault, or stalking is not a tenant in the same dwelling unit as the protected tenant, a tenant of a dwelling may give oral or written notice to the landlord that a protected tenant is a victim of domestic violence, sexual assault, or stalking and may request that the locks to the dwelling unit be changed. A protected tenant is not required to provide documentation of the domestic violence, sexual assault, or stalking to initiate the changing of the locks, pursuant to this subsection.

(b) If the perpetrator of the domestic violence, sexual assault, or stalking is a tenant in the same dwelling unit as the victim, any tenant or protected tenant of a dwelling unit may give oral or written notice to the landlord that a protected tenant is a victim of domestic violence, sexual assault, or stalking and may request that the locks to the dwelling unit be changed. In these circumstances, the following shall apply:

(1) Before the landlord or tenant changes the locks under this subsection the tenant must provide the landlord with a copy of an order issued by a court that orders the perpetrator to stay away from the dwelling unit. If the order has not been served on the perpetrator, the landlord may wait 48 hours before changing the locks or giving permission for the locks to be changed.

(2) Unless a court order allows the perpetrator to return to the dwelling to retrieve personal belongings, the landlord has no duty under the rental agreement or by law to allow the perpetrator access to the dwelling unit, to provide keys to the perpetrator, or to provide the perpetrator access to the perpetrator's personal property within the dwelling unit once the landlord has been provided with a court order requiring the perpetrator to stay away from the dwelling. If a landlord complies with this section, the landlord is not liable to a perpetrator excluded from the dwelling unit.

(3) The perpetrator who has been excluded from the dwelling unit under this subsection remains liable under the lease with any other tenant of the dwelling unit for rent or damages to the dwelling unit.

(c) A landlord who receives a request under subsection (a) of this section shall change the locks to the protected tenant's dwelling unit or give the protected tenant permission to change the locks within 48 hours. A landlord who receives a request under subsection (b) of this section shall change the locks to the protected tenant's dwelling unit or give the protected tenant permission to change the locks within 72 hours. The protected tenant shall bear the expense of changing the locks. If a landlord fails to act within the required time, the protected tenant may change the locks without the landlord's permission. If the protected tenant changes the locks, the protected tenant shall give a key to the new locks to the landlord within 48 hours of the locks being changed."

SECTION 7. Article 5 of Chapter 42 of the General Statutes is amended by adding the following new section to read:

"**§ 42-45.1. Early termination of rental agreement by victims of domestic violence, sexual assault, or stalking.**

(a) Any protected tenant may terminate his or her rental agreement for a dwelling unit by providing the landlord with a written notice of termination to be effective on a date stated in the notice that is at least 30 days after the landlord's receipt of the notice. The notice to the landlord shall be accompanied by either a copy of a valid order of protection issued by a court, after an opportunity to be heard, pursuant to G.S. 50B-3, a criminal order that restrains a person from contact with a protected tenant, or a valid Address Confidentiality Program card issued pursuant to G.S. 15C-4 to the victim or a minor member of the tenant's household. A victim of domestic violence or sexual assault must submit a copy of a safety plan with the notice to terminate. The safety plan, dated during the term of the tenancy to be terminated, must be provided by a domestic violence or sexual assault program which substantially complies with the requirements set forth in G.S. 50B-9 and must recommend relocation of the protected tenant.

(b) Upon termination of a rental agreement under this section, the tenant who is released from the rental agreement pursuant to subsection (a) of this section is liable for the rent due under the rental agreement prorated to the effective date of the termination and payable at the time that would have been required by the terms of the rental agreement. The tenant is not liable for any other rent or fees due only to the early termination of the tenancy. If, pursuant to this section, a tenant terminates the rental agreement 14 days or more before occupancy, the tenant is not subject to any damages or penalties.

(c) Notwithstanding the release of a protected tenant from a rental agreement under subsection (a) of this section, or the exclusion of a perpetrator of domestic violence, sexual assault, or stalking by court order, if there are any remaining tenants residing in the dwelling unit, the tenancy shall continue for those tenants. The perpetrator who has been excluded from the dwelling unit under court order remains liable under the lease with any other tenant of the dwelling unit for rent or damages to the dwelling unit.

(d) The provisions of this section may not be waived or modified by agreement of the parties."

SECTION 8. G.S. 157-29(b) reads as rewritten:

"(b) In the operation or management of housing projects, ~~or~~ portions of projects, or other housing assistance programs for persons of low income, an authority shall at all times observe the following duties with respect to rentals and tenant selection:

...

(3) In the administration of its waiting lists, it shall adopt a preference for households with incomes of less than thirty percent (30%) of the area median income.

(4) An authority shall take applications on a continuous basis from persons meeting the preference listed in this section and shall not close the application process to these persons. Any additional local preferences shall not take priority over the preference in this section."

SECTION 9. G.S. 7A-219 reads as rewritten:

"§ 7A-219. Certain counterclaims; cross claims; third-party claims not permissible.

No counterclaim, cross claim or third-party claim which would make the amount in controversy exceed the jurisdictional amount established by G.S. 7A-210(1) is permissible in a small claim action assigned to a magistrate. No determination of fact or law in an assigned small claim action estops a party thereto in any subsequent action which, except for this section, might have been asserted under the Code of Civil Procedure as a counterclaim in the small claim action. Notwithstanding G.S. 1A-1, Rule 13, failure by a defendant to file a counterclaim in a small claims action assigned to a magistrate, or failure by a defendant to appeal a judgment in a small claims action to district court, shall not bar such claims in a separate action."

SECTION 10. G.S. 42-30 reads as rewritten:

"§ 42-30. Judgment by ~~confession or~~ confession, where plaintiff has proved ~~case.~~ case, or failure to appear.

The summons shall be returned according to its tenor, and if on its return it appears to have been duly served, and if (i) the plaintiff proves his case by a preponderance of the evidence, ~~or~~ (ii) the defendant admits the allegations of the complaint, or (iii) the defendant fails to appear on the day of court and the plaintiff requests in open court a judgment for possession based solely on the filed pleadings where the pleadings allege defendant's failure to pay rent as a breach of the lease for which reentry is allowed and the defendant has not filed a responsive pleading, the magistrate shall give judgment that the defendant be removed from, and the plaintiff be put in possession of, the demised premises; and if any rent or damages for the occupation of the premises after the cessation of the estate of the lessee, not exceeding the jurisdictional amount established by G.S. 7A-210(1), be claimed in the oath of the plaintiff as due and unpaid, the magistrate shall inquire thereof, and if supported by a preponderance of the evidence, give judgment as he may find the fact to be."

SECTION 11. G.S. 42-33 reads as rewritten:

"§ 42-33. Rent and costs tendered by tenant.

(a) If, in any action brought to recover the possession of demised premises upon a forfeiture for the nonpayment of rent, the tenant, before final judgment given in such

action, pays or tenders the rent due and the costs of the action, all further proceedings in such action shall cease. If the plaintiff further prosecutes his action, and the defendant pays into court for the use of the plaintiff a sum equal to that which shall be found to be due, and the costs, to the time of such payment, or to the time of a tender and refusal, if one has occurred, the defendant shall recover from the plaintiff all subsequent costs; the plaintiff shall be allowed to receive the sum paid into court for his use, and the proceedings shall be stayed.

(b) Upon the acceptance of all rent due and the costs of the action by the lessor before final judgment given in that action, regardless of any lease provision otherwise, the complaint in summary ejectment shall be dismissed."

SECTION 12. G.S. 42-34(b) reads as rewritten:

"(b) During an appeal to district court, it shall be sufficient to stay execution of a judgment for ejectment if the defendant appellant pays to the clerk of superior court any rent in arrears as determined by the magistrate and signs an undertaking that he or she will pay into the office of the clerk of superior court the amount of the tenant's share of the contract rent as it becomes due periodically after the judgment was entered and, where applicable, comply with subdivision (c) below. For the sole purpose of determining the amount of rent in arrears pursuant to a judgment for possession pursuant to G.S. 42-30(3), the magistrate's determination shall be based upon (i) the available evidence presented to the magistrate or (ii) the amounts listed on the face of the filed Complain in Summary Ejectment. Provided however, when the magistrate makes a finding in the record, based on evidence presented in court, that there is an actual dispute as to the amount of rent in arrears that is due and the magistrate specifies the specific amount of rent in arrears in dispute, in order to stay execution of a judgment for ejectment, the defendant appellant shall not be required to pay to the clerk of superior court the amount of rent in arrears found by the magistrate to be in dispute, even if the magistrate's judgment includes this amount in the amount of rent found to be in arrears. If a defendant appellant appeared at the hearing before the magistrate and the magistrate found an amount of rent in arrears that was not in dispute, and if an attorney representing the defendant appellant on appeal to the district court signs a pleading stating that there is evidence of an actual dispute as to the amount of rent in arrears, then the defendant appellant shall not be required to pay the rent in arrears alleged to be in dispute to stay execution of a judgment for ejectment pending appeal. Any magistrate, clerk, or district court judge shall order stay of execution upon the defendant appellant's paying the undisputed rent in arrears to the clerk and signing the undertaking. If either party disputes the amount of the payment or the due date in the undertaking, the aggrieved party may move for modification of the terms of the undertaking before the clerk of superior court or the district court. Upon such motion and upon notice to all interested parties, the clerk or court shall hold a hearing within 10 calendar days of the date the motion is filed and determine what modifications, if any, are appropriate."

SECTION 13. Sections 5, 6 and 7 of this act become effective October 1, 2005, and apply to leases entered into or renewed on or after that date. The remainder of this act becomes effective October 1, 2005.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 1029

Judiciary I Committee Substitute Adopted 5/31/05
PROPOSED HOUSE COMMITTEE SUBSTITUTE S1029-CSSA-30 [v.3]

7/27/2005 11:22:43 AM

Short Title: Clarify/Enhance Domestic Vio. & Tenancy Laws. (Public)

Sponsors:

Referred to:

March 24, 2005

A BILL TO BE ENTITLED

AN ACT TO CLARIFY AND ENHANCE THE LAWS RELATING TO DOMESTIC VIOLENCE, TO ENACT LAWS REGARDING DOMESTIC VIOLENCE VICTIMS AND TENANCY, TO CLARIFY THAT THE FAILURE TO FILE A COUNTERCLAIM IN A SMALL CLAIMS ACTION DOES NOT BAR THE CLAIM IN A SEPARATE ACTION AND TO MAKE CHANGES TO LANDLORD TENANT LAW.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 50B-3 reads as rewritten:

"**§ 50B-3. Relief.**

(a) ~~The~~ If the court, including magistrates as authorized under G.S. 50B-2(c1), ~~may grant any~~finds that an act of domestic violence has occurred, the court shall grant a protective order ~~to bring about a cessation of acts of domestic violence. The orders may:~~restraining the defendant from further acts of domestic violence. A protective order may include any of the following types of relief:

(1) Direct a party to refrain from such ~~acts;~~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;~~household.

(3) Require a party to provide a spouse and his or her children suitable alternate ~~housing;~~housing.

(4) Award temporary custody of minor children and establish temporary visitation 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;~~process.

(5) Order the eviction of a party from the residence or household and assistance to the victim in returning to ~~it;~~it.

(6) Order either party to make payments for the support of a minor child as required by ~~law;~~law.
(7) Order either party to make payments for the support of a spouse as required by ~~law;~~law.
(8) Provide for possession of personal property of the ~~parties;~~parties.
(9) Order a party to refrain from doing any or all of the following:
a. Threatening, abusing, or following the other ~~party;~~party.
b. Harassing the other party, including by telephone, visiting the home or workplace, or other ~~means, or~~means.
c. Otherwise interfering with the other ~~party;~~party.
(10) Award attorney's fees to either ~~party;~~party.
(11) Prohibit a party from purchasing a firearm for a time fixed in the ~~order;~~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~~Commission.
(13) Include any additional prohibitions or requirements the court deems necessary to protect any party or any minor child.

(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.

(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,~~two years, including an order that previously has been renewed, upon a motion by the aggrieved party filed before the expiration of the current 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.

(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. If the defendant is ordered to stay away from the child's school, a copy of the order shall be delivered promptly by the sheriff to the principal or, in the principal's absence, the assistant principal or the principal's designee of each school named in the order.

(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, renewals, and dismissals of the order shall also be promptly entered."

SECTION 2. G.S. 50B-3.1(e) reads as rewritten:

"(e) 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 finds that the defendant is precluded from owning or possessing a firearm pursuant to State or federal ~~law.~~law or final disposition of any pending criminal charges committed against the person that is the subject of the current protective order."

SECTION 3. G.S. 50B-3.1(f) reads as rewritten:

"(f) 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 or final disposition of any pending criminal charges committed against the person that is the subject of the current protective order and not later than 90 days after the expiration of the current ~~order.~~order or final disposition of any pending criminal charges committed against the person that is the subject of the current protective 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;~~renewed.

(2) Whether the defendant is subject to any other protective ~~orders; or~~orders.

(3) Whether the defendant is disqualified from owning or possessing a firearm pursuant to 18 U.S.C. § 922 or any State law.

(4) Whether the defendant has any pending criminal charges, in either State or federal court, committed against the person that is the subject of the current protective order.

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 ~~law.~~law or if the defendant has any pending criminal charges, in either State or federal court, committed against the person that is the subject of the current protective order until the final disposition of those charges."

SECTION 4. G.S. 50-13.1(c) reads as rewritten:

"(c) For good cause, on the motion of either party or on the court's own motion, the court may waive the mandatory setting under Article 39A of Chapter 7A of the General Statutes of a contested custody or visitation matter for mediation. Good cause may include, but is not limited to, the following: a showing of undue hardship to a party; an agreement between the parties for voluntary mediation, subject to court approval; allegations of abuse or neglect of the minor child; allegations of alcoholism, drug abuse, or ~~spouse abuse;~~domestic violence between the parents in common; or allegations of severe psychological, psychiatric, or emotional problems. A showing by either party that the party resides more than fifty miles from the court shall be considered good cause."

SECTION 5. G.S. 42-40 reads as rewritten:

"**§ 42-40. Definitions.**

For the purpose of this Article, the following definitions shall apply:

...

(4) "Protected tenant" means a tenant or household member who is a victim of domestic violence under Chapter 50B of the General Statutes, or sexual assault or stalking under Chapter 14 of the General Statutes."

SECTION 6. Article 5 of Chapter 42 of the General Statutes is amended by adding the following new sections to read:

"**§ 42-42.1. Victim protection – nondiscrimination.**

A landlord shall not terminate a tenancy, fail to renew a tenancy, refuse to enter into a rental agreement, or otherwise retaliate in the rental of a dwelling based substantially on: (i) the tenant, applicant, or a household member's status as a victim of domestic violence, sexual assault, or stalking; or (ii) the tenant or applicant having terminated a

rental agreement under G.S. 42-45.1. Evidence provided to the landlord of domestic violence, sexual assault, or stalking may include any of the following:

(1) Law enforcement, court, or federal agency records or files.

(2) Documentation from a domestic violence or sexual assault program.

(3) Documentation from a religious, medical, or other professional.

"**§ 42-42.2. Victim protection – change locks.**

(a) If the perpetrator of domestic violence, sexual assault, or stalking is not a tenant in the same dwelling unit as the protected tenant, a tenant of a dwelling may give oral or written notice to the landlord that a protected tenant is a victim of domestic violence, sexual assault, or stalking and may request that the locks to the dwelling unit be changed. A protected tenant is not required to provide documentation of the domestic violence, sexual assault, or stalking to initiate the changing of the locks, pursuant to this subsection. A landlord who receives a request under this subsection shall change the locks to the protected tenant's dwelling unit or give the protected tenant permission to change the locks within 48 hours.

(b) If the perpetrator of the domestic violence, sexual assault, or stalking is a tenant in the same dwelling unit as the victim, any tenant or protected tenant of a dwelling unit may give oral or written notice to the landlord that a protected tenant is a victim of domestic violence, sexual assault, or stalking and may request that the locks to the dwelling unit be changed. In these circumstances, the following shall apply:

(1) Before the landlord or tenant changes the locks under this subsection the tenant must provide the landlord with a copy of an order issued by a court that orders the perpetrator to stay away from the dwelling unit.

(2) Unless a court order allows the perpetrator to return to the dwelling to retrieve personal belongings, the landlord has no duty under the rental agreement or by law to allow the perpetrator access to the dwelling unit, to provide keys to the perpetrator, or to provide the perpetrator access to the perpetrator's personal property within the dwelling unit once the landlord has been provided with a court order requiring the perpetrator to stay away from the dwelling. If a landlord complies with this section, the landlord is not liable for civil damages, to a perpetrator excluded from the dwelling unit, for loss of use of the dwelling unit or loss of use or damage to the perpetrator's personal property.

(3) The perpetrator who has been excluded from the dwelling unit under this subsection remains liable under the lease with any other tenant of the dwelling unit for rent or damages to the dwelling unit.

A landlord who receives a request under this subsection shall change the locks to the protected tenant's dwelling unit or give the protected tenant permission to change the locks within 72 hours.

(c) The protected tenant shall bear the expense of changing the locks. If a landlord fails to act within the required time, the protected tenant may change the locks without the landlord's permission. If the protected tenant changes the locks, the

protected tenant shall give a key to the new locks to the landlord within 48 hours of the locks being changed."

SECTION 7. Article 5 of Chapter 42 of the General Statutes is amended by adding the following new section to read:

"**§ 42-45.1. Early termination of rental agreement by victims of domestic violence, sexual assault, or stalking.**

(a) Any protected tenant may terminate his or her rental agreement for a dwelling unit by providing the landlord with a written notice of termination to be effective on a date stated in the notice that is at least 30 days after the landlord's receipt of the notice. The notice to the landlord shall be accompanied by either: (i) a copy of a valid order of protection issued by a court pursuant to Chapter 50B or 50C, other than an ex-parte order, (ii) a criminal order that restrains a person from contact with a protected tenant, or (iii) a valid Address Confidentiality Program card issued pursuant to G.S. 15C-4 to the victim or a minor member of the tenant's household. A victim of domestic violence or sexual assault must submit a copy of a safety plan with the notice to terminate. The safety plan, dated during the term of the tenancy to be terminated, must be provided by a domestic violence or sexual assault program which substantially complies with the requirements set forth in G.S. 50B-9 and must recommend relocation of the protected tenant.

(b) Upon termination of a rental agreement under this section, the tenant who is released from the rental agreement pursuant to subsection (a) of this section is liable for the rent due under the rental agreement prorated to the effective date of the termination and payable at the time that would have been required by the terms of the rental agreement. The tenant is not liable for any other rent or fees due only to the early termination of the tenancy. If, pursuant to this section, a tenant terminates the rental agreement 14 days or more before occupancy, the tenant is not subject to any damages or penalties.

(c) Notwithstanding the release of a protected tenant from a rental agreement under subsection (a) of this section, or the exclusion of a perpetrator of domestic violence, sexual assault, or stalking by court order, if there are any remaining tenants residing in the dwelling unit, the tenancy shall continue for those tenants. The perpetrator who has been excluded from the dwelling unit under court order remains liable under the lease with any other tenant of the dwelling unit for rent or damages to the dwelling unit.

(d) The provisions of this section may not be waived or modified by agreement of the parties."

SECTION 8. G.S. 157-29(b) reads as rewritten:

"(b) In the operation or management of housing projects, ~~or~~ portions of projects, or other housing assistance programs for persons of low income, an authority shall at all times observe the following duties with respect to rentals and tenant selection:

...

(3) In the administration of its waiting lists, it shall adopt a preference for households with incomes of less than thirty percent (30%) of the area median income.

(4) An authority shall take applications on a continuous basis from persons meeting the preference listed in this section and shall not close the application process to these persons. Any additional local preferences shall not take priority over the preference in this section."

SECTION 9. G.S. 7A-219 reads as rewritten:

"**§ 7A-219. Certain counterclaims; cross claims; third-party claims not permissible.**

No counterclaim, cross claim or third-party claim which would make the amount in controversy exceed the jurisdictional amount established by G.S. 7A-210(1) is permissible in a small claim action assigned to a magistrate. No determination of fact or law in an assigned small claim action estops a party thereto in any subsequent action which, except for this section, might have been asserted under the Code of Civil Procedure as a counterclaim in the small claim action. Notwithstanding G.S. 1A-1, Rule 13, failure by a defendant to file a counterclaim in a small claims action assigned to a magistrate, or failure by a defendant to appeal a judgment in a small claims action to district court, shall not bar such claims in a separate action."

SECTION 10. G.S. 42-30 reads as rewritten:

"**§ 42-30. Judgment by ~~confession or~~confession, where plaintiff has proved ~~case.~~case, or failure to appear.**

The summons shall be returned according to its tenor, and if on its return it appears to have been duly served, and if (i) the plaintiff proves his case by a preponderance of the evidence, ~~or~~ (ii) the defendant admits the allegations of the complaint, or (iii) the defendant fails to appear on the day of court and the plaintiff requests in open court a judgment for possession based solely on the filed pleadings where the pleadings allege defendant's failure to pay rent as a breach of the lease for which reentry is allowed and the defendant has not filed a responsive pleading, the magistrate shall give judgment that the defendant be removed from, and the plaintiff be put in possession of, the demised premises; and if any rent or damages for the occupation of the premises after the cessation of the estate of the lessee, not exceeding the jurisdictional amount established by G.S. 7A-210(1), be claimed in the oath of the plaintiff as due and unpaid, the magistrate shall inquire thereof, and if supported by a preponderance of the evidence, give judgment as he may find the fact to be."

SECTION 11. G.S. 42-34(b) reads as rewritten:

"(b) During an appeal to district court, it shall be sufficient to stay execution of a judgment for ejectment if the defendant appellant pays to the clerk of superior court any rent in arrears as determined by the magistrate and signs an undertaking that he or she will pay into the office of the clerk of superior court the amount of the tenant's share of the contract rent as it becomes due periodically after the judgment was entered and, where applicable, comply with subdivision (c) below. For the sole purpose of determining the amount of rent in arrears pursuant to a judgment for possession pursuant to G.S. 42-30(iii), the magistrate's determination shall be based upon (i) the available evidence presented to the magistrate or (ii) the amounts listed on the face of the filed Complaint in Summary Ejectment. Provided however, when the magistrate makes a finding in the record, based on evidence presented in court, that there is an

actual dispute as to the amount of rent in arrears that is due and the magistrate specifies the specific amount of rent in arrears in dispute, in order to stay execution of a judgment for ejectment, the defendant appellant shall not be required to pay to the clerk of superior court the amount of rent in arrears found by the magistrate to be in dispute, even if the magistrate's judgment includes this amount in the amount of rent found to be in arrears. If a defendant appellant appeared at the hearing before the magistrate and the magistrate found an amount of rent in arrears that was not in dispute, and if an attorney representing the defendant appellant on appeal to the district court signs a pleading stating that there is evidence of an actual dispute as to the amount of rent in arrears, then the defendant appellant shall not be required to pay the rent in arrears alleged to be in dispute to stay execution of a judgment for ejectment pending appeal. Any magistrate, clerk, or district court judge shall order stay of execution upon the defendant appellant's paying the undisputed rent in arrears to the clerk and signing the undertaking. If either party disputes the amount of the payment or the due date in the undertaking, the aggrieved party may move for modification of the terms of the undertaking before the clerk of superior court or the district court. Upon such motion and upon notice to all interested parties, the clerk or court shall hold a hearing within 10 calendar days of the date the motion is filed and determine what modifications, if any, are appropriate."

SECTION 12. Section 1 of this act becomes effective October 1, 2005, and applies to orders entered on or after that date. Sections 5, 6 and 7 of this act become effective October 1, 2005, and apply to leases entered into or renewed on or after that date. The remainder of this act becomes effective October 1, 2005.

SENATE BILL 1029:
Clarify/Enhance Domestic Vio. & Tenancy Laws

BILL ANALYSIS

Committee:	House Judiciary I	**Date:**	July 28, 2005
Introduced by:	Sen. Cowell	**Summary by:**	Susan Sitze
Version:	PCS to Second Edition S1029-CSSA-30[v.3]		Committee Counsel

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 1029 amends the laws relating to domestic violence to permit domestic violence court orders to be entered by consent of the parties, to authorize the return of firearms seized pursuant to Chapter 50B after criminal charges have been disposed of, to allow victims of domestic violence to terminate leases early without penalty, to allow victims of domestic violence to have locks on rental property changed, and to require housing assistance programs to give a preference to persons whose incomes are less than 30% of the area medium income. The bill also clarifies that a defendant in a small claims action does not have to file a counterclaim in the small claims action to preserve their rights to the claim. Additionally, the PCS makes some changes to the laws regarding ejectment.***

CURRENT LAW: Currently under G.S. 50B-3, only the court may enter domestic violence orders. Protective orders may be renewed for up to one year. Firearms seized in domestic violence situations may only be returned upon the expiration of domestic violence orders. There are currently no provisions to allow a victim of domestic violence to terminate a lease early or have the locks changed on rental property.

BILL ANALYSIS:

Section 1 of the bill amends G.S. 50B-3 to extend the time period a protective order can be renewed for from a period of up to one year to a period of up to two years. Also this section requires that a copy of a protective order prohibiting a defendant from being around a victim's school be promptly delivered by the sheriff to the principal of the school.

Sections 2 & 3 allow the defendant in a domestic violence situation to have a seized firearm returned upon the final disposition of pending criminal charges, in addition to upon termination of the protective order.

Section 4 clarifies when the court may waive the mandatory mediation of custody and visitation matters to apply in situations where there has been domestic violence between the parents, regardless of whether they were married.

Section 6 creates two new statutes. One section prohibits landlords from discriminating against victims of domestic violence in residential rental situations. The other allows tenants who are victim of domestic violence to have the locks on their rental property changed at their expense.

Section 7 creates a new statute to permit a victim of domestic violence to terminate a residential lease on 30 days notice without being liable for any additional rent, under certain circumstances.

Section 8 amends the law governing the management of housing projects and programs to require housing authorities to give preferences in rentals to persons whose incomes are less than 30% of the areas median income.

Section 9 clarifies procedures to make clear that counterclaims need not be filed in small claims actions in order to preserve the right to later pursue such a claim.

Section 10 provides judgment for the plaintiff if the defendant fails to appear in court, the plaintiff requests judgment in open court, the pleadings allege failure to pay rent, and the defendant has not filed a responsive pleading.

Section 11 clarifies the evidence a magistrate shall consider in determining the amount of rent in arrears pursuant to a judgment for possession.

EFFECTIVE DATE: Section 1 of this act becomes effective October 1, 2005, and applies to orders entered on or after that date. Sections 5, 6 & 7 of this act become effective October 1, 2005, and apply to leases entered into or renewed on or after that date. The remainder of this act becomes effective October 1, 2005.

**O. Walker Reagan contributed substantially to this summary.*

S1029e2-SMSA-CSSA-30v3

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative Hackney (Chair) for the Committee on JUDICIARY I.

☒Committee Substitute for
SB 1029 A BILL TO BE ENTITLED AN ACT TO CLARIFY AND ENHANCE THE LAWS RELATING TO DOMESTIC VIOLENCE, TO ENACT LAWS REGARDING DOMESTIC VIOLENCE VICTIMS AND TENANCY AND TO CLARIFY THAT THE FAILURE TO FILE A COUNTERCLAIM IN A SMALL CLAIMS ACTION DOES NOT BAR THE CLAIM IN A SEPARATE ACTION.

☒ With a favorable report as to House committee substitute bill, which changes the title, unfavorable as to Senate committee substitute bill.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

_____ Pursuant to Rule 36(b), the (House/Senate) committee substitute bill/(joint) resolution (No._____) is placed on the Calendar of _____. (The original bill resolution No._____) is placed on the Unfavorable Calendar.

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

S 3

SENATE BILL 590
Commerce Committee Substitute Adopted 5/18/05
Finance Committee Substitute Adopted 5/26/05

Short Title: Consumer Credit Counseling/Debt Management. (Public)

Sponsors:

Referred to:

March 16, 2005

A BILL TO BE ENTITLED

AN ACT TO FURTHER PROTECT CONSUMERS SEEKING ASSISTANCE WITH MANAGING THEIR DEBTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-426 reads as rewritten:

"**§ 14-426. Certain persons and transactions not deemed debt adjusters or debt adjustment.**

The following individuals or transactions shall not be deemed debt adjusters or as being engaged in the business or practice of debt adjusting:

(1) Any person or individual who is a regular full-time employee of a debtor, and who acts as an adjuster of his employer's ~~debts;~~debts.

(2) Any person or individual acting pursuant to any order or judgment of a court, or pursuant to authority conferred by any law of this State or of the United ~~States;~~States.

(3) Any person who is a creditor of the debtor, or an agent of one or more creditors of the debtor, and whose services in adjusting the debtor's debts are rendered without cost to the ~~debtor;~~debtor.

(4) Any person who at the request of a debtor, arranges for or makes a loan to the debtor, and who, at the authorization of the debtor, acts as an adjuster of the debtor's debts in the disbursement of the proceeds of the loan, without compensation for the services rendered in adjusting such ~~debts;~~debts.

(5) An intermittent or casual adjustment of a debtor's debts, for compensation, by an individual or person who is not a debt adjuster or who is not engaged in the business or practice of debt adjusting, and who does not hold himself out as being regularly engaged in debt adjusting.

(6) An attorney-at-law licensed to practice in this State who is not primarily engaged in the business of debt adjusting but who engages in debt adjusting activities incidental to the practice of law.

(7) An organization that provides credit counseling, education, and debt management services to debtors if the organization also does all of the following:

a. Provides individualized credit counseling and budgeting assistance to the debtor without charge prior to the debtor's enrollment in a debt management plan provided by the organization.

b. Determines that the debtor has the financial ability to make payments to complete the debt management plan and that the plan is suitable for the debtor.

c. Disburses the debtor's funds to creditors pursuant to a debt management plan that the debtor has paid for with no more than nominal consideration and has agreed to in writing.

d. Provides to the debtor, periodically and on no less than a quarterly basis, an individualized accounting for the most recent period of all of the debtor's payments and disbursements under the debt management plan and all charges paid by the debtor.

e. Does not directly or indirectly require the debtor to purchase other services or materials as a condition to participating in the debt management plan.

f. Is accredited by an accrediting organization that the Commissioner of Banks approves as being independent and nationally recognized for providing accreditation to organizations that provide credit counseling and debt management services."

SECTION 2. G.S. 14-423 reads as rewritten:

"**§ 14-423. Definitions.**

(a) As used in this ~~Article certain terms or words are hereby defined as follows:~~Article, the following definitions apply:

(1) ~~The term "debt"~~Debt adjuster" means a person who engages in, attempts to engage in, or offers to engage in the practice or business of debt ~~adjusting as said term is defined in this Article.~~adjusting.

(2) ~~The term "debt"~~Debt adjusting" ~~shall mean the~~means entering into or making ~~of~~ a contract, express or implied, with a particular debtor whereby the debtor agrees to pay a certain amount of money periodically to the person engaged in the debt adjusting business and ~~who shall~~that person, for ~~a~~ consideration, ~~agree~~ agrees to distribute, or ~~distribute~~ distributes the same among certain specified creditors in accordance with a plan agreed upon. ~~The term "debt adjusting" is further defined and shall also mean~~Debt adjusting includes the business or practice of any person who holds himself out as acting or

offering or attempting to act for ~~a~~ consideration as an intermediary between a debtor and his creditors for the purpose of settling, compounding, or in ~~anywise~~ any way altering the terms of payment of any debt of a debtor, and to that end receives money or other property from the debtor, or on behalf of the debtor, for the payment to, or distribution among, the creditors of the debtor. Debt adjusting also includes the business or practice of debt settlement or foreclosure assistance whereby any person holds himself or herself out as acting for consideration as an intermediary between a debtor and the debtor's creditors for the purpose of reducing, settling, or altering the terms of the payment of any debt of the debtor, whether or not the person distributes the creditor's funds or property among the creditors, and receives a fee or other consideration for reducing, settling, or altering the terms of the payment of the debt in advance of the debt settlement having been completed or in advance of all the services agreed to having been rendered in full.

(3) ~~The term or word "debtor"~~"Debtor" means an ~~individual,~~individual who resides in North Carolina, and includes two or more individuals who are jointly and ~~severally~~ severally, or jointly or ~~severally~~ severally, indebted to a creditor or creditors.

(3a) "Nominal consideration" means a fee or a contribution to cover the cost of administering a debt management plan not to exceed forty dollars ($40.00) for origination or setup of the debt management plan and ten percent (10%) of the monthly payment disbursed under the debt management plan, not to exceed forty dollars ($40.00) per month.

(4) ~~The word "person~~"Person" means an individual, firm, partnership, limited partnership, ~~corporation~~ corporation, or association."

SECTION 3. G.S. 14-425 reads as rewritten:

"**§ 14-425. Enjoining practice of debt adjusting; appointment of receiver for money and property employed.**

The superior court shall have jurisdiction, in an action brought in the name of the State by the Attorney General or the district attorney of the prosecutorial district as defined in G.S. 7A-60, to ~~enjoin any person from acting, offering to act, or attempting to act, as a debt adjuster, or engaging in the business of debt adjusting; and, in such action,~~ enjoin, as an unfair or deceptive trade practice, the continuation of any debt adjusting business or the offering of any debt adjusting services. The Attorney General or the district attorney who brings an action under this section may appoint a receiver for the property and money employed in the transaction of business by such person as a debt adjuster, to ~~insure,~~ensure, so far as may be possible, the return to debtors of so much of their money and property as has been received by the debt adjuster, and has not been paid to the creditors of the debtors. The court may also assess civil penalties under G.S. 75-15.2 and award attorneys' fees to the State under G.S. 75-16.1."

SECTION 4. G.S. 14-426(7)g., as enacted by Section 1 of this act, becomes effective October 1, 2005. The remainder of this act is effective when it becomes law. This act expires October 1, 2007.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 590
Commerce Committee Substitute Adopted 5/18/05
Finance Committee Substitute Adopted 5/26/05
PROPOSED HOUSE COMMITTEE SUBSTITUTE S590-CSRO-44 [v.1]

7/27/2005 10:39:38 PM

Short Title: Consumer Credit Counseling/Debt Management. (Public)

Sponsors:

Referred to:

March 16, 2005

A BILL TO BE ENTITLED

AN ACT TO FURTHER PROTECT CONSUMERS SEEKING ASSISTANCE WITH MANAGING THEIR DEBTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-426 reads as rewritten:

"**§ 14-426. Certain persons and transactions not deemed debt adjusters or debt adjustment.**

The following individuals or transactions shall not be deemed debt adjusters or as being engaged in the business or practice of debt adjusting:

(1) Any person or individual who is a regular full-time employee of a debtor, and who acts as an adjuster of his employer's ~~debts;~~debts.

(2) Any person or individual acting pursuant to any order or judgment of a court, or pursuant to authority conferred by any law of this State or of the United ~~States;~~States.

(3) Any person who is a creditor of the debtor, or an agent of one or more creditors of the debtor, and whose services in adjusting the debtor's debts are rendered without cost to the ~~debtor;~~debtor.

(4) Any person who at the request of a debtor, arranges for or makes a loan to the debtor, and who, at the authorization of the debtor, acts as an adjuster of the debtor's debts in the disbursement of the proceeds of the loan, without compensation for the services rendered in adjusting such ~~debts;~~debts.

(5) An intermittent or casual adjustment of a debtor's debts, for compensation, by an individual or person who is not a debt adjuster or who is not engaged in the business or practice of debt adjusting, and

who does not hold himself out as being regularly engaged in debt adjusting.

(6) An attorney-at-law licensed to practice in this State who is not primarily engaged in the business of debt adjusting but who engages in debt adjusting activities incidental to the practice of law.

(7) An organization that provides credit counseling, education, and debt management services to debtors if the organization also does all of the following:

a. Provides individualized credit counseling and budgeting assistance to the debtor without charge prior to the debtor's enrollment in a debt management plan provided by the organization.

b. Determines that the debtor has the financial ability to make payments to complete the debt management plan and that the plan is suitable for the debtor.

c. Disburses the debtor's funds to creditors pursuant to a debt management plan that the debtor has paid for with no more than nominal consideration and has agreed to in writing.

d. Provides to the debtor, periodically and on no less than a quarterly basis, an individualized accounting for the most recent period of all of the debtor's payments and disbursements under the debt management plan and all charges paid by the debtor.

e. Does not directly or indirectly require the debtor to purchase other services or materials as a condition to participating in the debt management plan.

f. Does not receive a payment, commission, or other benefit for referring the debtor to a provider of services.

g. Is accredited by an accrediting organization that the Commissioner of Banks approves as being independent and nationally recognized for providing accreditation to organizations that provide credit counseling and debt management services."

SECTION 2. G.S. 14-423 reads as rewritten:

"**§ 14-423. Definitions.**

(a) As used in this ~~Article certain terms or words are hereby defined as follows:~~Article, the following definitions apply:

(1) ~~The term "debt"~~Debt adjuster" means a person who engages in, attempts to engage in, or offers to engage in the practice or business of debt ~~adjusting as said term is defined in this Article.~~adjusting.

(2) ~~The term "debt"~~Debt adjusting" ~~shall mean the~~means entering into or making ~~of~~ a contract, express or implied, with a particular debtor whereby the debtor agrees to pay a certain amount of money periodically to the person engaged in the debt adjusting business and ~~who shall~~that person, for ~~a~~ consideration, ~~agree~~ agrees to distribute, or

~~distribute~~ distributes the same among certain specified creditors in accordance with a plan agreed upon. ~~The term "debt adjusting" is further defined and shall also mean~~Debt adjusting includes the business or practice of any person who holds himself out as acting or offering or attempting to act for ~~a~~ consideration as an intermediary between a debtor and his creditors for the purpose of settling, compounding, or in ~~anywise~~ any way altering the terms of payment of any debt of a debtor, and to that end receives money or other property from the debtor, or on behalf of the debtor, for the payment to, or distribution among, the creditors of the debtor. Debt adjusting also includes the business or practice of debt settlement or foreclosure assistance whereby any person holds himself or herself out as acting for consideration as an intermediary between a debtor and the debtor's creditors for the purpose of reducing, settling, or altering the terms of the payment of any debt of the debtor, whether or not the person distributes the debtor's funds or property among the creditors, and receives a fee or other consideration for reducing, settling, or altering the terms of the payment of the debt in advance of the debt settlement having been completed or in advance of all the services agreed to having been rendered in full.

(3) ~~The term or word "debtor"~~"Debtor" means an ~~individual,~~individual who resides in North Carolina, and includes two or more individuals who are jointly and ~~severally~~ severally, or jointly or ~~severally~~ severally, indebted to a creditor or creditors.

(3a) "Nominal consideration" means a fee or a contribution to cover the cost of administering a debt management plan not to exceed forty dollars ($40.00) for origination or setup of the debt management plan and ten percent (10%) of the monthly payment disbursed under the debt management plan, not to exceed forty dollars ($40.00) per month.

(4) ~~The word "person"~~"Person" means an individual, firm, partnership, limited partnership, ~~corporation~~ corporation, or association."

SECTION 3. G.S. 14-425 reads as rewritten:

"**§ 14-425. Enjoining practice of debt adjusting; appointment of receiver for money and property employed.**

The superior court shall have jurisdiction, in an action brought in the name of the State by the Attorney General or the district attorney of the prosecutorial district as defined in G.S. 7A-60, to ~~enjoin any person from acting, offering to act, or attempting to act, as a debt adjuster, or engaging in the business of debt adjusting; and, in such action,~~ enjoin, as an unfair or deceptive trade practice, the continuation of any debt adjusting business or the offering of any debt adjusting services. The Attorney General or the district attorney who brings an action under this section may appoint a receiver for the property and money employed in the transaction of business by such person as a debt adjuster, to ~~insure,~~ensure, so far as may be possible, the return to debtors of so much of their money and property as has been received by the debt adjuster, and has not been

paid to the creditors of the debtors. The court may also assess civil penalties under G.S. 75-15.2 and award attorneys' fees to the State under G.S. 75-16.1."

SECTION 4. G.S. 14-426(7)g., as enacted by Section 1 of this act, becomes effective October 1, 2005. The remainder of this act is effective when it becomes law. This act expires October 1, 2007.

SENATE BILL 590:
Consumer Credit Counseling/Debt Management

BILL ANALYSIS

Committee:	House Judiciary I	**Date:**	July 27, 2005
Introduced by:	Sen. Dorsett	**Summary by:**	Karen Cochrane-Brown
Version:	PCS to Third Edition S590-CSRO-CSRO-44 [v.1]		Staff Attorney

SUMMARY: ***Senate Bill 590 amends the criminal law that prohibits persons from engaging in the business or practice of debt adjusting by creating an exemption from the limitations of the law for attorneys not primarily engaged in debt adjustment activities and organizations that provide credit counseling and debt management services under certain conditions. The bill also expands the definition of "debt adjusting" to include the business or practice of debt settlement or foreclosure assistance. The bill adds as an additional remedy for violation of this law to allow the court to order the violator to pay a civil penalty of up to $5000 plus attorneys fees.***

The Proposed Committee Substitute adds to the list of requirements a credit counseling organization must meet to be exempt from the prohibition of the law in section 1 of the bill and makes a technical correction in section 2 of the bill.

CURRENT LAW: Under current law it is a Class 2 misdemeanor to engage in the business or practice of debt adjusting (as defined in Section 2 of the bill). This law does not apply to the business or practice of debt adjustment by an employee of the debtor, a person acting pursuant to court order, a creditor of the debtor acting without cost to the debtor, a lender disbursing loan proceeds to pay debts, and a person who intermittently or casually adjust debts but is not regularly engaged in debt adjusting (See list of exempt persons in Section 1 of the bill). Currently the district attorney, acting on behalf of the State, may seek an injunctive to stop illegal debt adjustment activities.

BILL ANALYSIS: **Section 1** of the bill amends the list of person exempt from the law by adding:

- Licensed attorneys not primarily engaged in the business of debt adjustment but who act incident to the practice of law.
- Organizations that provide credit counseling, education, and debt management services under the following conditions:
    - Provides free credit counseling and budgeting assistance to a debtor prior to enrollment in a debt management plan.
    - Determines that the debtor has the financial ability to complete a debt management plan suitable to the debtor.
    - Disburses debtor's funds to creditors pursuant to a debt management plan for which the debtor only pays nominal consideration not to exceed $40 to initiate a plan and a monthly fee of 10% of the monthly payments not to exceed $40.
    - Provides at least a quarterly accounting to the debtor of disbursements made.
    - Does not require the debtor to purchase other services or materials as a condition of participation.

- Does not receive a payment, commission or other benefit for referring the debtor to a provider of services.
- Is accredited by an organization approved by the Commissioner of Banks.

Section 2 expands the definition of "debt adjusting" to include the business or practice of debt settlement or foreclosure assistance by acting as an intermediary between the debtor and the debtor's creditors for the purposes of reducing, settling or altering terms of payment of debts regardless of whether the person is compensated in advance or actually distributes debtor's funds to creditors.

Section 3 provides that the Attorney General, in addition to district attorneys, can bring actions to enjoin illegal debt adjusting as an unfair or deceptive trade practice. This section also allows the court to order the defendant to pay a civil penalty of up to $5000 and attorney's fees under G.S. 75-15.2 and 75-16.1.

EFFECTIVE DATE: G.S. 14-426(7)g., as enacted in Section 1 of the bill, becomes effective October 1, 2005, but the remainder of the bill is effective when the bill becomes law. The act would expire on October 1, 2007.

RELEVANT STATUTES:

§ 14-424. Engaging, etc., in business of debt adjusting a misdemeanor.

If any person shall engage in, or offer to or attempt to, engage in the business or practice of debt adjusting, or if any person shall hereafter act, offer to act, or attempt to act as a debt adjuster, he shall be guilty of a Class 2 misdemeanor.

§ 75-15.2. Civil penalty.

In any suit instituted by the Attorney General, in which the defendant is found to have violated G.S. 75-1.1 and the acts or practices which constituted the violation were, when committed, knowingly violative of a statute, the court may, in its discretion, impose a civil penalty against the defendant of up to five thousand dollars ($5,000) for each violation. In any action brought by the Attorney General pursuant to this Chapter in which it is shown that an action or practice when committed was specifically prohibited by a court order, the Court may, in its discretion, impose a civil penalty of up to five thousand dollars ($5,000) for each violation. Civil penalties may be imposed in a new action or by motion in an earlier action, whether or not such earlier action has been concluded. In determining the amount of the civil penalty, the court shall consider all relevant circumstances, including, but not limited to, the extent of the harm caused by the conduct constituting a violation, the nature and persistence of such conduct, the length of time over which the conduct occurred, the assets, liabilities, and net worth of the person, whether corporate or individual, and any corrective action taken by the defendant. The clear proceeds of penalties so assessed shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

§ 75-16.1. Attorney fee.

In any suit instituted by a person who alleges that the defendant violated G.S. 75-1.1, the presiding judge may, in his discretion, allow a reasonable attorney fee to the duly licensed attorney representing the prevailing party, such attorney fee to be taxed as a part of the court costs and payable by the losing party, upon a finding by the presiding judge that:

(1) The party charged with the violation has willfully engaged in the act or practice, and there was an unwarranted refusal by such party to fully resolve the matter which constitutes the basis of such suit; or

(2) The party instituting the action knew, or should have known, the action was frivolous and malicious.

O. Walker Reagan, counsel to the Senate Commerce committee, substantially contributed to this summary.

S0590e3-SMRO-CSRO-CSRO-44 v1

House Judiciary I Committee

August 2, 2005
10:00 a.m.

Minutes

The House Judiciary I Committee met on Tuesday, August 2, 2005 at 10:00 a. m. in Room 1228 in the Legislative Building. Vice Chair Ross called the meeting to order and the following members were present: Representative Alexander, Capps, Goodwin, Harrison, Insko, Miller, Ross, Stam and West. Ex-officio member Cunningham was also present. A copy of the agenda and visitor registration is attached, (Attachments I and II).

Vice Chair Ross recognized Senator Dorsett to continue the discussion of Senate Bill 590, AN ACT TO FURTHER PROTECT CONSUMERS SEEKING ASSISTANCE WITH MANAGING THEIR DEBTS, (Attachment III). The bill was first explained and discussed during the July 28 meeting of the Committee at which time a Proposed House Committee Substitute was adopted for discussion. A copy of a bill summary prepared by Ms. Karen Cochrane-Brown is attached to the minutes, (Attachment IV).

Vice Chair Ross stated since some people did not have an opportunity to address the Committee during the previous meeting, equal time would be given during this meeting to the proponents and opponents of the bill.

Mr. Phillip Lehman, Consumer Protection Division, Office of the Attorney General, was recognized. He said that the area of debt management and debt adjusting is a major consumer protection problem around the country. He stated that the bill is designed to allow legitimate credit counselors to perform debt management services for their clients while screening the bad actors out. The bill allows for the charging of nominal fees that are limited to $40 in advance and up to $40 per month. He said that the bill amends the current debt adjusting law, a criminal law that prohibits debt adjusting, and defines debt adjusting as a negotiation or settlement of an individual consumer's debt for a fee together with a collection of money from the consumer for dispersal to the consumer's creditors. The bill allows an exemption from the prohibition against debt adjusting for certain organizations that provide credit counseling and educational services as well as debt management plans. These agencies, in order to be exempt, must be certified by a national accrediting organization that is approved by the Commissioner of Banks. The bill clarifies that the Attorney General has direct authority to enforce the law. The bill amends the definition of debt adjusting to cover other activities that are very closely related such as debt settlement and foreclosure. He said that the bill does not prohibit such activities, but restricts the collection of advance fees.

Speaking in support of the bill were Mr. Al Ripley, North Carolina Justice Center, Mr. Brad Lamb, North Carolina Consumers Council, Ms. Leslie Bevacqua-Coman, Freedom Point, and Mr. Paul Stock, North Carolina Bankers Association.

Speaking in opposition to the bill were Mr. Don Davis, an attorney from Raleigh, Mr. David Mockler, Charlotte Homesavers USA and Mr. John Wall, an attorney from Greensboro.

Representative Cunningham moved a favorable report for the bill.

Representative Stam offered an amendment, (Attachment V) which would not prohibit mortgage assistance unless the person is distributing the debtor's funds or property among the creditors or obtains benefits or legal title to the debtor's real or personal property. Ms. Cochrane-Brown stated that she was not completely sure that leaving in the language that says that they don't receive payments in advance necessarily resolves the problem. She said that the problem that most of the opponents have is that they cannot collect the fees up front. Representative Stam then stated that he would like for this amendment to be corrected.

Senator Dorsett spoke in opposition to the amendment.

Representative Stam offered a perfecting amendment, (Attachment VI). Ms. Cochrane-Brown explained that the perfecting amendment amended the amendment on page 1, line 1. Upon vote of the Committee, the perfecting amendment failed.

The amendment was before the Committee. Upon vote of the Committee, the original amendment failed.

Representative Cunningham's motion for a favorable report was before the Committee. The motion carried, (Attachment VII).

The meeting adjourned at 10:50 a.m.

Representative Deborah Ross
Vice Chairman

Emily Reynolds Freeman
Committee Clerk

ATTACHMENT I

HOUSE COMMITTEE ON JUDICIARY I

August 2, 2005
10:00 a.m.

OPENING REMARKS

AGENDA ITEMS

Senate Bill 590 – Consumer Credit Counseling/Debt Management
Senator Dorsett

ADJOURNMENT

ATTACHMENT II

VISITOR REGISTRATION SHEET

House Judiciary I — August 2, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Lee Hodge	KCLH
Angie Hairr	Maupin Taylor
Susan Valarni	Nationwide
Betty Turner	BAE
Paul Stock	NCBA
Dave Simpson	Carolinas AGC
Gardner Payne	Edwards Wobb
STEVE GLENNETT	CAROLINAS AGC
David Mockler	HSV
John Wall	Attorney

VISITOR REGISTRATION SHEET

House Judiciary I — August 2, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
David Harris	NCGA
John Hurst	NCGA - Research
Gary Govert	NC DOJ
Phil Lehman	NC DOJ
Lynne Weaver	NC DOJ
Al Ripley	NC Justice Ctr
Chris Kolda	Self-Help
Doug Miskew	Capstrat
Mike Crowson	The Freedom Point
Leslie Bevacqua Cox	Capstrat
Kate Munro	NC DOT

VISITOR REGISTRATION SHEET

House Judiciary I — August 2, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Connie Wilson	SST
DON DAVIS	ATTORNEY
Jana Estes	Rep. Stam
Rich Webb	Rep. Alexander
Matt Latrick	NCGA
Lynn Bonner	N&O
Bill Rowe	NC Justice Center
JERRY LIVERETTE	NC RIGHT TO LIFE
Barbara Hest	NCRTL
Kathleen Edwards	UNC-CH Institute of Gov't
Michael Stading	Holt & York

VISITOR REGISTRATION SHEET

House Judiciary I — August 2, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
JEONANN WOCHNA	NCDOJ
Peter Laroche	Consumer Credit Counseling Forsyth
Brad Lamb	NC Consumers Council
DAVID BARNES	Poyner + Spruill
Stephanie Simpson	NCAR
Colleen Kocharek	NCAWA
Hal Miller	NCAECT
John Gunn	NCSTrooper
John Kelly	Gov Office
Bill Scoggin	KLH
Ron Ottaway	Wachovia

VISITOR REGISTRATION SHEET

J-I — Name of Committee

8-2-05 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY
John Nunn	NCFPC
Thomas Porter	Maggie Taylor
BOB KUCAB	NCHFA
Andy Romanet	NCLM

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 590
Commerce Committee Substitute Adopted 5/18/05
Finance Committee Substitute Adopted 5/26/05
PROPOSED HOUSE COMMITTEE SUBSTITUTE S590-CSRO-44 [v.1]

7/27/2005 10:39:38 PM

Short Title: Consumer Credit Counseling/Debt Management. (Public)

Sponsors:

Referred to:

March 16, 2005

A BILL TO BE ENTITLED

AN ACT TO FURTHER PROTECT CONSUMERS SEEKING ASSISTANCE WITH MANAGING THEIR DEBTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-426 reads as rewritten:

"**§ 14-426. Certain persons and transactions not deemed debt adjusters or debt adjustment.**

The following individuals or transactions shall not be deemed debt adjusters or as being engaged in the business or practice of debt adjusting:

(1) Any person or individual who is a regular full-time employee of a debtor, and who acts as an adjuster of his employer's ~~debts;~~debts.

(2) Any person or individual acting pursuant to any order or judgment of a court, or pursuant to authority conferred by any law of this State or of the United ~~States;~~States.

(3) Any person who is a creditor of the debtor, or an agent of one or more creditors of the debtor, and whose services in adjusting the debtor's debts are rendered without cost to the ~~debtor;~~debtor.

(4) Any person who at the request of a debtor, arranges for or makes a loan to the debtor, and who, at the authorization of the debtor, acts as an adjuster of the debtor's debts in the disbursement of the proceeds of the loan, without compensation for the services rendered in adjusting such ~~debts;~~debts.

(5) An intermittent or casual adjustment of a debtor's debts, for compensation, by an individual or person who is not a debt adjuster or who is not engaged in the business or practice of debt adjusting, and

who does not hold himself out as being regularly engaged in debt adjusting.

(6) An attorney-at-law licensed to practice in this State who is not primarily engaged in the business of debt adjusting but who engages in debt adjusting activities incidental to the practice of law.

(7) An organization that provides credit counseling, education, and debt management services to debtors if the organization also does all of the following:

a. Provides individualized credit counseling and budgeting assistance to the debtor without charge prior to the debtor's enrollment in a debt management plan provided by the organization.

b. Determines that the debtor has the financial ability to make payments to complete the debt management plan and that the plan is suitable for the debtor.

c. Disburses the debtor's funds to creditors pursuant to a debt management plan that the debtor has paid for with no more than nominal consideration and has agreed to in writing.

d. Provides to the debtor, periodically and on no less than a quarterly basis, an individualized accounting for the most recent period of all of the debtor's payments and disbursements under the debt management plan and all charges paid by the debtor.

e. Does not directly or indirectly require the debtor to purchase other services or materials as a condition to participating in the debt management plan.

f. Does not receive a payment, commission, or other benefit for referring the debtor to a provider of services.

g. Is accredited by an accrediting organization that the Commissioner of Banks approves as being independent and nationally recognized for providing accreditation to organizations that provide credit counseling and debt management services."

SECTION 2. G.S. 14-423 reads as rewritten:

"**§ 14-423. Definitions.**

(a) As used in this ~~Article certain terms or words are hereby defined as follows:~~Article, the following definitions apply:

(1) ~~The term "debt"~~Debt adjuster" means a person who engages in, attempts to engage in, or offers to engage in the practice or business of debt ~~adjusting as said term is defined in this Article.~~adjusting.

(2) ~~The term "debt"~~Debt adjusting" ~~shall mean the~~means entering into or making ~~of~~ a contract, express or implied, with a particular debtor whereby the debtor agrees to pay a certain amount of money periodically to the person engaged in the debt adjusting business and ~~who shall~~that person, for ~~a~~ consideration, ~~agree~~ agrees to distribute, or

~~distribute~~ distributes the same among certain specified creditors in accordance with a plan agreed upon. ~~The term "debt adjusting" is further defined and shall also mean~~Debt adjusting includes the business or practice of any person who holds himself out as acting or offering or attempting to act for ~~a~~ consideration as an intermediary between a debtor and his creditors for the purpose of settling, compounding, or in ~~anywise~~ any way altering the terms of payment of any debt of a debtor, and to that end receives money or other property from the debtor, or on behalf of the debtor, for the payment to, or distribution among, the creditors of the debtor. Debt adjusting also includes the business or practice of debt settlement or foreclosure assistance whereby any person holds himself or herself out as acting for consideration as an intermediary between a debtor and the debtor's creditors for the purpose of reducing, settling, or altering the terms of the payment of any debt of the debtor, whether or not the person distributes the debtor's funds or property among the creditors, and receives a fee or other consideration for reducing, settling, or altering the terms of the payment of the debt in advance of the debt settlement having been completed or in advance of all the services agreed to having been rendered in full.

(3) ~~The term or word "debtor"~~"Debtor" means an ~~individual,~~individual who resides in North Carolina, and includes two or more individuals who are jointly and ~~severally~~ severally, or jointly or ~~severally~~ severally, indebted to a creditor or creditors.

(3a) "Nominal consideration" means a fee or a contribution to cover the cost of administering a debt management plan not to exceed forty dollars ($40.00) for origination or setup of the debt management plan and ten percent (10%) of the monthly payment disbursed under the debt management plan, not to exceed forty dollars ($40.00) per month.

(4) ~~The word "person~~"Person" means an individual, firm, partnership, limited partnership, ~~corporation~~ corporation, or association."

SECTION 3. G.S. 14-425 reads as rewritten:

"**§ 14-425. Enjoining practice of debt adjusting; appointment of receiver for money and property employed.**

The superior court shall have jurisdiction, in an action brought in the name of the State by the Attorney General or the district attorney of the prosecutorial district as defined in G.S. 7A-60, to ~~enjoin any person from acting, offering to act, or attempting to act, as a debt adjuster, or engaging in the business of debt adjusting; and, in such action,~~ enjoin, as an unfair or deceptive trade practice, the continuation of any debt adjusting business or the offering of any debt adjusting services. The Attorney General or the district attorney who brings an action under this section may appoint a receiver for the property and money employed in the transaction of business by such person as a debt adjuster, to ~~insure,~~ensure, so far as may be possible, the return to debtors of so much of their money and property as has been received by the debt adjuster, and has not been

paid to the creditors of the debtors. The court may also assess civil penalties under G.S. 75-15.2 and award attorneys' fees to the State under G.S. 75-16.1."

SECTION 4. G.S. 14-426(7)g., as enacted by Section 1 of this act, becomes effective October 1, 2005. The remainder of this act is effective when it becomes law. This act expires October 1, 2007.

SENATE BILL 590:
Consumer Credit Counseling/Debt Management

BILL ANALYSIS

Committee:	House Judiciary I	**Date:**	July 27, 2005
Introduced by:	Sen. Dorsett	**Summary by:**	Karen Cochrane-Brown
Version:	PCS to Third Edition S590-CSRO-CSRO-44 [v.1]		Staff Attorney

SUMMARY: ***Senate Bill 590 amends the criminal law that prohibits persons from engaging in the business or practice of debt adjusting by creating an exemption from the limitations of the law for attorneys not primarily engaged in debt adjustment activities and organizations that provide credit counseling and debt management services under certain conditions. The bill also expands the definition of "debt adjusting" to include the business or practice of debt settlement or foreclosure assistance. The bill adds as an additional remedy for violation of this law to allow the court to order the violator to pay a civil penalty of up to $5000 plus attorneys fees.***

The Proposed Committee Substitute adds to the list of requirements a credit counseling organization must meet to be exempt from the prohibition of the law in section 1 of the bill and makes a technical correction in section 2 of the bill.

CURRENT LAW: Under current law it is a Class 2 misdemeanor to engage in the business or practice of debt adjusting (as defined in Section 2 of the bill). This law does not apply to the business or practice of debt adjustment by an employee of the debtor, a person acting pursuant to court order, a creditor of the debtor acting without cost to the debtor, a lender disbursing loan proceeds to pay debts, and a person who intermittently or casually adjust debts but is not regularly engaged in debt adjusting (See list of exempt persons in Section 1 of the bill). Currently the district attorney, acting on behalf of the State, may seek an injunctive to stop illegal debt adjustment activities.

BILL ANALYSIS: **Section 1** of the bill amends the list of person exempt from the law by adding:

- Licensed attorneys not primarily engaged in the business of debt adjustment but who act incident to the practice of law.
- Organizations that provide credit counseling, education, and debt management services under the following conditions:
    - Provides free credit counseling and budgeting assistance to a debtor prior to enrollment in a debt management plan.
    - Determines that the debtor has the financial ability to complete a debt management plan suitable to the debtor.
    - Disburses debtor's funds to creditors pursuant to a debt management plan for which the debtor only pays nominal consideration not to exceed $40 to initiate a plan and a monthly fee of 10% of the monthly payments not to exceed $40.
    - Provides at least a quarterly accounting to the debtor of disbursements made.
    - Does not require the debtor to purchase other services or materials as a condition of participation.

- Does not receive a payment, commission or other benefit for referring the debtor to a provider of services.
- Is accredited by an organization approved by the Commissioner of Banks.

Section 2 expands the definition of "debt adjusting" to include the business or practice of debt settlement or foreclosure assistance by acting as an intermediary between the debtor and the debtor's creditors for the purposes of reducing, settling or altering terms of payment of debts regardless of whether the person is compensated in advance or actually distributes debtor's funds to creditors.

Section 3 provides that the Attorney General, in addition to district attorneys, can bring actions to enjoin illegal debt adjusting as an unfair or deceptive trade practice. This section also allows the court to order the defendant to pay a civil penalty of up to $5000 and attorney's fees under G.S. 75-15.2 and 75-16.1.

EFFECTIVE DATE: G.S. 14-426(7)g., as enacted in Section 1 of the bill, becomes effective October 1, 2005, but the remainder of the bill is effective when the bill becomes law. The act would expire on October 1, 2007.

RELEVANT STATUTES:

§ 14-424. Engaging, etc., in business of debt adjusting a misdemeanor.

If any person shall engage in, or offer to or attempt to, engage in the business or practice of debt adjusting, or if any person shall hereafter act, offer to act, or attempt to act as a debt adjuster, he shall be guilty of a Class 2 misdemeanor.

§ 75-15.2. Civil penalty.

In any suit instituted by the Attorney General, in which the defendant is found to have violated G.S. 75-1.1 and the acts or practices which constituted the violation were, when committed, knowingly violative of a statute, the court may, in its discretion, impose a civil penalty against the defendant of up to five thousand dollars ($5,000) for each violation. In any action brought by the Attorney General pursuant to this Chapter in which it is shown that an action or practice when committed was specifically prohibited by a court order, the Court may, in its discretion, impose a civil penalty of up to five thousand dollars ($5,000) for each violation. Civil penalties may be imposed in a new action or by motion in an earlier action, whether or not such earlier action has been concluded. In determining the amount of the civil penalty, the court shall consider all relevant circumstances, including, but not limited to, the extent of the harm caused by the conduct constituting a violation, the nature and persistence of such conduct, the length of time over which the conduct occurred, the assets, liabilities, and net worth of the person, whether corporate or individual, and any corrective action taken by the defendant. The clear proceeds of penalties so assessed shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

§ 75-16.1. Attorney fee.

In any suit instituted by a person who alleges that the defendant violated G.S. 75-1.1, the presiding judge may, in his discretion, allow a reasonable attorney fee to the duly licensed attorney representing the prevailing party, such attorney fee to be taxed as a part of the court costs and payable by the losing party, upon a finding by the presiding judge that:

(1) The party charged with the violation has willfully engaged in the act or practice, and there was an unwarranted refusal by such party to fully resolve the matter which constitutes the basis of such suit; or

(2) The party instituting the action knew, or should have known, the action was frivolous and malicious.

O. Walker Reagan, counsel to the Senate Commerce committee, substantially contributed to this summary.

S0590e3-SMRO-CSRO-CSRO-44 v1

ATTACHMENT V

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 590

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

S590-ARO-41 [v.1]

Date _____,2005

Comm. Sub. [YES]
Amends Title [NO]
S590-CSRO-44 [v.1]

Representative Stam

moves to amend the bill on page 3, lines 15-16, by rewriting the lines to read:

"the payment of any debt of the debtor and the person distributes the debtor's funds or property among the creditors or obtains beneficial or legal title to the debtor's real or personal property and".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

ATTACHMENT VI

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE _____

S. B. No. 590 Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE ✓

Rep.)
) Stam
Sen.)

amendmt
1 moves to amend the ~~bill~~ on page 1, line 1
2 ( ) WHICH CHANGES THE TITLE
3 by deleting the number "16" and substituting the
4 number "20".
5
6 and on pg. 1, line 5
7 by rewriting the line to read:
8
9 "personal property.".
10
11
12
13
14
15
16
17
18
19

SIGNED Sky Stam

ADOPTED _____ FAILED ✓ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative Hackney (Chair) for the Committee on JUDICIARY I.

☒Committee Substitute for
SB 590 A BILL TO BE ENTITLED AN ACT TO FURTHER PROTECT CONSUMERS SEEKING ASSISTANCE WITH MANAGING THEIR DEBTS.

☒ With a favorable report as to House committee substitute bill, unfavorable as to Senate committee substitute bill.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

_____ Pursuant to Rule 36(b), the (House/Senate) committee substitute bill/(joint) resolution (No._____) is placed on the Calendar of _____. (The original bill resolution No._____) is placed on the Unfavorable Calendar.

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

House Judiciary 1 Committee

August 4, 2005

Minutes

The House Judiciary 1 Committee met on Thursday, August 4, 2005 at 10:00 a.m. in Room 1228 in the Legislative Building. The Chairman, Representative Hackney, called the meeting to order. The following members were present:: Representatives Ross, Stiller, Alexander, Capps, Goodwin, Harrison, Insko, West, and Culpepper. A copy of the agenda and visitor registration are attached (Attachments I and II).

The first bill before the Committee was Senate Bill 705, AN ACT TO PROVIDE FOR THE LICENSURE OF SUBSTANCE ABUSE PROFESSIONALS, TO ESTABLISH THE CREDENTIAL OF CERTIFIED CRIMINAL JUSTICE ADDICTIONS PROFESSIONAL, AND TO ALLOW THE DEPARTMENT OF JUSTICE TO CONDUCT CRIMINAL HISTORY RECORD CHECKS FROM STATE AND NATIONAL REPOSITORIES OF CRIMINAL HISTORY OF APPLICANTS FOR CREDENTIALS UPON THE REQUEST OF THE NORTH CAROLINA SUBSTANCE ABUSE PROFESSIONAL PRACTICE BOARD, (Attachment III). A Proposed House Committee Substitute was distributed to the member of the Committee, (Attachment IV). Representative Alexander moved adoption for the purpose of discussion. The motion carried. Senator Nesbitt was recognized for an explanation of the Committee Substitute. The proposed changes would amend the NC Substance Abuse Act. Those changes are outlined in a bill summary prepared by Ms. Erika Churchill, Committee Counsel, (Attachment V). Senator Nesbitt urged the Committee members to pass the Committee Substitute.

Representative Stam asked if there was any grand parenting in the bill. Mr. Jim Scarborough, Executive Director of the Substance Abuse Board responded. Representative Insko inquired as to whether or not addiction to a lottery would be covered. Mr. Scarborough said it could be adapted to cover all addictions, including lottery and alcohol. Mr. Scarborough responded to other questions raised by the members. Senator Nesbitt emphasized his commitment to the need to bring about the changes set out in the bill.

Representative Hugh Holliman was recognized and addressed Sections 5 through 10 of the Bill. He urged support of the bill and asked Erika Churchill, Committee Council, to further explain it. She addressed the issue of smoking in restaurants and the changes that this bill would enforce.

Lynette Tolson, Heart Association, was recognized and stated that the Association cannot support this proposed legislation as written. They have concerns that that it does not protect all the workers from second-hand smoke and said that the local communities should be able to make the decisions relating to the handling of this situation.

Mr. John Thompson of the Cancer Society was recognized and stated that the Society does not support the bill.

Mr. T. Jerry Williams, North Carolina Restaurant Association, stated that they have strong concerns about the requirements of the bill. He stated that it would cost some restaurant owners thousands of dollars to update their facilities to bring about the changes required under this Bill.

Ms. Deborah Bryan, American Lung Association of North Carolina, was recognized. She said this Bill provided a huge improvement, but there was a long way to go. She expressed appreciation for the improvements covered in this Bill.

Following Committee discussion, Representative Ross moved a favored report to the Committee Substitute and an unfavorable report to the original bill. The motion carried, (Attachment VI).

The meeting adjourned at 10:45 a.m.

Representative Joe Hackney
Chairman

Emily Reynolds Freeman
Committee Clerk

HOUSE COMMITTEE ON JUDICIARY I

August 4, 2005
10:00 a.m.

OPENING REMARKS

AGENDA ITEMS

Senate Bill 705 – Amend NC Substance Abuse Act
Senator Nesbitt

ADJOURNMENT

ATTACHMENT II

VISITOR REGISTRATION SHEET

House Judiciary I — **Name of Committee**

August 4, 2005 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Pam Seamans	NC Alliance for Health
Lynette Dolson	Am Heart Assoc.
Elizabeth Dutton	American Cancer Society
John Thompson	American Cancer Society
[illegible]	NCRA
[illegible]	AHA
Kathleen Edwards	UNC-CH Institute of Gov't
Morris Plescia MD	Division of Public Hlth. DA
Sally Herndon Mahler	Div. of Public Health
Deborah Bryan	Amer Lung Assn of NC
Susan King Cope	American Lung Association of NC

VISITOR REGISTRATION SHEET

House Judiciary I — August 4, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Bart Gumie	NCSAPCB
Chris Fitzsimon	NC Policy Watch
John McMillan	AFJ-5
Rodney E Clark	Raleigh Chamber Assoc.
Ken Jones	Smith Anderson
Carol Ann	13 PMHL
John McKay	Gov office
Beau Mills	NC LCV
John Bowdish	Action America
Jennifer Fuller	NASW-NC/CPSW
Mark Benson	Capitol Group

VISITOR REGISTRATION SHEET

House Judiciary I — August 4, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
W.P. Pullen	NCATL
Ed Turlington	BPMTC
John Cyrus	NCS Strategies
Kim Kelly Dandy	Capitol Group
Matt Wallace	NCNN
Greg Poole	AOC
John Rustin	NCFPC
Brian Lewis	Covenant w/ NC's Children

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

S 3

SENATE BILL 705
Health Care Committee Substitute Adopted 5/16/05
Third Edition Engrossed 6/1/05

Short Title: Amend NC Substance Abuse Act. (Public)

Sponsors:

Referred to:

March 21, 2005

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE LICENSURE OF SUBSTANCE ABUSE PROFESSIONALS, TO ESTABLISH THE CREDENTIAL OF CERTIFIED CRIMINAL JUSTICE ADDICTIONS PROFESSIONAL, AND TO ALLOW THE DEPARTMENT OF JUSTICE TO CONDUCT CRIMINAL HISTORY RECORD CHECKS FROM STATE AND NATIONAL REPOSITORIES OF CRIMINAL HISTORY OF APPLICANTS FOR CREDENTIALS UPON THE REQUEST OF THE NORTH CAROLINA SUBSTANCE ABUSE PROFESSIONAL PRACTICE BOARD.

The General Assembly of North Carolina enacts:

SECTION 1. Article 5C of Chapter 90 of the General Statutes reads as rewritten:

"Article 5C.

"North Carolina Substance Abuse ~~Professionals Certification~~Professional Practice Act.

"**§ 90-113.30. Declaration of purpose.**

The North Carolina Substance Abuse Professional ~~Certification~~ Practice Board, established by G.S. 90-113.32, is recognized as the ~~certifying~~ registering, certifying, and licensing authority for substance abuse professionals described in this Article in order to safeguard the public health, safety, and welfare, to protect the public from being harmed by unqualified persons, to assure the highest degree of professional care and conduct on the part of ~~certified~~ credentialed substance abuse professionals, to provide for the establishment of standards for the education of ~~certified~~ credentialed substance abuse professionals, and to ensure the availability of ~~certified~~ credentialed substance abuse professional services of high quality to persons in need of these services. It is the purpose of this Article to provide for the regulation of ~~Board-certified~~Board-credentialed persons offering substance abuse counseling services, substance abuse prevention services, or any other substance abuse services for which the Board may grant ~~certification.~~registration, certification, or licensure.

~~"§90-113.31. Definitions.~~

~~The following definitions shall apply in this Article:~~

~~(1) Approved supervisor. — A person who provides supervision as required by the Board to persons applying for registration or certification as a substance abuse professional pursuant to this Article.~~

~~(1a) Board. — The North Carolina Substance Abuse Professional Certification Board.~~

~~(1b) Certified clinical addictions specialist. — A person certified by the Board to practice as a clinical addictions specialist in accordance with the provisions of this Article.~~

~~(1c) Certified clinical supervisor. — A person certified by the Board to practice as a clinical supervisor in accordance with the provisions of this Article.~~

~~(1d) Certified residential facility director. — A person certified by the Board to practice as a residential facility director in accordance with the provisions of this Article.~~

~~(2) Certified substance abuse counselor. — A person certified by the Board to practice as a substance abuse counselor in accordance with the provisions of this Article.~~

~~(3) Repealed by S.L. 1997-492, s. 2.~~

~~(3a) Certified substance abuse prevention consultant. — A person certified by the Board to practice substance abuse prevention in accordance with the provisions of this Article.~~

~~(4) Clinical supervisor intern. — A person designated by the Board to practice as a clinical supervisor intern for a period not to exceed three years without a showing of good cause in accordance with the provisions of this Article.~~

~~(4a) Credentialing body. — A board that licenses, certifies, or regulates a profession or practice.~~

~~(4b) Deemed status. — Recognition by the Board of the credentials offered by a professional discipline whereby the individuals certified, licensed, or otherwise recognized by the discipline as having met the standards of a substance abuse specialist may apply individually for certification as a certified clinical addictions specialist.~~

~~(4c) Human services field. — An area of study that focuses on the biological, psychological, and social aspects of human beings.~~

~~(4d) Repealed by Session Laws 1999-164, s. 1.~~

~~(5) Prevention. — The reduction, delay, or avoidance of alcohol and of other drug use behavior. "Prevention" includes the promotion of positive environments and individual strengths that contribute to personal health and well-being over an entire life and the development of strategies that encourage individuals, families, and communities to take part in assessing and changing their lifestyle and environments.~~

~~(6) Professional discipline. – A field of study characterized by the technical, educational, and ethical standards of a profession.~~

~~(6a) Registrant. – A person who has initiated a certification process to become a certified substance abuse counselor or a certified clinical addictions specialist pursuant to this Article and is authorized to provide DWI assessments pursuant to G.S. 122C-142.1.~~

~~(7) Substance abuse counseling. – The assessment, evaluation, and provision of counseling to persons suffering from substance, drug, or alcohol abuse or dependency.~~

~~(7a) Substance abuse counselor intern. – A person who successfully completes 300 hours of Board approved supervised practical training and a written examination in pursuit of certification as a substance abuse counselor.~~

~~(8) Substance abuse professional. – A certified substance abuse counselor, certified substance abuse prevention consultant, certified clinical supervisor, certified clinical addictions specialist, or certified residential facility director.~~

"**§ 90-113.31A. Definitions.**

The following definitions shall apply in this Article:

(1) Applicant. – A person who has initiated a process to become a substance abuse professional pursuant to this Article.

(2) Applicant supervisor. – A person who provides supervision as required by the Board to persons applying for registration, certification, or licensure as a substance abuse professional pursuant to this Article.

(3) Board. – The North Carolina Substance Abuse Professional Practice Board.

(4) Certified clinical supervisor. – A person certified by the Board to practice as a clinical supervisor in accordance with the provisions of this Article.

(5) Certified criminal justice addictions professional. – A person certified by the Board to practice as a criminal justice addictions professional who under supervision provides direct services to clients or offenders exhibiting substance abuse disorders and works in a program determined by the Board to be involved in a criminal justice setting.

(6) Certified substance abuse counselor. – A person certified by the Board to practice under the supervision of a practice supervisor as a substance abuse counselor in accordance with the provisions of this Article.

(7) Certified substance abuse prevention consultant. – A person certified by the Board to practice substance abuse prevention in accordance with the provisions of this Article.

(8) Certified substance abuse residential facility director. – A person certified by the Board to practice as a substance abuse residential facility director in accordance with the provisions of this Article.

(9) Clinical addictions specialist intern. – A person who successfully completes 300 hours of Board-approved supervised practical training and passes a written examination in pursuit of licensure as a clinical addictions specialist.

(10) Clinical supervisor intern. – A person designated by the Board to practice as a clinical supervisor under the supervision of a certified clinical supervisor for a period not to exceed three years without a showing of good cause in accordance with the provisions of this Article.

(11) Counseling. – The utilization of special skills to assist individuals, families, or groups in achieving objectives, including the following:

a. Exploring a problem and its ramifications.

b. Examining attitudes and feelings.

c. Considering alternative solutions.

d. Decision making.

(12) Credential. – Any registration, certification, or license issued by the Board.

(13) Credentialing body. – A board that licenses, certifies, registers, or otherwise regulates a profession or practice.

(14) Criminal history. – A history of conviction of a State crime, whether a misdemeanor or felony, that bears on an applicant's fitness for licensure to practice substance abuse professional services. The crimes include the criminal offenses set forth in any of the following Articles of Chapter 14 of the General Statutes: Article 5, Counterfeiting and Issuing Monetary Substitutes; Article 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7A, Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 19B, Financial Transaction Card Crime Act; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, Riots and Civil Disorders; Article 39, Protection of Minors; Article 40, Protection of the Family; Article 59, Public Intoxication; and Article 60, Computer-Related Crime. The crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act in Article 5 of Chapter 90 of the General Statutes and alcohol-related offenses including sale to

underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5.

(15) Deemed status. – Recognition by the Board of the credentials offered by a professional discipline whereby the individuals certified, licensed, or otherwise recognized by the discipline as having met the standards of a clinical addictions specialist may apply individually for licensure as a licensed clinical addictions specialist.

(16) Dual relationship. – A relationship in addition to the professional relationship with a person to whom the substance abuse professional delivers services in the Twelve Core Functions or the performance domains, both as defined in rules adopted by the Board, or as provided in a supervisory capacity. These relationships may result in grounds for disciplinary action.

(17) Human services field. – An area of study that focuses on the biological, psychological, behavioral, and social aspects of human welfare with focus on the direct services designed to improve it.

(18) Independent study. – Any course of study that is not traditional classroom-based that must be preapproved by the Board or any organization that has deemed status with the Board.

(19) Licensed clinical addictions specialist. – A person licensed by the Board to practice as a clinical addictions specialist in accordance with the provisions of this Article.

(20) Practice supervisor. – A certified clinical supervisor, clinical supervisor intern, or licensed clinical addictions specialist who provides oversight and responsibility in a face-to-face capacity for each certified substance abuse counselor or criminal justice addictions professional.

(21) Prevention. – The reduction, delay, or avoidance of alcohol and of other drug use behavior. 'Prevention' includes the promotion of positive environments and individual strengths that contribute to personal health and well-being over an entire life and the development of strategies that encourage individuals, families, and communities to take part in assessing and changing their lifestyle and environments.

(22) Professional discipline. – A field of study characterized by the technical, educational, and ethical standards of a profession.

(23) Registrant. – A person who completes all requirements to be registered with the Board and is supervised by a certified clinical supervisor or clinical supervisor intern.

(24) Substance abuse counseling. – The assessment, evaluation, and provision of counseling and therapeutic service to persons suffering from substance abuse or dependency.

(25) Substance abuse counselor intern. – A person who successfully completes 300 hours of Board-approved supervised practical training

and passes a written examination in pursuit of credentialing as a substance abuse counselor.

(26) Substance abuse professional. – A registrant, certified substance abuse counselor, substance abuse counselor intern, certified substance abuse prevention consultant, certified clinical supervisor, clinical addictions specialist intern, licensed clinical addictions specialist, certified substance abuse residential facility director, or certified criminal justice addictions professional.

"**§ 90-113.31B. Scope of practice.**

The scope of practice is the use by all substance abuse professionals and their ongoing supervisees of principles, methods, and procedures of the Twelve Core Functions or performance domains as prescribed by the International Certification and Reciprocity Consortium/Alcohol and Other Drug Abuse, Incorporated, and as limited by individual credential and supervisory requirements pursuant to this Article. Specifically, the scope of practice for each individual defined as a substance abuse professional under G.S. 90-113.31A is as follows:

(1) The practice of a certified substance abuse counselor consists of the Twelve Core Functions, including screening, intake, orientation, assessment, treatment planning, counseling, case management, crisis intervention, client education, report and record keeping, consultation with other professionals in regard to client treatment and services, and referral to treat addictive disorder or disease and help prevent relapse.

(2) The practice of a certified substance abuse prevention consultant is based on knowledge in the performance domains to prevent or reduce the conditions that place individuals at increased risk of developing addictive disorder or disease and help prevent relapse.

(3) The practice of a certified clinical supervisor is based on knowledge in the performance domains to supervise substance abuse professionals who work to treat, prevent, or reduce the conditions that place individuals at risk of developing addictive disorder or disease and help prevent relapse.

(4) The practice of a licensed clinical addictions specialist may be independent and consists of the Twelve Core Functions, including screening, intake, orientation, assessment, treatment planning, counseling, case management, crisis intervention, client education, report and record keeping, consultation with other professionals in regard to client treatment and services, referral to reduce the conditions that place individuals at risk of developing addictive disorder or disease with co-occurring disorders, and treatment for addictive disorder or disease. The licensed clinical addictions specialist may provide supervision to maintain a professional credential as defined by this Article.

(5) The practice of a certified substance abuse residential facility director is a voluntary credential and consists of the Twelve Core Functions,

including screening, intake, orientation, assessment, treatment planning, counseling, case management, crisis intervention, client education, report and record keeping, consultation with professionals in regard to client treatment and services, referral to prevent or reduce the conditions that place individuals at increased risk of developing addictive disorder or disease, treatment for addictive disorder or disease, and the prevention of relapse as well as academic management training.

(6) The practice of a certified criminal justice addictions professional is based on knowledge in the performance domains of dynamics of addiction in criminal behavior; legal, ethical, and professional responsibility; criminal justice system and processes; screening, intake, and assessment; case management; monitoring; and client supervision and counseling to prevent or reduce the conditions that place individuals at increased risk of developing addictive disorder or disease, treat addictive disorder or disease, and help prevent relapse.

"**§ 90-113.32. Board; composition; voting.**

(a) The Board is created as the ~~certifying~~ authority ~~for substance abuse counselors, substance abuse prevention consultants, clinical supervisors, clinical addictions specialists, and residential facility directors~~to credential substance abuse professionals in North Carolina.

(b) Until the full Board is elected or appointed pursuant to subsection (c) of this section, the Board shall consist of 16 members with one member appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121, and one member appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121. The remaining 14 shall be those members of the current North Carolina Substance Abuse Professional ~~Certification~~ Practice Board, Inc., who have terms that are unexpired as of the effective date of this Article. The initial Board shall appoint an initial Nominating and Elections Committee to fill immediate vacancies on the Board, using the process established in subsection (d) of this section. The election and appointment process of the initial Board shall result in a Board of 19 members by April 1, 1995. As these initial members' terms expire, their successors shall be appointed as described in subsection (c) of this section, until the permanent Board is established, as described in subsection (c) of this section. Time spent as an initial member counts in determining the limitation on consecutive terms prescribed in subsection (e) of this section.

(c) After the initial Board members' terms expire, the Board shall consist of the following members, all of whom shall reside in North Carolina, appointed or elected as follows:

(1) Eleven professionals ~~certified~~ credentialed pursuant to this Article and elected by the ~~certified~~ credentialed professionals, at least two of whom shall serve each of the four Division of Mental Health,

Developmental Disabilities, and Substance Abuse Services regions of the State. Three members shall serve as members at large.

(2) Three members at large chosen from laypersons or other professional disciplines who have shown a special interest in the field of substance abuse, nominated by the Nominating and Elections Committee established by subsection (d) of this section and elected by the Board.

(3) Two members from the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, Department of Health and Human Services, appointed by the Chief of ~~Substance Abuse Services Section, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, Department of Health and Human Services,~~the North Carolina Substance Abuse Single State Agency, at least one of whom ~~is from the Substance Abuse Services Section.~~administers substance abuse services.

(4) One member of the public at large appointed by the Governor.

(5) One member of the public at large appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121 and one member of the public at large appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121.

(6) One member shall represent each of the professional disciplines granted deemed status under G.S. 90-113.41A. The member may be appointed by the professional discipline on or before a date set by the Board. If the professional discipline has at least one association in the State, the member shall be chosen from a list of nominees submitted to the association. The members appointed or elected under this subdivision shall be certified as substance abuse specialists by the professional discipline that the members represent.

No member of the General Assembly shall serve on the Board.

(c1) Every member of the Board shall have the right to vote on all matters before the Board, except for the President who shall vote only in case of a tie or when another member of the Board abstains on the question of whether the professional discipline the member represents shall retain its deemed status.

(d) The Board shall appoint five professionals from the field of substance abuse counseling and substance abuse prevention consulting to serve on the Nominating and Elections Committee. Of these five, at least three shall not be members of the Board. The Board shall appoint a member of the Nominating and Elections Committee to serve as chair. The Committee's purpose is to accept nominations from professionals certified or licensed by the Board to fill vacancies on the Board in membership categories prescribed by subdivisions (1) and (2) of subsection (c) of this section and to conduct the election of Board members. The Committee shall solicit nominations from all professionals it has certified or licensed under this Article when elected members' terms are due to expire. The certified or licensed professionals shall submit to the Committee

all nominations beginning 90 days and ending ~~14~~ 28 days before the election of new Board members. The Committee shall furnish all certified or licensed professionals with a ballot containing all the nominees for each elected Board member vacancy. In soliciting and making nominations for this process, the Committee shall give consideration to factors that promote representation on the Board by professionals certified or licensed by the Board. The Committee shall serve for a two-year term, its successors to be appointed for the same term by the Board.

(e) Members of the Board shall serve for ~~three-year~~four-year terms. No Board member shall serve for more than two consecutive terms, but a person who has been a member for two consecutive terms may be reappointed after being off the Board for a period of at least one year. When a vacancy occurs in an unexpired term, the Board shall, as soon as practicable, appoint temporary members to serve until the end of the unexpired terms. Time spent as a temporary member does not count in determining the limitation on consecutive terms.

(f) If a member becomes ineligible to serve on the Board for any reason, except when the member has committed an ethical violation that results in the suspension or revocation of the member's professional credentials, ~~the~~ that member may fulfill the remainder of ~~the member's~~his or her term on the Board.

"§ 90-113.33. Board; powers and duties.

The Board shall:

(1) Examine and determine the qualifications and fitness of applicants for certification and licensure to practice in this State.

(1a) Determine the qualifications and fitness of organizations applying for deemed status.

(2) Issue, renew, deny, suspend, or revoke ~~certification~~ licensure, certification, or registration to practice in this State or reprimand or otherwise discipline ~~certificate~~ a license, certificate, or registration ~~holders~~ holder in this State. ~~Denial of an applicant's certification or registration or the granting of certification or registration on a probationary or other conditional status shall be subject to substantially the same rules and procedures prescribed by the Board for review and disciplinary actions against those persons holding certificates or registrations. Disciplinary actions involving a clinical addictions specialist whose certification is achieved through deemed status shall be initially heard by the specialist's credentialing body. The specialist may appeal the body's decision to the Board. The Board shall, however, have the authority to hear the initial disciplinary action involving a clinical addictions specialist.~~

(3) Deal with issues concerning reciprocity.

(4) Conduct investigations for the purpose of determining whether violations of this Article or grounds for disciplining exists.

(5) Employ ~~the professional and clerical~~and fix the compensation of personnel and legal counsel that the Board determines is necessary to carry out the provisions of this Article. The Board's employment of

legal counsel is subject to the provisions of G.S. 114-2.3. The Board may purchase or rent necessary office space, equipment, and supplies.

(6) Conduct administrative hearings in accordance with Chapter 150B of the General Statutes when a "contested case", as defined in Chapter 150B, arises.

(7) Appoint from its own membership one or more members to act as representatives of the Board at any meeting in which it considers this representation is desirable.

(8) Establish fees for applications for examination, registration, certificates of ~~certification~~ certification, licensure, and renewal, and other services provided by the Board.

(9) Adopt any rules necessary to carry out the purpose of this Article and its duties and responsibilities pursuant to this Article.

(10) Request that the Department of Justice conduct criminal history record checks of applicants for registration, certification, or licensure pursuant to G.S. 114-19.11A.

The powers and duties enumerated in this section are granted for the purposes of enabling the Board to safeguard the public health, safety, and welfare against unqualified or incompetent practitioners and are to be liberally construed to accomplish this objective. When the Board exercises its authority under this Article to discipline a person, it may, as part of the decision imposing the discipline, charge the costs of investigations and the hearing to the person disciplined.

"§ 90-113.33A. Officers may administer oaths, and subpoena witnesses, records, and other materials.

The President or other presiding officer of the Board may administer oaths to all persons appearing before it as the Board may deem necessary to perform its duties, and may summon and issue subpoenas for the appearance of any witnesses deemed necessary to testify concerning any matter to be heard before or inquired into by the Board. The Board may order that any client records, documents, or other materials concerning any matter to be heard before or inquired into by the Board shall be produced before the Board or made available for inspection, notwithstanding any other provisions of law providing for the application of any counselor-client or physician-patient privilege with respect to such records, documents, or other materials. All records, documents, or other materials compiled by the Board are subject to the provisions of G.S. 90-113.34, except that in any proceeding before the Board, record of any hearing before the Board, and notice of charges against any person ~~certified~~ credentialed by the Board, the Board shall withhold from public disclosure the identity of a client, including information relating to dates and places of treatment, or any other information that tends to identify the client unless the client or the client's representative has expressly consented to the disclosure. Upon written request, the Board shall revoke a subpoena if, upon a hearing, it finds that the evidence sought does not relate to a matter in issue, the subpoena does not describe the evidence with sufficient particularity, or the subpoena is invalid.

"§ 90-113.34. Records to be kept; copies of records.

(a) The Board shall keep a regular record of its proceedings, together with the names of the members of the Board present, the names of the applicants for registration, certification, and licensure as well as other information relevant to its actions. The Board shall cause a record to be kept that shall show the name, last known place of business, last known place of residence, and date and number of the ~~certificate of certification as a certified substance abuse counselor, certified substance abuse prevention consultant, certified clinical supervisor, certified clinical addictions specialist, or certified residential facility director for every living certified person.~~credential assigned to each substance abuse professional meeting the standards set forth in this Article. Any interested person in the State is entitled to obtain a copy of ~~that record on~~Board records upon application to the Board and ~~upon~~ payment of a reasonable charge that is based on the costs involved in providing the copy.

(b) The Board may in a closed session receive evidence regarding the provision of substance abuse counseling or other treatment and services provided to a client who has not expressly or through implication consented to the public disclosure of such treatment as may be necessary for the protection of the rights of the client or of the accused registrant or substance abuse professional and the full presentation of relevant evidence. All records, papers, and other documents containing information collected and compiled by the Board, its members, or employees as a result of investigations, inquiries, or interviews conducted in connection with ~~a certification~~awarding a credential or a disciplinary matter shall not be considered public records within the meaning of Chapter 132 of the General Statutes, except any notice or statement of charges, or notice of hearing shall be a public record notwithstanding that it may contain information collected and compiled as a result of an investigation, inquiry, or interview. If any record, paper, or other document containing information collected and compiled by the Board as provided in this subsection is received and admitted in evidence in any hearing before the Board, it shall thereupon be a public record.

(c) Notwithstanding any provision to the contrary, the Board may, in any proceeding, record of any hearing, and notice of charges, withhold from public disclosure the identity of a client who has not expressly or through implication consented to such disclosure of treatment by the accused substance abuse professional.

"**§ 90-113.35. Disposition of funds.**

All fees and other moneys collected and received by the Board shall be used to implement this Article. The financial records of the Board shall be subjected to an annual audit and paid for out of the funds of the Board.

"**§ 90-113.36. ~~Certificates of certification.~~Credentials.**

(a) The Board shall furnish a certificate of certification or licensure to each applicant successfully completing the requirements for ~~certification.~~his or her credential.

(b) The Board may furnish a certificate of certification or licensure to any person in another state or territory if the individual's qualifications were, at the date of ~~registration or~~registration, certification, or licensure, substantially equal to the requirements under this Article. However, an out-of-state applicant shall first file application and pay any required fees.

~~"§ 90-113.37. Renewal of certification; lapse; revival.~~

~~(a) Every person certified pursuant to this Article who desires to maintain certification status shall apply to the Board for a renewal of certification every other year and pay to the secretary-treasurer the prescribed fee. Renewal of certification is subject to completion of no more than 60 hours of those continuing education requirements established by the Board. A clinical supervisor shall complete 15 hours of substance abuse clinical supervision training prior to the certificate being renewed. Certification that is not renewed automatically lapses, unless the Board provides for the late renewal of certification upon the payment of a late fee. No late renewal shall be granted more than five years after a certification expires. A suspended certification is subject to this section's renewal requirements and may be renewed as provided in this section. This renewal does not entitle the certified person to engage in the certified activity or in any other conduct or activity in violation of the order or judgment by which the certification was suspended, until the certification is reinstated. If a certification revoked on disciplinary grounds is reinstated and requires renewal, the certified person shall pay the renewal fee and any applicable late fee.~~

~~(b) The Board shall establish the manner in which lapsed certification may be revived or extended.~~

"**§ 90-113.37A. Renewal of credential; lapse.**

(a) Every person credentialed pursuant to this Article who desires to maintain his or her credentials shall apply to the Board for a renewal of certification or licensure every other year and pay to the treasurer the prescribed fee.

(b) Renewal of licensure is subject to completion of at least 40 hours of the continuing education requirements established by the Board. Renewal of substance abuse counselor or substance abuse prevention consultant certification is subject to completion of at least 60 hours of the continuing education requirements established by the Board. A certified substance abuse counselor shall submit a Board-approved supervision contract signed by the applicant and a practice supervisor documenting ongoing supervision at a ratio of one hour of supervision to every 40 hours of practice after certification is granted by the Board on a form provided by the Board. Any person certified by the Board as a certified alcoholism counselor or certified drug abuse counselor shall become a certified substance abuse counselor.

A clinical supervisor shall complete at least 15 hours of substance abuse clinical supervision training prior to the certificate being renewed. A substance abuse residential facility director shall complete at least 10 hours of substance abuse training for renewal. A certified criminal justice addictions professional shall complete at least 40 hours of continuing education that must be earned in the certified criminal justice addictions professional performance domains. A certified criminal justice addictions professional shall submit a Board-approved supervision contract signed by the criminal justice addictions professional and a practice supervisor documenting ongoing supervision at a ratio of one hour of supervision to every 40 hours of practice after certification is granted by the Board on a form provided by the Board.

(c) Independent study hours shall compose no more than fifty percent (50%) of the total number of hours required for renewal.

(d) A credential that is not renewed automatically lapses, unless the Board approves the late renewal of a credential upon the payment of a late fee.

(e) No late renewal shall be granted more than five years after a certification or licensure expires.

(f) A suspended credential may be renewed as provided in this section. This renewal does not entitle the credentialed person to engage in conduct or activity in violation of the order or judgment by which the credential was suspended, until the credential is reinstated. If a credential revoked on disciplinary grounds is reinstated and requires renewal, the credentialed person shall pay the renewal fee and any applicable late fee.

(g) The Board shall establish the manner in which lapsed certification or licensure may be revived or extended.

"§ 90-113.38. Maximums for certain fees.

(a) The fee to obtain a certificate of certification as a substance abuse counselor, substance abuse prevention consultant, clinical supervisor, ~~or~~ substance abuse residential facility ~~director~~ director, or certified criminal justice addictions professional may not exceed four hundred seventy-five dollars ($475.00). The fee to renew a certificate may not exceed one hundred fifty dollars ($150.00).

(b) The fee to obtain a certificate of ~~certification~~ licensure for a clinical addictions specialist pursuant to deemed status ~~may~~ shall not exceed one hundred fifty dollars ($150.00). The fee to renew a ~~certificate may~~license for a clinical addictions specialist pursuant to deemed status shall not exceed one hundred dollars ($100.00). The fee to obtain a ~~certificate of certification~~license for a clinical addictions specialist pursuant to all other procedures authorized by this Article ~~may~~ shall not exceed four hundred seventy-five dollars ($475.00). The fee to renew the ~~certificate may~~license shall not exceed one hundred fifty dollars ($150.00).

(b1) The fee to obtain a registration as a registrant shall ~~be~~ not exceed one hundred fifty dollars ($150.00). The fee to renew a registration shall ~~be~~ not exceed one hundred fifty dollars ($150.00).

(c) There shall be a reexamination fee of one hundred fifty dollars ($150.00) which shall be paid for each reexamination in addition to the fees ~~required under~~authorized pursuant to subsection (a) of this section. There shall be a fee not to exceed twenty-five dollars ($25.00) for rescheduling any examination.

(d) There shall be a fee ~~of~~ not to exceed twenty-five dollars ($25.00) to obtain a written verification ~~of certification~~or additional copy of a credential issued by the Board.

(e) There shall be a late renewal fee not to exceed one hundred twenty-five dollars ($125.00).

(f) In addition to any other prescribed fees, the Board shall charge a fee not to exceed one hundred fifty dollars ($150.00) for each administration of the test an applicant must pass to be credentialed as a United States Department of Transportation substance abuse professional.

"§ 90-113.39. Standards for ~~certification.~~credentials.

The Board shall establish standards ~~for certification of~~to credential substance abuse professionals. The ~~certification~~ credentialing standards of the International Certification and Reciprocity Consortium/Alcohol and Other Drug Abuse, Incorporated and the standards adopted by professional disciplines granted deemed status or their successor organizations may be used as guidelines for the Board's standards. The Board shall publish these required ~~standards separately from its rules so as to provide easy access to the~~ standards.

"§ 90-113.40. Requirements for ~~certification.~~certification and licensure.

(a) The Board shall issue a certificate certifying an applicant as a "Certified Substance Abuse Counselor" or as a "Certified Substance Abuse Prevention Consultant" if:

(1) The applicant is of good moral character.

(2) The applicant is not and has not engaged in any practice or conduct that would be grounds for disciplinary action under G.S. 90-113.44.

(3) The applicant is qualified for certification pursuant to the requirements of this Article and any rules adopted pursuant to it.

(4) The applicant has, at a minimum, a high school diploma or a high school equivalency certificate.

(5) The applicant has signed a form attesting to the intention to adhere fully to the ethical standards adopted by the Board.

(5a) The applicant submits a complete criminal history record check pursuant to G.S. 90-113.46A.

(6) The applicant has completed 270 hours of Board-approved education. The Board may prescribe that a certain number of hours be in a course of study for substance abuse counseling and that a certain number of hours be in a course of study for substance abuse prevention consulting. Independent study hours shall not compose more than fifty percent (50%) of the total number of hours required for initial credentialing.

(7) The applicant has documented completion of a minimum of 300 hours of Supervised Practical ~~Training and~~Training, has provided a Board-approved supervision contract between the applicant and an ~~approved supervisor.~~applicant supervisor, and has been deemed recommended by the applicant supervisor to advance in the credentialing process.

(8) The applicant for substance abuse counselor has completed ~~either~~ a total of 6,000 hours of supervised experience in the field, whether paid or ~~volunteer, or, if a graduate of a Board-approved master's degree program, a total of 3,000 hours of supervised experience in the field, whether paid or~~ volunteer. The applicant for substance abuse prevention consultant has completed a total of ~~10,000~~6,000 hours supervised experience in the field, whether paid or volunteer, or 4,000 hours if the applicant has at least a bachelors degree in a human services field from a regionally accredited college or university.

(9) The applicant has ~~successfully completed~~obtained a passing score on a written ~~examination and~~examination. An applicant for certification as a substance abuse counselor must also obtain a passing score on an oral examination promulgated and administered by the Board.

(b) The Board shall issue a certificate certifying an individual as a "Certified Clinical Supervisor" if, in addition to meeting the requirements of subdivisions (a)(1) through ~~(5)~~(5a) of this section, the applicant:

(1) Submits proof of designation by the Board as a clinical supervisor intern.

(2) Prior to June 30, 1998, the applicant presents proof that the applicant has 12,000 hours experience in alcohol and drug abuse counseling and a bachelors degree or 8,000 hours experience in alcohol and drug abuse counseling and a minimum of a master's degree. After June 30, 1998, the applicant shall present proof that the applicant has a minimum of a master's degree in a human services field with a clinical application from a regionally accredited college or university.

(3) Has 6,000 hours experience as a substance abuse clinical supervisor if the applicant has a bachelors degree or 4,000 hours experience if the applicant has a master's degree in a human services field with a clinical application from a regionally accredited college or university.

(4) Has 30 hours of substance abuse clinical supervision specific education or training. These hours shall be reflective of the ~~12 core functions~~Twelve Core Functions in the applicant's clinical application and practice and may also be counted toward the applicant's ~~recertification~~ renewal as a substance abuse ~~counselor~~counselor or a clinical addictions specialist.

(5) Submits a letter of reference from a professional who can attest to the applicant's supervisory competence and two letters of reference from either counselors who have been supervised by the applicant or professionals who can attest to the applicant's competence.

(6) ~~Successfully completes~~Obtains a passing score on a written examination administered by the Board.

A person who practices as a certified clinical supervisor in addition to practicing as a certified substance abuse counselor shall be exempt from the practice supervision contract requirement.

(b1) The Board shall designate an applicant as a "Clinical Supervisor Intern" if, in addition to meeting the requirements of subdivisions (a)(1) through ~~(5)~~(5a) of this section, the applicant meets the following qualifications:

(1) Submits an application, resume, and official transcript showing that the applicant has obtained a master's degree in a human services field with a clinical application from a regionally accredited college or university.

(2) Submits verification statements.

(3) Submits proof of ~~certification~~ credentialing as a certified substance abuse ~~counselor or a certified~~counselor, a licensed clinical addictions ~~specialist.~~specialist, or certification or licensure through an organization granted deemed status by the Board.

(4) Submits documentation establishing that the applicant has completed at least fifty percent of the required clinical supervision specific training hours as defined by the Board.

(c) The Board shall issue a ~~certificate certifying~~license credentialing an applicant as a "~~Certified~~ Licensed Clinical Addictions Specialist" if, in addition to meeting the requirements of subdivisions (a)(1) through ~~(5)~~(5a) of this section, the applicant meets one of the following criteria:

(1) Criteria A. – The applicant:

a. Has a minimum of a master's degree with a clinical application in a human services field from a regionally accredited college or university.

b. Has two years postgraduate supervised substance abuse counseling experience.

c. Submits three letters of reference from ~~certified~~ licensed clinical addictions specialists or certified substance abuse counselors who have obtained master's degrees.

d. Has achieved a combined score set by the Board on a master's level written and oral examination administered by the Board.

e. Has attained 180 hours of substance abuse specific training ~~as described~~from either a regionally accredited college or university, which may include unlimited independent study, or from training events of which no more than fifty percent (50%) shall be in independent study. All hours shall be credited according to the standards set forth in G.S. 90-113.41A.

f. The applicant has documented completion of a minimum of 300 hours of supervised practical training and has provided a Board-approved supervision contract between the applicant and an ~~approved~~ applicant supervisor.

(2) Criteria B. – The applicant:

a. Has a minimum of a master's degree with a clinical application in a human services field from a regionally accredited college or university.

b. Has been certified as a substance abuse counselor.

c. Has one year of postgraduate supervised substance abuse counseling experience.

d. Has achieved a passing score on a master's level written examination administered by the Board.

e. Submits three letters of reference from ~~certified~~ either licensed clinical addictions specialists or certified substance abuse counselors who have obtained master's degrees.

(3) Criteria C. – The applicant:

a. Has a minimum of a master's degree in a human services field with both a clinical application and a substance abuse specialty from a regionally accredited college or university that includes 180 hours of substance abuse specific education and training pursuant to G.S. 90-113.41A.

b. Has one year of postgraduate supervised substance abuse counseling experience.

c. Has achieved a passing score on an oral examination administered by the Board.

d. Submits three letters of reference from ~~certified~~ licensed clinical addictions specialists or certified substance abuse counselors who have obtained master's degrees.

(4) Criteria D. – The applicant has a substance abuse certification from a professional discipline that has been granted deemed status by the Board.

(d) The Board shall issue a certificate certifying an applicant as a "Substance Abuse ~~Certified~~ Residential Facility Director" ~~if, in addition to meeting the requirements of subdivisions (a)(1) through (5) of this section,~~ if the applicant:

(1) Has been ~~certified~~ credentialed as a substance abuse counselor or a clinical addictions specialist.

(2) Has 50 hours of Board approved academic or didactic management specific training or a combination thereof. Independent study may compose up to fifty percent (50%) of the total number of hours required for initial credentialing.

(3) Submits letters of reference from the applicant's current supervisor and a colleague or coworker.

(d1) The Board shall issue a certificate certifying an applicant as a 'Certified Criminal Justice Addictions Professional', with the acronym 'CCJP', if in addition to meeting the requirements of subdivisions (a)(1) through (5a) of this section, the applicant:

(1) Has attained 270 hours of Board-approved education or training, unless the applicant has attained a minimum of a masters degree with a clinical application and a substance abuse specialty from a regionally accredited college or university whereby the applicant must only obtain 180 hours. The hours of education shall be specifically related to the knowledge and skills necessary to perform the tasks within the International Certification and Reciprocity Consortium/Alcohol and Other Drug Abuse, Incorporated, 'IC&RC/AODA, Inc.,' criminal justice addictions professional performance domains as they relate to both adults and juveniles. Independent study may compose up to fifty percent (50%) of the total number of hours obtained for initial certification or renewal.

(2) Has documented 300 hours of Board-approved supervised practical training. This supervision shall mean the administrative, clinical, and evaluative process of monitoring, assessing, and enhancing professional performance. A minimum of 10 hours of supervision in each criminal justice domain established by the IC&RC/AODA, Inc., is required.

(3) Has provided documentation of supervised work experience providing direct service to clients or offenders involved in one of the three branches of the criminal justice system, which include law enforcement, the judiciary, and corrections. The applicant must meet one of the following criteria:

a. Criteria A. – In addition to having a high school degree or GED, the applicant has a minimum of 6,000 hours of documented work experience in direct services in criminal justice or addictions services or any combination of these services that have been obtained during the past 10 years.

b. Criteria B. – In addition to having an associate degree, the applicant has a minimum of 5,000 hours of documented work experience in direct services in criminal justice or addictions services or any combination of these services obtained during the past 10 years.

c. Criteria C. – In addition to having at least a bachelors degree, the applicant has a minimum of 4,000 hours of documented work experience in direct services in criminal justice or addictions services or any combination of these services and this experience has been obtained during the past 10 years.

d. Criteria D. – In addition to having at least a masters degree in a human services field, the applicant has a minimum of 2,000 hours of documented work experience in direct services in criminal justice or addictions services or any combination of these services that has been obtained during the past 10 years.

e. Criteria E. – In addition to having at least a masters degree in a human services field with a specialty from a regionally accredited college or university that includes 180 hours of substance abuse specific education or training, the applicant has a minimum of 2,000 hours of postgraduate supervised substance abuse counseling experience.

f. Criteria F. – In addition to having obtained the credential of a certified clinical addictions specialist or other advanced credential in a human services field from an organization that has obtained deemed status with the Board, the applicant has a minimum of 1,000 hours of documented work experience in direct services in criminal justice or addictions services that has been obtained during the past 10 years.

(4) Has passed the IC&RC/AODA, Inc., certified criminal justice addictions professional written examination.

(e) The Board shall publish from time to time information in order to provide specifics for potential applicants of an acceptable educational curriculum and the terms of acceptable supervised fieldwork experience.

(f) ~~Effective until January 1, 2001, any person who is certified as a certified clinical supervisor or who functions by his or her job description as a certified clinical supervisor shall be qualified to supervise applicants for certified clinical supervisor.~~

~~Effective from January 1, 2001 until January 1, 2003, only a person who is certified both as a certified clinical supervisor and as a certified clinical addictions specialist shall be qualified to supervise applicants for certified clinical addictions specialist, but a person who is certified as a certified clinical supervisor or a certified clinical addictions specialist shall be qualified to supervise an applicant for certification as a certified substance abuse counselor.~~

Effective January 1, 2003, only a person who is certified as a certified clinical supervisor or a clinical supervisor intern shall be qualified to supervise applicants for certified clinical supervisor and certified substance abuse counselor and applicants for ~~certified~~ licensed clinical addictions specialist who meet the qualifications of their credential other than through deemed status as provided in G.S. 90-113.40(c)(4).

"§ 90-113.40A. Requirements for registration.

(a) Upon application and payment of the required fee, the Board shall issue a registration designating an applicant as a registrant if the applicant:

(1) Provides documentation that he or she has received a high school diploma, or the equivalent, and evidence of any baccalaureate or advanced degrees the applicant has received.

(2) Completes a registration application on a form provided by the Board.

(3) Provides documentation of three hours of educational training in ethics.

(4) Signs a form attesting to the applicant's commitment to adhere to the ethical standards adopted by the Board.

(4a) Provides a complete criminal history record check pursuant to G.S. 90-113.46A.

(5) Signs a supervision contract provided by the Board that documents the proposed supervision process by an ~~approved~~ applicant supervisor.

(b) Registrant status shall be maintained for a period of up to five years while the registrant is in the process of completing his or her requirements for ~~certification~~ credentials pursuant to this Article. If at the end of a five-year period a registrant has not obtained ~~certification~~ a credential under this Article, the Board shall renew the registration for up to an additional five-year period after the registrant pays the required fee and complies with all requirements for registration pursuant to G.S. 90-113.40A. The Board shall terminate the registration of any registrant who fails to renew his or her registration.

(c) The registrant shall notify the Board of any criminal conviction imposed during the period of registration.

"§ 90-113.40B. ~~Approved~~ Applicant supervision.

The Board shall designate a person as an ~~approved~~ applicant supervisor of individuals applying for ~~registration or certification~~registration, certification, or licensure as a substance abuse professional as follows:

(1) A certified clinical supervisor shall supervise a clinical supervisor intern.

(2) A certified clinical supervisor or a clinical supervisor intern shall supervise a substance abuse residential facility director applicant, a clinical addictions specialist applicant, or a substance abuse counselor applicant.

~~(3) A certified clinical supervisor, a clinical supervisor intern, a certified clinical addictions specialist, or a certified substance abuse counselor shall supervise a registrant who provides DWI assessments.~~

(4) A certified substance abuse prevention consultant with a minimum of three years of professional experience, a certified clinical supervisor, or a clinical supervisor intern shall supervise a registrant applying for certification as a prevention consultant.

(5) Pursuant to the deemed status procedure under G.S. 90-113.41A, the supervision requirements described in subdivisions (1) through (4) of this section shall not apply to persons applying for ~~certification~~ licensure as a ~~certified~~ licensed clinical addictions specialist.

(6) A criminal justice addictions professional applicant shall be supervised by a certified clinical supervisor or clinical supervisor intern.

"§ 90-113.41. Examination.

(a) Except for those individuals applying for ~~certification~~ licensure under G.S. 90-113.41A, applicants for certification or licensure under this Article shall file an application at least 60 days prior to the date of examination and upon the forms and in the manner prescribed by the Board. The application shall be accompanied by the appropriate fee. No portion of this fee is refundable. Applicants who fail an examination may apply for reexamination upon the payment of another examination fee.

(b) Each applicant for certification or licensure under this Article shall be ~~examined~~ tested in an examination ~~that is consistent with the examination requirements of~~developed by the International Certification and Reciprocity Consortium/Alcohol and Other Drug Abuse, Incorporated and the standards adopted by professional disciplines granted deemed status or their successor organizations.

(c) Applicants for certification or licensure shall be examined at a time and place and under the supervision that the Board determines. Examinations shall be given in this State at least twice each year.

(d) Applicants may obtain their examination scores and may review their examination papers in accordance with rules the Board adopts and agreements between Board-authorized test development companies.

"§ 90-113.41A. Deemed status.

(a) To be granted deemed status by the Board, a credentialing body of a professional discipline or its designee shall demonstrate that its substance abuse ~~certification~~ credentialing program substantially meets the following:

(1) Each person to whom the credentialing body awards credentials following the effective date of this act meets and maintains minimum requirements in substance abuse specific content areas. Each person also has a minimum of a master's degree with a clinical application in a human services field.

(2) The body requires 180 hours, or the equivalent thereof, of substance abuse specific education and training that covers the following content areas:

a. Basic addiction and cross addiction Physiology and Pharmacology of Psychoactive drugs that are abused.

b. Screening, assessment, and intake of clients.

c. Individual, group, and family counseling.

d. Treatment, planning, reporting, and record keeping.

e. Crisis intervention.

f. Case management and treatment resources.

g. Ethics, legal issues, and confidentiality.

h. Psychological, emotional, personality, and developmental issues.

i. ~~Coexisting~~ Co-occurring physical and mental disabilities.

j. Special population issues, including age, gender, race, ethnicity, and health status.

k. Traditions and philosophies of recovery treatment models and support groups.

(3) The program requires one year or its equivalent of post-degree supervised clinical substance abuse practice. At least fifty percent (50%) of the practice shall consist of direct substance abuse clinical care.

(b) The professional discipline seeking deemed status shall require its members to adhere to a code of ethical conduct and shall enforce that code with disciplinary action.

(c) The Board may grant deemed status to any professional discipline that substantially meets the standards in this section. Once such status has been granted, an individual within the professional discipline may apply to the Board for ~~certification as a certified clinical addictions specialist.~~the credential of licensed clinical addictions specialist.

(d) The Standards ~~and Credentialing~~ Committee of the Board shall review the standards of each professional discipline every third year from the date it was granted deemed status to determine if the discipline continues to substantially meet the requirements of this section. If the Committee finds that a professional discipline no longer meets the requirements of this section, it shall report its findings to the Board at the Board's next regularly scheduled meeting. The deemed status standing of a

professional discipline's credential may be discontinued by a two-thirds vote of the Board.

"§ 90-113.41B. Change of name or address.

Every person licensed, ~~certified~~ certified, or registered under the provisions of this Article shall give written notice to the Board of any change in his or her name or address within 60 business days after the change takes place.

"§ 90-113.42. ~~Exemptions.~~Violations; exemptions.

(a) It shall be unlawful for any person not licensed or otherwise credentialed as a substance abuse professional pursuant to this Article to engage in those activities set forth in the scope of practice of a substance abuse professional under G.S. 90-113.31B, unless that person is regulated by another profession or is a registrant or intern as defined by this Article.

(b) It is not the intent of this Article to regulate members of other regulated professions who provide substance abuse services or consultation in the normal course of the practice of their profession. ~~Accordingly, this~~

(c) This Article does not apply to any person registered, certified, or licensed by the State or federal government to practice any other occupation or profession while rendering substance abuse services or consultation in the performance of the occupation or profession for which the person is registered, certified, or licensed.

(d) Only individuals ~~certified~~ registered, certified, or licensed under this Article may use the title ~~certified substance abuse counselor, certified substance abuse prevention consultant, certified clinical supervisor, certified clinical addictions specialist, or certified residential facility director.~~'Certified Substance Abuse Counselor', 'Certified Substance Abuse Prevention Consultant', 'Certified Clinical Supervisor', 'Licensed Clinical Addictions Specialist', 'Certified Substance Abuse Residential Facility Director', 'Certified Criminal Justice Addictions Professional', 'Substance Abuse Counselor Intern', 'Clinical Addictions Specialist Intern', 'Clinical Supervisor Intern', or 'Registrant'.

"§ 90-113.43. Illegal practice; misdemeanor penalty.

Except as otherwise authorized in this Article, no person shall:

(1) ~~Practice,~~Offer substance abuse professional services, practice, attempt to practice, or supervise while holding himself or herself out to be a certified ~~substance abuse counselor, certified substance abuse prevention consultant, certified clinical supervisor, certified clinical addictions specialist, or certified residential facility director~~substance abuse counselor, certified substance abuse prevention consultant, certified clinical supervisor, certified or licensed clinical addictions specialist, clinical addictions specialist intern, substance abuse residential facility director, certified criminal justice addictions professional, clinical supervisor intern, substance abuse prevention consultant, or registrant without first having obtained a certificate of ~~certification~~ registration, certification, or licensure from the Board.

(2) Use in connection with any name any letters, words, numerical codes, or insignia indicating or implying that this person is a ~~certified~~

registrant, substance abuse counselor, ~~certified~~ substance abuse prevention consultant, certified clinical supervisor, ~~certified~~ clinical addictions specialist, ~~or~~ certified substance abuse residential facility ~~director~~ director, substance abuse counselor intern, or clinical addictions specialist intern unless this person is ~~certified~~ registered, certified, or licensed pursuant to this Article.

(3) Practice or attempt to practice as a certified substance abuse counselor, certified substance abuse prevention consultant, certified clinical supervisor, ~~certified~~ licensed clinical addictions specialist, certified criminal justice addictions professional, or certified substance abuse residential facility director with a revoked, lapsed, or suspended ~~certification.~~certification or license.

(4) Aid, abet, or assist any ~~uncertified~~ person to practice as a certified substance abuse counselor, certified substance abuse prevention consultant, certified clinical supervisor, ~~certified~~ licensed clinical addictions specialist, ~~or~~ certified substance abuse residential facility ~~director~~ director, registrant, substance abuse counselor intern, clinical addictions specialist, or clinical supervisor intern in violation of this Article.

(5) Knowingly serve in a position required by State law or rule or federal law or regulation to be filled by a registrant, certified substance abuse counselor, certified substance abuse prevention consultant, certified clinical supervisor, ~~certified~~ licensed clinical addictions specialist, ~~or~~ certified substance abuse residential facility ~~director~~ director, substance abuse counselor intern, clinical addictions specialist intern, or clinical supervisor intern unless that person is ~~certified~~ registered, certified, or licensed under this Article.

(6) Repealed by S.L. 1997-492, s. 13.

(7) Practice, supervise, or attempt to practice or supervise or knowingly serve in a position required by State law or rule or federal law or regulation to be filled by a designated substance abuse intern without being designated as such by the Board.

A person who engages in any of the illegal practices enumerated by this section is guilty of a Class 1 misdemeanor. Each act of unlawful practice constitutes a distinct and separate offense.

"§ 90-113.44. Grounds for disciplinary action.

(a) Grounds for disciplinary action for an applicant or credentialed professional include:

(1) The employment of fraud, deceit, or misrepresentation in obtaining or attempting to obtain ~~certification~~ licensure, certification, or registration or renewal of ~~certification~~ licensure, certification, or registration.

(2) The use of drugs or alcoholic beverages to the extent that professional competency is ~~affected, until proof of rehabilitation can be established.~~affected.

(2a) The use of drugs or alcoholic beverages to the extent that a substance abuse professional suffers impairment.

(3) Conviction of an offense under any municipal, State, or federal ~~narcotic or controlled substance law, until proof of rehabilitation can be established.~~law other than traffic laws as prescribed by Chapter 20 of the General Statutes.

(4) Conviction of a felony or other public offense involving moral ~~turpitude, until proof of rehabilitation can be established.~~turpitude. Conviction of a Class A-E felony shall result in an immediate suspension of ~~certification~~ licensure, certification, or registration for a minimum of one year.

(5) An adjudication of insanity or incompetency, until proof of recovery from this condition can be ~~established.~~established by a licensed psychologist or psychiatrist.

(6) Engaging in any act or practice in violation of any of the provisions of this Article or any of the rules adopted pursuant to it, or aiding, abetting, or assisting any other person in such a violation.

(7) The commission of an act of malpractice, gross negligence, or incompetence ~~in the practice of substance abuse counseling, substance abuse prevention consulting, clinical supervising, or in serving as a clinical addictions specialist, residential facility director, or a registrant.~~while serving as a substance abuse professional, intern, or registrant.

~~(8) Practicing as a certified substance abuse counselor, certified substance abuse prevention consultant, certified clinical supervisor, certified clinical addictions specialist or certified residential facility director without a valid certificate or practicing as a registrant without a valid registration.~~

(9) Engaging in conduct that could result in harm or injury to the public.

(10) Entering into a dual relationship that impairs professional judgment or increases the risk of exploitation with a client or supervisee.

(11) Practicing as a credentialed substance abuse professional outside of his or her scope of practice pursuant to G.S. 90-113.31B.

(b) Denial of an applicant's licensure, certification, or registration or the granting of licensure, certification, or registration on a probationary or other conditional status shall be subject to substantially the same rules and procedures prescribed by the Board for review and disciplinary actions against any person holding a license, certificate, or registration. A suspension of a credential resulting from impairment due to substance use, mental health, or medical disorder shall be imposed for at least six months beginning from the date of successful discharge from a residential substance abuse treatment program or other appropriate treatment modality determined as a result of an assessment by a Board-approved assessor. Disciplinary actions involving a clinical addictions specialist whose licensure is achieved through deemed status shall be initially heard by the specialist's credentialing body. The specialist may appeal the body's

decision to the Board. The Board shall, however, have the discretionary authority to hear the initial disciplinary action involving a credentialed professional.

"§ 90-113.45. Enjoining illegal practices.

(a) The Board may, if it finds that any person is violating any of the provisions of this Article or of the rules adopted pursuant to it, apply in its own name to the superior court for a temporary or permanent restraining order or injunction to restrain that person from continuing these illegal practices. The court may grant injunctive relief regardless of whether criminal prosecution or other action has been or may be instituted as a result of the violation. In the court's consideration of the issue of whether to grant or continue an injunction sought by the Board, a showing of conduct in violation of the terms of this Article shall be sufficient to meet any requirement of general North Carolina injunction law for irreparable damage.

(b) The venue for actions brought under this section is the superior court of any county in which the illegal acts are alleged to have been committed or in the county where the defendant resides.

"§ 90-113.46. Application of requirements of Article.

All persons ~~certified~~ credentialed by the North Carolina Substance Abuse Professional ~~Certification~~ Practice Board, Inc., as of July 1, 1994, shall be ~~certified~~ credentialed by the Board pursuant to this Article. All these persons are subject to all the other requirements of this Article and of the rules adopted pursuant to it.

"§ 90-113.46A. Criminal history record checks of applicants for registration, certification, or licensure.

(a) All applicants for registration, certification, or licensure shall consent to a criminal history record check. Refusal to consent to a criminal history record check may constitute grounds for the Board to deny registration, certification, or licensure to an applicant. The Board shall ensure that the State and national criminal history of an applicant is checked. The Board shall be responsible for providing to the North Carolina Department of Justice the fingerprints of the applicant to be checked, a form signed by the applicant consenting to the criminal record check and the use of fingerprints and other identifying information required by the State or National Repositories, the fee required by the Department of Justice for providing this service, and any additional information required by the Department of Justice. The Board shall keep all information obtained pursuant to this section confidential.

(b) If an applicant's criminal history record check reveals one or more convictions as defined in G.S. 90-113.31A(14), the conviction shall not automatically bar issuance of a credential by the Board to the applicant. The Board shall consider all of the following factors regarding the conviction:

(1) The level of seriousness of the crime.

(2) The date of the crime.

(3) The age of the person at the time of the conviction.

(4) The circumstances surrounding the commission of the crime, if known.

(5) The nexus between the criminal conduct of the person and the job duties of the position to be filled.

(6) The person's prison, jail, probation, parole, rehabilitation, and employment records since the date the crime was committed.

(7) The subsequent commission by the person of a crime as defined in G.S. 90-113.31A(14).

If, after reviewing the factors, the Board determines that the grounds set forth in G.S. 90-113.44 exist, the Board may deny registration, certification, or licensure of the applicant. The Board may disclose to the applicant information contained in the criminal history record check that is relevant to the denial. The Board shall not provide a copy of the criminal history record check to the applicant. The applicant shall have the right to appear before the Board to appeal the Board's decision. However, an appearance before the full Board shall constitute an exhaustion of administrative remedies in accordance with Chapter 150B of the General Statutes.

(c) Limited Immunity. – The Board, its officers and employees, acting in good faith and in compliance with this section, shall be immune from civil liability for denying registration, certification, or licensure to an applicant based on information provided in the applicant's criminal history record check."

SECTION 2. Article 4 of Chapter 114 of the General Statutes is amended by adding the following new section to read:

"**§ 114-19.11A. Criminal record checks of applicants for registration, certification, or licensure as a substance abuse professional.**

The Department of Justice may provide to the North Carolina Substance Abuse Professional Practice Board from the State and National Repositories of Criminal Histories the criminal history of any applicant for registration, certification, or licensure pursuant to Article 5C of Chapter 90 of the General Statutes. Along with the request, the Board shall provide to the Department of Justice 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 Board 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 3. All members serving on the North Carolina Substance Abuse Professional Practice Board on the effective date of this act shall complete their current three-year terms. Upon completion of their terms, newly appointed or elected members of the Board shall serve four-year terms pursuant to G.S. 90-113.33, as enacted in Section 1 of this act.

SECTION 4. Notwithstanding G.S. 90-113.40(d1), as enacted by Section 1 of this act, the North Carolina Substance Abuse Professional Practice Board may certify a person as a certified criminal justice addictions professional during a limited period of 90 days from the date this act becomes effective and the credential is approved by the

IC&RC/AODA, Inc., if the applicant qualifies based on experience providing services to clients or offenders exhibiting substance abuse disorders and is working in a program determined by the Board to be integrally involved in at least one of the three branches of the criminal justice system, which include law enforcement, the judiciary, and corrections. In addition to meeting the requirements of G.S. 90-113.40(a)(1) through (5a), the person shall do the following:

(1) Provide two letters recommending certification from a current or former peer who functions in substantially the same professional capacity as determined by the Board.

(2) Provide one letter recommending certification from a person currently supervising or who has supervised the applicant within the previous five years attesting to the applicant's competency in the fields of substance abuse and criminal justice.

(3) Pay the criminal justice addictions professional certification fee for certification not to exceed one hundred fifty dollars ($150.00).

(4) Provide one of the following:

a. A high school diploma or a high school equivalency certificate, documentation of eight years or 16,000 hours of supervised work experience providing direct service to clients or offenders determined by the Board to be integrally involved in at least one of the three branches of the criminal justice system, which include law enforcement, the judiciary, and corrections.

b. An associate degree and documentation of six years or 12,000 hours of supervised work experience providing direct service to clients or offenders determined by the Board to be integrally involved in the three branches of the criminal justice system, which include law enforcement, the judiciary, and corrections.

c. A bachelors degree in the human services field with four years or 8,000 hours of supervised work experience providing direct service to clients or offenders determined by the Board to be integrally involved in at least one of the three branches of the criminal justice system, which include law enforcement, the judiciary, and corrections.

d. A masters degree or above in the human services field with two years or 4,000 hours of supervised work experience providing direct service to clients or offenders determined by the Board to be integrally involved in the three branches of the criminal justice system, which include law enforcement, the judiciary, and corrections.

(5) Provide documentation of at least 270 clock hours of board approved education and 300 hours of board approved supervised practical training, both in the International Certification & Reciprocity Consortium/Alcohol and Other Drug Abuse, Incorporated., criminal justice addiction professional performance domains."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

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SENATE BILL 705
Health Care Committee Substitute Adopted 5/16/05
Third Edition Engrossed 6/1/05
PROPOSED HOUSE COMMITTEE SUBSTITUTE S705-PCS55273-ST-80

Short Title: Amend Substance Abuse and Smoking Laws. (Public)

Sponsors:

Referred to:

March 21, 2005

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE LICENSURE OF SUBSTANCE ABUSE PROFESSIONALS, TO ESTABLISH THE CREDENTIAL OF CERTIFIED CRIMINAL JUSTICE ADDICTIONS PROFESSIONAL, AND TO ALLOW THE DEPARTMENT OF JUSTICE TO CONDUCT CRIMINAL HISTORY RECORD CHECKS FROM STATE AND NATIONAL REPOSITORIES OF CRIMINAL HISTORY OF APPLICANTS FOR CREDENTIALS UPON THE REQUEST OF THE NORTH CAROLINA SUBSTANCE ABUSE PROFESSIONAL PRACTICE BOARD, AND TO AMEND THE LAW CONCERNING SMOKING IN PUBLIC PLACES TO REDUCE SMOKING IN RESTAURANTS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 5C of Chapter 90 of the General Statutes reads as rewritten:

"Article 5C.

"North Carolina Substance Abuse ~~Professionals Certification~~Professional Practice Act.

"§ 90-113.30. Declaration of purpose.

The North Carolina Substance Abuse Professional ~~Certification~~ Practice Board, established by G.S. 90-113.32, is recognized as the ~~certifying~~ registering, certifying, and licensing authority for substance abuse professionals described in this Article in order to safeguard the public health, safety, and welfare, to protect the public from being harmed by unqualified persons, to assure the highest degree of professional care and conduct on the part of ~~certified~~ credentialed substance abuse professionals, to provide for the establishment of standards for the education of ~~certified~~ credentialed substance abuse professionals, and to ensure the availability of ~~certified~~ credentialed substance abuse professional services of high quality to persons in need of these services. It is the purpose of this Article to provide for the regulation of

~~Board-certified~~Board-credentialed persons offering substance abuse counseling services, substance abuse prevention services, or any other substance abuse services for which the Board may grant ~~certification.~~registration, certification, or licensure.

~~"§90-113.31. Definitions.~~

~~The following definitions shall apply in this Article:~~

~~(1) Approved supervisor. A person who provides supervision as required by the Board to persons applying for registration or certification as a substance abuse professional pursuant to this Article.~~

~~(1a) Board. The North Carolina Substance Abuse Professional Certification Board.~~

~~(1b) Certified clinical addictions specialist. A person certified by the Board to practice as a clinical addictions specialist in accordance with the provisions of this Article.~~

~~(1c) Certified clinical supervisor. A person certified by the Board to practice as a clinical supervisor in accordance with the provisions of this Article.~~

~~(1d) Certified residential facility director. A person certified by the Board to practice as a residential facility director in accordance with the provisions of this Article.~~

~~(2) Certified substance abuse counselor. A person certified by the Board to practice as a substance abuse counselor in accordance with the provisions of this Article.~~

~~(3) Repealed by S.L. 1997-492, s. 2.~~

~~(3a) Certified substance abuse prevention consultant. A person certified by the Board to practice substance abuse prevention in accordance with the provisions of this Article.~~

~~(4) Clinical supervisor intern. A person designated by the Board to practice as a clinical supervisor intern for a period not to exceed three years without a showing of good cause in accordance with the provisions of this Article.~~

~~(4a) Credentialing body. A board that licenses, certifies, or regulates a profession or practice.~~

~~(4b) Deemed status. Recognition by the Board of the credentials offered by a professional discipline whereby the individuals certified, licensed, or otherwise recognized by the discipline as having met the standards of a substance abuse specialist may apply individually for certification as a certified clinical addictions specialist.~~

~~(4c) Human services field. An area of study that focuses on the biological, psychological, and social aspects of human beings.~~

~~(4d) Repealed by Session Laws 1999-164, s. 1.~~

~~(5) Prevention. The reduction, delay, or avoidance of alcohol and of other drug use behavior. "Prevention" includes the promotion of positive environments and individual strengths that contribute to personal health and well-being over an entire life and the development~~

~~of strategies that encourage individuals, families, and communities to take part in assessing and changing their lifestyle and environments.~~

~~(6) Professional discipline. — A field of study characterized by the technical, educational, and ethical standards of a profession.~~

~~(6a) Registrant. — A person who has initiated a certification process to become a certified substance abuse counselor or a certified clinical addictions specialist pursuant to this Article and is authorized to provide DWI assessments pursuant to G.S. 122C-142.1.~~

~~(7) Substance abuse counseling. — The assessment, evaluation, and provision of counseling to persons suffering from substance, drug, or alcohol abuse or dependency.~~

~~(7a) Substance abuse counselor intern. — A person who successfully completes 300 hours of Board approved supervised practical training and a written examination in pursuit of certification as a substance abuse counselor.~~

~~(8) Substance abuse professional. — A certified substance abuse counselor, certified substance abuse prevention consultant, certified clinical supervisor, certified clinical addictions specialist, or certified residential facility director.~~

"**§ 90-113.31A. Definitions.**

The following definitions shall apply in this Article:

(1) Applicant. – A person who has initiated a process to become a substance abuse professional pursuant to this Article.

(2) Applicant supervisor. – A person who provides supervision as required by the Board to persons applying for registration, certification, or licensure as a substance abuse professional pursuant to this Article.

(3) Board. – The North Carolina Substance Abuse Professional Practice Board.

(4) Certified clinical supervisor. – A person certified by the Board to practice as a clinical supervisor in accordance with the provisions of this Article.

(5) Certified criminal justice addictions professional. – A person certified by the Board to practice as a criminal justice addictions professional who, under supervision, provides direct services to clients or offenders exhibiting substance abuse disorders and works in a program determined by the Board to be involved in a criminal justice setting.

(6) Certified substance abuse counselor. – A person certified by the Board to practice under the supervision of a practice supervisor as a substance abuse counselor in accordance with the provisions of this Article.

(7) Certified substance abuse prevention consultant. – A person certified by the Board to practice substance abuse prevention in accordance with the provisions of this Article.

(8) Certified substance abuse residential facility director. – A person certified by the Board to practice as a substance abuse residential facility director in accordance with the provisions of this Article.

(9) Clinical addictions specialist intern. – A person who successfully completes 300 hours of Board-approved supervised practical training and passes a written examination in pursuit of licensure as a clinical addictions specialist.

(10) Clinical supervisor intern. – A person designated by the Board to practice as a clinical supervisor under the supervision of a certified clinical supervisor for a period not to exceed three years without a showing of good cause in accordance with the provisions of this Article.

(11) Counseling. – The utilization of special skills to assist individuals, families, or groups in achieving objectives, including the following:

a. Exploring a problem and its ramifications.

b. Examining attitudes and feelings.

c. Considering alternative solutions.

d. Decision making.

(12) Credential. – Any registration, certification, or license issued by the Board.

(13) Credentialing body. – A board that licenses, certifies, registers, or otherwise regulates a profession or practice.

(14) Criminal history. – A history of conviction of a State crime, whether a misdemeanor or felony, that bears on an applicant's fitness for licensure to practice substance abuse professional services. The crimes include the criminal offenses set forth in any of the following Articles of Chapter 14 of the General Statutes: Article 5, Counterfeiting and Issuing Monetary Substitutes; Article 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7A, Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 19B, Financial Transaction Card Crime Act; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, Riots and Civil Disorders; Article 39, Protection of Minors; Article 40, Protection of the Family; Article 59, Public Intoxication; and Article 60, Computer-Related Crime. The crimes

also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act in Article 5 of Chapter 90 of the General Statutes and alcohol-related offenses including sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5.

(15) Deemed status. – Recognition by the Board of the credentials offered by a professional discipline whereby the individuals certified, licensed, or otherwise recognized by the discipline as having met the standards of a clinical addictions specialist may apply individually for licensure as a licensed clinical addictions specialist.

(16) Dual relationship. – A relationship in addition to the professional relationship with a person to whom the substance abuse professional delivers services in the Twelve Core Functions or the performance domains, both as defined in rules adopted by the Board, or as provided in a supervisory capacity. These relationships may result in grounds for disciplinary action.

(17) Human services field. – An area of study that focuses on the biological, psychological, behavioral, and social aspects of human welfare with focus on the direct services designed to improve it.

(18) Independent study. – Any course of study that is not traditional classroom-based that must be preapproved by the Board or any organization that has deemed status with the Board.

(19) Licensed clinical addictions specialist. – A person licensed by the Board to practice as a clinical addictions specialist in accordance with the provisions of this Article.

(20) Practice supervisor. – A certified clinical supervisor, clinical supervisor intern, or licensed clinical addictions specialist who provides oversight and responsibility in a face-to-face capacity for each certified substance abuse counselor or criminal justice addictions professional.

(21) Prevention. – The reduction, delay, or avoidance of alcohol and of other drug use behavior. 'Prevention' includes the promotion of positive environments and individual strengths that contribute to personal health and well-being over an entire life and the development of strategies that encourage individuals, families, and communities to take part in assessing and changing their lifestyles and environments.

(22) Professional discipline. – A field of study characterized by the technical, educational, and ethical standards of a profession.

(23) Registrant. – A person who completes all requirements to be registered with the Board and is supervised by a certified clinical supervisor or clinical supervisor intern.

(24) Substance abuse counseling. – The assessment, evaluation, and provision of counseling and therapeutic service to persons suffering from substance abuse or dependency.

(25) Substance abuse counselor intern. – A person who successfully completes 300 hours of Board-approved supervised practical training and passes a written examination in pursuit of credentialing as a substance abuse counselor.

(26) Substance abuse professional. – A registrant, certified substance abuse counselor, substance abuse counselor intern, certified substance abuse prevention consultant, certified clinical supervisor, clinical addictions specialist intern, licensed clinical addictions specialist, certified substance abuse residential facility director, or certified criminal justice addictions professional.

"**§ 90-113.31B. Scope of practice.**

The scope of practice is the use by all substance abuse professionals and their ongoing supervisees of principles, methods, and procedures of the Twelve Core Functions or performance domains as prescribed by the International Certification and Reciprocity Consortium/Alcohol and Other Drug Abuse, Incorporated, and as limited by individual credential and supervisory requirements pursuant to this Article. Specifically, the scope of practice for each individual defined as a substance abuse professional under G.S. 90-113.31A is as follows:

(1) The practice of a certified substance abuse counselor consists of the Twelve Core Functions, including screening, intake, orientation, assessment, treatment planning, counseling, case management, crisis intervention, client education, report and record keeping, consultation with other professionals in regard to client treatment and services, and referral to treat addictive disorder or disease and help prevent relapse.

(2) The practice of a certified substance abuse prevention consultant is based on knowledge in the performance domains to prevent or reduce the conditions that place individuals at increased risk of developing addictive disorder or disease and help prevent relapse.

(3) The practice of a certified clinical supervisor is based on knowledge in the performance domains to supervise substance abuse professionals who work to treat, prevent, or reduce the conditions that place individuals at risk of developing addictive disorder or disease and help prevent relapse.

(4) The practice of a licensed clinical addictions specialist may be independent and consists of the Twelve Core Functions, including screening, intake, orientation, assessment, treatment planning, counseling, case management, crisis intervention, client education, report and record keeping, consultation with other professionals in regard to client treatment and services, referral to reduce the conditions that place individuals at risk of developing addictive disorder or disease with co-occurring disorders, and treatment for addictive disorder or disease. The licensed clinical addictions specialist may provide supervision to maintain a professional credential as defined by this Article.

(5) The practice of a certified substance abuse residential facility director is a voluntary credential and consists of the Twelve Core Functions, including screening, intake, orientation, assessment, treatment planning, counseling, case management, crisis intervention, client education, report and record keeping, consultation with professionals in regard to client treatment and services, referral to prevent or reduce the conditions that place individuals at increased risk of developing addictive disorder or disease, treatment for addictive disorder or disease, and the prevention of relapse as well as academic management training.

(6) The practice of a certified criminal justice addictions professional is based on knowledge in the performance domains of dynamics of addiction in criminal behavior; legal, ethical, and professional responsibility; criminal justice system and processes; screening, intake, and assessment; case management; monitoring; and client supervision and counseling to prevent or reduce the conditions that place individuals at increased risk of developing addictive disorder or disease, treat addictive disorder or disease, and help prevent relapse.

"**§ 90-113.32. Board; composition; voting.**

(a) The Board is created as the ~~certifying~~ authority ~~for substance abuse counselors, substance abuse prevention consultants, clinical supervisors, clinical addictions specialists, and residential facility directors~~to credential substance abuse professionals in North Carolina.

(b) Until the full Board is elected or appointed pursuant to subsection (c) of this section, the Board shall consist of 16 members with one member appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121, and one member appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121. The remaining 14 shall be those members of the current North Carolina Substance Abuse Professional ~~Certification~~ Practice Board, Inc., who have terms that are unexpired as of the effective date of this Article. The initial Board shall appoint an initial Nominating and Elections Committee to fill immediate vacancies on the Board, using the process established in subsection (d) of this section. The election and appointment process of the initial Board shall result in a Board of 19 members by April 1, 1995. As these initial members' terms expire, their successors shall be appointed as described in subsection (c) of this section, until the permanent Board is established, as described in subsection (c) of this section. Time spent as an initial member counts in determining the limitation on consecutive terms prescribed in subsection (e) of this section.

(c) After the initial Board members' terms expire, the Board shall consist of the following members, all of whom shall reside in North Carolina, appointed or elected as follows:

(1) Eleven professionals ~~certified~~ credentialed pursuant to this Article and elected by the ~~certified~~ credentialed professionals, at least two of

whom shall serve each of the four Division of Mental Health, Developmental Disabilities, and Substance Abuse Services regions of the State. Three members shall serve as members at large.

(2) Three members at large chosen from laypersons or other professional disciplines who have shown a special interest in the field of substance abuse, nominated by the Nominating and Elections Committee established by subsection (d) of this section and elected by the Board.

(3) Two members from the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, Department of Health and Human Services, appointed by the Chief of ~~Substance Abuse Services Section, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, Department of Health and Human Services,~~the North Carolina Substance Abuse Single State Agency, at least one of whom ~~is from the Substance Abuse Services Section.~~administers substance abuse services.

(4) One member of the public at large appointed by the Governor.

(5) One member of the public at large appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121 and one member of the public at large appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121.

(6) One member shall represent each of the professional disciplines granted deemed status under G.S. 90-113.41A. The member may be appointed by the professional discipline on or before a date set by the Board. If the professional discipline has at least one association in the State, the member shall be chosen from a list of nominees submitted to the association. The members appointed or elected under this subdivision shall be certified as substance abuse specialists by the professional discipline that the members represent.

No member of the General Assembly shall serve on the Board.

(c1) Every member of the Board shall have the right to vote on all matters before the Board, except for the President who shall vote only in case of a tie or when another member of the Board abstains on the question of whether the professional discipline the member represents shall retain its deemed status.

(d) The Board shall appoint five professionals from the field of substance abuse counseling and substance abuse prevention consulting to serve on the Nominating and Elections Committee. Of these five, at least three shall not be members of the Board. The Board shall appoint a member of the Nominating and Elections Committee to serve as chair. The Committee's purpose is to accept nominations from professionals certified or licensed by the Board to fill vacancies on the Board in membership categories prescribed by subdivisions (1) and (2) of subsection (c) of this section and to conduct the election of Board members. The Committee shall solicit nominations from all professionals it has certified or licensed under this Article when elected members' terms

are due to expire. The certified or licensed professionals shall submit to the Committee all nominations beginning 90 days and ending ~~14~~ 28 days before the election of new Board members. The Committee shall furnish all certified or licensed professionals with a ballot containing all the nominees for each elected Board member vacancy. In soliciting and making nominations for this process, the Committee shall give consideration to factors that promote representation on the Board by professionals certified or licensed by the Board. The Committee shall serve for a two-year term, its successors to be appointed for the same term by the Board.

(e) Members of the Board shall serve for ~~three-year~~four-year terms. No Board member shall serve for more than two consecutive terms, but a person who has been a member for two consecutive terms may be reappointed after being off the Board for a period of at least one year. When a vacancy occurs in an unexpired term, the Board shall, as soon as practicable, appoint temporary members to serve until the end of the unexpired terms. Time spent as a temporary member does not count in determining the limitation on consecutive terms.

(f) If a member becomes ineligible to serve on the Board for any reason, except when the member has committed an ethical violation that results in the suspension or revocation of the member's professional credentials, ~~the~~ that member may fulfill the remainder of ~~the member's~~his or her term on the Board.

"§ 90-113.33. Board; powers and duties.

The Board shall:

(1) Examine and determine the qualifications and fitness of applicants for certification and licensure to practice in this State.

(1a) Determine the qualifications and fitness of organizations applying for deemed status.

(2) Issue, renew, deny, suspend, or revoke ~~certification~~ licensure, certification, or registration to practice in this State or reprimand or otherwise discipline ~~certificate~~ a license, certificate, or registration ~~holders~~ holder in this State. ~~Denial of an applicant's certification or registration or the granting of certification or registration on a probationary or other conditional status shall be subject to substantially the same rules and procedures prescribed by the Board for review and disciplinary actions against those persons holding certificates or registrations. Disciplinary actions involving a clinical addictions specialist whose certification is achieved through deemed status shall be initially heard by the specialist's credentialing body. The specialist may appeal the body's decision to the Board. The Board shall, however, have the authority to hear the initial disciplinary action involving a clinical addictions specialist.~~

(3) Deal with issues concerning reciprocity.

(4) Conduct investigations for the purpose of determining whether violations of this Article or grounds for disciplining exists.

(5) Employ ~~the professional and clerical~~and fix the compensation of personnel and legal counsel that the Board determines is necessary to

carry out the provisions of this Article. The Board's employment of legal counsel is subject to the provisions of G.S. 114-2.3. The Board may purchase or rent necessary office space, equipment, and supplies.

(6) Conduct administrative hearings in accordance with Chapter 150B of the General Statutes when a "contested case", as defined in Chapter 150B, arises.

(7) Appoint from its own membership one or more members to act as representatives of the Board at any meeting in which it considers this representation is desirable.

(8) Establish fees for applications for examination, registration, certificates of ~~certification~~ certification, licensure, and renewal, and other services provided by the Board.

(9) Adopt any rules necessary to carry out the purpose of this Article and its duties and responsibilities pursuant to this Article.

(10) Request that the Department of Justice conduct criminal history record checks of applicants for registration, certification, or licensure pursuant to G.S. 114-19.11A.

The powers and duties enumerated in this section are granted for the purposes of enabling the Board to safeguard the public health, safety, and welfare against unqualified or incompetent practitioners and are to be liberally construed to accomplish this objective. When the Board exercises its authority under this Article to discipline a person, it may, as part of the decision imposing the discipline, charge the costs of investigations and the hearing to the person disciplined.

"§ 90-113.33A. Officers may administer oaths, and subpoena witnesses, records, and other materials.

The President or other presiding officer of the Board may administer oaths to all persons appearing before it as the Board may deem necessary to perform its duties, and may summon and issue subpoenas for the appearance of any witnesses deemed necessary to testify concerning any matter to be heard before or inquired into by the Board. The Board may order that any client records, documents, or other materials concerning any matter to be heard before or inquired into by the Board shall be produced before the Board or made available for inspection, notwithstanding any other provisions of law providing for the application of any counselor-client or physician-patient privilege with respect to such records, documents, or other materials. All records, documents, or other materials compiled by the Board are subject to the provisions of G.S. 90-113.34, except that in any proceeding before the Board, record of any hearing before the Board, and notice of charges against any person ~~certified~~ credentialed by the Board, the Board shall withhold from public disclosure the identity of a client, including information relating to dates and places of treatment, or any other information that tends to identify the client unless the client or the client's representative has expressly consented to the disclosure. Upon written request, the Board shall revoke a subpoena if, upon a hearing, it finds that the evidence sought does not relate to a matter in issue, the subpoena does not describe the evidence with sufficient particularity, or the subpoena is invalid.

"**§ 90-113.34. Records to be kept; copies of records.**

(a) The Board shall keep a regular record of its proceedings, together with the names of the members of the Board present, the names of the applicants for registration, certification, and licensure as well as other information relevant to its actions. The Board shall cause a record to be kept that shall show the name, last known place of business, last known place of residence, and date and number of the ~~certificate of certification as a certified substance abuse counselor, certified substance abuse prevention consultant, certified clinical supervisor, certified clinical addictions specialist, or certified residential facility director for every living certified person.~~credential assigned to each substance abuse professional meeting the standards set forth in this Article. Any interested person in the State is entitled to obtain a copy of ~~that record on~~Board records upon application to the Board and ~~upon~~ payment of a reasonable charge that is based on the costs involved in providing the copy.

(b) The Board may in a closed session receive evidence regarding the provision of substance abuse counseling or other treatment and services provided to a client who has not expressly or through implication consented to the public disclosure of such treatment as may be necessary for the protection of the rights of the client or of the accused registrant or substance abuse professional and the full presentation of relevant evidence. All records, papers, and other documents containing information collected and compiled by the Board, its members, or employees as a result of investigations, inquiries, or interviews conducted in connection with ~~a certification~~awarding a credential or a disciplinary matter shall not be considered public records within the meaning of Chapter 132 of the General Statutes, except any notice or statement of charges, or notice of hearing shall be a public record notwithstanding that it may contain information collected and compiled as a result of an investigation, inquiry, or interview. If any record, paper, or other document containing information collected and compiled by the Board as provided in this subsection is received and admitted in evidence in any hearing before the Board, it shall thereupon be a public record.

(c) Notwithstanding any provision to the contrary, the Board may, in any proceeding, record of any hearing, and notice of charges, withhold from public disclosure the identity of a client who has not expressly or through implication consented to such disclosure of treatment by the accused substance abuse professional.

"**§ 90-113.35. Disposition of funds.**

All fees and other moneys collected and received by the Board shall be used to implement this Article. The financial records of the Board shall be subjected to an annual audit and paid for out of the funds of the Board.

"**§ 90-113.36. ~~Certificates of certification.~~Credentials.**

(a) The Board shall furnish a certificate of certification or licensure to each applicant successfully completing the requirements for ~~certification.~~his or her credential.

(b) The Board may furnish a certificate of certification or licensure to any person in another state or territory if the individual's qualifications were, at the date of ~~registration or~~registration, certification, or licensure, substantially equal to the

requirements under this Article. However, an out-of-state applicant shall first file application and pay any required fees.

~~"§ 90-113.37. Renewal of certification; lapse; revival.~~

~~(a) Every person certified pursuant to this Article who desires to maintain certification status shall apply to the Board for a renewal of certification every other year and pay to the secretary-treasurer the prescribed fee. Renewal of certification is subject to completion of no more than 60 hours of those continuing education requirements established by the Board. A clinical supervisor shall complete 15 hours of substance abuse clinical supervision training prior to the certificate being renewed. Certification that is not renewed automatically lapses, unless the Board provides for the late renewal of certification upon the payment of a late fee. No late renewal shall be granted more than five years after a certification expires. A suspended certification is subject to this section's renewal requirements and may be renewed as provided in this section. This renewal does not entitle the certified person to engage in the certified activity or in any other conduct or activity in violation of the order or judgment by which the certification was suspended, until the certification is reinstated. If a certification revoked on disciplinary grounds is reinstated and requires renewal, the certified person shall pay the renewal fee and any applicable late fee.~~

~~(b) The Board shall establish the manner in which lapsed certification may be revived or extended.~~

"§ 90-113.37A. Renewal of credential; lapse.

(a) Every person credentialed pursuant to this Article who desires to maintain his or her credentials shall apply to the Board for a renewal of certification or licensure every other year and pay to the treasurer the prescribed fee.

(b) Renewal of licensure is subject to completion of at least 40 hours of the continuing education requirements established by the Board. Renewal of substance abuse counselor or substance abuse prevention consultant certification is subject to completion of at least 60 hours of the continuing education requirements established by the Board. A certified substance abuse counselor shall submit a Board-approved supervision contract signed by the applicant and a practice supervisor documenting ongoing supervision at a ratio of one hour of supervision to every 40 hours of practice after certification is granted by the Board on a form provided by the Board. Any person certified by the Board as a certified alcoholism counselor or certified drug abuse counselor shall become a certified substance abuse counselor.

A clinical supervisor shall complete at least 15 hours of substance abuse clinical supervision training prior to the certificate being renewed. A substance abuse residential facility director shall complete at least 10 hours of substance abuse training for renewal. A certified criminal justice addictions professional shall complete at least 40 hours of continuing education that must be earned in the certified criminal justice addictions professional performance domains. A certified criminal justice addictions professional shall submit a Board-approved supervision contract signed by the criminal justice addictions professional and a practice supervisor documenting ongoing supervision at a ratio of one hour of supervision to every 40 hours of practice after certification is granted by the Board on a form provided by the Board.

(c) Independent study hours shall compose no more than fifty percent (50%) of the total number of hours required for renewal.

(d) A credential that is not renewed automatically lapses, unless the Board approves the late renewal of a credential upon the payment of a late fee.

(e) No late renewal shall be granted more than five years after a certification or licensure expires.

(f) A suspended credential may be renewed as provided in this section. This renewal does not entitle the credentialed person to engage in conduct or activity in violation of the order or judgment by which the credential was suspended, until the credential is reinstated. If a credential revoked on disciplinary grounds is reinstated and requires renewal, the credentialed person shall pay the renewal fee and any applicable late fee.

(g) The Board shall establish the manner in which lapsed certification or licensure may be revived or extended.

"**§ 90-113.38. Maximums for certain fees.**

(a) The fee to obtain a certificate of certification as a substance abuse counselor, substance abuse prevention consultant, clinical supervisor, ~~or~~ substance abuse residential facility ~~director~~ director, or certified criminal justice addictions professional may not exceed four hundred seventy-five dollars ($475.00). The fee to renew a certificate may not exceed one hundred fifty dollars ($150.00).

(b) The fee to obtain a certificate of ~~certification~~ licensure for a clinical addictions specialist pursuant to deemed status ~~may~~ shall not exceed one hundred fifty dollars ($150.00). The fee to renew a ~~certificate may~~license for a clinical addictions specialist pursuant to deemed status shall not exceed one hundred dollars ($100.00). The fee to obtain a ~~certificate of certification~~license for a clinical addictions specialist pursuant to all other procedures authorized by this Article ~~may~~ shall not exceed four hundred seventy-five dollars ($475.00). The fee to renew the ~~certificate may~~license shall not exceed one hundred fifty dollars ($150.00).

(b1) The fee to obtain a registration as a registrant shall ~~be~~ not exceed one hundred fifty dollars ($150.00). The fee to renew a registration shall ~~be~~ not exceed one hundred fifty dollars ($150.00).

(c) There shall be a reexamination fee of one hundred fifty dollars ($150.00) which shall be paid for each reexamination in addition to the fees ~~required under~~authorized pursuant to subsection (a) of this section. There shall be a fee not to exceed twenty-five dollars ($25.00) for rescheduling any examination.

(d) There shall be a fee ~~of~~ not to exceed twenty-five dollars ($25.00) to obtain a written verification ~~of certification~~or additional copy of a credential issued by the Board.

(e) There shall be a late renewal fee not to exceed one hundred twenty-five dollars ($125.00).

(f) In addition to any other prescribed fees, the Board shall charge a fee not to exceed one hundred fifty dollars ($150.00) for each administration of the test an applicant must pass to be credentialed as a United States Department of Transportation substance abuse professional.

"**§ 90-113.39. Standards for ~~certification.~~credentials.**

The Board shall establish standards ~~for certification of~~to credential substance abuse professionals. The ~~certification~~ credentialing standards of the International Certification and Reciprocity Consortium/Alcohol and Other Drug Abuse, Incorporated and the standards adopted by professional disciplines granted deemed status or their successor organizations may be used as guidelines for the Board's standards. The Board shall publish these required ~~standards separately from its rules so as to provide easy access to the~~ standards.

"**§ 90-113.40. Requirements for ~~certification.~~certification and licensure.**

(a) The Board shall issue a certificate certifying an applicant as a "Certified Substance Abuse Counselor" or as a "Certified Substance Abuse Prevention Consultant" if:

(1) The applicant is of good moral character.

(2) The applicant is not and has not engaged in any practice or conduct that would be grounds for disciplinary action under G.S. 90-113.44.

(3) The applicant is qualified for certification pursuant to the requirements of this Article and any rules adopted pursuant to it.

(4) The applicant has, at a minimum, a high school diploma or a high school equivalency certificate.

(5) The applicant has signed a form attesting to the intention to adhere fully to the ethical standards adopted by the Board.

(5a) The applicant submits to a complete criminal history record check pursuant to G.S. 90-113.46A.

(6) The applicant has completed 270 hours of Board-approved education. The Board may prescribe that a certain number of hours be in a course of study for substance abuse counseling and that a certain number of hours be in a course of study for substance abuse prevention consulting. Independent study hours shall not compose more than fifty percent (50%) of the total number of hours required for initial credentialing.

(7) The applicant has documented completion of a minimum of 300 hours of Supervised Practical ~~Training and~~Training, has provided a Board-approved supervision contract between the applicant and an ~~approved supervisor.~~applicant supervisor, and has been deemed recommended by the applicant supervisor to advance in the credentialing process.

(8) The applicant for substance abuse counselor has completed ~~either~~ a total of 6,000 hours of supervised experience in the field, whether paid or ~~volunteer, or, if a graduate of a Board-approved master's degree program, a total of 3,000 hours of supervised experience in the field, whether paid or~~ volunteer. The applicant for substance abuse prevention consultant has completed a total of ~~10,000~~6,000 hours supervised experience in the field, whether paid or volunteer, or 4,000

hours if the applicant has at least a bachelors degree in a human services field from a regionally accredited college or university.

(9) The applicant has ~~successfully completed~~obtained a passing score on a written ~~examination and~~examination. An applicant for certification as a substance abuse counselor must also obtain a passing score on an oral examination promulgated and administered by the Board.

(b) The Board shall issue a certificate certifying an individual as a "Certified Clinical Supervisor" if, in addition to meeting the requirements of subdivisions (a)(1) through ~~(5)~~(5a) of this section, the applicant:

(1) Submits proof of designation by the Board as a clinical supervisor intern.

(2) Prior to June 30, 1998, the applicant presents proof that the applicant has 12,000 hours experience in alcohol and drug abuse counseling and a bachelors degree or 8,000 hours experience in alcohol and drug abuse counseling and a minimum of a master's degree. After June 30, 1998, the applicant shall present proof that the applicant has a minimum of a master's degree in a human services field with a clinical application from a regionally accredited college or university.

(3) Has 6,000 hours experience as a substance abuse clinical supervisor if the applicant has a bachelors degree or 4,000 hours experience if the applicant has a master's degree in a human services field with a clinical application from a regionally accredited college or university.

(4) Has 30 hours of substance abuse clinical supervision specific education or training. These hours shall be reflective of the ~~12 core functions~~Twelve Core Functions in the applicant's clinical application and practice and may also be counted toward the applicant's ~~recertification~~ renewal as a substance abuse ~~counselor~~counselor or a clinical addictions specialist.

(5) Submits a letter of reference from a professional who can attest to the applicant's supervisory competence and two letters of reference from either counselors who have been supervised by the applicant or professionals who can attest to the applicant's competence.

(6) ~~Successfully completes~~Obtains a passing score on a written examination administered by the Board.

A person who practices as a certified clinical supervisor in addition to practicing as a certified substance abuse counselor shall be exempt from the practice supervision contract requirement.

(b1) The Board shall designate an applicant as a "Clinical Supervisor Intern" if, in addition to meeting the requirements of subdivisions (a)(1) through ~~(5)~~(5a) of this section, the applicant meets the following qualifications:

(1) Submits an application, resume, and official transcript showing that the applicant has obtained a master's degree in a human services field with a clinical application from a regionally accredited college or university.

(2) Submits verification statements.
(3) Submits proof of ~~certification~~ credentialing as a certified substance abuse ~~counselor or a certified~~counselor, a licensed clinical addictions ~~specialist.~~specialist, or certification or licensure through an organization granted deemed status by the Board.
(4) Submits documentation establishing that the applicant has completed at least fifty percent of the required clinical supervision specific training hours as defined by the Board.

(c) The Board shall issue a ~~certificate certifying~~license credentialing an applicant as a "~~Certified~~ Licensed Clinical Addictions Specialist" if, in addition to meeting the requirements of subdivisions (a)(1) through ~~(5)~~(5a) of this section, the applicant meets one of the following criteria:

(1) Criteria A. – The applicant:
a. Has a minimum of a master's degree with a clinical application in a human services field from a regionally accredited college or university.
b. Has two years postgraduate supervised substance abuse counseling experience.
c. Submits three letters of reference from ~~certified~~ licensed clinical addictions specialists or certified substance abuse counselors who have obtained master's degrees.
d. Has achieved a combined score set by the Board on a master's level written and oral examination administered by the Board.
e. Has attained 180 hours of substance abuse specific training ~~as described~~from either a regionally accredited college or university, which may include unlimited independent study, or from training events of which no more than fifty percent (50%) shall be in independent study. All hours shall be credited according to the standards set forth in G.S. 90-113.41A.
f. The applicant has documented completion of a minimum of 300 hours of supervised practical training and has provided a Board-approved supervision contract between the applicant and an ~~approved~~ applicant supervisor.

(2) Criteria B. – The applicant:
a. Has a minimum of a master's degree with a clinical application in a human services field from a regionally accredited college or university.
b. Has been certified as a substance abuse counselor.
c. Has one year of postgraduate supervised substance abuse counseling experience.
d. Has achieved a passing score on a master's level written examination administered by the Board.

e. Submits three letters of reference from ~~certified~~ either licensed clinical addictions specialists or certified substance abuse counselors who have obtained master's degrees.

(3) Criteria C. – The applicant:

a. Has a minimum of a master's degree in a human services field with both a clinical application and a substance abuse specialty from a regionally accredited college or university that includes 180 hours of substance abuse specific education and training pursuant to G.S. 90-113.41A.

b. Has one year of postgraduate supervised substance abuse counseling experience.

c. Has achieved a passing score on an oral examination administered by the Board.

d. Submits three letters of reference from ~~certified~~ licensed clinical addictions specialists or certified substance abuse counselors who have obtained master's degrees.

(4) Criteria D. – The applicant has a substance abuse certification from a professional discipline that has been granted deemed status by the Board.

(d) The Board shall issue a certificate certifying an applicant as a "Substance Abuse ~~Certified~~ Residential Facility Director" ~~if, in addition to meeting the requirements of subdivisions (a)(1) through (5) of this section,~~ if the applicant:

(1) Has been ~~certified~~ credentialed as a substance abuse counselor or a clinical addictions specialist.

(2) Has 50 hours of Board approved academic or didactic management specific training or a combination thereof. Independent study may compose up to fifty percent (50%) of the total number of hours required for initial credentialing.

(3) Submits letters of reference from the applicant's current supervisor and a colleague or coworker.

(d1) The Board shall issue a certificate certifying an applicant as a 'Certified Criminal Justice Addictions Professional', with the acronym 'CCJP', if in addition to meeting the requirements of subdivisions (a)(1) through (5a) of this section, the applicant:

(1) Has attained 270 hours of Board-approved education or training, unless the applicant has attained a minimum of a masters degree with a clinical application and a substance abuse specialty from a regionally accredited college or university whereby the applicant must only obtain 180 hours. The hours of education shall be specifically related to the knowledge and skills necessary to perform the tasks within the International Certification and Reciprocity Consortium/Alcohol and Other Drug Abuse, Incorporated, 'IC&RC/AODA, Inc.,' criminal justice addictions professional performance domains as they relate to both adults and juveniles. Independent study may compose up to fifty

percent (50%) of the total number of hours obtained for initial certification or renewal.

(2) Has documented 300 hours of Board-approved supervised practical training. This supervision shall mean the administrative, clinical, and evaluative process of monitoring, assessing, and enhancing professional performance. A minimum of 10 hours of supervision in each criminal justice domain established by the IC&RC/AODA, Inc., is required.

(3) Has provided documentation of supervised work experience providing direct service to clients or offenders involved in one of the three branches of the criminal justice system, which include law enforcement, the judiciary, and corrections. The applicant must meet one of the following criteria:

a. Criteria A. – In addition to having a high school degree or GED, the applicant has a minimum of 6,000 hours of documented work experience in direct services in criminal justice or addictions services or any combination of these services that have been obtained during the past 10 years.

b. Criteria B. – In addition to having an associate degree, the applicant has a minimum of 5,000 hours of documented work experience in direct services in criminal justice or addictions services or any combination of these services obtained during the past 10 years.

c. Criteria C. – In addition to having at least a bachelors degree, the applicant has a minimum of 4,000 hours of documented work experience in direct services in criminal justice or addictions services, or any combination of these services, and this experience has been obtained during the past 10 years.

d. Criteria D. – In addition to having at least a masters degree in a human services field, the applicant has a minimum of 2,000 hours of documented work experience in direct services in criminal justice or addictions services or any combination of these services that has been obtained during the past 10 years.

e. Criteria E. – In addition to having at least a masters degree in a human services field with a specialty from a regionally accredited college or university that includes 180 hours of substance abuse specific education or training, the applicant has a minimum of 2,000 hours of postgraduate supervised substance abuse counseling experience.

f. Criteria F. – In addition to having obtained the credential of a certified clinical addictions specialist or other advanced credential in a human services field from an organization that has obtained deemed status with the Board, the applicant has a minimum of 1,000 hours of documented work experience in

direct services in criminal justice or addictions services that has been obtained during the past 10 years.

(4) Has passed the IC&RC/AODA, Inc., certified criminal justice addictions professional written examination.

(e) The Board shall publish from time to time information in order to provide specifics for potential applicants of an acceptable educational curriculum and the terms of acceptable supervised fieldwork experience.

(f) ~~Effective until January 1, 2001, any person who is certified as a certified clinical supervisor or who functions by his or her job description as a certified clinical supervisor shall be qualified to supervise applicants for certified clinical supervisor.~~

~~Effective from January 1, 2001 until January 1, 2003, only a person who is certified both as a certified clinical supervisor and as a certified clinical addictions specialist shall be qualified to supervise applicants for certified clinical addictions specialist, but a person who is certified as a certified clinical supervisor or a certified clinical addictions specialist shall be qualified to supervise an applicant for certification as a certified substance abuse counselor.~~

Effective January 1, 2003, only a person who is certified as a certified clinical supervisor or a clinical supervisor intern shall be qualified to supervise applicants for certified clinical supervisor and certified substance abuse counselor and applicants for ~~certified~~ licensed clinical addictions specialist who meet the qualifications of their credential other than through deemed status as provided in G.S. 90-113.40(c)(4).

"§ 90-113.40A. Requirements for registration.

(a) Upon application and payment of the required fee, the Board shall issue a registration designating an applicant as a registrant if the applicant:

(1) Provides documentation that he or she has received a high school diploma, or the equivalent, and evidence of any baccalaureate or advanced degrees the applicant has received.

(2) Completes a registration application on a form provided by the Board.

(3) Provides documentation of three hours of educational training in ethics.

(4) Signs a form attesting to the applicant's commitment to adhere to the ethical standards adopted by the Board.

(4a) Submits to a complete criminal history record check pursuant to G.S. 90-113.46A.

(5) Signs a supervision contract provided by the Board that documents the proposed supervision process by an ~~approved~~ applicant supervisor.

(b) Registrant status shall be maintained for a period of up to five years while the registrant is in the process of completing his or her requirements for ~~certification~~ credentials pursuant to this Article. If at the end of a five-year period a registrant has not obtained ~~certification~~ a credential under this Article, the Board shall renew the registration for up to an additional five-year period after the registrant pays the required fee and complies with all requirements for registration pursuant to G.S. 90-113.40A. The Board shall terminate the registration of any registrant who fails to renew his or her registration.

(c) The registrant shall notify the Board of any criminal conviction imposed during the period of registration.

"§ 90-113.40B. ~~Approved~~ Applicant supervision.

The Board shall designate a person as an ~~approved~~ applicant supervisor of individuals applying for ~~registration or certification~~registration, certification, or licensure as a substance abuse professional as follows:

(1) A certified clinical supervisor shall supervise a clinical supervisor intern.

(2) A certified clinical supervisor or a clinical supervisor intern shall supervise a substance abuse residential facility director applicant, a clinical addictions specialist applicant, or a substance abuse counselor applicant.

~~(3) A certified clinical supervisor, a clinical supervisor intern, a certified clinical addictions specialist, or a certified substance abuse counselor shall supervise a registrant who provides DWI assessments.~~

(4) A certified substance abuse prevention consultant with a minimum of three years of professional experience, a certified clinical supervisor, or a clinical supervisor intern shall supervise a registrant applying for certification as a prevention consultant.

(5) Pursuant to the deemed status procedure under G.S. 90-113.41A, the supervision requirements described in subdivisions (1) through (4) of this section shall not apply to persons applying for ~~certification~~ licensure as a ~~certified~~ licensed clinical addictions specialist.

(6) A criminal justice addictions professional applicant shall be supervised by a certified clinical supervisor or clinical supervisor intern.

"§ 90-113.41. Examination.

(a) Except for those individuals applying for ~~certification~~ licensure under G.S. 90-113.41A, applicants for certification or licensure under this Article shall file an application at least 60 days prior to the date of examination and upon the forms and in the manner prescribed by the Board. The application shall be accompanied by the appropriate fee. No portion of this fee is refundable. Applicants who fail an examination may apply for reexamination upon the payment of another examination fee.

(b) Each applicant for certification or licensure under this Article shall be ~~examined~~ tested in an examination ~~that is consistent with the examination requirements of~~developed by the International Certification and Reciprocity Consortium/Alcohol and Other Drug Abuse, Incorporated and the standards adopted by professional disciplines granted deemed status or their successor organizations.

(c) Applicants for certification or licensure shall be examined at a time and place and under the supervision that the Board determines. Examinations shall be given in this State at least twice each year.

(d) Applicants may obtain their examination scores and may review their examination papers in accordance with rules the Board adopts and agreements between Board-authorized test development companies.

"§ 90-113.41A. Deemed status.

(a) To be granted deemed status by the Board, a credentialing body of a professional discipline or its designee shall demonstrate that its substance abuse ~~certification~~ credentialing program substantially meets the following:

(1) Each person to whom the credentialing body awards credentials following the effective date of this act meets and maintains minimum requirements in substance abuse specific content areas. Each person also has a minimum of a master's degree with a clinical application in a human services field.

(2) The body requires 180 hours, or the equivalent thereof, of substance abuse specific education and training that covers the following content areas:

a. Basic addiction and cross addiction Physiology and Pharmacology of Psychoactive drugs that are abused.

b. Screening, assessment, and intake of clients.

c. Individual, group, and family counseling.

d. Treatment, planning, reporting, and record keeping.

e. Crisis intervention.

f. Case management and treatment resources.

g. Ethics, legal issues, and confidentiality.

h. Psychological, emotional, personality, and developmental issues.

i. ~~Coexisting~~ Co-occurring physical and mental disabilities.

j. Special population issues, including age, gender, race, ethnicity, and health status.

k. Traditions and philosophies of recovery treatment models and support groups.

(3) The program requires one year or its equivalent of post-degree supervised clinical substance abuse practice. At least fifty percent (50%) of the practice shall consist of direct substance abuse clinical care.

(b) The professional discipline seeking deemed status shall require its members to adhere to a code of ethical conduct and shall enforce that code with disciplinary action.

(c) The Board may grant deemed status to any professional discipline that substantially meets the standards in this section. Once such status has been granted, an individual within the professional discipline may apply to the Board for ~~certification as a certified clinical addictions specialist.~~the credential of licensed clinical addictions specialist.

(d) The Standards ~~and Credentialing~~ Committee of the Board shall review the standards of each professional discipline every third year from the date it was granted deemed status to determine if the discipline continues to substantially meet the requirements of this section. If the Committee finds that a professional discipline no longer meets the requirements of this section, it shall report its findings to the Board at the Board's next regularly scheduled meeting. The deemed status standing of a

professional discipline's credential may be discontinued by a two-thirds vote of the Board.

"§ 90-113.41B. Change of name or address.

Every person licensed, ~~certified~~ certified, or registered under the provisions of this Article shall give written notice to the Board of any change in his or her name or address within 60 business days after the change takes place.

"§ 90-113.42. ~~Exemptions.~~Violations; exemptions.

(a) It shall be unlawful for any person not licensed or otherwise credentialed as a substance abuse professional pursuant to this Article to engage in those activities set forth in the scope of practice of a substance abuse professional under G.S. 90-113.31B, unless that person is regulated by another profession or is a registrant or intern as defined by this Article.

(b) It is not the intent of this Article to regulate members of other regulated professions who provide substance abuse services or consultation in the normal course of the practice of their profession. ~~Accordingly, this~~

(c) This Article does not apply to any person registered, certified, or licensed by the State or federal government to practice any other occupation or profession while rendering substance abuse services or consultation in the performance of the occupation or profession for which the person is registered, certified, or licensed.

(d) Only individuals ~~certified~~ registered, certified, or licensed under this Article may use the title ~~certified substance abuse counselor, certified substance abuse prevention consultant, certified clinical supervisor, certified clinical addictions specialist, or certified residential facility director.~~ 'Certified Substance Abuse Counselor', 'Certified Substance Abuse Prevention Consultant', 'Certified Clinical Supervisor', 'Licensed Clinical Addictions Specialist', 'Certified Substance Abuse Residential Facility Director', 'Certified Criminal Justice Addictions Professional', 'Substance Abuse Counselor Intern', 'Clinical Addictions Specialist Intern', 'Clinical Supervisor Intern', or 'Registrant'.

"§ 90-113.43. Illegal practice; misdemeanor penalty.

Except as otherwise authorized in this Article, no person shall:

(1) ~~Practice,~~Offer substance abuse professional services, practice, attempt to practice, or supervise while holding himself or herself out to be a certified ~~substance abuse counselor, certified substance abuse prevention consultant, certified clinical supervisor, certified clinical addictions specialist, or certified residential facility director~~substance abuse counselor, certified substance abuse prevention consultant, certified clinical supervisor, certified or licensed clinical addictions specialist, clinical addictions specialist intern, substance abuse residential facility director, certified criminal justice addictions professional, clinical supervisor intern, substance abuse prevention consultant, or registrant without first having obtained a certificate of ~~certification~~ registration, certification, or licensure from the Board.

(2) Use in connection with any name any letters, words, numerical codes, or insignia indicating or implying that this person is a ~~certified~~

registrant, substance abuse counselor, ~~certified~~ substance abuse prevention consultant, certified clinical supervisor, ~~certified~~ clinical addictions specialist, ~~or~~ certified substance abuse residential facility ~~director~~ director, substance abuse counselor intern, or clinical addictions specialist intern unless this person is ~~certified~~ registered, certified, or licensed pursuant to this Article.

(3) Practice or attempt to practice as a certified substance abuse counselor, certified substance abuse prevention consultant, certified clinical supervisor, ~~certified~~ licensed clinical addictions specialist, certified criminal justice addictions professional, or certified substance abuse residential facility director with a revoked, lapsed, or suspended ~~certification.~~certification or license.

(4) Aid, abet, or assist any ~~uncertified~~ person to practice as a certified substance abuse counselor, certified substance abuse prevention consultant, certified clinical supervisor, ~~certified~~ licensed clinical addictions specialist, ~~or~~ certified substance abuse residential facility ~~director~~ director, registrant, substance abuse counselor intern, clinical addictions specialist, or clinical supervisor intern in violation of this Article.

(5) Knowingly serve in a position required by State law or rule or federal law or regulation to be filled by a registrant, certified substance abuse counselor, certified substance abuse prevention consultant, certified clinical supervisor, ~~certified~~ licensed clinical addictions specialist, ~~or~~ certified substance abuse residential facility ~~director~~ director, substance abuse counselor intern, clinical addictions specialist intern, or clinical supervisor intern unless that person is ~~certified~~ registered, certified, or licensed under this Article.

(6) Repealed by S.L. 1997-492, s. 13.

(7) Practice, supervise, or attempt to practice or supervise or knowingly serve in a position required by State law or rule or federal law or regulation to be filled by a designated substance abuse intern without being designated as such by the Board.

A person who engages in any of the illegal practices enumerated by this section is guilty of a Class 1 misdemeanor. Each act of unlawful practice constitutes a distinct and separate offense.

"**§ 90-113.44. Grounds for disciplinary action.**

(a) Grounds for disciplinary action for an applicant or credentialed professional include:

(1) The employment of fraud, deceit, or misrepresentation in obtaining or attempting to obtain ~~certification~~ licensure, certification, or registration or renewal of ~~certification~~ licensure, certification, or registration.

(2) The use of drugs or alcoholic beverages to the extent that professional competency is ~~affected, until proof of rehabilitation can be established.~~affected.

(2a) The use of drugs or alcoholic beverages to the extent that a substance abuse professional suffers impairment.

(3) Conviction of an offense under any municipal, State, or federal ~~narcotic or controlled substance law, until proof of rehabilitation can be established.~~law other than traffic laws as prescribed by Chapter 20 of the General Statutes.

(4) Conviction of a felony or other public offense involving moral ~~turpitude, until proof of rehabilitation can be established.~~turpitude. Conviction of a Class A-E felony shall result in an immediate suspension of ~~certification~~ licensure, certification, or registration for a minimum of one year.

(5) An adjudication of insanity or incompetency, until proof of recovery from this condition can be ~~established.~~established by a licensed psychologist or psychiatrist.

(6) Engaging in any act or practice in violation of any of the provisions of this Article or any of the rules adopted pursuant to it, or aiding, abetting, or assisting any other person in such a violation.

(7) The commission of an act of malpractice, gross negligence, or incompetence ~~in the practice of substance abuse counseling, substance abuse prevention consulting, clinical supervising, or in serving as a clinical addictions specialist, residential facility director, or a registrant.~~while serving as a substance abuse professional, intern, or registrant.

~~(8) Practicing as a certified substance abuse counselor, certified substance abuse prevention consultant, certified clinical supervisor, certified clinical addictions specialist or certified residential facility director without a valid certificate or practicing as a registrant without a valid registration.~~

(9) Engaging in conduct that could result in harm or injury to the public.

(10) Entering into a dual relationship that impairs professional judgment or increases the risk of exploitation with a client or supervisee.

(11) Practicing as a credentialed substance abuse professional outside of his or her scope of practice pursuant to G.S. 90-113.31B.

(b) Denial of an applicant's licensure, certification, or registration or the granting of licensure, certification, or registration on a probationary or other conditional status shall be subject to substantially the same rules and procedures prescribed by the Board for review and disciplinary actions against any person holding a license, certificate, or registration. A suspension of a credential resulting from impairment due to substance use, mental health, or medical disorder shall be imposed for at least six months beginning from the date of successful discharge from a residential substance abuse treatment program or other appropriate treatment modality determined as a result of an assessment by a Board-approved assessor. Disciplinary actions involving a clinical addictions specialist whose licensure is achieved through deemed status shall be initially heard by the specialist's credentialing body. The specialist may appeal the body's

decision to the Board. The Board shall, however, have the discretionary authority to hear the initial disciplinary action involving a credentialed professional.

"§ 90-113.45. Enjoining illegal practices.

(a) The Board may, if it finds that any person is violating any of the provisions of this Article or of the rules adopted pursuant to it, apply in its own name to the superior court for a temporary or permanent restraining order or injunction to restrain that person from continuing these illegal practices. The court may grant injunctive relief regardless of whether criminal prosecution or other action has been or may be instituted as a result of the violation. In the court's consideration of the issue of whether to grant or continue an injunction sought by the Board, a showing of conduct in violation of the terms of this Article shall be sufficient to meet any requirement of general North Carolina injunction law for irreparable damage.

(b) The venue for actions brought under this section is the superior court of any county in which the illegal acts are alleged to have been committed or in the county where the defendant resides.

"§ 90-113.46. Application of requirements of Article.

All persons ~~certified~~ credentialed by the North Carolina Substance Abuse Professional ~~Certification~~ Practice Board, Inc., as of July 1, 1994, shall be ~~certified~~ credentialed by the Board pursuant to this Article. All these persons are subject to all the other requirements of this Article and of the rules adopted pursuant to it.

"§ 90-113.46A. Criminal history record checks of applicants for registration, certification, or licensure.

(a) All applicants for registration, certification, or licensure shall consent to a criminal history record check. Refusal to consent to a criminal history record check may constitute grounds for the Board to deny registration, certification, or licensure to an applicant. The Board shall ensure that the State and national criminal history of an applicant is checked. The Board shall be responsible for providing to the North Carolina Department of Justice the fingerprints of the applicant to be checked, a form signed by the applicant consenting to the criminal history record check and the use of fingerprints and other identifying information required by the State or National Repositories, the fee required by the Department of Justice for providing this service, and any additional information required by the Department of Justice. The Board shall keep all information obtained pursuant to this section confidential.

(b) If an applicant's criminal history record check reveals one or more convictions as defined in G.S. 90-113.31A(14), the conviction shall not automatically bar issuance of a credential by the Board to the applicant. The Board shall consider all of the following factors regarding the conviction:

(1) The level of seriousness of the crime.

(2) The date of the crime.

(3) The age of the person at the time of the conviction.

(4) The circumstances surrounding the commission of the crime, if known.

(5) The nexus between the criminal conduct of the person and the job duties of the position to be filled.

(6) The person's prison, jail, probation, parole, rehabilitation, and employment records since the date the crime was committed.

(7) The subsequent commission by the person of a crime as defined in G.S. 90-113.31A(14).

If, after reviewing the factors, the Board determines that the grounds set forth in G.S. 90-113.44 exist, the Board may deny registration, certification, or licensure of the applicant. The Board may disclose to the applicant information contained in the criminal history record check that is relevant to the denial. The Board shall not provide a copy of the criminal history record check to the applicant. The applicant shall have the right to appear before the Board to appeal the Board's decision. However, an appearance before the full Board shall constitute an exhaustion of administrative remedies in accordance with Chapter 150B of the General Statutes.

(c) Limited Immunity. – The Board, its officers and employees, acting in good faith and in compliance with this section, shall be immune from civil liability for denying registration, certification, or licensure to an applicant based on information provided in the applicant's criminal history record check."

SECTION 2. Article 4 of Chapter 114 of the General Statutes is amended by adding the following new section to read:

"**§ 114-19.11A. Criminal record checks of applicants for registration, certification, or licensure as a substance abuse professional.**

The Department of Justice may provide to the North Carolina Substance Abuse Professional Practice Board from the State and National Repositories of Criminal Histories the criminal history of any applicant for registration, certification, or licensure pursuant to Article 5C of Chapter 90 of the General Statutes. Along with the request, the Board shall provide to the Department of Justice 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 Board 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 3. All members serving on the North Carolina Substance Abuse Professional Practice Board on the effective date of this act shall complete their current three-year terms. Upon completion of their terms, newly appointed or elected members of the Board shall serve four-year terms pursuant to G.S. 90-113.33, as enacted in Section 1 of this act.

SECTION 4. Notwithstanding G.S. 90-113.40(d1), as enacted by Section 1 of this act, the North Carolina Substance Abuse Professional Practice Board may certify a person as a certified criminal justice addictions professional during a limited period of 90 days from the date this act becomes effective and the credential is approved by the

IC&RC/AODA, Inc., if the applicant qualifies based on experience providing services to clients or offenders exhibiting substance abuse disorders and is working in a program determined by the Board to be integrally involved in at least one of the three branches of the criminal justice system, which include law enforcement, the judiciary, and corrections. In addition to meeting the requirements of G.S. 90-113.40(a)(1) through (5a), the person shall do the following:

(1) Provide two letters recommending certification from a current or former peer who functions in substantially the same professional capacity as determined by the Board.

(2) Provide one letter recommending certification from a person currently supervising or who has supervised the applicant within the previous five years attesting to the applicant's competency in the fields of substance abuse and criminal justice.

(3) Pay the criminal justice addictions professional certification fee for certification not to exceed one hundred fifty dollars ($150.00).

(4) Provide one of the following:

a. A high school diploma or a high school equivalency certificate, documentation of eight years or 16,000 hours of supervised work experience providing direct service to clients or offenders determined by the Board to be integrally involved in at least one of the three branches of the criminal justice system, which include law enforcement, the judiciary, and corrections.

b. An associate degree and documentation of six years or 12,000 hours of supervised work experience providing direct service to clients or offenders determined by the Board to be integrally involved in the three branches of the criminal justice system, which include law enforcement, the judiciary, and corrections.

c. A bachelors degree in the human services field with four years or 8,000 hours of supervised work experience providing direct service to clients or offenders determined by the Board to be integrally involved in at least one of the three branches of the criminal justice system, which include law enforcement, the judiciary, and corrections.

d. A masters degree or above in the human services field with two years or 4,000 hours of supervised work experience providing direct service to clients or offenders determined by the Board to be integrally involved in the three branches of the criminal justice system, which include law enforcement, the judiciary, and corrections.

(5) Provide documentation of at least 270 clock hours of Board-approved education and 300 hours of Board-approved supervised practical training, both in the International Certification & Reciprocity Consortium/Alcohol and Other Drug Abuse, Incorporated, criminal justice addiction professional performance domains.

SECTION 5. G.S. 143-596(4) is repealed.

SECTION 6. Chapter 14 of the General Statutes is amended by adding a new Article to read:

"Article 62.

"Smoking in Public Restaurants.

"**§ 14-462. Definitions.**

The following definitions shall apply to this Article:

(1) Restaurant. – An eating establishment substantially engaged in the business of preparing and serving meals and regularly and customarily selling food to be eaten on the premises with a seating capacity of 50 or more, including, but not limited to, coffee shops, cafeterias, sandwich stands, and any building, structure, or area where food is available for eating on the premises in consideration of payment. The term 'restaurant' shall not include a designated bar or lounge area attached to a restaurant where alcoholic beverages are sold and shall not include an outdoor or partially enclosed outdoor seating area with or without a ceiling.

(2) Smoke or smoking. – The use or possession of a lighted cigarette, lighted cigar, lighted pipe, or any other lighted tobacco product.

"**§ 14-463. Smoking in public restaurants; notice.**

(a) Every restaurant may have a designated smoking area. Notwithstanding any other provision of law, the smoking area of a restaurant shall be no more than twenty-five percent (25%) of the seating capacity inside the restaurant. 'No Smoking' signs or the international 'No Smoking' symbol, which consists of a pictorial representation of a burning cigarette enclosed in a circle with a bar across it, shall be conspicuously posted and properly maintained in each area of the restaurant not designated as a smoking area.

(b) No person may smoke in any area of a restaurant that is accessible to the public and not designated as a smoking area.

(c) Any person in charge of a restaurant open and accessible to the public or a designated agent or employee of the restaurant, who observes a person smoking in apparent violation of this section, shall ask the person to extinguish all lighted tobacco products. If the person persists in apparent violation of this section, the person in charge of the restaurant or the designated agent or employee of the restaurant shall ask the person to leave the premises.

(d) Nothing in this Article shall prohibit a county health department from establishing an Internet listing of local restaurants that are considered to be 'smoke free'. No such listing shall contain negative information about any restaurant or other establishment that allows smoking.

"**§ 14-464. Violations; penalties.**

Any person who refuses to either extinguish all lighted tobacco products or leave the premises of a restaurant when asked to do so pursuant to G.S. 14-463(b) is responsible for an infraction. For violations occurring prior to January 1, 2007, the person shall be issued a warning. A person committing a violation on or after January 1, 2007, is

subject to a fine not to exceed fifty dollars ($50.00). Any violation of this Article may be reported to a law enforcement officer.

"**§ 14-465. Exceptions.**

This Article shall not apply to the following:

(1) Any building owned, rented, leased, or otherwise operated by a social, fraternal, or religious organization when used solely by the organization members or their guests or families.

(2) Any facility or private room rented or leased for private functions from which the general public is excluded.

(3) Private clubs.

"**§ 14-466. Limit on civil liability.**

No person may bring an action against a restaurant for requesting that person to extinguish all lighted tobacco products in compliance with this Article."

SECTION 7.(a) G.S. 14-462, as enacted by Section 6 of this act, reads as rewritten:

"**§ 14-462. Definitions.**

The following definitions shall apply to this Article:

(1) Restaurant. – An eating establishment substantially engaged in the business of preparing and serving meals and regularly and customarily selling food to be eaten on the premises with a seating capacity of 50 or more, including but not limited to, coffee shops, cafeterias, sandwich stands, and any building, structure, or area where food is available for eating on the premises in consideration of payment. The term 'restaurant' shall ~~not~~ include a designated bar or lounge area attached to a restaurant where alcoholic beverages are sold and shall not include an outdoor or partially enclosed outdoor seating area with or without a ceiling.

(2) Smoke or smoking. – The use or possession of a lighted cigarette, lighted cigar, lighted pipe, or any other lighted tobacco product.

(3) Smoking area. – A portion of a restaurant designated to permit smoking that is completely enclosed, separate and apart from the remainder of the restaurant, with adequate ventilation to prevent environmental tobacco smoke from mixing with the air outside the smoking area."

SECTION 7.(b) G.S. 14-463, as enacted by Section 6 of this act, is amended by adding a new subsection to read:

"(e) The 'smoking area' of a restaurant shall be in a room or rooms separate and apart from the main dining area."

SECTION 7.(c) G.S. 130A-248(a3) reads as rewritten:

"(a3) The rules adopted by the Commission pursuant to subsections (a), (a1), and (a2) of this section shall address, but not be limited to, the following:

(1) Sanitation requirements for cleanliness of floors, walls, ceilings, storage spaces, utensils, ventilation equipment, and other areas and ~~items;~~items.

(2) Requirements for:
a. Lighting and water supply;
b. Wastewater collection, treatment, and disposal facilities; and
c. Lavatory and toilet facilities, food protection, and waste ~~disposal;~~disposal.

(3) The cleaning and bactericidal treatment of eating and drinking utensils and other food-contact surfaces. A requirement imposed under this subdivision to sanitize multiuse eating and drinking utensils and other food-contact surfaces does not apply to utensils and surfaces provided in the guest room of the lodging unit for guests to prepare food while staying in the guest room.

(3a) The appropriate and reasonable use of gloves or utensils by employees who handle unwrapped ~~food;~~food.

(4) The methods of food preparation, transportation, catering, storage, and ~~serving;~~serving.

(5) The health of ~~employees;~~employees.

(6) Animal and vermin ~~control; and~~control.

(7) The prohibition against the offering of unwrapped food samples to the general public unless the offering and acceptance of the samples are continuously supervised by an agent of the entity preparing or offering the samples or by an agent of the entity on whose premises the samples are made available. As used in this subdivision, "food samples" means unwrapped food prepared and made available for sampling by and without charge to the general public for the purpose of promoting the food made available for sampling. This subdivision does not apply to unwrapped food prepared and offered in buffet, cafeteria, or other style in exchange for payment by the general public or by the person or entity arranging for the preparation and offering of such unwrapped food. This subdivision shall not apply to open air produce markets nor to farmer market facilities operated on land owned or leased by the State of North Carolina or any local government.

(8) Requirements for smoking areas as defined in G.S. 14-462.

The rules shall contain a system for grading establishments, such as Grade A, Grade B, and Grade C. The rules shall be written in a manner that promotes consistency in both the interpretation and application of the grading system."

SECTION 7.(d) This section becomes effective January 1, 2007.

SECTION 8.(a) G.S. 14-463, as enacted by Sections 6 and 7 of this act, is amended by adding a new subsection to read:

"(f) Any restaurant employee who is an unemancipated minor shall provide the employer with a signed written statement from the unemancipated minor's parent or guardian authorizing the unemancipated minor to work in a restaurant where smoking is permitted unless the unemancipated minor will be working only in 'No Smoking' or outside areas of the restaurant. This subsection shall not apply to an unemancipated minor employed by a parent or guardian."

SECTION 8.(b) This section becomes effective January 1, 2008.

SECTION 9.(a) G.S. 14-463, as enacted by Sections 6, 7, and 8 of this act, is amended by adding a new subsection to read:

"(g) Any restaurant that allows smoking shall post and maintain at least one notice in the immediate vicinity of the sanitation grade or on the front door of the restaurant that smoking is allowed in the restaurant."

SECTION 9.(b) This section becomes effective January 1, 2010.

SECTION 10. Sections 1 through 4 and 10 of this act are effective when it becomes law. Except as otherwise provided in this act, the remainder of this act becomes effective January 1, 2006, and applies to acts committed on or after that date.

SENATE BILL 705:
Amend Substance Abuse and Smoking Laws

BILL ANALYSIS

Committee:	House Judiciary I	**Date:**	August 3, 2005
Introduced by:	Sen. Nesbitt	**Summary by:**	R. Erika Churchill
Version:	PCS to Third Edition S705-CSST-80		Committee Counsel

SUMMARY: ***The proposed committee substitute for Senate Bill 705 would do two things:***

1. ***Provide for the licensure of substance abuse professionals; establish the credential of certified criminal justice addictions professional; require that applicants for registration, certification or licensure consent to a criminal history record check; and make a range of technical and conforming changes to the existing North Carolina Substance Abuse Professionals Certification Act. The bill would charge the North Carolina Substance Abuse Professional Certification Board with credentialing and licensing qualified substance abuse professionals rather than certifying them as is currently the case, and would change the Board's name to the North Carolina Substance Abuse Professional Practice Board to reflect its new role.***
2. ***Reduce smoking in public restaurants and phase in separate areas for smoking in restaurants; violators would be responsible for an infraction. Except as otherwise noted, effective January 1, 2006.***

Amend NC Substance Abuse Act --- Sections 1 through 5 of the pcs; IDENTICAL to the second edition of Senate Bill 705.

CURRENT LAW: The North Carolina Substance Abuse Professional Certification Board administers a certification process for professionals engaged in the assessment, evaluation, and provision of counseling and therapeutic services to persons suffering from substance abuse or dependency. The Board is directed to ensure that Board authorized professional titles cannot be used by anyone unless they have actually obtained that title officially through the Board. Titles currently authorized by the Board include the following: certified clinical addictions specialist, certified clinical supervisor, certified residential facility director, certified substance abuse counselor, certified substance abuse prevention consultant and clinical supervisor intern.

The Board has the authority to investigate complaints about professionals who are either certified by the Board or in the process of becoming certified, but has no authority to investigate or pursue complaints about unregulated professionals.

BILL ANALYSIS: Senate Bill 705 would change the name of the certification authority for substance abuse professionals from the 'North Carolina Substance Abuse Professional Certification Board' to the 'North Carolina Substance Abuse Professional Practice Board' and expand its powers and duties to include licensure. Board membership would remain unchanged[1]; however, the term of membership would increase from three-year terms to four-year terms.

[1] Eleven credentialed professionals elected by the credentialed professionals, at least two of whom shall serve each of the four Division of Mental Health, Developmental Disabilities, and Substance Abuse Services regions of the State. Three laypersons or other professional disciplines who have shown a special interest in the field of substance abuse, nominated by the Nominating and Elections Committee, whose five members are elected by the Board. Two members from the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, Department of Health and Human Services. Three public members, one appointed by each of the following people: the Governor, Speaker of the House of Representatives, and President Pro Tempore of the Senate.

Senate Bill 705 would expand the Board's scope of authority to include practice protection, which would ensure that a person, unless otherwise exempted by statute, would be unable to practice as a substance abuse professional without successful completion of a mandatory licensing process through the Board. Those exempted by statute would include any person registered, certified, or licensed by the State or federal government to practice any other occupation or profession while rendering substance abuse services or consultation in the performance of the occupation or profession for which the person is registered, certified, or licensed[2].

The Board would offer a wide range of credentials to practitioners from entry level up to and including persons with a master's degree or higher (who would be eligible for licensure as clinical addictions specialists). The range of credentials would encompass persons who practice in substance abuse treatment, substance abuse prevention, substance abuse clinical supervision, substance abuse residential facility programs, and criminal justice settings. The bill would define substance abuse professional to include the following titles: a registrant, certified substance abuse counselor, substance abuse counselor intern, certified substance abuse prevention consultant, certified clinical supervisor, clinical addictions specialist intern, licensed clinical addictions specialist, certified substance abuse residential facility director, or certified criminal justice addictions professional. Each type of credential would carry its own educational, training, and experience requirements as determined by the Board. Credentials would require renewal every two years, conditioned upon meeting various levels of continuing education as determined by the type of credential being renewed.

The bill would set forth the scope of practice for each of the classifications of substance abuse professional[3] listed in the preceding paragraph, and make it unlawful for any person not licensed or otherwise credentialed as a substance abuse professional pursuant to Article 5C to engage in the activities included in the scope of practice given. Practicing outside of the scope of practice for which one is credentialed would subject a substance abuse professional to disciplinary action by the Board.

Any person currently certified to practice as a substance abuse professional would be considered to be credentialed and able to continue to practice in the field. Persons working the criminal justice area would be allowed to apply for status as a 'registrant' and given five years to complete the credentialing process to become a certified criminal justice addictions specialist. Section 4 of the bill provides that a person who meets all of the educational and experience requirements to be a certified criminal justice addictions specialist may be certified as such by the Board without taking the Board-administered written exam if the person applies to the Board for certification within 90 days from the date this act becomes effective.

The bill would make it a Class 1 misdemeanor to offer or provide substance abuse counseling without being credentialed by the North Carolina Substance Abuse Professional Practice Board. The Board would establish and publish required standards to credential substance abuse professionals and would be able to use the credentialing standards of the International Certification and Reciprocity Consortium/Alcohol and Other Drug Abuse, Incorporated and the standards adopted by professional disciplines granted deemed status or their successor organizations as guidelines.

The bill also makes the following changes to the NC Substance Abuse Professional Practice Act:

- Imposes a minimum of six months suspension for impairment due to substance abuse, mental health, or medical disorder.
- Provides that independent study may not compose more than 50% of the total number of hours required for initial credentialing.
- Specifically authorizes employment of counsel.

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

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[2] G.S. 90-113.42(c).
[3] G.S. 90-113.31A.

Reduce Smoking in Restaurants. – Sections 5 through 10 of the pcs.

BILL ANALYSIS:

Section 5. The proposed committee substitute would repeal the definition of a restaurant found in Article 64 of Chapter 143. Article 64 regulates smoking in State controlled buildings and limits the ordinances local governments may pass to ban smoking. Although it contains a definition of a restaurant, the term is not used anywhere in the article.

Section 6. The proposed committee substitute allows restaurants that are open and accessible to the public to have designated smoking area that is no more than 25% of the seating capacity of the restaurant. The areas not designated as smoking would have to be conspicuously posted as 'No Smoking' areas. No person would be allowed to smoke in those 'No Smoking' areas. A restaurant is defined as an eating establishment preparing and serving meals and regularly selling food to be eaten on the premises. The definition specifically includes coffee shops, cafeterias, sandwich stands, and any structure or area where food is available for eating in the premises for payment. It also includes bars and lounge areas attached to restaurants. The definition specifically excludes bar and lounge areas attached to a restaurant where alcoholic beverages are sold and any outdoor or partially enclosed seating area with or without a ceiling. Premises operated by private organizations for members and their guest or families are exempt, as are facilities and private rooms used for private functions and private clubs.

Smoking is the use or possession of lighted tobacco products.

The person in charge, or a designee, must ask any person observed smoking in a 'No Smoking' area to extinguish the product. If the person does not, they must be asked to leave.

The proposed committee substitute would make refusal to extinguish the tobacco product or leave the restaurant is an infraction. Prior to January 1, 2007 a warning is issued. Afterward, the violator may be fined up to $50.

The proposed committee substitute would also provide that no person could bring an action against the restaurant for asking that person to extinguish all lighted tobacco products in a 'No Smoking' area.

Sections 7 and 8. Effective January 1, 2007, restaurants would be required to have 'Smoking' areas separate and apart from the main dining area. The definition of restaurant would be amended to include bar and lounge areas attached to a restaurant where alcoholic beverages are sold. The Commission on Health Services shall adopt rules regarding enforcement of restaurant regulations and inspections with respect to providing smoking areas.

Section 9. Effective January 1, 2008, restaurants would not be allowed to have unemancipated minors working in the smoking areas of the restaurant without signed written permission of the minor's parent or guardian.

Section 10. Effective January 1, 2010, restaurants that allow smoking will be required to post notice that smoking is permitted in the immediate vicinity of the sanitation grade posting or the front door of the restaurant.

Effective Date.—Section 11.

The provisions in Sections 1 through 4 of the proposed committee substitute (Amend NC Substance Abuse Act) are effective when the act becomes law. Except as otherwise noted, the remaining provisions become effective January 1, 2006 and apply to act committed on or after that date.

Ben Popkin and Cindy Avrette substantially contributed to this summary.

S0705e3-SMST-CSST-80

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative Hackney (Chair) for the Committee on JUDICIARY I.

☒Committee Substitute for
SB 705 A BILL TO BE ENTITLED AN ACT TO PROVIDE FOR THE LICENSURE OF SUBSTANCE ABUSE PROFESSIONALS, TO ESTABLISH THE CREDENTIAL OF CERTIFIED CRIMINAL JUSTICE ADDICTIONS PROFESSIONAL, AND TO ALLOW THE DEPARTMENT OF JUSTICE TO CONDUCT CRIMINAL HISTORY RECORD CHECKS FROM STATE AND NATIONAL REPOSITORIES OF CRIMINAL HISTORY OF APPLICANTS FOR CREDENTIALS UPON THE REQUEST OF THE NORTH CAROLINA SUBSTANCE ABUSE PROFESSIONAL PRACTICE BOARD.

☒ With a favorable report as to House committee substitute bill, which changes the title, unfavorable as to Senate committee substitute bill.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

_____ Pursuant to Rule 36(b), the (House/Senate) committee substitute bill/(joint) resolution (No._____) is placed on the Calendar of _____. (The original bill resolution No._____) is placed on the Unfavorable Calendar.

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

House Judiciary I Committee

August 11, 2005
10:00 a.m.

Minutes

The House Judiciary I Committee met on Thursday, August 11, 2005, at 10:00 a. m. The Chairman, Representative Hackney, called the meeting to order and the following members were present: Representatives Alexander, Capps, Goodwin, Harrison, Insko, Ross, Stiller and Stam. A copy of the agenda and visitor registration is attached, (Attachments I and II).

Chairman Hackney announced that the first bill under consideration by the committee would be Senate Bill 705, AN ACT TO PROVIDE FOR THE LICENSURE OF SUBSTANCE ABUSE PROFESSIONALS, TO ESTABLISH THE CREDENTIAL OF CERTIFIED CRIMINAL JUSTICE ADDICTIONS PROFESSIONAL, AND TO ALLOW THE DEPARTMENT OF JUSTICE TO CONDUCT CRIMINAL HISTORY RECORD CHECKS FROM STATE AND NATIONAL REPOSITORIES OF CRIMINAL HISTORY OF APPLICANTS FOR CREDENTIALS UPON THE REQUEST OF THE NORTH CAROLINA SUBSTANCE ABUSE PROFESSIONAL PRACTICE BOARD, AND TO AMEND THE LAW CONCERNING SMOKING IN PUBLIC PLACES TO REDUCE SMOKING IN RESTAURANTS, (Attachment III). The bill was discussed and passed out of the Committee during the August 4 meeting. Chairman Hackney stated that the purpose of having the bill back was to remove the language regarding smoking in restaurants.

Representative Holliman was recognized to comment on the bill. He said that the Senate would not have time to take up the new language that had been added, so rather than holding up the entire bill, he requested that the smoking in restaurants language be removed.

A new House Committee Substitute (Attachment IV) was distributed and Representative Alexander moved that it be adopted for the purpose of discussion. The motion carried. A bill summary prepared by Ms. Erika Churchill, Committee Counsel, is attached to the minutes, (Attachment V). Representative Alexander then moved that the new House Committee Substitute be given a favorable report. The motion carried, (Attachment VI).

Senator Clodfelter was recognized to continue discussion of Senate Bill 856, AN ACT REGARDING ACCESS TO A PUBLIC RECORD THAT IS ALSO TRIAL PREPARATION MATERIAL, (Attachment VII). The bill was previously discussed at the June 23 meeting of the Committee. A Proposed House Committee Substitute was distributed, (Attachment VIII) and Representative Stam moved its adoption for the purpose of discussion. The motion carried.

Senator Clodfelter stated that during the previous discussion questions had arisen regarding Section 2 of the bill that amended the public records law so that in all cases in which a party was successful in getting access to public records and had to go to court to do so could get attorneys fees whether or not there was any dispute, justification or other extenuating circumstances. He said that the Proposed Committee Substitute restores the bill as it originally was in the Senate. The current statute allows the court in its discretion to award attorneys' fees. He said that the new bill states that the court shall award attorneys' fees to the prevailing party unless the court makes certain specific findings in order not to award attorneys' fees. Senator Clodfelter stated that he preferred the language in the Proposed House Committee Substitute. He suggested that the language on lines 17-20 on page 3 could be changed for clarity.

A bill summary prepared by Ms. Churchill is attached to the minutes, (Attachment IX).

Ms. Judith Wegner, a professor of state and local government law at UNC-Chapel Hill, was recognized to comment on the bill and said that the Committee Substitute strikes a good balance.

Mr. Jeff Gray, Chair, Government and Public Sector Attorneys Section of the Bar Association, was recognized and expressed support of the Committee Substitute.

Mr. Andy Romanet, General Counsel, North Carolina League of Municipalities stated that Section 2 was compromised, but is a compromise that they can live with.

Mr. Mark Prak, North Carolina Association of Broadcasters stated support of the version 2 of the bill that had passed in the Senate. He said that the current public records law is weighted in favor of every record of government being considered public record unless there is an exception. He stated that the right public policy is to restore the law to the way it was some years past before attorneys' fees became discretionary. He said that those who try to withhold information would be emboldened to do so if there is not also on the table the consideration that they will have to pay the attorneys' fees for wrongfully withholding documents.

Representative Stam offered an amendment to rewrite lines 16-20 on page 3 of the bill, (Attachment X).

Committee discussion followed.

Mr. Prak spoke in opposition to the amendment.

Upon vote of the committee, the amendment was adopted. Representatives Stam and Ross then moved a favorable report for a new House Committee Substitute incorporating the Stam amendment. The motion carried, (Attachment XI). A copy of the new Committee Substitute is attached, (Attachment XII).

The meeting was adjourned at 10:45.

Representative Joe Hackney
Chairman

Emily Reynolds Freeman
Committee Clerk

ATTACHMENT I

HOUSE COMMITTEE ON JUDICIARY I

August 11, 2005
10:00 a.m.

OPENING REMARKS

AGENDA ITEMS

Senate Bill 705 – Amend NC Substance Abuse Act
Senator Nesbitt

Senate Bill 856 – Access to Public Trial Preparation Records
Senator Clodfelter

ADJOURNMENT

ATTACHMENT II

VISITOR REGISTRATION SHEET

House Judiciary I — **Name of Committee**

August 11, 2005 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Elizabeth Outten	American Cancer Society
John Thompson	American Cancer Society
Anna Bridges	NCSAPCB
McKenzie Grimes	NCBHS
Derek Allen	City of Greensboro
Katerina Moshinski	Brooks Pierce
Leanne Winner	NCSBA
Molly Ryan	NCSBA
Jean Rogall	NC Family Policy Council
CASANDRA STRONG	CCPS

VISITOR REGISTRATION SHEET

House Judiciary I — August 11, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Stacy Flannery	NCHCFA
DAVID BARNES	Poyner Spruill
[illegible]	AHA
[illegible]	NCAA
Matt Latrick	NCGA
Matthew Eisley	NHO
Mark Fleming	University
Kevin Fitzgerald	UNC
Judith Meggers	Hillsborough; UNC
[illegible]	Am Heart
Annie Putzen	NC Alliance for Health

VISITOR REGISTRATION SHEET

House Judiciary I — August 11, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Ann Christian	Atty
Mark Prak	atty
Dan McLawhorn	Raleigh City Atty's Office
	NCSAPCB
Bart Gimis	NCSAPCB
Tim Hall	NCSAPCB
Michelle Frazier	NC Bar Ass'n
Holly Bryan	NCATL
	NCRA - NCWA
John Cyrus	NCS Grange
Roger Bone	Bone & Rose

VISITOR REGISTRATION SHEET

House Judiciary I — August 11, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Hugh Tilson	NCMA
Perry Woods	Wake County

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 4

SENATE BILL 705

Health Care Committee Substitute Adopted 5/16/05
Third Edition Engrossed 6/1/05
House Committee Substitute Favorable 8/8/05

Short Title: Amend Substance Abuse and Smoking Laws. (Public)

Sponsors:

Referred to:

March 21, 2005

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE LICENSURE OF SUBSTANCE ABUSE PROFESSIONALS, TO ESTABLISH THE CREDENTIAL OF CERTIFIED CRIMINAL JUSTICE ADDICTIONS PROFESSIONAL, AND TO ALLOW THE DEPARTMENT OF JUSTICE TO CONDUCT CRIMINAL HISTORY RECORD CHECKS FROM STATE AND NATIONAL REPOSITORIES OF CRIMINAL HISTORY OF APPLICANTS FOR CREDENTIALS UPON THE REQUEST OF THE NORTH CAROLINA SUBSTANCE ABUSE PROFESSIONAL PRACTICE BOARD, AND TO AMEND THE LAW CONCERNING SMOKING IN PUBLIC PLACES TO REDUCE SMOKING IN RESTAURANTS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 5C of Chapter 90 of the General Statutes reads as rewritten:

"Article 5C.

"North Carolina Substance Abuse ~~Professionals Certification~~Professional Practice Act.

"**§ 90-113.30. Declaration of purpose.**

The North Carolina Substance Abuse Professional ~~Certification~~ Practice Board, established by G.S. 90-113.32, is recognized as the ~~certifying~~ registering, certifying, and licensing authority for substance abuse professionals described in this Article in order to safeguard the public health, safety, and welfare, to protect the public from being harmed by unqualified persons, to assure the highest degree of professional care and conduct on the part of ~~certified~~ credentialed substance abuse professionals, to provide for the establishment of standards for the education of ~~certified~~ credentialed substance abuse professionals, and to ensure the availability of ~~certified~~ credentialed substance abuse professional services of high quality to persons in need of these services. It is the purpose of this Article to provide for the regulation of ~~Board-certified~~Board-credentialed persons offering substance abuse counseling

services, substance abuse prevention services, or any other substance abuse services for which the Board may grant ~~certification.~~registration, certification, or licensure.

~~"§90-113.31. Definitions.~~

~~The following definitions shall apply in this Article:~~

~~(1) Approved supervisor. A person who provides supervision as required by the Board to persons applying for registration or certification as a substance abuse professional pursuant to this Article.~~

~~(1a) Board. The North Carolina Substance Abuse Professional Certification Board.~~

~~(1b) Certified clinical addictions specialist. A person certified by the Board to practice as a clinical addictions specialist in accordance with the provisions of this Article.~~

~~(1c) Certified clinical supervisor. A person certified by the Board to practice as a clinical supervisor in accordance with the provisions of this Article.~~

~~(1d) Certified residential facility director. A person certified by the Board to practice as a residential facility director in accordance with the provisions of this Article.~~

~~(2) Certified substance abuse counselor. A person certified by the Board to practice as a substance abuse counselor in accordance with the provisions of this Article.~~

~~(3) Repealed by S.L. 1997-492, s. 2.~~

~~(3a) Certified substance abuse prevention consultant. A person certified by the Board to practice substance abuse prevention in accordance with the provisions of this Article.~~

~~(4) Clinical supervisor intern. A person designated by the Board to practice as a clinical supervisor intern for a period not to exceed three years without a showing of good cause in accordance with the provisions of this Article.~~

~~(4a) Credentialing body. A board that licenses, certifies, or regulates a profession or practice.~~

~~(4b) Deemed status. Recognition by the Board of the credentials offered by a professional discipline whereby the individuals certified, licensed, or otherwise recognized by the discipline as having met the standards of a substance abuse specialist may apply individually for certification as a certified clinical addictions specialist.~~

~~(4c) Human services field. An area of study that focuses on the biological, psychological, and social aspects of human beings.~~

~~(4d) Repealed by Session Laws 1999-164, s. 1.~~

~~(5) Prevention. The reduction, delay, or avoidance of alcohol and of other drug use behavior. "Prevention" includes the promotion of positive environments and individual strengths that contribute to personal health and well-being over an entire life and the development~~

~~of strategies that encourage individuals, families, and communities to take part in assessing and changing their lifestyle and environments.~~

~~(6) Professional discipline. — A field of study characterized by the technical, educational, and ethical standards of a profession.~~

~~(6a) Registrant. — A person who has initiated a certification process to become a certified substance abuse counselor or a certified clinical addictions specialist pursuant to this Article and is authorized to provide DWI assessments pursuant to G.S. 122C-142.1.~~

~~(7) Substance abuse counseling. — The assessment, evaluation, and provision of counseling to persons suffering from substance, drug, or alcohol abuse or dependency.~~

~~(7a) Substance abuse counselor intern. — A person who successfully completes 300 hours of Board approved supervised practical training and a written examination in pursuit of certification as a substance abuse counselor.~~

~~(8) Substance abuse professional. — A certified substance abuse counselor, certified substance abuse prevention consultant, certified clinical supervisor, certified clinical addictions specialist, or certified residential facility director.~~

"**§ 90-113.31A. Definitions.**

The following definitions shall apply in this Article:

(1) Applicant. – A person who has initiated a process to become a substance abuse professional pursuant to this Article.

(2) Applicant supervisor. – A person who provides supervision as required by the Board to persons applying for registration, certification, or licensure as a substance abuse professional pursuant to this Article.

(3) Board. – The North Carolina Substance Abuse Professional Practice Board.

(4) Certified clinical supervisor. – A person certified by the Board to practice as a clinical supervisor in accordance with the provisions of this Article.

(5) Certified criminal justice addictions professional. – A person certified by the Board to practice as a criminal justice addictions professional who, under supervision, provides direct services to clients or offenders exhibiting substance abuse disorders and works in a program determined by the Board to be involved in a criminal justice setting.

(6) Certified substance abuse counselor. – A person certified by the Board to practice under the supervision of a practice supervisor as a substance abuse counselor in accordance with the provisions of this Article.

(7) Certified substance abuse prevention consultant. – A person certified by the Board to practice substance abuse prevention in accordance with the provisions of this Article.

(8) Certified substance abuse residential facility director. – A person certified by the Board to practice as a substance abuse residential facility director in accordance with the provisions of this Article.

(9) Clinical addictions specialist intern. – A person who successfully completes 300 hours of Board-approved supervised practical training and passes a written examination in pursuit of licensure as a clinical addictions specialist.

(10) Clinical supervisor intern. – A person designated by the Board to practice as a clinical supervisor under the supervision of a certified clinical supervisor for a period not to exceed three years without a showing of good cause in accordance with the provisions of this Article.

(11) Counseling. – The utilization of special skills to assist individuals, families, or groups in achieving objectives, including the following:

a. Exploring a problem and its ramifications.

b. Examining attitudes and feelings.

c. Considering alternative solutions.

d. Decision making.

(12) Credential. – Any registration, certification, or license issued by the Board.

(13) Credentialing body. – A board that licenses, certifies, registers, or otherwise regulates a profession or practice.

(14) Criminal history. – A history of conviction of a State crime, whether a misdemeanor or felony, that bears on an applicant's fitness for licensure to practice substance abuse professional services. The crimes include the criminal offenses set forth in any of the following Articles of Chapter 14 of the General Statutes: Article 5, Counterfeiting and Issuing Monetary Substitutes; Article 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7A, Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 19B, Financial Transaction Card Crime Act; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, Riots and Civil Disorders; Article 39, Protection of Minors; Article 40, Protection of the Family; Article 59, Public Intoxication; and Article 60, Computer-Related Crime. The crimes

also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act in Article 5 of Chapter 90 of the General Statutes and alcohol-related offenses including sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5.

(15) Deemed status. – Recognition by the Board of the credentials offered by a professional discipline whereby the individuals certified, licensed, or otherwise recognized by the discipline as having met the standards of a clinical addictions specialist may apply individually for licensure as a licensed clinical addictions specialist.

(16) Dual relationship. – A relationship in addition to the professional relationship with a person to whom the substance abuse professional delivers services in the Twelve Core Functions or the performance domains, both as defined in rules adopted by the Board, or as provided in a supervisory capacity. These relationships may result in grounds for disciplinary action.

(17) Human services field. – An area of study that focuses on the biological, psychological, behavioral, and social aspects of human welfare with focus on the direct services designed to improve it.

(18) Independent study. – Any course of study that is not traditional classroom-based that must be preapproved by the Board or any organization that has deemed status with the Board.

(19) Licensed clinical addictions specialist. – A person licensed by the Board to practice as a clinical addictions specialist in accordance with the provisions of this Article.

(20) Practice supervisor. – A certified clinical supervisor, clinical supervisor intern, or licensed clinical addictions specialist who provides oversight and responsibility in a face-to-face capacity for each certified substance abuse counselor or criminal justice addictions professional.

(21) Prevention. – The reduction, delay, or avoidance of alcohol and of other drug use behavior. 'Prevention' includes the promotion of positive environments and individual strengths that contribute to personal health and well-being over an entire life and the development of strategies that encourage individuals, families, and communities to take part in assessing and changing their lifestyles and environments.

(22) Professional discipline. – A field of study characterized by the technical, educational, and ethical standards of a profession.

(23) Registrant. – A person who completes all requirements to be registered with the Board and is supervised by a certified clinical supervisor or clinical supervisor intern.

(24) Substance abuse counseling. – The assessment, evaluation, and provision of counseling and therapeutic service to persons suffering from substance abuse or dependency.

(25) Substance abuse counselor intern. – A person who successfully completes 300 hours of Board-approved supervised practical training and passes a written examination in pursuit of credentialing as a substance abuse counselor.

(26) Substance abuse professional. – A registrant, certified substance abuse counselor, substance abuse counselor intern, certified substance abuse prevention consultant, certified clinical supervisor, clinical addictions specialist intern, licensed clinical addictions specialist, certified substance abuse residential facility director, or certified criminal justice addictions professional.

"**§ 90-113.31B. Scope of practice.**

The scope of practice is the use by all substance abuse professionals and their ongoing supervisees of principles, methods, and procedures of the Twelve Core Functions or performance domains as prescribed by the International Certification and Reciprocity Consortium/Alcohol and Other Drug Abuse, Incorporated, and as limited by individual credential and supervisory requirements pursuant to this Article. Specifically, the scope of practice for each individual defined as a substance abuse professional under G.S. 90-113.31A is as follows:

(1) The practice of a certified substance abuse counselor consists of the Twelve Core Functions, including screening, intake, orientation, assessment, treatment planning, counseling, case management, crisis intervention, client education, report and record keeping, consultation with other professionals in regard to client treatment and services, and referral to treat addictive disorder or disease and help prevent relapse.

(2) The practice of a certified substance abuse prevention consultant is based on knowledge in the performance domains to prevent or reduce the conditions that place individuals at increased risk of developing addictive disorder or disease and help prevent relapse.

(3) The practice of a certified clinical supervisor is based on knowledge in the performance domains to supervise substance abuse professionals who work to treat, prevent, or reduce the conditions that place individuals at risk of developing addictive disorder or disease and help prevent relapse.

(4) The practice of a licensed clinical addictions specialist may be independent and consists of the Twelve Core Functions, including screening, intake, orientation, assessment, treatment planning, counseling, case management, crisis intervention, client education, report and record keeping, consultation with other professionals in regard to client treatment and services, referral to reduce the conditions that place individuals at risk of developing addictive disorder or disease with co-occurring disorders, and treatment for addictive disorder or disease. The licensed clinical addictions specialist may provide supervision to maintain a professional credential as defined by this Article.

(5) The practice of a certified substance abuse residential facility director is a voluntary credential and consists of the Twelve Core Functions, including screening, intake, orientation, assessment, treatment planning, counseling, case management, crisis intervention, client education, report and record keeping, consultation with professionals in regard to client treatment and services, referral to prevent or reduce the conditions that place individuals at increased risk of developing addictive disorder or disease, treatment for addictive disorder or disease, and the prevention of relapse as well as academic management training.

(6) The practice of a certified criminal justice addictions professional is based on knowledge in the performance domains of dynamics of addiction in criminal behavior; legal, ethical, and professional responsibility; criminal justice system and processes; screening, intake, and assessment; case management; monitoring; and client supervision and counseling to prevent or reduce the conditions that place individuals at increased risk of developing addictive disorder or disease, treat addictive disorder or disease, and help prevent relapse.

"**§ 90-113.32. Board; composition; voting.**

(a) The Board is created as the ~~certifying~~ authority ~~for substance abuse counselors, substance abuse prevention consultants, clinical supervisors, clinical addictions specialists, and residential facility directors~~to credential substance abuse professionals in North Carolina.

(b) Until the full Board is elected or appointed pursuant to subsection (c) of this section, the Board shall consist of 16 members with one member appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121, and one member appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121. The remaining 14 shall be those members of the current North Carolina Substance Abuse Professional ~~Certification~~ Practice Board, Inc., who have terms that are unexpired as of the effective date of this Article. The initial Board shall appoint an initial Nominating and Elections Committee to fill immediate vacancies on the Board, using the process established in subsection (d) of this section. The election and appointment process of the initial Board shall result in a Board of 19 members by April 1, 1995. As these initial members' terms expire, their successors shall be appointed as described in subsection (c) of this section, until the permanent Board is established, as described in subsection (c) of this section. Time spent as an initial member counts in determining the limitation on consecutive terms prescribed in subsection (e) of this section.

(c) After the initial Board members' terms expire, the Board shall consist of the following members, all of whom shall reside in North Carolina, appointed or elected as follows:

(1) Eleven professionals ~~certified~~ credentialed pursuant to this Article and elected by the ~~certified~~ credentialed professionals, at least two of

whom shall serve each of the four Division of Mental Health, Developmental Disabilities, and Substance Abuse Services regions of the State. Three members shall serve as members at large.

(2) Three members at large chosen from laypersons or other professional disciplines who have shown a special interest in the field of substance abuse, nominated by the Nominating and Elections Committee established by subsection (d) of this section and elected by the Board.

(3) Two members from the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, Department of Health and Human Services, appointed by the Chief of ~~Substance Abuse Services Section, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, Department of Health and Human Services,~~the North Carolina Substance Abuse Single State Agency, at least one of whom ~~is from the Substance Abuse Services Section.~~administers substance abuse services.

(4) One member of the public at large appointed by the Governor.

(5) One member of the public at large appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121 and one member of the public at large appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121.

(6) One member shall represent each of the professional disciplines granted deemed status under G.S. 90-113.41A. The member may be appointed by the professional discipline on or before a date set by the Board. If the professional discipline has at least one association in the State, the member shall be chosen from a list of nominees submitted to the association. The members appointed or elected under this subdivision shall be certified as substance abuse specialists by the professional discipline that the members represent.

No member of the General Assembly shall serve on the Board.

(c1) Every member of the Board shall have the right to vote on all matters before the Board, except for the President who shall vote only in case of a tie or when another member of the Board abstains on the question of whether the professional discipline the member represents shall retain its deemed status.

(d) The Board shall appoint five professionals from the field of substance abuse counseling and substance abuse prevention consulting to serve on the Nominating and Elections Committee. Of these five, at least three shall not be members of the Board. The Board shall appoint a member of the Nominating and Elections Committee to serve as chair. The Committee's purpose is to accept nominations from professionals certified or licensed by the Board to fill vacancies on the Board in membership categories prescribed by subdivisions (1) and (2) of subsection (c) of this section and to conduct the election of Board members. The Committee shall solicit nominations from all professionals it has certified or licensed under this Article when elected members' terms

are due to expire. The certified or licensed professionals shall submit to the Committee all nominations beginning 90 days and ending ~~14~~ 28 days before the election of new Board members. The Committee shall furnish all certified or licensed professionals with a ballot containing all the nominees for each elected Board member vacancy. In soliciting and making nominations for this process, the Committee shall give consideration to factors that promote representation on the Board by professionals certified or licensed by the Board. The Committee shall serve for a two-year term, its successors to be appointed for the same term by the Board.

(e) Members of the Board shall serve for ~~three-year~~four-year terms. No Board member shall serve for more than two consecutive terms, but a person who has been a member for two consecutive terms may be reappointed after being off the Board for a period of at least one year. When a vacancy occurs in an unexpired term, the Board shall, as soon as practicable, appoint temporary members to serve until the end of the unexpired terms. Time spent as a temporary member does not count in determining the limitation on consecutive terms.

(f) If a member becomes ineligible to serve on the Board for any reason, except when the member has committed an ethical violation that results in the suspension or revocation of the member's professional credentials, ~~the~~ that member may fulfill the remainder of ~~the member's~~his or her term on the Board.

"**§ 90-113.33. Board; powers and duties.**

The Board shall:

(1) Examine and determine the qualifications and fitness of applicants for certification and licensure to practice in this State.

(1a) Determine the qualifications and fitness of organizations applying for deemed status.

(2) Issue, renew, deny, suspend, or revoke ~~certification~~ licensure, certification, or registration to practice in this State or reprimand or otherwise discipline ~~certificate~~ a license, certificate, or registration ~~holders~~ holder in this State. ~~Denial of an applicant's certification or registration or the granting of certification or registration on a probationary or other conditional status shall be subject to substantially the same rules and procedures prescribed by the Board for review and disciplinary actions against those persons holding certificates or registrations. Disciplinary actions involving a clinical addictions specialist whose certification is achieved through deemed status shall be initially heard by the specialist's credentialing body. The specialist may appeal the body's decision to the Board. The Board shall, however, have the authority to hear the initial disciplinary action involving a clinical addictions specialist.~~

(3) Deal with issues concerning reciprocity.

(4) Conduct investigations for the purpose of determining whether violations of this Article or grounds for disciplining exists.

(5) Employ ~~the professional and clerical~~and fix the compensation of personnel and legal counsel that the Board determines is necessary to

carry out the provisions of this Article. The Board's employment of legal counsel is subject to the provisions of G.S. 114-2.3. The Board may purchase or rent necessary office space, equipment, and supplies.

(6) Conduct administrative hearings in accordance with Chapter 150B of the General Statutes when a "contested case", as defined in Chapter 150B, arises.

(7) Appoint from its own membership one or more members to act as representatives of the Board at any meeting in which it considers this representation is desirable.

(8) Establish fees for applications for examination, registration, certificates of ~~certification~~ certification, licensure, and renewal, and other services provided by the Board.

(9) Adopt any rules necessary to carry out the purpose of this Article and its duties and responsibilities pursuant to this Article.

(10) Request that the Department of Justice conduct criminal history record checks of applicants for registration, certification, or licensure pursuant to G.S. 114-19.11A.

The powers and duties enumerated in this section are granted for the purposes of enabling the Board to safeguard the public health, safety, and welfare against unqualified or incompetent practitioners and are to be liberally construed to accomplish this objective. When the Board exercises its authority under this Article to discipline a person, it may, as part of the decision imposing the discipline, charge the costs of investigations and the hearing to the person disciplined.

"§ 90-113.33A. Officers may administer oaths, and subpoena witnesses, records, and other materials.

The President or other presiding officer of the Board may administer oaths to all persons appearing before it as the Board may deem necessary to perform its duties, and may summon and issue subpoenas for the appearance of any witnesses deemed necessary to testify concerning any matter to be heard before or inquired into by the Board. The Board may order that any client records, documents, or other materials concerning any matter to be heard before or inquired into by the Board shall be produced before the Board or made available for inspection, notwithstanding any other provisions of law providing for the application of any counselor-client or physician-patient privilege with respect to such records, documents, or other materials. All records, documents, or other materials compiled by the Board are subject to the provisions of G.S. 90-113.34, except that in any proceeding before the Board, record of any hearing before the Board, and notice of charges against any person ~~certified~~ credentialed by the Board, the Board shall withhold from public disclosure the identity of a client, including information relating to dates and places of treatment, or any other information that tends to identify the client unless the client or the client's representative has expressly consented to the disclosure. Upon written request, the Board shall revoke a subpoena if, upon a hearing, it finds that the evidence sought does not relate to a matter in issue, the subpoena does not describe the evidence with sufficient particularity, or the subpoena is invalid.

"**§ 90-113.34. Records to be kept; copies of records.**

(a) The Board shall keep a regular record of its proceedings, together with the names of the members of the Board present, the names of the applicants for registration, certification, and licensure as well as other information relevant to its actions. The Board shall cause a record to be kept that shall show the name, last known place of business, last known place of residence, and date and number of the ~~certificate of certification as a certified substance abuse counselor, certified substance abuse prevention consultant, certified clinical supervisor, certified clinical addictions specialist, or certified residential facility director for every living certified person.~~credential assigned to each substance abuse professional meeting the standards set forth in this Article. Any interested person in the State is entitled to obtain a copy of ~~that record on~~Board records upon application to the Board and ~~upon~~ payment of a reasonable charge that is based on the costs involved in providing the copy.

(b) The Board may in a closed session receive evidence regarding the provision of substance abuse counseling or other treatment and services provided to a client who has not expressly or through implication consented to the public disclosure of such treatment as may be necessary for the protection of the rights of the client or of the accused registrant or substance abuse professional and the full presentation of relevant evidence. All records, papers, and other documents containing information collected and compiled by the Board, its members, or employees as a result of investigations, inquiries, or interviews conducted in connection with ~~a certification~~awarding a credential or a disciplinary matter shall not be considered public records within the meaning of Chapter 132 of the General Statutes, except any notice or statement of charges, or notice of hearing shall be a public record notwithstanding that it may contain information collected and compiled as a result of an investigation, inquiry, or interview. If any record, paper, or other document containing information collected and compiled by the Board as provided in this subsection is received and admitted in evidence in any hearing before the Board, it shall thereupon be a public record.

(c) Notwithstanding any provision to the contrary, the Board may, in any proceeding, record of any hearing, and notice of charges, withhold from public disclosure the identity of a client who has not expressly or through implication consented to such disclosure of treatment by the accused substance abuse professional.

"**§ 90-113.35. Disposition of funds.**

All fees and other moneys collected and received by the Board shall be used to implement this Article. The financial records of the Board shall be subjected to an annual audit and paid for out of the funds of the Board.

"**§ 90-113.36. ~~Certificates of certification.~~Credentials.**

(a) The Board shall furnish a certificate of certification or licensure to each applicant successfully completing the requirements for ~~certification.~~his or her credential.

(b) The Board may furnish a certificate of certification or licensure to any person in another state or territory if the individual's qualifications were, at the date of ~~registration or~~registration, certification, or licensure, substantially equal to the

requirements under this Article. However, an out-of-state applicant shall first file application and pay any required fees.

~~"§ 90-113.37. Renewal of certification; lapse; revival.~~

~~(a) Every person certified pursuant to this Article who desires to maintain certification status shall apply to the Board for a renewal of certification every other year and pay to the secretary treasurer the prescribed fee. Renewal of certification is subject to completion of no more than 60 hours of those continuing education requirements established by the Board. A clinical supervisor shall complete 15 hours of substance abuse clinical supervision training prior to the certificate being renewed. Certification that is not renewed automatically lapses, unless the Board provides for the late renewal of certification upon the payment of a late fee. No late renewal shall be granted more than five years after a certification expires. A suspended certification is subject to this section's renewal requirements and may be renewed as provided in this section. This renewal does not entitle the certified person to engage in the certified activity or in any other conduct or activity in violation of the order or judgment by which the certification was suspended, until the certification is reinstated. If a certification revoked on disciplinary grounds is reinstated and requires renewal, the certified person shall pay the renewal fee and any applicable late fee.~~

~~(b) The Board shall establish the manner in which lapsed certification may be revived or extended.~~

"**§ 90-113.37A. Renewal of credential; lapse.**

(a) Every person credentialed pursuant to this Article who desires to maintain his or her credentials shall apply to the Board for a renewal of certification or licensure every other year and pay to the treasurer the prescribed fee.

(b) Renewal of licensure is subject to completion of at least 40 hours of the continuing education requirements established by the Board. Renewal of substance abuse counselor or substance abuse prevention consultant certification is subject to completion of at least 60 hours of the continuing education requirements established by the Board. A certified substance abuse counselor shall submit a Board-approved supervision contract signed by the applicant and a practice supervisor documenting ongoing supervision at a ratio of one hour of supervision to every 40 hours of practice after certification is granted by the Board on a form provided by the Board. Any person certified by the Board as a certified alcoholism counselor or certified drug abuse counselor shall become a certified substance abuse counselor.

A clinical supervisor shall complete at least 15 hours of substance abuse clinical supervision training prior to the certificate being renewed. A substance abuse residential facility director shall complete at least 10 hours of substance abuse training for renewal. A certified criminal justice addictions professional shall complete at least 40 hours of continuing education that must be earned in the certified criminal justice addictions professional performance domains. A certified criminal justice addictions professional shall submit a Board-approved supervision contract signed by the criminal justice addictions professional and a practice supervisor documenting ongoing supervision at a ratio of one hour of supervision to every 40 hours of practice after certification is granted by the Board on a form provided by the Board.

(c) Independent study hours shall compose no more than fifty percent (50%) of the total number of hours required for renewal.

(d) A credential that is not renewed automatically lapses, unless the Board approves the late renewal of a credential upon the payment of a late fee.

(e) No late renewal shall be granted more than five years after a certification or licensure expires.

(f) A suspended credential may be renewed as provided in this section. This renewal does not entitle the credentialed person to engage in conduct or activity in violation of the order or judgment by which the credential was suspended, until the credential is reinstated. If a credential revoked on disciplinary grounds is reinstated and requires renewal, the credentialed person shall pay the renewal fee and any applicable late fee.

(g) The Board shall establish the manner in which lapsed certification or licensure may be revived or extended.

"§ 90-113.38. Maximums for certain fees.

(a) The fee to obtain a certificate of certification as a substance abuse counselor, substance abuse prevention consultant, clinical supervisor, ~~or~~ substance abuse residential facility ~~director~~ director, or certified criminal justice addictions professional may not exceed four hundred seventy-five dollars ($475.00). The fee to renew a certificate may not exceed one hundred fifty dollars ($150.00).

(b) The fee to obtain a certificate of ~~certification~~ licensure for a clinical addictions specialist pursuant to deemed status ~~may~~ shall not exceed one hundred fifty dollars ($150.00). The fee to renew a ~~certificate may~~license for a clinical addictions specialist pursuant to deemed status shall not exceed one hundred dollars ($100.00). The fee to obtain a ~~certificate of certification~~license for a clinical addictions specialist pursuant to all other procedures authorized by this Article ~~may~~ shall not exceed four hundred seventy-five dollars ($475.00). The fee to renew the ~~certificate may~~license shall not exceed one hundred fifty dollars ($150.00).

(b1) The fee to obtain a registration as a registrant shall ~~be~~ not exceed one hundred fifty dollars ($150.00). The fee to renew a registration shall ~~be~~ not exceed one hundred fifty dollars ($150.00).

(c) There shall be a reexamination fee of one hundred fifty dollars ($150.00) which shall be paid for each reexamination in addition to the fees ~~required under~~authorized pursuant to subsection (a) of this section. There shall be a fee not to exceed twenty-five dollars ($25.00) for rescheduling any examination.

(d) There shall be a fee ~~of~~ not to exceed twenty-five dollars ($25.00) to obtain a written verification ~~of certification~~or additional copy of a credential issued by the Board.

(e) There shall be a late renewal fee not to exceed one hundred twenty-five dollars ($125.00).

(f) In addition to any other prescribed fees, the Board shall charge a fee not to exceed one hundred fifty dollars ($150.00) for each administration of the test an applicant must pass to be credentialed as a United States Department of Transportation substance abuse professional.

"**§ 90-113.39. Standards for ~~certification.~~credentials.**

The Board shall establish standards ~~for certification of~~to credential substance abuse professionals. The ~~certification~~ credentialing standards of the International Certification and Reciprocity Consortium/Alcohol and Other Drug Abuse, Incorporated and the standards adopted by professional disciplines granted deemed status or their successor organizations may be used as guidelines for the Board's standards. The Board shall publish these required ~~standards separately from its rules so as to provide easy access to the~~ standards.

"**§ 90-113.40. Requirements for ~~certification.~~certification and licensure.**

(a) The Board shall issue a certificate certifying an applicant as a "Certified Substance Abuse Counselor" or as a "Certified Substance Abuse Prevention Consultant" if:

(1) The applicant is of good moral character.

(2) The applicant is not and has not engaged in any practice or conduct that would be grounds for disciplinary action under G.S. 90-113.44.

(3) The applicant is qualified for certification pursuant to the requirements of this Article and any rules adopted pursuant to it.

(4) The applicant has, at a minimum, a high school diploma or a high school equivalency certificate.

(5) The applicant has signed a form attesting to the intention to adhere fully to the ethical standards adopted by the Board.

(5a) The applicant submits to a complete criminal history record check pursuant to G.S. 90-113.46A.

(6) The applicant has completed 270 hours of Board-approved education. The Board may prescribe that a certain number of hours be in a course of study for substance abuse counseling and that a certain number of hours be in a course of study for substance abuse prevention consulting. Independent study hours shall not compose more than fifty percent (50%) of the total number of hours required for initial credentialing.

(7) The applicant has documented completion of a minimum of 300 hours of Supervised Practical ~~Training and~~Training, has provided a Board-approved supervision contract between the applicant and an ~~approved supervisor.~~applicant supervisor, and has been deemed recommended by the applicant supervisor to advance in the credentialing process.

(8) The applicant for substance abuse counselor has completed ~~either~~ a total of 6,000 hours of supervised experience in the field, whether paid or ~~volunteer, or, if a graduate of a Board-approved master's degree program, a total of 3,000 hours of supervised experience in the field, whether paid or~~ volunteer. The applicant for substance abuse prevention consultant has completed a total of ~~10,000~~6,000 hours supervised experience in the field, whether paid or volunteer, or 4,000

hours if the applicant has at least a bachelors degree in a human services field from a regionally accredited college or university.

(9) The applicant has ~~successfully completed~~obtained a passing score on a written ~~examination and~~examination. An applicant for certification as a substance abuse counselor must also obtain a passing score on an oral examination promulgated and administered by the Board.

(b) The Board shall issue a certificate certifying an individual as a "Certified Clinical Supervisor" if, in addition to meeting the requirements of subdivisions (a)(1) through ~~(5)~~(5a) of this section, the applicant:

(1) Submits proof of designation by the Board as a clinical supervisor intern.

(2) Prior to June 30, 1998, the applicant presents proof that the applicant has 12,000 hours experience in alcohol and drug abuse counseling and a bachelors degree or 8,000 hours experience in alcohol and drug abuse counseling and a minimum of a master's degree. After June 30, 1998, the applicant shall present proof that the applicant has a minimum of a master's degree in a human services field with a clinical application from a regionally accredited college or university.

(3) Has 6,000 hours experience as a substance abuse clinical supervisor if the applicant has a bachelors degree or 4,000 hours experience if the applicant has a master's degree in a human services field with a clinical application from a regionally accredited college or university.

(4) Has 30 hours of substance abuse clinical supervision specific education or training. These hours shall be reflective of the ~~12 core functions~~Twelve Core Functions in the applicant's clinical application and practice and may also be counted toward the applicant's ~~recertification~~ renewal as a substance abuse ~~counselor~~counselor or a clinical addictions specialist.

(5) Submits a letter of reference from a professional who can attest to the applicant's supervisory competence and two letters of reference from either counselors who have been supervised by the applicant or professionals who can attest to the applicant's competence.

(6) ~~Successfully completes~~Obtains a passing score on a written examination administered by the Board.

A person who practices as a certified clinical supervisor in addition to practicing as a certified substance abuse counselor shall be exempt from the practice supervision contract requirement.

(b1) The Board shall designate an applicant as a "Clinical Supervisor Intern" if, in addition to meeting the requirements of subdivisions (a)(1) through ~~(5)~~(5a) of this section, the applicant meets the following qualifications:

(1) Submits an application, resume, and official transcript showing that the applicant has obtained a master's degree in a human services field with a clinical application from a regionally accredited college or university.

(2) Submits verification statements.

(3) Submits proof of ~~certification~~ credentialing as a certified substance abuse ~~counselor or a certified~~counselor, a licensed clinical addictions ~~specialist.~~specialist, or certification or licensure through an organization granted deemed status by the Board.

(4) Submits documentation establishing that the applicant has completed at least fifty percent of the required clinical supervision specific training hours as defined by the Board.

(c) The Board shall issue a ~~certificate certifying~~license credentialing an applicant as a "~~Certified~~ Licensed Clinical Addictions Specialist" if, in addition to meeting the requirements of subdivisions (a)(1) through ~~(5)~~(5a) of this section, the applicant meets one of the following criteria:

(1) Criteria A. – The applicant:

a. Has a minimum of a master's degree with a clinical application in a human services field from a regionally accredited college or university.

b. Has two years postgraduate supervised substance abuse counseling experience.

c. Submits three letters of reference from ~~certified~~ licensed clinical addictions specialists or certified substance abuse counselors who have obtained master's degrees.

d. Has achieved a combined score set by the Board on a master's level written and oral examination administered by the Board.

e. Has attained 180 hours of substance abuse specific training ~~as described~~from either a regionally accredited college or university, which may include unlimited independent study, or from training events of which no more than fifty percent (50%) shall be in independent study. All hours shall be credited according to the standards set forth in G.S. 90-113.41A.

f. The applicant has documented completion of a minimum of 300 hours of supervised practical training and has provided a Board-approved supervision contract between the applicant and an ~~approved~~ applicant supervisor.

(2) Criteria B. – The applicant:

a. Has a minimum of a master's degree with a clinical application in a human services field from a regionally accredited college or university.

b. Has been certified as a substance abuse counselor.

c. Has one year of postgraduate supervised substance abuse counseling experience.

d. Has achieved a passing score on a master's level written examination administered by the Board.

e. Submits three letters of reference from ~~certified~~ either licensed clinical addictions specialists or certified substance abuse counselors who have obtained master's degrees.

(3) Criteria C. – The applicant:

a. Has a minimum of a master's degree in a human services field with both a clinical application and a substance abuse specialty from a regionally accredited college or university that includes 180 hours of substance abuse specific education and training pursuant to G.S. 90-113.41A.

b. Has one year of postgraduate supervised substance abuse counseling experience.

c. Has achieved a passing score on an oral examination administered by the Board.

d. Submits three letters of reference from ~~certified~~ licensed clinical addictions specialists or certified substance abuse counselors who have obtained master's degrees.

(4) Criteria D. – The applicant has a substance abuse certification from a professional discipline that has been granted deemed status by the Board.

(d) The Board shall issue a certificate certifying an applicant as a "Substance Abuse ~~Certified~~ Residential Facility Director" ~~if, in addition to meeting the requirements of subdivisions (a)(1) through (5) of this section,~~ if the applicant:

(1) Has been ~~certified~~ credentialed as a substance abuse counselor or a clinical addictions specialist.

(2) Has 50 hours of Board approved academic or didactic management specific training or a combination thereof. Independent study may compose up to fifty percent (50%) of the total number of hours required for initial credentialing.

(3) Submits letters of reference from the applicant's current supervisor and a colleague or coworker.

(d1) The Board shall issue a certificate certifying an applicant as a 'Certified Criminal Justice Addictions Professional', with the acronym 'CCJP', if in addition to meeting the requirements of subdivisions (a)(1) through (5a) of this section, the applicant:

(1) Has attained 270 hours of Board-approved education or training, unless the applicant has attained a minimum of a masters degree with a clinical application and a substance abuse specialty from a regionally accredited college or university whereby the applicant must only obtain 180 hours. The hours of education shall be specifically related to the knowledge and skills necessary to perform the tasks within the International Certification and Reciprocity Consortium/Alcohol and Other Drug Abuse, Incorporated, 'IC&RC/AODA, Inc.,' criminal justice addictions professional performance domains as they relate to both adults and juveniles. Independent study may compose up to fifty

percent (50%) of the total number of hours obtained for initial certification or renewal.

(2) Has documented 300 hours of Board-approved supervised practical training. This supervision shall mean the administrative, clinical, and evaluative process of monitoring, assessing, and enhancing professional performance. A minimum of 10 hours of supervision in each criminal justice domain established by the IC&RC/AODA, Inc., is required.

(3) Has provided documentation of supervised work experience providing direct service to clients or offenders involved in one of the three branches of the criminal justice system, which include law enforcement, the judiciary, and corrections. The applicant must meet one of the following criteria:

a. Criteria A. – In addition to having a high school degree or GED, the applicant has a minimum of 6,000 hours of documented work experience in direct services in criminal justice or addictions services or any combination of these services that have been obtained during the past 10 years.

b. Criteria B. – In addition to having an associate degree, the applicant has a minimum of 5,000 hours of documented work experience in direct services in criminal justice or addictions services or any combination of these services obtained during the past 10 years.

c. Criteria C. – In addition to having at least a bachelors degree, the applicant has a minimum of 4,000 hours of documented work experience in direct services in criminal justice or addictions services, or any combination of these services, and this experience has been obtained during the past 10 years.

d. Criteria D. – In addition to having at least a masters degree in a human services field, the applicant has a minimum of 2,000 hours of documented work experience in direct services in criminal justice or addictions services or any combination of these services that has been obtained during the past 10 years.

e. Criteria E. – In addition to having at least a masters degree in a human services field with a specialty from a regionally accredited college or university that includes 180 hours of substance abuse specific education or training, the applicant has a minimum of 2,000 hours of postgraduate supervised substance abuse counseling experience.

f. Criteria F. – In addition to having obtained the credential of a certified clinical addictions specialist or other advanced credential in a human services field from an organization that has obtained deemed status with the Board, the applicant has a minimum of 1,000 hours of documented work experience in

direct services in criminal justice or addictions services that has been obtained during the past 10 years.

(4) Has passed the IC&RC/AODA, Inc., certified criminal justice addictions professional written examination.

(e) The Board shall publish from time to time information in order to provide specifics for potential applicants of an acceptable educational curriculum and the terms of acceptable supervised fieldwork experience.

(f) ~~Effective until January 1, 2001, any person who is certified as a certified clinical supervisor or who functions by his or her job description as a certified clinical supervisor shall be qualified to supervise applicants for certified clinical supervisor.~~

~~Effective from January 1, 2001 until January 1, 2003, only a person who is certified both as a certified clinical supervisor and as a certified clinical addictions specialist shall be qualified to supervise applicants for certified clinical addictions specialist, but a person who is certified as a certified clinical supervisor or a certified clinical addictions specialist shall be qualified to supervise an applicant for certification as a certified substance abuse counselor.~~

Effective January 1, 2003, only a person who is certified as a certified clinical supervisor or a clinical supervisor intern shall be qualified to supervise applicants for certified clinical supervisor and certified substance abuse counselor and applicants for ~~certified~~ licensed clinical addictions specialist who meet the qualifications of their credential other than through deemed status as provided in G.S. 90-113.40(c)(4).

"§ 90-113.40A. Requirements for registration.

(a) Upon application and payment of the required fee, the Board shall issue a registration designating an applicant as a registrant if the applicant:

(1) Provides documentation that he or she has received a high school diploma, or the equivalent, and evidence of any baccalaureate or advanced degrees the applicant has received.

(2) Completes a registration application on a form provided by the Board.

(3) Provides documentation of three hours of educational training in ethics.

(4) Signs a form attesting to the applicant's commitment to adhere to the ethical standards adopted by the Board.

(4a) Submits to a complete criminal history record check pursuant to G.S. 90-113.46A.

(5) Signs a supervision contract provided by the Board that documents the proposed supervision process by an ~~approved~~ applicant supervisor.

(b) Registrant status shall be maintained for a period of up to five years while the registrant is in the process of completing his or her requirements for ~~certification~~ credentials pursuant to this Article. If at the end of a five-year period a registrant has not obtained ~~certification~~ a credential under this Article, the Board shall renew the registration for up to an additional five-year period after the registrant pays the required fee and complies with all requirements for registration pursuant to G.S. 90-113.40A. The Board shall terminate the registration of any registrant who fails to renew his or her registration.

(c) The registrant shall notify the Board of any criminal conviction imposed during the period of registration.

"§ 90-113.40B. ~~Approved~~ Applicant supervision.

The Board shall designate a person as an ~~approved~~ applicant supervisor of individuals applying for ~~registration or certification~~registration, certification, or licensure as a substance abuse professional as follows:

(1) A certified clinical supervisor shall supervise a clinical supervisor intern.

(2) A certified clinical supervisor or a clinical supervisor intern shall supervise a substance abuse residential facility director applicant, a clinical addictions specialist applicant, or a substance abuse counselor applicant.

~~(3) A certified clinical supervisor, a clinical supervisor intern, a certified clinical addictions specialist, or a certified substance abuse counselor shall supervise a registrant who provides DWI assessments.~~

(4) A certified substance abuse prevention consultant with a minimum of three years of professional experience, a certified clinical supervisor, or a clinical supervisor intern shall supervise a registrant applying for certification as a prevention consultant.

(5) Pursuant to the deemed status procedure under G.S. 90-113.41A, the supervision requirements described in subdivisions (1) through (4) of this section shall not apply to persons applying for ~~certification~~ licensure as a ~~certified~~ licensed clinical addictions specialist.

(6) A criminal justice addictions professional applicant shall be supervised by a certified clinical supervisor or clinical supervisor intern.

"§ 90-113.41. Examination.

(a) Except for those individuals applying for ~~certification~~ licensure under G.S. 90-113.41A, applicants for certification or licensure under this Article shall file an application at least 60 days prior to the date of examination and upon the forms and in the manner prescribed by the Board. The application shall be accompanied by the appropriate fee. No portion of this fee is refundable. Applicants who fail an examination may apply for reexamination upon the payment of another examination fee.

(b) Each applicant for certification or licensure under this Article shall be ~~examined~~ tested in an examination ~~that is consistent with the examination requirements of~~developed by the International Certification and Reciprocity Consortium/Alcohol and Other Drug Abuse, Incorporated and the standards adopted by professional disciplines granted deemed status or their successor organizations.

(c) Applicants for certification or licensure shall be examined at a time and place and under the supervision that the Board determines. Examinations shall be given in this State at least twice each year.

(d) Applicants may obtain their examination scores and may review their examination papers in accordance with rules the Board adopts and agreements between Board-authorized test development companies.

"§ 90-113.41A. Deemed status.

(a) To be granted deemed status by the Board, a credentialing body of a professional discipline or its designee shall demonstrate that its substance abuse ~~certification~~ credentialing program substantially meets the following:

(1) Each person to whom the credentialing body awards credentials following the effective date of this act meets and maintains minimum requirements in substance abuse specific content areas. Each person also has a minimum of a master's degree with a clinical application in a human services field.

(2) The body requires 180 hours, or the equivalent thereof, of substance abuse specific education and training that covers the following content areas:

a. Basic addiction and cross addiction Physiology and Pharmacology of Psychoactive drugs that are abused.

b. Screening, assessment, and intake of clients.

c. Individual, group, and family counseling.

d. Treatment, planning, reporting, and record keeping.

e. Crisis intervention.

f. Case management and treatment resources.

g. Ethics, legal issues, and confidentiality.

h. Psychological, emotional, personality, and developmental issues.

i. ~~Coexisting~~ Co-occurring physical and mental disabilities.

j. Special population issues, including age, gender, race, ethnicity, and health status.

k. Traditions and philosophies of recovery treatment models and support groups.

(3) The program requires one year or its equivalent of post-degree supervised clinical substance abuse practice. At least fifty percent (50%) of the practice shall consist of direct substance abuse clinical care.

(b) The professional discipline seeking deemed status shall require its members to adhere to a code of ethical conduct and shall enforce that code with disciplinary action.

(c) The Board may grant deemed status to any professional discipline that substantially meets the standards in this section. Once such status has been granted, an individual within the professional discipline may apply to the Board for ~~certification as a certified clinical addictions specialist.~~the credential of licensed clinical addictions specialist.

(d) The Standards ~~and Credentialing~~ Committee of the Board shall review the standards of each professional discipline every third year from the date it was granted deemed status to determine if the discipline continues to substantially meet the requirements of this section. If the Committee finds that a professional discipline no longer meets the requirements of this section, it shall report its findings to the Board at the Board's next regularly scheduled meeting. The deemed status standing of a

professional discipline's credential may be discontinued by a two-thirds vote of the Board.

"§ 90-113.41B. Change of name or address.

Every person licensed, ~~certified~~ certified, or registered under the provisions of this Article shall give written notice to the Board of any change in his or her name or address within 60 business days after the change takes place.

"§ 90-113.42. ~~Exemptions.~~Violations; exemptions.

(a) It shall be unlawful for any person not licensed or otherwise credentialed as a substance abuse professional pursuant to this Article to engage in those activities set forth in the scope of practice of a substance abuse professional under G.S. 90-113.31B, unless that person is regulated by another profession or is a registrant or intern as defined by this Article.

(b) It is not the intent of this Article to regulate members of other regulated professions who provide substance abuse services or consultation in the normal course of the practice of their profession. ~~Accordingly, this~~

(c) This Article does not apply to any person registered, certified, or licensed by the State or federal government to practice any other occupation or profession while rendering substance abuse services or consultation in the performance of the occupation or profession for which the person is registered, certified, or licensed.

(d) Only individuals ~~certified~~ registered, certified, or licensed under this Article may use the title ~~certified substance abuse counselor, certified substance abuse prevention consultant, certified clinical supervisor, certified clinical addictions specialist, or certified residential facility director.~~ 'Certified Substance Abuse Counselor', 'Certified Substance Abuse Prevention Consultant', 'Certified Clinical Supervisor', 'Licensed Clinical Addictions Specialist', 'Certified Substance Abuse Residential Facility Director', 'Certified Criminal Justice Addictions Professional', 'Substance Abuse Counselor Intern', 'Clinical Addictions Specialist Intern', 'Clinical Supervisor Intern', or 'Registrant'.

"§ 90-113.43. Illegal practice; misdemeanor penalty.

Except as otherwise authorized in this Article, no person shall:

(1) ~~Practice,~~Offer substance abuse professional services, practice, attempt to practice, or supervise while holding himself or herself out to be a certified ~~substance abuse counselor, certified substance abuse prevention consultant, certified clinical supervisor, certified clinical addictions specialist, or certified residential facility director~~substance abuse counselor, certified substance abuse prevention consultant, certified clinical supervisor, certified or licensed clinical addictions specialist, clinical addictions specialist intern, substance abuse residential facility director, certified criminal justice addictions professional, clinical supervisor intern, substance abuse prevention consultant, or registrant without first having obtained a certificate of ~~certification~~ registration, certification, or licensure from the Board.

(2) Use in connection with any name any letters, words, numerical codes, or insignia indicating or implying that this person is a ~~certified~~

registrant, substance abuse counselor, ~~certified~~ substance abuse prevention consultant, certified clinical supervisor, ~~certified~~ clinical addictions specialist, ~~or~~ certified substance abuse residential facility ~~director~~ director, substance abuse counselor intern, or clinical addictions specialist intern unless this person is ~~certified~~ registered, certified, or licensed pursuant to this Article.

(3) Practice or attempt to practice as a certified substance abuse counselor, certified substance abuse prevention consultant, certified clinical supervisor, ~~certified~~ licensed clinical addictions specialist, certified criminal justice addictions professional, or certified substance abuse residential facility director with a revoked, lapsed, or suspended ~~certification.~~certification or license.

(4) Aid, abet, or assist any ~~uncertified~~ person to practice as a certified substance abuse counselor, certified substance abuse prevention consultant, certified clinical supervisor, ~~certified~~ licensed clinical addictions specialist, ~~or~~ certified substance abuse residential facility ~~director~~ director, registrant, substance abuse counselor intern, clinical addictions specialist, or clinical supervisor intern in violation of this Article.

(5) Knowingly serve in a position required by State law or rule or federal law or regulation to be filled by a registrant, certified substance abuse counselor, certified substance abuse prevention consultant, certified clinical supervisor, ~~certified~~ licensed clinical addictions specialist, ~~or~~ certified substance abuse residential facility ~~director~~ director, substance abuse counselor intern, clinical addictions specialist intern, or clinical supervisor intern unless that person is ~~certified~~ registered, certified, or licensed under this Article.

(6) Repealed by S.L. 1997-492, s. 13.

(7) Practice, supervise, or attempt to practice or supervise or knowingly serve in a position required by State law or rule or federal law or regulation to be filled by a designated substance abuse intern without being designated as such by the Board.

A person who engages in any of the illegal practices enumerated by this section is guilty of a Class 1 misdemeanor. Each act of unlawful practice constitutes a distinct and separate offense.

"§ 90-113.44. Grounds for disciplinary action.

(a) Grounds for disciplinary action for an applicant or credentialed professional include:

(1) The employment of fraud, deceit, or misrepresentation in obtaining or attempting to obtain ~~certification~~ licensure, certification, or registration or renewal of ~~certification~~ licensure, certification, or registration.

(2) The use of drugs or alcoholic beverages to the extent that professional competency is ~~affected, until proof of rehabilitation can be established.~~affected.

(2a) The use of drugs or alcoholic beverages to the extent that a substance abuse professional suffers impairment.

(3) Conviction of an offense under any municipal, State, or federal ~~narcotic or controlled substance law, until proof of rehabilitation can be established.~~law other than traffic laws as prescribed by Chapter 20 of the General Statutes.

(4) Conviction of a felony or other public offense involving moral ~~turpitude, until proof of rehabilitation can be established.~~turpitude. Conviction of a Class A-E felony shall result in an immediate suspension of ~~certification~~ licensure, certification, or registration for a minimum of one year.

(5) An adjudication of insanity or incompetency, until proof of recovery from this condition can be ~~established.~~established by a licensed psychologist or psychiatrist.

(6) Engaging in any act or practice in violation of any of the provisions of this Article or any of the rules adopted pursuant to it, or aiding, abetting, or assisting any other person in such a violation.

(7) The commission of an act of malpractice, gross negligence, or incompetence ~~in the practice of substance abuse counseling, substance abuse prevention consulting, clinical supervising, or in serving as a clinical addictions specialist, residential facility director, or a registrant.~~while serving as a substance abuse professional, intern, or registrant.

~~(8) Practicing as a certified substance abuse counselor, certified substance abuse prevention consultant, certified clinical supervisor, certified clinical addictions specialist or certified residential facility director without a valid certificate or practicing as a registrant without a valid registration.~~

(9) Engaging in conduct that could result in harm or injury to the public.

(10) Entering into a dual relationship that impairs professional judgment or increases the risk of exploitation with a client or supervisee.

(11) Practicing as a credentialed substance abuse professional outside of his or her scope of practice pursuant to G.S. 90-113.31B.

(b) Denial of an applicant's licensure, certification, or registration or the granting of licensure, certification, or registration on a probationary or other conditional status shall be subject to substantially the same rules and procedures prescribed by the Board for review and disciplinary actions against any person holding a license, certificate, or registration. A suspension of a credential resulting from impairment due to substance use, mental health, or medical disorder shall be imposed for at least six months beginning from the date of successful discharge from a residential substance abuse treatment program or other appropriate treatment modality determined as a result of an assessment by a Board-approved assessor. Disciplinary actions involving a clinical addictions specialist whose licensure is achieved through deemed status shall be initially heard by the specialist's credentialing body. The specialist may appeal the body's

decision to the Board. The Board shall, however, have the discretionary authority to hear the initial disciplinary action involving a credentialed professional.

"§ 90-113.45. Enjoining illegal practices.

(a) The Board may, if it finds that any person is violating any of the provisions of this Article or of the rules adopted pursuant to it, apply in its own name to the superior court for a temporary or permanent restraining order or injunction to restrain that person from continuing these illegal practices. The court may grant injunctive relief regardless of whether criminal prosecution or other action has been or may be instituted as a result of the violation. In the court's consideration of the issue of whether to grant or continue an injunction sought by the Board, a showing of conduct in violation of the terms of this Article shall be sufficient to meet any requirement of general North Carolina injunction law for irreparable damage.

(b) The venue for actions brought under this section is the superior court of any county in which the illegal acts are alleged to have been committed or in the county where the defendant resides.

"§ 90-113.46. Application of requirements of Article.

All persons ~~certified~~ credentialed by the North Carolina Substance Abuse Professional ~~Certification~~ Practice Board, Inc., as of July 1, 1994, shall be ~~certified~~ credentialed by the Board pursuant to this Article. All these persons are subject to all the other requirements of this Article and of the rules adopted pursuant to it.

"§ 90-113.46A. Criminal history record checks of applicants for registration, certification, or licensure.

(a) All applicants for registration, certification, or licensure shall consent to a criminal history record check. Refusal to consent to a criminal history record check may constitute grounds for the Board to deny registration, certification, or licensure to an applicant. The Board shall ensure that the State and national criminal history of an applicant is checked. The Board shall be responsible for providing to the North Carolina Department of Justice the fingerprints of the applicant to be checked, a form signed by the applicant consenting to the criminal history record check and the use of fingerprints and other identifying information required by the State or National Repositories, the fee required by the Department of Justice for providing this service, and any additional information required by the Department of Justice. The Board shall keep all information obtained pursuant to this section confidential.

(b) If an applicant's criminal history record check reveals one or more convictions as defined in G.S. 90-113.31A(14), the conviction shall not automatically bar issuance of a credential by the Board to the applicant. The Board shall consider all of the following factors regarding the conviction:

(1) The level of seriousness of the crime.

(2) The date of the crime.

(3) The age of the person at the time of the conviction.

(4) The circumstances surrounding the commission of the crime, if known.

(5) The nexus between the criminal conduct of the person and the job duties of the position to be filled.

(6) The person's prison, jail, probation, parole, rehabilitation, and employment records since the date the crime was committed.

(7) The subsequent commission by the person of a crime as defined in G.S. 90-113.31A(14).

If, after reviewing the factors, the Board determines that the grounds set forth in G.S. 90-113.44 exist, the Board may deny registration, certification, or licensure of the applicant. The Board may disclose to the applicant information contained in the criminal history record check that is relevant to the denial. The Board shall not provide a copy of the criminal history record check to the applicant. The applicant shall have the right to appear before the Board to appeal the Board's decision. However, an appearance before the full Board shall constitute an exhaustion of administrative remedies in accordance with Chapter 150B of the General Statutes.

(c) Limited Immunity. – The Board, its officers and employees, acting in good faith and in compliance with this section, shall be immune from civil liability for denying registration, certification, or licensure to an applicant based on information provided in the applicant's criminal history record check."

SECTION 2. Article 4 of Chapter 114 of the General Statutes is amended by adding the following new section to read:

"**§ 114-19.11A. Criminal record checks of applicants for registration, certification, or licensure as a substance abuse professional.**

The Department of Justice may provide to the North Carolina Substance Abuse Professional Practice Board from the State and National Repositories of Criminal Histories the criminal history of any applicant for registration, certification, or licensure pursuant to Article 5C of Chapter 90 of the General Statutes. Along with the request, the Board shall provide to the Department of Justice 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 Board 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 3. All members serving on the North Carolina Substance Abuse Professional Practice Board on the effective date of this act shall complete their current three-year terms. Upon completion of their terms, newly appointed or elected members of the Board shall serve four-year terms pursuant to G.S. 90-113.33, as enacted in Section 1 of this act.

SECTION 4. Notwithstanding G.S. 90-113.40(d1), as enacted by Section 1 of this act, the North Carolina Substance Abuse Professional Practice Board may certify a person as a certified criminal justice addictions professional during a limited period of 90 days from the date this act becomes effective and the credential is approved by the

IC&RC/AODA, Inc., if the applicant qualifies based on experience providing services to clients or offenders exhibiting substance abuse disorders and is working in a program determined by the Board to be integrally involved in at least one of the three branches of the criminal justice system, which include law enforcement, the judiciary, and corrections. In addition to meeting the requirements of G.S. 90-113.40(a)(1) through (5a), the person shall do the following:

(1) Provide two letters recommending certification from a current or former peer who functions in substantially the same professional capacity as determined by the Board.

(2) Provide one letter recommending certification from a person currently supervising or who has supervised the applicant within the previous five years attesting to the applicant's competency in the fields of substance abuse and criminal justice.

(3) Pay the criminal justice addictions professional certification fee for certification not to exceed one hundred fifty dollars ($150.00).

(4) Provide one of the following:

a. A high school diploma or a high school equivalency certificate, documentation of eight years or 16,000 hours of supervised work experience providing direct service to clients or offenders determined by the Board to be integrally involved in at least one of the three branches of the criminal justice system, which include law enforcement, the judiciary, and corrections.

b. An associate degree and documentation of six years or 12,000 hours of supervised work experience providing direct service to clients or offenders determined by the Board to be integrally involved in the three branches of the criminal justice system, which include law enforcement, the judiciary, and corrections.

c. A bachelors degree in the human services field with four years or 8,000 hours of supervised work experience providing direct service to clients or offenders determined by the Board to be integrally involved in at least one of the three branches of the criminal justice system, which include law enforcement, the judiciary, and corrections.

d. A masters degree or above in the human services field with two years or 4,000 hours of supervised work experience providing direct service to clients or offenders determined by the Board to be integrally involved in the three branches of the criminal justice system, which include law enforcement, the judiciary, and corrections.

(5) Provide documentation of at least 270 clock hours of Board-approved education and 300 hours of Board-approved supervised practical training, both in the International Certification & Reciprocity Consortium/Alcohol and Other Drug Abuse, Incorporated, criminal justice addiction professional performance domains.

SECTION 5. G.S. 143-596(4) is repealed.

SECTION 6. Chapter 14 of the General Statutes is amended by adding a new Article to read:

"Article 62.

"Smoking in Public Restaurants.

"**§ 14-462. Definitions.**

The following definitions shall apply to this Article:

(1) Restaurant. – An eating establishment substantially engaged in the business of preparing and serving meals and regularly and customarily selling food to be eaten on the premises with a seating capacity of 50 or more, including, but not limited to, coffee shops, cafeterias, sandwich stands, and any building, structure, or area where food is available for eating on the premises in consideration of payment. The term 'restaurant' shall not include a designated bar or lounge area attached to a restaurant where alcoholic beverages are sold and shall not include an outdoor or partially enclosed outdoor seating area with or without a ceiling.

(2) Smoke or smoking. – The use or possession of a lighted cigarette, lighted cigar, lighted pipe, or any other lighted tobacco product.

"**§ 14-463. Smoking in public restaurants; notice.**

(a) Every restaurant may have a designated smoking area. Notwithstanding any other provision of law, the smoking area of a restaurant shall be no more than twenty-five percent (25%) of the seating capacity inside the restaurant. 'No Smoking' signs or the international 'No Smoking' symbol, which consists of a pictorial representation of a burning cigarette enclosed in a circle with a bar across it, shall be conspicuously posted and properly maintained in each area of the restaurant not designated as a smoking area.

(b) No person may smoke in any area of a restaurant that is accessible to the public and not designated as a smoking area.

(c) Any person in charge of a restaurant open and accessible to the public or a designated agent or employee of the restaurant, who observes a person smoking in apparent violation of this section, shall ask the person to extinguish all lighted tobacco products. If the person persists in apparent violation of this section, the person in charge of the restaurant or the designated agent or employee of the restaurant shall ask the person to leave the premises.

(d) Nothing in this Article shall prohibit a county health department from establishing an Internet listing of local restaurants that are considered to be 'smoke free'. No such listing shall contain negative information about any restaurant or other establishment that allows smoking.

"**§ 14-464. Violations; penalties.**

Any person who refuses to either extinguish all lighted tobacco products or leave the premises of a restaurant when asked to do so pursuant to G.S. 14-463(b) is responsible for an infraction. For violations occurring prior to January 1, 2007, the person shall be issued a warning. A person committing a violation on or after January 1, 2007, is

subject to a fine not to exceed fifty dollars ($50.00). Any violation of this Article may be reported to a law enforcement officer.

"**§ 14-465. Exceptions.**

This Article shall not apply to the following:

(1) Any building owned, rented, leased, or otherwise operated by a social, fraternal, or religious organization when used solely by the organization members or their guests or families.

(2) Any facility or private room rented or leased for private functions from which the general public is excluded.

(3) Private clubs.

"**§ 14-466. Limit on civil liability.**

No person may bring an action against a restaurant for requesting that person to extinguish all lighted tobacco products in compliance with this Article."

SECTION 7.(a) G.S. 14-462, as enacted by Section 6 of this act, reads as rewritten:

"**§ 14-462. Definitions.**

The following definitions shall apply to this Article:

(1) Restaurant. – An eating establishment substantially engaged in the business of preparing and serving meals and regularly and customarily selling food to be eaten on the premises with a seating capacity of 50 or more, including but not limited to, coffee shops, cafeterias, sandwich stands, and any building, structure, or area where food is available for eating on the premises in consideration of payment. The term 'restaurant' shall ~~not~~ include a designated bar or lounge area attached to a restaurant where alcoholic beverages are sold and shall not include an outdoor or partially enclosed outdoor seating area with or without a ceiling.

(2) Smoke or smoking. – The use or possession of a lighted cigarette, lighted cigar, lighted pipe, or any other lighted tobacco product.

(3) Smoking area. – A portion of a restaurant designated to permit smoking that is completely enclosed, separate and apart from the remainder of the restaurant, with adequate ventilation to prevent environmental tobacco smoke from mixing with the air outside the smoking area."

SECTION 7.(b) G.S. 14-463, as enacted by Section 6 of this act, is amended by adding a new subsection to read:

"(e) The 'smoking area' of a restaurant shall be in a room or rooms separate and apart from the main dining area."

SECTION 7.(c) G.S. 130A-248(a3) reads as rewritten:

"(a3) The rules adopted by the Commission pursuant to subsections (a), (a1), and (a2) of this section shall address, but not be limited to, the following:

(1) Sanitation requirements for cleanliness of floors, walls, ceilings, storage spaces, utensils, ventilation equipment, and other areas and ~~items;~~items.

(2) Requirements for:
a. Lighting and water supply;
b. Wastewater collection, treatment, and disposal facilities; and
c. Lavatory and toilet facilities, food protection, and waste ~~disposal;~~disposal.

(3) The cleaning and bactericidal treatment of eating and drinking utensils and other food-contact surfaces. A requirement imposed under this subdivision to sanitize multiuse eating and drinking utensils and other food-contact surfaces does not apply to utensils and surfaces provided in the guest room of the lodging unit for guests to prepare food while staying in the guest room.

(3a) The appropriate and reasonable use of gloves or utensils by employees who handle unwrapped ~~food;~~food.

(4) The methods of food preparation, transportation, catering, storage, and ~~serving;~~serving.

(5) The health of ~~employees;~~employees.

(6) Animal and vermin ~~control; and~~control.

(7) The prohibition against the offering of unwrapped food samples to the general public unless the offering and acceptance of the samples are continuously supervised by an agent of the entity preparing or offering the samples or by an agent of the entity on whose premises the samples are made available. As used in this subdivision, "food samples" means unwrapped food prepared and made available for sampling by and without charge to the general public for the purpose of promoting the food made available for sampling. This subdivision does not apply to unwrapped food prepared and offered in buffet, cafeteria, or other style in exchange for payment by the general public or by the person or entity arranging for the preparation and offering of such unwrapped food. This subdivision shall not apply to open air produce markets nor to farmer market facilities operated on land owned or leased by the State of North Carolina or any local government.

(8) Requirements for smoking areas as defined in G.S. 14-462.

The rules shall contain a system for grading establishments, such as Grade A, Grade B, and Grade C. The rules shall be written in a manner that promotes consistency in both the interpretation and application of the grading system."

SECTION 7.(d) This section becomes effective January 1, 2007.

SECTION 8.(a) G.S. 14-463, as enacted by Sections 6 and 7 of this act, is amended by adding a new subsection to read:

"(f) Any restaurant employee who is an unemancipated minor shall provide the employer with a signed written statement from the unemancipated minor's parent or guardian authorizing the unemancipated minor to work in a restaurant where smoking is permitted unless the unemancipated minor will be working only in 'No Smoking' or outside areas of the restaurant. This subsection shall not apply to an unemancipated minor employed by a parent or guardian."

SECTION 8.(b) This section becomes effective January 1, 2008.

SECTION 9.(a) G.S. 14-463, as enacted by Sections 6, 7, and 8 of this act, is amended by adding a new subsection to read:

"(g) Any restaurant that allows smoking shall post and maintain at least one notice in the immediate vicinity of the sanitation grade or on the front door of the restaurant that smoking is allowed in the restaurant."

SECTION 9.(b) This section becomes effective January 1, 2010.

SECTION 10. Sections 1 through 4 and 10 of this act are effective when it becomes law. Except as otherwise provided in this act, the remainder of this act becomes effective January 1, 2006, and applies to acts committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

S D

SENATE BILL 705
Health Care Committee Substitute Adopted 5/16/05
Third Edition Engrossed 6/1/05
House Committee Substitute Favorable 8/8/05
PROPOSED HOUSE COMMITTEE SUBSTITUTE S705-CSST-90 [v.1]

8/10/2005 3:46:25 PM

Short Title: Amend Substance Abuse Laws. (Public)

Sponsors:

Referred to:

March 21, 2005

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE LICENSURE OF SUBSTANCE ABUSE PROFESSIONALS, TO ESTABLISH THE CREDENTIAL OF CERTIFIED CRIMINAL JUSTICE ADDICTIONS PROFESSIONAL, AND TO ALLOW THE DEPARTMENT OF JUSTICE TO CONDUCT CRIMINAL HISTORY RECORD CHECKS FROM STATE AND NATIONAL REPOSITORIES OF CRIMINAL HISTORY OF APPLICANTS FOR CREDENTIALS UPON THE REQUEST OF THE NORTH CAROLINA SUBSTANCE ABUSE PROFESSIONAL PRACTICE BOARD.

The General Assembly of North Carolina enacts:

SECTION 1. Article 5C of Chapter 90 of the General Statutes reads as rewritten:

"Article 5C.

"North Carolina Substance Abuse ~~Professionals Certification~~Professional Practice Act.

"**§ 90-113.30. Declaration of purpose.**

The North Carolina Substance Abuse Professional ~~Certification~~ Practice Board, established by G.S. 90-113.32, is recognized as the ~~certifying~~ registering, certifying, and licensing authority for substance abuse professionals described in this Article in order to safeguard the public health, safety, and welfare, to protect the public from being harmed by unqualified persons, to assure the highest degree of professional care and conduct on the part of ~~certified~~ credentialed substance abuse professionals, to provide for the establishment of standards for the education of ~~certified~~ credentialed substance abuse professionals, and to ensure the availability of ~~certified~~ credentialed substance abuse professional services of high quality to persons in need of these services. It is the purpose of this Article to provide for the regulation of

~~Board-certified~~Board-credentialed persons offering substance abuse counseling services, substance abuse prevention services, or any other substance abuse services for which the Board may grant ~~certification.~~registration, certification, or licensure.

"~~§90-113.31. Definitions.~~

~~The following definitions shall apply in this Article:~~

~~(1) Approved supervisor. A person who provides supervision as required by the Board to persons applying for registration or certification as a substance abuse professional pursuant to this Article.~~

~~(1a) Board. The North Carolina Substance Abuse Professional Certification Board.~~

~~(1b) Certified clinical addictions specialist. A person certified by the Board to practice as a clinical addictions specialist in accordance with the provisions of this Article.~~

~~(1c) Certified clinical supervisor. A person certified by the Board to practice as a clinical supervisor in accordance with the provisions of this Article.~~

~~(1d) Certified residential facility director. A person certified by the Board to practice as a residential facility director in accordance with the provisions of this Article.~~

~~(2) Certified substance abuse counselor. A person certified by the Board to practice as a substance abuse counselor in accordance with the provisions of this Article.~~

~~(3) Repealed by S.L. 1997-492, s. 2.~~

~~(3a) Certified substance abuse prevention consultant. A person certified by the Board to practice substance abuse prevention in accordance with the provisions of this Article.~~

~~(4) Clinical supervisor intern. A person designated by the Board to practice as a clinical supervisor intern for a period not to exceed three years without a showing of good cause in accordance with the provisions of this Article.~~

~~(4a) Credentialing body. A board that licenses, certifies, or regulates a profession or practice.~~

~~(4b) Deemed status. Recognition by the Board of the credentials offered by a professional discipline whereby the individuals certified, licensed, or otherwise recognized by the discipline as having met the standards of a substance abuse specialist may apply individually for certification as a certified clinical addictions specialist.~~

~~(4c) Human services field. An area of study that focuses on the biological, psychological, and social aspects of human beings.~~

~~(4d) Repealed by Session Laws 1999-164, s. 1.~~

~~(5) Prevention. The reduction, delay, or avoidance of alcohol and of other drug use behavior. "Prevention" includes the promotion of positive environments and individual strengths that contribute to personal health and well-being over an entire life and the development~~

~~of strategies that encourage individuals, families, and communities to take part in assessing and changing their lifestyle and environments.~~

~~(6) Professional discipline. — A field of study characterized by the technical, educational, and ethical standards of a profession.~~

~~(6a) Registrant. — A person who has initiated a certification process to become a certified substance abuse counselor or a certified clinical addictions specialist pursuant to this Article and is authorized to provide DWI assessments pursuant to G.S. 122C-142.1.~~

~~(7) Substance abuse counseling. — The assessment, evaluation, and provision of counseling to persons suffering from substance, drug, or alcohol abuse or dependency.~~

~~(7a) Substance abuse counselor intern. — A person who successfully completes 300 hours of Board approved supervised practical training and a written examination in pursuit of certification as a substance abuse counselor.~~

~~(8) Substance abuse professional. — A certified substance abuse counselor, certified substance abuse prevention consultant, certified clinical supervisor, certified clinical addictions specialist, or certified residential facility director.~~

"**§ 90-113.31A. Definitions.**

The following definitions shall apply in this Article:

(1) Applicant. – A person who has initiated a process to become a substance abuse professional pursuant to this Article.

(2) Applicant supervisor. – A person who provides supervision as required by the Board to persons applying for registration, certification, or licensure as a substance abuse professional pursuant to this Article.

(3) Board. – The North Carolina Substance Abuse Professional Practice Board.

(4) Certified clinical supervisor. – A person certified by the Board to practice as a clinical supervisor in accordance with the provisions of this Article.

(5) Certified criminal justice addictions professional. – A person certified by the Board to practice as a criminal justice addictions professional who, under supervision, provides direct services to clients or offenders exhibiting substance abuse disorders and works in a program determined by the Board to be involved in a criminal justice setting.

(6) Certified substance abuse counselor. – A person certified by the Board to practice under the supervision of a practice supervisor as a substance abuse counselor in accordance with the provisions of this Article.

(7) Certified substance abuse prevention consultant. – A person certified by the Board to practice substance abuse prevention in accordance with the provisions of this Article.

(8) Certified substance abuse residential facility director. – A person certified by the Board to practice as a substance abuse residential facility director in accordance with the provisions of this Article.

(9) Clinical addictions specialist intern. – A person who successfully completes 300 hours of Board-approved supervised practical training and passes a written examination in pursuit of licensure as a clinical addictions specialist.

(10) Clinical supervisor intern. – A person designated by the Board to practice as a clinical supervisor under the supervision of a certified clinical supervisor for a period not to exceed three years without a showing of good cause in accordance with the provisions of this Article.

(11) Counseling. – The utilization of special skills to assist individuals, families, or groups in achieving objectives, including the following:

a. Exploring a problem and its ramifications.

b. Examining attitudes and feelings.

c. Considering alternative solutions.

d. Decision making.

(12) Credential. – Any registration, certification, or license issued by the Board.

(13) Credentialing body. – A board that licenses, certifies, registers, or otherwise regulates a profession or practice.

(14) Criminal history. – A history of conviction of a State crime, whether a misdemeanor or felony, that bears on an applicant's fitness for licensure to practice substance abuse professional services. The crimes include the criminal offenses set forth in any of the following Articles of Chapter 14 of the General Statutes: Article 5, Counterfeiting and Issuing Monetary Substitutes; Article 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7A, Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 19B, Financial Transaction Card Crime Act; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, Riots and Civil Disorders; Article 39, Protection of Minors; Article 40, Protection of the Family; Article 59, Public Intoxication; and Article 60, Computer-Related Crime. The crimes

also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act in Article 5 of Chapter 90 of the General Statutes and alcohol-related offenses including sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5.

(15) Deemed status. – Recognition by the Board of the credentials offered by a professional discipline whereby the individuals certified, licensed, or otherwise recognized by the discipline as having met the standards of a clinical addictions specialist may apply individually for licensure as a licensed clinical addictions specialist.

(16) Dual relationship. – A relationship in addition to the professional relationship with a person to whom the substance abuse professional delivers services in the Twelve Core Functions or the performance domains, both as defined in rules adopted by the Board, or as provided in a supervisory capacity. These relationships may result in grounds for disciplinary action.

(17) Human services field. – An area of study that focuses on the biological, psychological, behavioral, and social aspects of human welfare with focus on the direct services designed to improve it.

(18) Independent study. – Any course of study that is not traditional classroom-based that must be preapproved by the Board or any organization that has deemed status with the Board.

(19) Licensed clinical addictions specialist. – A person licensed by the Board to practice as a clinical addictions specialist in accordance with the provisions of this Article.

(20) Practice supervisor. – A certified clinical supervisor, clinical supervisor intern, or licensed clinical addictions specialist who provides oversight and responsibility in a face-to-face capacity for each certified substance abuse counselor or criminal justice addictions professional.

(21) Prevention. – The reduction, delay, or avoidance of alcohol and of other drug use behavior. 'Prevention' includes the promotion of positive environments and individual strengths that contribute to personal health and well-being over an entire life and the development of strategies that encourage individuals, families, and communities to take part in assessing and changing their lifestyles and environments.

(22) Professional discipline. – A field of study characterized by the technical, educational, and ethical standards of a profession.

(23) Registrant. – A person who completes all requirements to be registered with the Board and is supervised by a certified clinical supervisor or clinical supervisor intern.

(24) Substance abuse counseling. – The assessment, evaluation, and provision of counseling and therapeutic service to persons suffering from substance abuse or dependency.

(25) Substance abuse counselor intern. – A person who successfully completes 300 hours of Board-approved supervised practical training and passes a written examination in pursuit of credentialing as a substance abuse counselor.

(26) Substance abuse professional. – A registrant, certified substance abuse counselor, substance abuse counselor intern, certified substance abuse prevention consultant, certified clinical supervisor, clinical addictions specialist intern, licensed clinical addictions specialist, certified substance abuse residential facility director, or certified criminal justice addictions professional.

"**§ 90-113.31B. Scope of practice.**

The scope of practice is the use by all substance abuse professionals and their ongoing supervisees of principles, methods, and procedures of the Twelve Core Functions or performance domains as prescribed by the International Certification and Reciprocity Consortium/Alcohol and Other Drug Abuse, Incorporated, and as limited by individual credential and supervisory requirements pursuant to this Article. Specifically, the scope of practice for each individual defined as a substance abuse professional under G.S. 90-113.31A is as follows:

(1) The practice of a certified substance abuse counselor consists of the Twelve Core Functions, including screening, intake, orientation, assessment, treatment planning, counseling, case management, crisis intervention, client education, report and record keeping, consultation with other professionals in regard to client treatment and services, and referral to treat addictive disorder or disease and help prevent relapse.

(2) The practice of a certified substance abuse prevention consultant is based on knowledge in the performance domains to prevent or reduce the conditions that place individuals at increased risk of developing addictive disorder or disease and help prevent relapse.

(3) The practice of a certified clinical supervisor is based on knowledge in the performance domains to supervise substance abuse professionals who work to treat, prevent, or reduce the conditions that place individuals at risk of developing addictive disorder or disease and help prevent relapse.

(4) The practice of a licensed clinical addictions specialist may be independent and consists of the Twelve Core Functions, including screening, intake, orientation, assessment, treatment planning, counseling, case management, crisis intervention, client education, report and record keeping, consultation with other professionals in regard to client treatment and services, referral to reduce the conditions that place individuals at risk of developing addictive disorder or disease with co-occurring disorders, and treatment for addictive disorder or disease. The licensed clinical addictions specialist may provide supervision to maintain a professional credential as defined by this Article.

(5) The practice of a certified substance abuse residential facility director is a voluntary credential and consists of the Twelve Core Functions, including screening, intake, orientation, assessment, treatment planning, counseling, case management, crisis intervention, client education, report and record keeping, consultation with professionals in regard to client treatment and services, referral to prevent or reduce the conditions that place individuals at increased risk of developing addictive disorder or disease, treatment for addictive disorder or disease, and the prevention of relapse as well as academic management training.

(6) The practice of a certified criminal justice addictions professional is based on knowledge in the performance domains of dynamics of addiction in criminal behavior; legal, ethical, and professional responsibility; criminal justice system and processes; screening, intake, and assessment; case management; monitoring; and client supervision and counseling to prevent or reduce the conditions that place individuals at increased risk of developing addictive disorder or disease, treat addictive disorder or disease, and help prevent relapse.

"**§ 90-113.32. Board; composition; voting.**

(a) The Board is created as the ~~certifying~~ authority ~~for substance abuse counselors, substance abuse prevention consultants, clinical supervisors, clinical addictions specialists, and residential facility directors~~to credential substance abuse professionals in North Carolina.

(b) Until the full Board is elected or appointed pursuant to subsection (c) of this section, the Board shall consist of 16 members with one member appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121, and one member appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121. The remaining 14 shall be those members of the current North Carolina Substance Abuse Professional ~~Certification~~ Practice Board, Inc., who have terms that are unexpired as of the effective date of this Article. The initial Board shall appoint an initial Nominating and Elections Committee to fill immediate vacancies on the Board, using the process established in subsection (d) of this section. The election and appointment process of the initial Board shall result in a Board of 19 members by April 1, 1995. As these initial members' terms expire, their successors shall be appointed as described in subsection (c) of this section, until the permanent Board is established, as described in subsection (c) of this section. Time spent as an initial member counts in determining the limitation on consecutive terms prescribed in subsection (e) of this section.

(c) After the initial Board members' terms expire, the Board shall consist of the following members, all of whom shall reside in North Carolina, appointed or elected as follows:

(1) Eleven professionals ~~certified~~ credentialed pursuant to this Article and elected by the ~~certified~~ credentialed professionals, at least two of

whom shall serve each of the four Division of Mental Health, Developmental Disabilities, and Substance Abuse Services regions of the State. Three members shall serve as members at large.

(2) Three members at large chosen from laypersons or other professional disciplines who have shown a special interest in the field of substance abuse, nominated by the Nominating and Elections Committee established by subsection (d) of this section and elected by the Board.

(3) Two members from the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, Department of Health and Human Services, appointed by the Chief of ~~Substance Abuse Services Section, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, Department of Health and Human Services,~~the North Carolina Substance Abuse Single State Agency, at least one of whom ~~is from the Substance Abuse Services Section.~~administers substance abuse services.

(4) One member of the public at large appointed by the Governor.

(5) One member of the public at large appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121 and one member of the public at large appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121.

(6) One member shall represent each of the professional disciplines granted deemed status under G.S. 90-113.41A. The member may be appointed by the professional discipline on or before a date set by the Board. If the professional discipline has at least one association in the State, the member shall be chosen from a list of nominees submitted to the association. The members appointed or elected under this subdivision shall be certified as substance abuse specialists by the professional discipline that the members represent.

No member of the General Assembly shall serve on the Board.

(c1) Every member of the Board shall have the right to vote on all matters before the Board, except for the President who shall vote only in case of a tie or when another member of the Board abstains on the question of whether the professional discipline the member represents shall retain its deemed status.

(d) The Board shall appoint five professionals from the field of substance abuse counseling and substance abuse prevention consulting to serve on the Nominating and Elections Committee. Of these five, at least three shall not be members of the Board. The Board shall appoint a member of the Nominating and Elections Committee to serve as chair. The Committee's purpose is to accept nominations from professionals certified or licensed by the Board to fill vacancies on the Board in membership categories prescribed by subdivisions (1) and (2) of subsection (c) of this section and to conduct the election of Board members. The Committee shall solicit nominations from all professionals it has certified or licensed under this Article when elected members' terms

are due to expire. The certified or licensed professionals shall submit to the Committee all nominations beginning 90 days and ending ~~14~~ 28 days before the election of new Board members. The Committee shall furnish all certified or licensed professionals with a ballot containing all the nominees for each elected Board member vacancy. In soliciting and making nominations for this process, the Committee shall give consideration to factors that promote representation on the Board by professionals certified or licensed by the Board. The Committee shall serve for a two-year term, its successors to be appointed for the same term by the Board.

(e) Members of the Board shall serve for ~~three-year~~four-year terms. No Board member shall serve for more than two consecutive terms, but a person who has been a member for two consecutive terms may be reappointed after being off the Board for a period of at least one year. When a vacancy occurs in an unexpired term, the Board shall, as soon as practicable, appoint temporary members to serve until the end of the unexpired terms. Time spent as a temporary member does not count in determining the limitation on consecutive terms.

(f) If a member becomes ineligible to serve on the Board for any reason, except when the member has committed an ethical violation that results in the suspension or revocation of the member's professional credentials, ~~the~~ that member may fulfill the remainder of ~~the member's~~his or her term on the Board.

"§ 90-113.33. Board; powers and duties.

The Board shall:

(1) Examine and determine the qualifications and fitness of applicants for certification and licensure to practice in this State.

(1a) Determine the qualifications and fitness of organizations applying for deemed status.

(2) Issue, renew, deny, suspend, or revoke ~~certification~~ licensure, certification, or registration to practice in this State or reprimand or otherwise discipline ~~certificate~~ a license, certificate, or registration ~~holders~~ holder in this State. ~~Denial of an applicant's certification or registration or the granting of certification or registration on a probationary or other conditional status shall be subject to substantially the same rules and procedures prescribed by the Board for review and disciplinary actions against those persons holding certificates or registrations. Disciplinary actions involving a clinical addictions specialist whose certification is achieved through deemed status shall be initially heard by the specialist's credentialing body. The specialist may appeal the body's decision to the Board. The Board shall, however, have the authority to hear the initial disciplinary action involving a clinical addictions specialist.~~

(3) Deal with issues concerning reciprocity.

(4) Conduct investigations for the purpose of determining whether violations of this Article or grounds for disciplining exists.

(5) Employ ~~the professional and clerical~~and fix the compensation of personnel and legal counsel that the Board determines is necessary to

carry out the provisions of this Article. The Board's employment of legal counsel is subject to the provisions of G.S. 114-2.3. The Board may purchase or rent necessary office space, equipment, and supplies.

(6) Conduct administrative hearings in accordance with Chapter 150B of the General Statutes when a "contested case", as defined in Chapter 150B, arises.

(7) Appoint from its own membership one or more members to act as representatives of the Board at any meeting in which it considers this representation is desirable.

(8) Establish fees for applications for examination, registration, certificates of ~~certification~~ certification, licensure, and renewal, and other services provided by the Board.

(9) Adopt any rules necessary to carry out the purpose of this Article and its duties and responsibilities pursuant to this Article.

(10) Request that the Department of Justice conduct criminal history record checks of applicants for registration, certification, or licensure pursuant to G.S. 114-19.11A.

The powers and duties enumerated in this section are granted for the purposes of enabling the Board to safeguard the public health, safety, and welfare against unqualified or incompetent practitioners and are to be liberally construed to accomplish this objective. When the Board exercises its authority under this Article to discipline a person, it may, as part of the decision imposing the discipline, charge the costs of investigations and the hearing to the person disciplined.

"§ 90-113.33A. Officers may administer oaths, and subpoena witnesses, records, and other materials.

The President or other presiding officer of the Board may administer oaths to all persons appearing before it as the Board may deem necessary to perform its duties, and may summon and issue subpoenas for the appearance of any witnesses deemed necessary to testify concerning any matter to be heard before or inquired into by the Board. The Board may order that any client records, documents, or other materials concerning any matter to be heard before or inquired into by the Board shall be produced before the Board or made available for inspection, notwithstanding any other provisions of law providing for the application of any counselor-client or physician-patient privilege with respect to such records, documents, or other materials. All records, documents, or other materials compiled by the Board are subject to the provisions of G.S. 90-113.34, except that in any proceeding before the Board, record of any hearing before the Board, and notice of charges against any person ~~certified~~ credentialed by the Board, the Board shall withhold from public disclosure the identity of a client, including information relating to dates and places of treatment, or any other information that tends to identify the client unless the client or the client's representative has expressly consented to the disclosure. Upon written request, the Board shall revoke a subpoena if, upon a hearing, it finds that the evidence sought does not relate to a matter in issue, the subpoena does not describe the evidence with sufficient particularity, or the subpoena is invalid.

"**§ 90-113.34. Records to be kept; copies of records.**

(a) The Board shall keep a regular record of its proceedings, together with the names of the members of the Board present, the names of the applicants for registration, certification, and licensure as well as other information relevant to its actions. The Board shall cause a record to be kept that shall show the name, last known place of business, last known place of residence, and date and number of the ~~certificate of certification as a certified substance abuse counselor, certified substance abuse prevention consultant, certified clinical supervisor, certified clinical addictions specialist, or certified residential facility director for every living certified person.~~credential assigned to each substance abuse professional meeting the standards set forth in this Article. Any interested person in the State is entitled to obtain a copy of ~~that record on~~Board records upon application to the Board and ~~upon~~ payment of a reasonable charge that is based on the costs involved in providing the copy.

(b) The Board may in a closed session receive evidence regarding the provision of substance abuse counseling or other treatment and services provided to a client who has not expressly or through implication consented to the public disclosure of such treatment as may be necessary for the protection of the rights of the client or of the accused registrant or substance abuse professional and the full presentation of relevant evidence. All records, papers, and other documents containing information collected and compiled by the Board, its members, or employees as a result of investigations, inquiries, or interviews conducted in connection with ~~a certification~~awarding a credential or a disciplinary matter shall not be considered public records within the meaning of Chapter 132 of the General Statutes, except any notice or statement of charges, or notice of hearing shall be a public record notwithstanding that it may contain information collected and compiled as a result of an investigation, inquiry, or interview. If any record, paper, or other document containing information collected and compiled by the Board as provided in this subsection is received and admitted in evidence in any hearing before the Board, it shall thereupon be a public record.

(c) Notwithstanding any provision to the contrary, the Board may, in any proceeding, record of any hearing, and notice of charges, withhold from public disclosure the identity of a client who has not expressly or through implication consented to such disclosure of treatment by the accused substance abuse professional.

"**§ 90-113.35. Disposition of funds.**

All fees and other moneys collected and received by the Board shall be used to implement this Article. The financial records of the Board shall be subjected to an annual audit and paid for out of the funds of the Board.

"**§ 90-113.36. ~~Certificates of certification.~~Credentials.**

(a) The Board shall furnish a certificate of certification or licensure to each applicant successfully completing the requirements for ~~certification.~~his or her credential.

(b) The Board may furnish a certificate of certification or licensure to any person in another state or territory if the individual's qualifications were, at the date of ~~registration or~~registration, certification, or licensure, substantially equal to the

requirements under this Article. However, an out-of-state applicant shall first file application and pay any required fees.

~~"§ 90-113.37. Renewal of certification; lapse; revival.~~

~~(a) Every person certified pursuant to this Article who desires to maintain certification status shall apply to the Board for a renewal of certification every other year and pay to the secretary-treasurer the prescribed fee. Renewal of certification is subject to completion of no more than 60 hours of those continuing education requirements established by the Board. A clinical supervisor shall complete 15 hours of substance abuse clinical supervision training prior to the certificate being renewed. Certification that is not renewed automatically lapses, unless the Board provides for the late renewal of certification upon the payment of a late fee. No late renewal shall be granted more than five years after a certification expires. A suspended certification is subject to this section's renewal requirements and may be renewed as provided in this section. This renewal does not entitle the certified person to engage in the certified activity or in any other conduct or activity in violation of the order or judgment by which the certification was suspended, until the certification is reinstated. If a certification revoked on disciplinary grounds is reinstated and requires renewal, the certified person shall pay the renewal fee and any applicable late fee.~~

~~(b) The Board shall establish the manner in which lapsed certification may be revived or extended.~~

"**§ 90-113.37A. Renewal of credential; lapse.**

(a) Every person credentialed pursuant to this Article who desires to maintain his or her credentials shall apply to the Board for a renewal of certification or licensure every other year and pay to the treasurer the prescribed fee.

(b) Renewal of licensure is subject to completion of at least 40 hours of the continuing education requirements established by the Board. Renewal of substance abuse counselor or substance abuse prevention consultant certification is subject to completion of at least 60 hours of the continuing education requirements established by the Board. A certified substance abuse counselor shall submit a Board-approved supervision contract signed by the applicant and a practice supervisor documenting ongoing supervision at a ratio of one hour of supervision to every 40 hours of practice after certification is granted by the Board on a form provided by the Board. Any person certified by the Board as a certified alcoholism counselor or certified drug abuse counselor shall become a certified substance abuse counselor.

A clinical supervisor shall complete at least 15 hours of substance abuse clinical supervision training prior to the certificate being renewed. A substance abuse residential facility director shall complete at least 10 hours of substance abuse training for renewal. A certified criminal justice addictions professional shall complete at least 40 hours of continuing education that must be earned in the certified criminal justice addictions professional performance domains. A certified criminal justice addictions professional shall submit a Board-approved supervision contract signed by the criminal justice addictions professional and a practice supervisor documenting ongoing supervision at a ratio of one hour of supervision to every 40 hours of practice after certification is granted by the Board on a form provided by the Board.

(c) Independent study hours shall compose no more than fifty percent (50%) of the total number of hours required for renewal.

(d) A credential that is not renewed automatically lapses, unless the Board approves the late renewal of a credential upon the payment of a late fee.

(e) No late renewal shall be granted more than five years after a certification or licensure expires.

(f) A suspended credential may be renewed as provided in this section. This renewal does not entitle the credentialed person to engage in conduct or activity in violation of the order or judgment by which the credential was suspended, until the credential is reinstated. If a credential revoked on disciplinary grounds is reinstated and requires renewal, the credentialed person shall pay the renewal fee and any applicable late fee.

(g) The Board shall establish the manner in which lapsed certification or licensure may be revived or extended.

"**§ 90-113.38. Maximums for certain fees.**

(a) The fee to obtain a certificate of certification as a substance abuse counselor, substance abuse prevention consultant, clinical supervisor, ~~or~~ substance abuse residential facility ~~director~~ director, or certified criminal justice addictions professional may not exceed four hundred seventy-five dollars ($475.00). The fee to renew a certificate may not exceed one hundred fifty dollars ($150.00).

(b) The fee to obtain a certificate of ~~certification~~ licensure for a clinical addictions specialist pursuant to deemed status ~~may~~ shall not exceed one hundred fifty dollars ($150.00). The fee to renew a ~~certificate may~~license for a clinical addictions specialist pursuant to deemed status shall not exceed one hundred dollars ($100.00). The fee to obtain a ~~certificate of certification~~license for a clinical addictions specialist pursuant to all other procedures authorized by this Article ~~may~~ shall not exceed four hundred seventy-five dollars ($475.00). The fee to renew the ~~certificate may~~license shall not exceed one hundred fifty dollars ($150.00).

(b1) The fee to obtain a registration as a registrant shall ~~be~~ not exceed one hundred fifty dollars ($150.00). The fee to renew a registration shall ~~be~~ not exceed one hundred fifty dollars ($150.00).

(c) There shall be a reexamination fee of one hundred fifty dollars ($150.00) which shall be paid for each reexamination in addition to the fees ~~required under~~authorized pursuant to subsection (a) of this section. There shall be a fee not to exceed twenty-five dollars ($25.00) for rescheduling any examination.

(d) There shall be a fee ~~of~~ not to exceed twenty-five dollars ($25.00) to obtain a written verification ~~of certification~~or additional copy of a credential issued by the Board.

(e) There shall be a late renewal fee not to exceed one hundred twenty-five dollars ($125.00).

(f) In addition to any other prescribed fees, the Board shall charge a fee not to exceed one hundred fifty dollars ($150.00) for each administration of the test an applicant must pass to be credentialed as a United States Department of Transportation substance abuse professional.

"§ 90-113.39. Standards for ~~certification.~~credentials.

The Board shall establish standards ~~for certification of~~to credential substance abuse professionals. The ~~certification~~ credentialing standards of the International Certification and Reciprocity Consortium/Alcohol and Other Drug Abuse, Incorporated and the standards adopted by professional disciplines granted deemed status or their successor organizations may be used as guidelines for the Board's standards. The Board shall publish these required ~~standards separately from its rules so as to provide easy access to the~~ standards.

"§ 90-113.40. Requirements for ~~certification.~~certification and licensure.

(a) The Board shall issue a certificate certifying an applicant as a "Certified Substance Abuse Counselor" or as a "Certified Substance Abuse Prevention Consultant" if:

(1) The applicant is of good moral character.

(2) The applicant is not and has not engaged in any practice or conduct that would be grounds for disciplinary action under G.S. 90-113.44.

(3) The applicant is qualified for certification pursuant to the requirements of this Article and any rules adopted pursuant to it.

(4) The applicant has, at a minimum, a high school diploma or a high school equivalency certificate.

(5) The applicant has signed a form attesting to the intention to adhere fully to the ethical standards adopted by the Board.

(5a) The applicant submits to a complete criminal history record check pursuant to G.S. 90-113.46A.

(6) The applicant has completed 270 hours of Board-approved education. The Board may prescribe that a certain number of hours be in a course of study for substance abuse counseling and that a certain number of hours be in a course of study for substance abuse prevention consulting. Independent study hours shall not compose more than fifty percent (50%) of the total number of hours required for initial credentialing.

(7) The applicant has documented completion of a minimum of 300 hours of Supervised Practical ~~Training and~~Training, has provided a Board-approved supervision contract between the applicant and an ~~approved supervisor.~~applicant supervisor, and has been deemed recommended by the applicant supervisor to advance in the credentialing process.

(8) The applicant for substance abuse counselor has completed ~~either~~ a total of 6,000 hours of supervised experience in the field, whether paid or ~~volunteer, or, if a graduate of a Board-approved master's degree program, a total of 3,000 hours of supervised experience in the field, whether paid or~~ volunteer. The applicant for substance abuse prevention consultant has completed a total of ~~10,000~~6,000 hours supervised experience in the field, whether paid or volunteer, or 4,000

hours if the applicant has at least a bachelors degree in a human services field from a regionally accredited college or university.

(9) The applicant has ~~successfully completed~~obtained a passing score on a written ~~examination and~~examination. An applicant for certification as a substance abuse counselor must also obtain a passing score on an oral examination promulgated and administered by the Board.

(b) The Board shall issue a certificate certifying an individual as a "Certified Clinical Supervisor" if, in addition to meeting the requirements of subdivisions (a)(1) through ~~(5)~~(5a) of this section, the applicant:

(1) Submits proof of designation by the Board as a clinical supervisor intern.

(2) Prior to June 30, 1998, the applicant presents proof that the applicant has 12,000 hours experience in alcohol and drug abuse counseling and a bachelors degree or 8,000 hours experience in alcohol and drug abuse counseling and a minimum of a master's degree. After June 30, 1998, the applicant shall present proof that the applicant has a minimum of a master's degree in a human services field with a clinical application from a regionally accredited college or university.

(3) Has 6,000 hours experience as a substance abuse clinical supervisor if the applicant has a bachelors degree or 4,000 hours experience if the applicant has a master's degree in a human services field with a clinical application from a regionally accredited college or university.

(4) Has 30 hours of substance abuse clinical supervision specific education or training. These hours shall be reflective of the ~~12 core functions~~Twelve Core Functions in the applicant's clinical application and practice and may also be counted toward the applicant's ~~recertification~~ renewal as a substance abuse ~~counselor~~counselor or a clinical addictions specialist.

(5) Submits a letter of reference from a professional who can attest to the applicant's supervisory competence and two letters of reference from either counselors who have been supervised by the applicant or professionals who can attest to the applicant's competence.

(6) ~~Successfully completes~~Obtains a passing score on a written examination administered by the Board.

A person who practices as a certified clinical supervisor in addition to practicing as a certified substance abuse counselor shall be exempt from the practice supervision contract requirement.

(b1) The Board shall designate an applicant as a "Clinical Supervisor Intern" if, in addition to meeting the requirements of subdivisions (a)(1) through ~~(5)~~(5a) of this section, the applicant meets the following qualifications:

(1) Submits an application, resume, and official transcript showing that the applicant has obtained a master's degree in a human services field with a clinical application from a regionally accredited college or university.

(2) Submits verification statements.

(3) Submits proof of ~~certification~~ credentialing as a certified substance abuse ~~counselor or a certified~~counselor, a licensed clinical addictions ~~specialist.~~specialist, or certification or licensure through an organization granted deemed status by the Board.

(4) Submits documentation establishing that the applicant has completed at least fifty percent of the required clinical supervision specific training hours as defined by the Board.

(c) The Board shall issue a ~~certificate certifying~~license credentialing an applicant as a "~~Certified~~ Licensed Clinical Addictions Specialist" if, in addition to meeting the requirements of subdivisions (a)(1) through ~~(5)~~(5a) of this section, the applicant meets one of the following criteria:

(1) Criteria A. – The applicant:

a. Has a minimum of a master's degree with a clinical application in a human services field from a regionally accredited college or university.

b. Has two years postgraduate supervised substance abuse counseling experience.

c. Submits three letters of reference from ~~certified~~ licensed clinical addictions specialists or certified substance abuse counselors who have obtained master's degrees.

d. Has achieved a combined score set by the Board on a master's level written and oral examination administered by the Board.

e. Has attained 180 hours of substance abuse specific training ~~as described~~from either a regionally accredited college or university, which may include unlimited independent study, or from training events of which no more than fifty percent (50%) shall be in independent study. All hours shall be credited according to the standards set forth in G.S. 90-113.41A.

f. The applicant has documented completion of a minimum of 300 hours of supervised practical training and has provided a Board-approved supervision contract between the applicant and an ~~approved~~ applicant supervisor.

(2) Criteria B. – The applicant:

a. Has a minimum of a master's degree with a clinical application in a human services field from a regionally accredited college or university.

b. Has been certified as a substance abuse counselor.

c. Has one year of postgraduate supervised substance abuse counseling experience.

d. Has achieved a passing score on a master's level written examination administered by the Board.

e. Submits three letters of reference from ~~certified~~ either licensed clinical addictions specialists or certified substance abuse counselors who have obtained master's degrees.

(3) Criteria C. – The applicant:

a. Has a minimum of a master's degree in a human services field with both a clinical application and a substance abuse specialty from a regionally accredited college or university that includes 180 hours of substance abuse specific education and training pursuant to G.S. 90-113.41A.

b. Has one year of postgraduate supervised substance abuse counseling experience.

c. Has achieved a passing score on an oral examination administered by the Board.

d. Submits three letters of reference from ~~certified~~ licensed clinical addictions specialists or certified substance abuse counselors who have obtained master's degrees.

(4) Criteria D. – The applicant has a substance abuse certification from a professional discipline that has been granted deemed status by the Board.

(d) The Board shall issue a certificate certifying an applicant as a "Substance Abuse ~~Certified~~ Residential Facility Director" ~~if, in addition to meeting the requirements of subdivisions (a)(1) through (5) of this section,~~ if the applicant:

(1) Has been ~~certified~~ credentialed as a substance abuse counselor or a clinical addictions specialist.

(2) Has 50 hours of Board approved academic or didactic management specific training or a combination thereof. Independent study may compose up to fifty percent (50%) of the total number of hours required for initial credentialing.

(3) Submits letters of reference from the applicant's current supervisor and a colleague or coworker.

(d1) The Board shall issue a certificate certifying an applicant as a 'Certified Criminal Justice Addictions Professional', with the acronym 'CCJP', if in addition to meeting the requirements of subdivisions (a)(1) through (5a) of this section, the applicant:

(1) Has attained 270 hours of Board-approved education or training, unless the applicant has attained a minimum of a masters degree with a clinical application and a substance abuse specialty from a regionally accredited college or university whereby the applicant must only obtain 180 hours. The hours of education shall be specifically related to the knowledge and skills necessary to perform the tasks within the International Certification and Reciprocity Consortium/Alcohol and Other Drug Abuse, Incorporated, 'IC&RC/AODA, Inc.,' criminal justice addictions professional performance domains as they relate to both adults and juveniles. Independent study may compose up to fifty

percent (50%) of the total number of hours obtained for initial certification or renewal.

(2) Has documented 300 hours of Board-approved supervised practical training. This supervision shall mean the administrative, clinical, and evaluative process of monitoring, assessing, and enhancing professional performance. A minimum of 10 hours of supervision in each criminal justice domain established by the IC&RC/AODA, Inc., is required.

(3) Has provided documentation of supervised work experience providing direct service to clients or offenders involved in one of the three branches of the criminal justice system, which include law enforcement, the judiciary, and corrections. The applicant must meet one of the following criteria:

a. Criteria A. – In addition to having a high school degree or GED, the applicant has a minimum of 6,000 hours of documented work experience in direct services in criminal justice or addictions services or any combination of these services that have been obtained during the past 10 years.

b. Criteria B. – In addition to having an associate degree, the applicant has a minimum of 5,000 hours of documented work experience in direct services in criminal justice or addictions services or any combination of these services obtained during the past 10 years.

c. Criteria C. – In addition to having at least a bachelors degree, the applicant has a minimum of 4,000 hours of documented work experience in direct services in criminal justice or addictions services, or any combination of these services, and this experience has been obtained during the past 10 years.

d. Criteria D. – In addition to having at least a masters degree in a human services field, the applicant has a minimum of 2,000 hours of documented work experience in direct services in criminal justice or addictions services or any combination of these services that has been obtained during the past 10 years.

e. Criteria E. – In addition to having at least a masters degree in a human services field with a specialty from a regionally accredited college or university that includes 180 hours of substance abuse specific education or training, the applicant has a minimum of 2,000 hours of postgraduate supervised substance abuse counseling experience.

f. Criteria F. – In addition to having obtained the credential of a certified clinical addictions specialist or other advanced credential in a human services field from an organization that has obtained deemed status with the Board, the applicant has a minimum of 1,000 hours of documented work experience in

direct services in criminal justice or addictions services that has been obtained during the past 10 years.

(4) Has passed the IC&RC/AODA, Inc., certified criminal justice addictions professional written examination.

(e) The Board shall publish from time to time information in order to provide specifics for potential applicants of an acceptable educational curriculum and the terms of acceptable supervised fieldwork experience.

(f) ~~Effective until January 1, 2001, any person who is certified as a certified clinical supervisor or who functions by his or her job description as a certified clinical supervisor shall be qualified to supervise applicants for certified clinical supervisor.~~

~~Effective from January 1, 2001 until January 1, 2003, only a person who is certified both as a certified clinical supervisor and as a certified clinical addictions specialist shall be qualified to supervise applicants for certified clinical addictions specialist, but a person who is certified as a certified clinical supervisor or a certified clinical addictions specialist shall be qualified to supervise an applicant for certification as a certified substance abuse counselor.~~

Effective January 1, 2003, only a person who is certified as a certified clinical supervisor or a clinical supervisor intern shall be qualified to supervise applicants for certified clinical supervisor and certified substance abuse counselor and applicants for ~~certified~~ licensed clinical addictions specialist who meet the qualifications of their credential other than through deemed status as provided in G.S. 90-113.40(c)(4).

"**§ 90-113.40A. Requirements for registration.**

(a) Upon application and payment of the required fee, the Board shall issue a registration designating an applicant as a registrant if the applicant:

(1) Provides documentation that he or she has received a high school diploma, or the equivalent, and evidence of any baccalaureate or advanced degrees the applicant has received.

(2) Completes a registration application on a form provided by the Board.

(3) Provides documentation of three hours of educational training in ethics.

(4) Signs a form attesting to the applicant's commitment to adhere to the ethical standards adopted by the Board.

(4a) Submits to a complete criminal history record check pursuant to G.S. 90-113.46A.

(5) Signs a supervision contract provided by the Board that documents the proposed supervision process by an ~~approved~~ applicant supervisor.

(b) Registrant status shall be maintained for a period of up to five years while the registrant is in the process of completing his or her requirements for ~~certification~~ credentials pursuant to this Article. If at the end of a five-year period a registrant has not obtained ~~certification~~ a credential under this Article, the Board shall renew the registration for up to an additional five-year period after the registrant pays the required fee and complies with all requirements for registration pursuant to G.S. 90-113.40A. The Board shall terminate the registration of any registrant who fails to renew his or her registration.

(c) The registrant shall notify the Board of any criminal conviction imposed during the period of registration.

"§ 90-113.40B. ~~Approved~~ Applicant supervision.

The Board shall designate a person as an ~~approved~~ applicant supervisor of individuals applying for ~~registration or certification~~registration, certification, or licensure as a substance abuse professional as follows:

(1) A certified clinical supervisor shall supervise a clinical supervisor intern.

(2) A certified clinical supervisor or a clinical supervisor intern shall supervise a substance abuse residential facility director applicant, a clinical addictions specialist applicant, or a substance abuse counselor applicant.

~~(3) A certified clinical supervisor, a clinical supervisor intern, a certified clinical addictions specialist, or a certified substance abuse counselor shall supervise a registrant who provides DWI assessments.~~

(4) A certified substance abuse prevention consultant with a minimum of three years of professional experience, a certified clinical supervisor, or a clinical supervisor intern shall supervise a registrant applying for certification as a prevention consultant.

(5) Pursuant to the deemed status procedure under G.S. 90-113.41A, the supervision requirements described in subdivisions (1) through (4) of this section shall not apply to persons applying for ~~certification~~ licensure as a ~~certified~~ licensed clinical addictions specialist.

(6) A criminal justice addictions professional applicant shall be supervised by a certified clinical supervisor or clinical supervisor intern.

"§ 90-113.41. Examination.

(a) Except for those individuals applying for ~~certification~~ licensure under G.S. 90-113.41A, applicants for certification or licensure under this Article shall file an application at least 60 days prior to the date of examination and upon the forms and in the manner prescribed by the Board. The application shall be accompanied by the appropriate fee. No portion of this fee is refundable. Applicants who fail an examination may apply for reexamination upon the payment of another examination fee.

(b) Each applicant for certification or licensure under this Article shall be ~~examined~~ tested in an examination ~~that is consistent with the examination requirements of~~developed by the International Certification and Reciprocity Consortium/Alcohol and Other Drug Abuse, Incorporated and the standards adopted by professional disciplines granted deemed status or their successor organizations.

(c) Applicants for certification or licensure shall be examined at a time and place and under the supervision that the Board determines. Examinations shall be given in this State at least twice each year.

(d) Applicants may obtain their examination scores and may review their examination papers in accordance with rules the Board adopts and agreements between Board-authorized test development companies.

"§ 90-113.41A. Deemed status.

(a) To be granted deemed status by the Board, a credentialing body of a professional discipline or its designee shall demonstrate that its substance abuse ~~certification~~ credentialing program substantially meets the following:

(1) Each person to whom the credentialing body awards credentials following the effective date of this act meets and maintains minimum requirements in substance abuse specific content areas. Each person also has a minimum of a master's degree with a clinical application in a human services field.

(2) The body requires 180 hours, or the equivalent thereof, of substance abuse specific education and training that covers the following content areas:

a. Basic addiction and cross addiction Physiology and Pharmacology of Psychoactive drugs that are abused.
b. Screening, assessment, and intake of clients.
c. Individual, group, and family counseling.
d. Treatment, planning, reporting, and record keeping.
e. Crisis intervention.
f. Case management and treatment resources.
g. Ethics, legal issues, and confidentiality.
h. Psychological, emotional, personality, and developmental issues.
i. ~~Coexisting~~ Co-occurring physical and mental disabilities.
j. Special population issues, including age, gender, race, ethnicity, and health status.
k. Traditions and philosophies of recovery treatment models and support groups.

(3) The program requires one year or its equivalent of post-degree supervised clinical substance abuse practice. At least fifty percent (50%) of the practice shall consist of direct substance abuse clinical care.

(b) The professional discipline seeking deemed status shall require its members to adhere to a code of ethical conduct and shall enforce that code with disciplinary action.

(c) The Board may grant deemed status to any professional discipline that substantially meets the standards in this section. Once such status has been granted, an individual within the professional discipline may apply to the Board for ~~certification as a certified clinical addictions specialist.~~the credential of licensed clinical addictions specialist.

(d) The Standards ~~and Credentialing~~ Committee of the Board shall review the standards of each professional discipline every third year from the date it was granted deemed status to determine if the discipline continues to substantially meet the requirements of this section. If the Committee finds that a professional discipline no longer meets the requirements of this section, it shall report its findings to the Board at the Board's next regularly scheduled meeting. The deemed status standing of a

professional discipline's credential may be discontinued by a two-thirds vote of the Board.

"§ 90-113.41B. Change of name or address.

Every person licensed, ~~certified~~ certified, or registered under the provisions of this Article shall give written notice to the Board of any change in his or her name or address within 60 business days after the change takes place.

"§ 90-113.42. ~~Exemptions.~~Violations; exemptions.

(a) It shall be unlawful for any person not licensed or otherwise credentialed as a substance abuse professional pursuant to this Article to engage in those activities set forth in the scope of practice of a substance abuse professional under G.S. 90-113.31B, unless that person is regulated by another profession or is a registrant or intern as defined by this Article.

(b) It is not the intent of this Article to regulate members of other regulated professions who provide substance abuse services or consultation in the normal course of the practice of their profession. ~~Accordingly, this~~

(c) This Article does not apply to any person registered, certified, or licensed by the State or federal government to practice any other occupation or profession while rendering substance abuse services or consultation in the performance of the occupation or profession for which the person is registered, certified, or licensed.

(d) Only individuals ~~certified~~ registered, certified, or licensed under this Article may use the title ~~certified substance abuse counselor, certified substance abuse prevention consultant, certified clinical supervisor, certified clinical addictions specialist, or certified residential facility director.~~ 'Certified Substance Abuse Counselor', 'Certified Substance Abuse Prevention Consultant', 'Certified Clinical Supervisor', 'Licensed Clinical Addictions Specialist', 'Certified Substance Abuse Residential Facility Director', 'Certified Criminal Justice Addictions Professional', 'Substance Abuse Counselor Intern', 'Clinical Addictions Specialist Intern', 'Clinical Supervisor Intern', or 'Registrant'.

"§ 90-113.43. Illegal practice; misdemeanor penalty.

Except as otherwise authorized in this Article, no person shall:

(1) ~~Practice,~~Offer substance abuse professional services, practice, attempt to practice, or supervise while holding himself or herself out to be a certified ~~substance abuse counselor, certified substance abuse prevention consultant, certified clinical supervisor, certified clinical addictions specialist, or certified residential facility director~~substance abuse counselor, certified substance abuse prevention consultant, certified clinical supervisor, certified or licensed clinical addictions specialist, clinical addictions specialist intern, substance abuse residential facility director, certified criminal justice addictions professional, clinical supervisor intern, substance abuse prevention consultant, or registrant without first having obtained a certificate of ~~certification~~ registration, certification, or licensure from the Board.

(2) Use in connection with any name any letters, words, numerical codes, or insignia indicating or implying that this person is a ~~certified~~

registrant, substance abuse counselor, ~~certified~~ substance abuse prevention consultant, certified clinical supervisor, ~~certified~~ clinical addictions specialist, ~~or~~ certified substance abuse residential facility ~~director~~ director, substance abuse counselor intern, or clinical addictions specialist intern unless this person is ~~certified~~ registered, certified, or licensed pursuant to this Article.

(3) Practice or attempt to practice as a certified substance abuse counselor, certified substance abuse prevention consultant, certified clinical supervisor, ~~certified~~ licensed clinical addictions specialist, certified criminal justice addictions professional, or certified substance abuse residential facility director with a revoked, lapsed, or suspended ~~certification.~~certification or license.

(4) Aid, abet, or assist any ~~uncertified~~ person to practice as a certified substance abuse counselor, certified substance abuse prevention consultant, certified clinical supervisor, ~~certified~~ licensed clinical addictions specialist, ~~or~~ certified substance abuse residential facility ~~director~~ director, registrant, substance abuse counselor intern, clinical addictions specialist, or clinical supervisor intern in violation of this Article.

(5) Knowingly serve in a position required by State law or rule or federal law or regulation to be filled by a registrant, certified substance abuse counselor, certified substance abuse prevention consultant, certified clinical supervisor, ~~certified~~ licensed clinical addictions specialist, ~~or~~ certified substance abuse residential facility ~~director~~ director, substance abuse counselor intern, clinical addictions specialist intern, or clinical supervisor intern unless that person is ~~certified~~ registered, certified, or licensed under this Article.

(6) Repealed by S.L. 1997-492, s. 13.

(7) Practice, supervise, or attempt to practice or supervise or knowingly serve in a position required by State law or rule or federal law or regulation to be filled by a designated substance abuse intern without being designated as such by the Board.

A person who engages in any of the illegal practices enumerated by this section is guilty of a Class 1 misdemeanor. Each act of unlawful practice constitutes a distinct and separate offense.

"**§ 90-113.44. Grounds for disciplinary action.**

(a) Grounds for disciplinary action for an applicant or credentialed professional include:

(1) The employment of fraud, deceit, or misrepresentation in obtaining or attempting to obtain ~~certification~~ licensure, certification, or registration or renewal of ~~certification~~ licensure, certification, or registration.

(2) The use of drugs or alcoholic beverages to the extent that professional competency is ~~affected, until proof of rehabilitation can be established.~~affected.

(2a) The use of drugs or alcoholic beverages to the extent that a substance abuse professional suffers impairment.

(3) Conviction of an offense under any municipal, State, or federal ~~narcotic or controlled substance law, until proof of rehabilitation can be established.~~law other than traffic laws as prescribed by Chapter 20 of the General Statutes.

(4) Conviction of a felony or other public offense involving moral ~~turpitude, until proof of rehabilitation can be established.~~turpitude. Conviction of a Class A-E felony shall result in an immediate suspension of ~~certification~~ licensure, certification, or registration for a minimum of one year.

(5) An adjudication of insanity or incompetency, until proof of recovery from this condition can be ~~established.~~established by a licensed psychologist or psychiatrist.

(6) Engaging in any act or practice in violation of any of the provisions of this Article or any of the rules adopted pursuant to it, or aiding, abetting, or assisting any other person in such a violation.

(7) The commission of an act of malpractice, gross negligence, or incompetence ~~in the practice of substance abuse counseling, substance abuse prevention consulting, clinical supervising, or in serving as a clinical addictions specialist, residential facility director, or a registrant.~~while serving as a substance abuse professional, intern, or registrant.

~~(8) Practicing as a certified substance abuse counselor, certified substance abuse prevention consultant, certified clinical supervisor, certified clinical addictions specialist or certified residential facility director without a valid certificate or practicing as a registrant without a valid registration.~~

(9) Engaging in conduct that could result in harm or injury to the public.

(10) Entering into a dual relationship that impairs professional judgment or increases the risk of exploitation with a client or supervisee.

(11) Practicing as a credentialed substance abuse professional outside of his or her scope of practice pursuant to G.S. 90-113.31B.

(b) Denial of an applicant's licensure, certification, or registration or the granting of licensure, certification, or registration on a probationary or other conditional status shall be subject to substantially the same rules and procedures prescribed by the Board for review and disciplinary actions against any person holding a license, certificate, or registration. A suspension of a credential resulting from impairment due to substance use, mental health, or medical disorder shall be imposed for at least six months beginning from the date of successful discharge from a residential substance abuse treatment program or other appropriate treatment modality determined as a result of an assessment by a Board-approved assessor. Disciplinary actions involving a clinical addictions specialist whose licensure is achieved through deemed status shall be initially heard by the specialist's credentialing body. The specialist may appeal the body's

decision to the Board. The Board shall, however, have the discretionary authority to hear the initial disciplinary action involving a credentialed professional.

"§ 90-113.45. Enjoining illegal practices.

(a) The Board may, if it finds that any person is violating any of the provisions of this Article or of the rules adopted pursuant to it, apply in its own name to the superior court for a temporary or permanent restraining order or injunction to restrain that person from continuing these illegal practices. The court may grant injunctive relief regardless of whether criminal prosecution or other action has been or may be instituted as a result of the violation. In the court's consideration of the issue of whether to grant or continue an injunction sought by the Board, a showing of conduct in violation of the terms of this Article shall be sufficient to meet any requirement of general North Carolina injunction law for irreparable damage.

(b) The venue for actions brought under this section is the superior court of any county in which the illegal acts are alleged to have been committed or in the county where the defendant resides.

"§ 90-113.46. Application of requirements of Article.

All persons ~~certified~~ credentialed by the North Carolina Substance Abuse Professional ~~Certification~~ Practice Board, Inc., as of July 1, 1994, shall be ~~certified~~ credentialed by the Board pursuant to this Article. All these persons are subject to all the other requirements of this Article and of the rules adopted pursuant to it.

"§ 90-113.46A. Criminal history record checks of applicants for registration, certification, or licensure.

(a) All applicants for registration, certification, or licensure shall consent to a criminal history record check. Refusal to consent to a criminal history record check may constitute grounds for the Board to deny registration, certification, or licensure to an applicant. The Board shall ensure that the State and national criminal history of an applicant is checked. The Board shall be responsible for providing to the North Carolina Department of Justice the fingerprints of the applicant to be checked, a form signed by the applicant consenting to the criminal history record check and the use of fingerprints and other identifying information required by the State or National Repositories, the fee required by the Department of Justice for providing this service, and any additional information required by the Department of Justice. The Board shall keep all information obtained pursuant to this section confidential.

(b) If an applicant's criminal history record check reveals one or more convictions as defined in G.S. 90-113.31A(14), the conviction shall not automatically bar issuance of a credential by the Board to the applicant. The Board shall consider all of the following factors regarding the conviction:

(1) The level of seriousness of the crime.

(2) The date of the crime.

(3) The age of the person at the time of the conviction.

(4) The circumstances surrounding the commission of the crime, if known.

(5) The nexus between the criminal conduct of the person and the job duties of the position to be filled.

(6) The person's prison, jail, probation, parole, rehabilitation, and employment records since the date the crime was committed.

(7) The subsequent commission by the person of a crime as defined in G.S. 90-113.31A(14).

If, after reviewing the factors, the Board determines that the grounds set forth in G.S. 90-113.44 exist, the Board may deny registration, certification, or licensure of the applicant. The Board may disclose to the applicant information contained in the criminal history record check that is relevant to the denial. The Board shall not provide a copy of the criminal history record check to the applicant. The applicant shall have the right to appear before the Board to appeal the Board's decision. However, an appearance before the full Board shall constitute an exhaustion of administrative remedies in accordance with Chapter 150B of the General Statutes.

(c) Limited Immunity. – The Board, its officers and employees, acting in good faith and in compliance with this section, shall be immune from civil liability for denying registration, certification, or licensure to an applicant based on information provided in the applicant's criminal history record check."

SECTION 2. Article 4 of Chapter 114 of the General Statutes is amended by adding the following new section to read:

"**§ 114-19.11A. Criminal record checks of applicants for registration, certification, or licensure as a substance abuse professional.**

The Department of Justice may provide to the North Carolina Substance Abuse Professional Practice Board from the State and National Repositories of Criminal Histories the criminal history of any applicant for registration, certification, or licensure pursuant to Article 5C of Chapter 90 of the General Statutes. Along with the request, the Board shall provide to the Department of Justice 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 Board 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 3. All members serving on the North Carolina Substance Abuse Professional Practice Board on the effective date of this act shall complete their current three-year terms. Upon completion of their terms, newly appointed or elected members of the Board shall serve four-year terms pursuant to G.S. 90-113.33, as enacted in Section 1 of this act.

SECTION 4. Notwithstanding G.S. 90-113.40(d1), as enacted by Section 1 of this act, the North Carolina Substance Abuse Professional Practice Board may certify a person as a certified criminal justice addictions professional during a limited period of 90 days from the date this act becomes effective and the credential is approved by the

IC&RC/AODA, Inc., if the applicant qualifies based on experience providing services to clients or offenders exhibiting substance abuse disorders and is working in a program determined by the Board to be integrally involved in at least one of the three branches of the criminal justice system, which include law enforcement, the judiciary, and corrections. In addition to meeting the requirements of G.S. 90-113.40(a)(1) through (5a), the person shall do the following:

(1) Provide two letters recommending certification from a current or former peer who functions in substantially the same professional capacity as determined by the Board.

(2) Provide one letter recommending certification from a person currently supervising or who has supervised the applicant within the previous five years attesting to the applicant's competency in the fields of substance abuse and criminal justice.

(3) Pay the criminal justice addictions professional certification fee for certification not to exceed one hundred fifty dollars ($150.00).

(4) Provide one of the following:

a. A high school diploma or a high school equivalency certificate, documentation of eight years or 16,000 hours of supervised work experience providing direct service to clients or offenders determined by the Board to be integrally involved in at least one of the three branches of the criminal justice system, which include law enforcement, the judiciary, and corrections.

b. An associate degree and documentation of six years or 12,000 hours of supervised work experience providing direct service to clients or offenders determined by the Board to be integrally involved in the three branches of the criminal justice system, which include law enforcement, the judiciary, and corrections.

c. A bachelors degree in the human services field with four years or 8,000 hours of supervised work experience providing direct service to clients or offenders determined by the Board to be integrally involved in at least one of the three branches of the criminal justice system, which include law enforcement, the judiciary, and corrections.

d. A masters degree or above in the human services field with two years or 4,000 hours of supervised work experience providing direct service to clients or offenders determined by the Board to be integrally involved in the three branches of the criminal justice system, which include law enforcement, the judiciary, and corrections.

(5) Provide documentation of at least 270 clock hours of Board-approved education and 300 hours of Board-approved supervised practical training, both in the International Certification & Reciprocity Consortium/Alcohol and Other Drug Abuse, Incorporated, criminal justice addiction professional performance domains.

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

SENATE BILL 705:
Amend Substance Abuse Laws

BILL ANALYSIS

Committee:	House Judiciary I	**Date:**	August 10, 2005
Introduced by:	Sen. Nesbitt	**Summary by:**	R. Erika Churchill
Version:	PCS to Fourth Edition S705-CSST-90		Committee Counsel

SUMMARY: ***The proposed committee substitute for Senate Bill 705 would do provide for the licensure of substance abuse professionals; establish the credential of certified criminal justice addictions professional; require that applicants for registration, certification or licensure consent to a criminal history record check; and make a range of technical and conforming changes to the existing North Carolina Substance Abuse Professionals Certification Act. The bill would charge the North Carolina Substance Abuse Professional Certification Board with credentialing and licensing qualified substance abuse professionals rather than certifying them as is currently the case, and would change the Board's name to the North Carolina Substance Abuse Professional Practice Board to reflect its new role.***

The proposed committee substitute is IDENTICAL to the second edition of Senate Bill 705.

CURRENT LAW: The North Carolina Substance Abuse Professional Certification Board administers a certification process for professionals engaged in the assessment, evaluation, and provision of counseling and therapeutic services to persons suffering from substance abuse or dependency. The Board is directed to ensure that Board authorized professional titles cannot be used by anyone unless they have actually obtained that title officially through the Board. Titles currently authorized by the Board include the following: certified clinical addictions specialist, certified clinical supervisor, certified residential facility director, certified substance abuse counselor, certified substance abuse prevention consultant and clinical supervisor intern.

The Board has the authority to investigate complaints about professionals who are either certified by the Board or in the process of becoming certified, but has no authority to investigate or pursue complaints about unregulated professionals.

BILL ANALYSIS: Senate Bill 705 would change the name of the certification authority for substance abuse professionals from the 'North Carolina Substance Abuse Professional Certification Board' to the 'North Carolina Substance Abuse Professional Practice Board' and expand its powers and duties to include licensure. Board membership would remain unchanged[1]; however, the term of membership would increase from three-year terms to four-year terms.

Senate Bill 705 would expand the Board's scope of authority to include practice protection, which would ensure that a person, unless otherwise exempted by statute, would be unable to practice as a substance abuse professional without successful completion of a mandatory licensing process through the Board. Those exempted by statute would include any person registered, certified, or licensed by the State or federal government to practice any other

[1] Eleven credentialed professionals elected by the credentialed professionals, at least two of whom shall serve each of the four Division of Mental Health, Developmental Disabilities, and Substance Abuse Services regions of the State. Three laypersons or other professional disciplines who have shown a special interest in the field of substance abuse, nominated by the Nominating and Elections Committee, whose five members are elected by the Board. Two members from the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, Department of Health and Human Services. Three public members, one appointed by each of the following people: the Governor, Speaker of the House of Representatives, and President Pro Tempore of the Senate.

occupation or profession while rendering substance abuse services or consultation in the performance of the occupation or profession for which the person is registered, certified, or licensed[2].

The Board would offer a wide range of credentials to practitioners from entry level up to and including persons with a master's degree or higher (who would be eligible for licensure as clinical addictions specialists). The range of credentials would encompass persons who practice in substance abuse treatment, substance abuse prevention, substance abuse clinical supervision, substance abuse residential facility programs, and criminal justice settings. The bill would define substance abuse professional to include the following titles: a registrant, certified substance abuse counselor, substance abuse counselor intern, certified substance abuse prevention consultant, certified clinical supervisor, clinical addictions specialist intern, licensed clinical addictions specialist, certified substance abuse residential facility director, or certified criminal justice addictions professional. Each type of credential would carry its own educational, training, and experience requirements as determined by the Board. Credentials would require renewal every two years, conditioned upon meeting various levels of continuing education as determined by the type of credential being renewed.

The bill would set forth the scope of practice for each of the classifications of substance abuse professional[3] listed in the preceding paragraph, and make it unlawful for any person not licensed or otherwise credentialed as a substance abuse professional pursuant to Article 5C to engage in the activities included in the scope of practice given. Practicing outside of the scope of practice for which one is credentialed would subject a substance abuse professional to disciplinary action by the Board.

Any person currently certified to practice as a substance abuse professional would be considered to be credentialed and able to continue to practice in the field. Persons working the criminal justice area would be allowed to apply for status as a 'registrant' and given five years to complete the credentialing process to become a certified criminal justice addictions specialist. Section 4 of the bill provides that a person who meets all of the educational and experience requirements to be a certified criminal justice addictions specialist may be certified as such by the Board without taking the Board-administered written exam if the person applies to the Board for certification within 90 days from the date this act becomes effective.

The bill would make it a Class 1 misdemeanor to offer or provide substance abuse counseling without being credentialed by the North Carolina Substance Abuse Professional Practice Board. The Board would establish and publish required standards to credential substance abuse professionals and would be able to use the credentialing standards of the International Certification and Reciprocity Consortium/Alcohol and Other Drug Abuse, Incorporated and the standards adopted by professional disciplines granted deemed status or their successor organizations as guidelines.

The bill also makes the following changes to the NC Substance Abuse Professional Practice Act:

- Imposes a minimum of six months suspension for impairment due to substance abuse, mental health, or medical disorder.
- Provides that independent study may not compose more than 50% of the total number of hours required for initial credentialing.
- Specifically authorizes employment of counsel.

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

Ben Popkin and Cindy Avrette substantially contributed to this summary.

S0705e4-SMST-CSST-90

[2] G.S. 90-113.42(c).
[3] G.S. 90-113.31A.

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative Hackney (Chair) for the Committee on JUDICIARY I.

☒ House Committee Substitute for
SB 705 A BILL TO BE ENTITLED AN ACT TO PROVIDE FOR THE LICENSURE OF SUBSTANCE ABUSE PROFESSIONALS, TO ESTABLISH THE CREDENTIAL OF CERTIFIED CRIMINAL JUSTICE ADDICTIONS PROFESSIONAL, AND TO ALLOW THE DEPARTMENT OF JUSTICE TO CONDUCT CRIMINAL HISTORY RECORD CHECKS FROM STATE AND NATIONAL REPOSITORIES OF CRIMINAL HISTORY OF APPLICANTS FOR CREDENTIALS UPON THE REQUEST OF THE NORTH CAROLINA SUBSTANCE ABUSE PROFESSIONAL PRACTICE BOARD, AND TO AMEND THE LAW CONCERNING SMOKING IN PUBLIC PLACES TO REDUCE SMOKING IN RESTAURANTS.

☒ With a favorable report as to House committee substitute bill #2, which changes the title, unfavorable as to House committee substitute bill #1.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

_____ Pursuant to Rule 36(b), the (House/Senate) committee substitute bill/(joint) resolution (No._____) is placed on the Calendar of _____. (The original bill resolution No._____) is placed on the Unfavorable Calendar.

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

S 2

SENATE BILL 856
Judiciary I Committee Substitute Adopted 5/31/05

Short Title: Access to Public Trial Preparation Material. (Public)

Sponsors:

Referred to:

March 23, 2005

A BILL TO BE ENTITLED

AN ACT REGARDING ACCESS TO A PUBLIC RECORD THAT IS ALSO TRIAL PREPARATION MATERIAL.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 132 of the General Statutes is amended by adding a new section to read:

"**§ 132-1.9. Trial preparation materials.**

(a) Scope. – A request to inspect, examine, or copy a public record that is also trial preparation material is governed by this section, and, to the extent this section conflicts with any other provision of law, this section applies.

(b) Right to Deny Access. – Except as otherwise provided in this section, a custodian may deny access to a public record that is also trial preparation material. If the denial is based on an assertion that the public record is trial preparation material that was prepared in anticipation of a legal proceeding that has not commenced, the custodian shall, upon request, provide a written justification for the assertion that the public record was prepared in anticipation of a legal proceeding.

(c) Trial Preparation Material Prepared in Anticipation of a Legal Proceeding. – Any person who is denied access to a public record that is also claimed to be trial preparation material that was prepared in anticipation of a legal proceeding that has not yet been commenced may petition the court pursuant to G.S. 132-9 for determination as to whether the public record is trial preparation material that was prepared in anticipation of a legal proceeding.

(d) During a Legal Proceeding. –

(1) When a legal proceeding is subject to G.S. 1A-1, Rule 26(b)(3), or subject to Rule 26(b)(3) of the Federal Rules of Civil Procedure, a party to the pending legal proceeding, including any appeals and postjudgment proceedings, who is denied access to a public record that is also claimed to be trial preparation material that pertains to the pending proceeding may seek access to such record only by motion

made in the pending legal proceeding and pursuant to the procedural and substantive standards that apply to that proceeding. A party to the pending legal proceeding may not directly or indirectly commence a separate proceeding for release of such record pursuant to G.S. 132-9 in any other court or tribunal.

(2) When a legal proceeding is not subject to G.S. 1A-1, Rule 26(b)(3), and not subject to Rule 26(b)(3) of the Federal Rules of Civil Procedure, a party to the pending legal proceeding, including any appeals and postjudgment proceedings, who is denied access to a public record that is also claimed to be trial preparation material that pertains to the pending legal proceeding may petition the court pursuant to G.S. 132-9 for access to such record. In determining whether to require the custodian to provide access to all or any portion of the record, the court or other tribunal shall apply the provisions of G.S. 1A-1, Rule 26(b)(3).

(3) Any person who is denied access to a public record that is also claimed to be trial preparation material and who is not a party to the pending legal proceeding to which such record pertains, and who is not acting in concert with or as an agent for any party to the pending legal proceeding, may petition the court pursuant to G.S. 132-9 for a determination as to whether the public record is trial preparation material.

(e) Following a Legal Proceeding. – Upon the conclusion of a legal proceeding, including the completion of all appeals and postjudgment proceedings, or, in the case where no legal proceeding has been commenced, upon the expiration of all applicable statutes of limitations and periods of repose, the custodian of a public record that is also claimed to be trial preparation material shall permit the inspection, examination, or copying of such record if any law that is applicable so provides.

(f) Effect of Disclosure. – Disclosure pursuant to this section of all or any portion of a public record that is also trial preparation material, whether voluntary or pursuant to an order issued by a court, or issued by an officer in an administrative or quasi-judicial legal proceeding, shall not constitute a waiver of the right to claim that any other document or record constitutes trial preparation material.

(g) Trial Preparation Materials That are Not Public Records. – This section does not require disclosure, or authorize a court to require disclosure, of trial preparation material that is not also a public record or that is under other provisions of this Chapter exempted or protected from disclosure by law or by an order issued by a court, or by an officer in an administrative or quasi-judicial legal proceeding.

(h) Definitions. – As used in this section, the following definitions apply:

(1) Legal proceeding. – Civil proceedings in any federal or State court. Legal proceeding also includes any federal, State, or local government administrative or quasi-judicial proceeding that is not expressly subject to the provisions of Chapter 1A of the General Statutes or the Federal Rules of Civil Procedure.

(2) Trial preparation material. – Any record, wherever located and in whatever form, that is trial preparation material within the meaning of G.S. 1A-1, Rule 26(b)(3), any comparable material prepared for any other legal proceeding, and any comparable material exchanged pursuant to a joint defense, joint prosecution, or joint interest agreement in connection with any pending or anticipated legal proceeding."

SECTION 2. G.S. 132-9 reads as rewritten:

"**§ 132-9. Access to records.**

...

(c) ~~In any action brought pursuant to this section in which a party successfully compels the disclosure of public records, the court may, in its discretion, allow the prevailing party to recover reasonable attorneys' fees if:~~

~~(1) The court finds that the agency acted without substantial justification in denying access to the public records; and~~

~~(2) The court finds that there are no special circumstances that would make the award of attorneys' fees unjust.~~

~~Any attorneys' fees assessed against a public agency under this section shall be charged against the operating expenses of the agency; provided, however, that the court may order that all or any portion of any attorneys' fees so assessed be paid personally by any public employee or public official found by the court to have knowingly or intentionally committed, caused, permitted, suborned, or participated in a violation of this Article. No order against any public employee or public official shall issue in any case where the public employee or public official seeks the advice of an attorney and such advice is followed.~~

If a civil action is filed against a public board, council, commission, or other governmental body of the State, or a county, municipality or other political subdivision or unit of government to enforce the provisions of this Chapter, and if the court determines that such governmental body unlawfully refused to permit a public record to be inspected, examined, or copied, then the court shall assess against the governmental body responsible the reasonable costs of enforcement, including reasonable attorneys' fees.

(c1) If a public board, council, commission, or other governmental body of the State, or a county, municipality or other political subdivision or unit of government appeals a court order requiring it to permit inspection, examination, or copying of public records pursuant to this Chapter and such order is affirmed, the appellate court shall assess against the governmental body the costs on appeal as well as reasonable attorneys' fees.

(d) If the court determines that an action brought pursuant to this section was filed in bad faith or was frivolous, the court ~~may, in its discretion,~~shall assess a reasonable attorney's fee against the person or persons instituting the action and award it to the public agency as part of the costs."

SECTION 3. This act becomes effective October 1, 2005.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

S D

SENATE BILL 856
Judiciary I Committee Substitute Adopted 5/31/05
PROPOSED HOUSE COMMITTEE SUBSTITUTE S856-CSSA-33 [v.1]

8/10/2005 5:54:05 PM

Short Title: Access to Public Trial Preparation Material. (Public)

Sponsors:

Referred to:

March 23, 2005

A BILL TO BE ENTITLED

AN ACT REGARDING ACCESS TO A PUBLIC RECORD THAT IS ALSO TRIAL PREPARATION MATERIAL.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 132 of the General Statutes is amended by adding a new section to read:

"**§ 132-1.9. Trial preparation materials.**

(a) Scope. – A request to inspect, examine, or copy a public record that is also trial preparation material is governed by this section, and, to the extent this section conflicts with any other provision of law, this section applies.

(b) Right to Deny Access. – Except as otherwise provided in this section, a custodian may deny access to a public record that is also trial preparation material. If the denial is based on an assertion that the public record is trial preparation material that was prepared in anticipation of a legal proceeding that has not commenced, the custodian shall, upon request, provide a written justification for the assertion that the public record was prepared in anticipation of a legal proceeding.

(c) Trial Preparation Material Prepared in Anticipation of a Legal Proceeding. – Any person who is denied access to a public record that is also claimed to be trial preparation material that was prepared in anticipation of a legal proceeding that has not yet been commenced may petition the court pursuant to G.S. 132-9 for determination as to whether the public record is trial preparation material that was prepared in anticipation of a legal proceeding.

(d) During a Legal Proceeding. –

(1) When a legal proceeding is subject to G.S. 1A-1, Rule 26(b)(3), or subject to Rule 26(b)(3) of the Federal Rules of Civil Procedure, a party to the pending legal proceeding, including any appeals and postjudgment proceedings, who is denied access to a public record that

is also claimed to be trial preparation material that pertains to the pending proceeding may seek access to such record only by motion made in the pending legal proceeding and pursuant to the procedural and substantive standards that apply to that proceeding. A party to the pending legal proceeding may not directly or indirectly commence a separate proceeding for release of such record pursuant to G.S. 132-9 in any other court or tribunal.

(2) When a legal proceeding is not subject to G.S. 1A-1, Rule 26(b)(3), and not subject to Rule 26(b)(3) of the Federal Rules of Civil Procedure, a party to the pending legal proceeding, including any appeals and postjudgment proceedings, who is denied access to a public record that is also claimed to be trial preparation material that pertains to the pending legal proceeding may petition the court pursuant to G.S. 132-9 for access to such record. In determining whether to require the custodian to provide access to all or any portion of the record, the court or other tribunal shall apply the provisions of G.S. 1A-1, Rule 26(b)(3).

(3) Any person who is denied access to a public record that is also claimed to be trial preparation material and who is not a party to the pending legal proceeding to which such record pertains, and who is not acting in concert with or as an agent for any party to the pending legal proceeding, may petition the court pursuant to G.S. 132-9 for a determination as to whether the public record is trial preparation material.

(e) Following a Legal Proceeding. – Upon the conclusion of a legal proceeding, including the completion of all appeals and postjudgment proceedings, or, in the case where no legal proceeding has been commenced, upon the expiration of all applicable statutes of limitations and periods of repose, the custodian of a public record that is also claimed to be trial preparation material shall permit the inspection, examination, or copying of such record if any law that is applicable so provides.

(f) Effect of Disclosure. – Disclosure pursuant to this section of all or any portion of a public record that is also trial preparation material, whether voluntary or pursuant to an order issued by a court, or issued by an officer in an administrative or quasi-judicial legal proceeding, shall not constitute a waiver of the right to claim that any other document or record constitutes trial preparation material.

(g) Trial Preparation Materials That are Not Public Records. – This section does not require disclosure, or authorize a court to require disclosure, of trial preparation material that is not also a public record or that is under other provisions of this Chapter exempted or protected from disclosure by law or by an order issued by a court, or by an officer in an administrative or quasi-judicial legal proceeding.

(h) Definitions. – As used in this section, the following definitions apply:

(1) Legal proceeding. – Civil proceedings in any federal or State court. Legal proceeding also includes any federal, State, or local government administrative or quasi-judicial proceeding that is not expressly subject

to the provisions of Chapter 1A of the General Statutes or the Federal Rules of Civil Procedure.

(2) Trial preparation material. – Any record, wherever located and in whatever form, that is trial preparation material within the meaning of G.S. 1A-1, Rule 26(b)(3), any comparable material prepared for any other legal proceeding, and any comparable material exchanged pursuant to a joint defense, joint prosecution, or joint interest agreement in connection with any pending or anticipated legal proceeding."

SECTION 2. G.S. 132-9 reads as rewritten:

"**§ 132-9. Access to records.**

...

(c) In any action brought pursuant to this section in which a party ~~successfully~~ compels the disclosure of public records, the court ~~may, in its discretion,~~shall allow the prevailing party to recover its reasonable attorneys' fees ~~if:~~attributed to those public records the court compelled disclosure of, unless the court finds all of the following:

(1) ~~The court finds that the~~The agency acted ~~without~~ with substantial justification in denying access to the public ~~records; and~~records.

(2) ~~The court finds that there~~There are ~~no special~~ circumstances that would make the award of attorneys' fees unjust.

Any attorneys' fees assessed against a public agency under this section shall be charged against the operating expenses of the agency; provided, however, that the court may order that all or any portion of any attorneys' fees so assessed be paid personally by any public employee or public official found by the court to have knowingly or intentionally committed, caused, permitted, suborned, or participated in a violation of this Article. No order against any public employee or public official shall issue in any case where the public employee or public official seeks the advice of an attorney and such advice is followed.

(d) If the court determines that an action brought pursuant to this section was filed in bad faith or was frivolous, the court ~~may, in its discretion,~~shall assess a reasonable attorney's fee against the person or persons instituting the action and award it to the public agency as part of the costs."

SECTION 3. This act becomes effective October 1, 2005.

SENATE BILL 856:
Access to Public Trial Preparation Material

BILL ANALYSIS

Committee:	House Judiciary I	**Date:**	August 10, 2005
Introduced by:	Sen. Clodfelter	**Summary by:**	R. Erika Churchill
Version:	PCS to Second Edition S856-CSSA-33		Committee Counsel

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 856 would amend the public records law to clarify that trial preparation material is not subject to public access until after the trial to which the material is associated is completed, if suit is filed, or the after the applicable statute of limitations has expired, if suit is not filed. The bill also sets out a judicial procedure for determining whether or not a public record is trial preparation material.***

CURRENT LAW: In 2004, in the case of McCormick v. Hanson, 164 NC App 459, the Court of Appeals held that Public Records Act does not make an exception trial preparation material that is a public record. Accordingly public trial preparation material that is a public record must be disclosed.

BILL ANALYSIS:

Section 1 establishes an except for trial preparation material that is a public record, by providing that a custodian of a public record that is also trial preparation material may deny access to the public record, whether or not a lawsuit has been filed. Any person denied access to a public record that is alleged to be a trial record may ask the court for a ruling. If the party seeking access is a party to the lawsuit, an action to determine access must be brought in the pending action. Otherwise, a person can bring a separate action for a judicial determination.

The custodian of trial preparation material that is also a public record must grant access to the material once the lawsuit is resolved, or when the applicable statute of limitations expires.

Section 2 amends the law establishing the process for gaining access to public records when access is denied, to require the court to award attorneys fees to the prevailing party unless the court finds the agency acted with substantial justification in denying access to the public record and there were circumstances that make the award of attorneys fees unjust. This section also requires the court to assess reasonable attorneys fees against the party who initiates an action in bad faith or frivolously.

EFFECTIVE DATE: This act becomes effective October 1, 2005.

S0856e2-SMST-CSSA-33

O. Walker Reagan contributed substantially to this summary.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT **ATTACHMENT X**

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE _____

S. B. No. 856 Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

(Rep.) Stam
Sen.)

moves to amend the bill on page ~~12~~ 3, line 16-20

( ) WHICH CHANGES THE TITLE

by rewriting those lines to read:

"records, unless the court finds

~~(1) The court finds that~~ the agency acted ~~without~~ with substantial justification in denying access to the public ~~records;~~ records or the court finds

~~(2) The court finds that there are no special~~ circumstances that would make the award of attorneys' fees unjust."

SIGNED Stam

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative Hackney (Chair) for the Committee on JUDICIARY I.

☒Committee Substitute for
SB 856 A BILL TO BE ENTITLED AN ACT REGARDING ACCESS TO A PUBLIC RECORD THAT IS ALSO TRIAL PREPARATION MATERIAL.

☒ With a favorable report as to House committee substitute bill, unfavorable as to Senate committee substitute bill.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

_____ Pursuant to Rule 36(b), the (House/Senate) committee substitute bill/(joint) resolution (No._____) is placed on the Calendar of _____. (The original bill resolution No._____) is placed on the Unfavorable Calendar.

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calend

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 856

Judiciary I Committee Substitute Adopted 5/31/05
PROPOSED HOUSE COMMITTEE SUBSTITUTE S856-PCS75361-ST-91

Short Title: Access to Public Trial Preparation Material. (Public)

Sponsors:

Referred to:

March 23, 2005

A BILL TO BE ENTITLED

AN ACT REGARDING ACCESS TO A PUBLIC RECORD THAT IS ALSO TRIAL PREPARATION MATERIAL.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 132 of the General Statutes is amended by adding a new section to read:

"**§ 132-1.9. Trial preparation materials.**

(a) Scope. – A request to inspect, examine, or copy a public record that is also trial preparation material is governed by this section, and, to the extent this section conflicts with any other provision of law, this section applies.

(b) Right to Deny Access. – Except as otherwise provided in this section, a custodian may deny access to a public record that is also trial preparation material. If the denial is based on an assertion that the public record is trial preparation material that was prepared in anticipation of a legal proceeding that has not commenced, the custodian shall, upon request, provide a written justification for the assertion that the public record was prepared in anticipation of a legal proceeding.

(c) Trial Preparation Material Prepared in Anticipation of a Legal Proceeding. – Any person who is denied access to a public record that is also claimed to be trial preparation material that was prepared in anticipation of a legal proceeding that has not yet been commenced may petition the court pursuant to G.S. 132-9 for determination as to whether the public record is trial preparation material that was prepared in anticipation of a legal proceeding.

(d) During a Legal Proceeding. –

(1) When a legal proceeding is subject to G.S. 1A-1, Rule 26(b)(3), or subject to Rule 26(b)(3) of the Federal Rules of Civil Procedure, a party to the pending legal proceeding, including any appeals and postjudgment proceedings, who is denied access to a public record that

is also claimed to be trial preparation material that pertains to the pending proceeding may seek access to such record only by motion made in the pending legal proceeding and pursuant to the procedural and substantive standards that apply to that proceeding. A party to the pending legal proceeding may not directly or indirectly commence a separate proceeding for release of such record pursuant to G.S. 132-9 in any other court or tribunal.

(2) When a legal proceeding is not subject to G.S. 1A-1, Rule 26(b)(3), and not subject to Rule 26(b)(3) of the Federal Rules of Civil Procedure, a party to the pending legal proceeding, including any appeals and postjudgment proceedings, who is denied access to a public record that is also claimed to be trial preparation material that pertains to the pending legal proceeding may petition the court pursuant to G.S. 132-9 for access to such record. In determining whether to require the custodian to provide access to all or any portion of the record, the court or other tribunal shall apply the provisions of G.S. 1A-1, Rule 26(b)(3).

(3) Any person who is denied access to a public record that is also claimed to be trial preparation material and who is not a party to the pending legal proceeding to which such record pertains, and who is not acting in concert with or as an agent for any party to the pending legal proceeding, may petition the court pursuant to G.S. 132-9 for a determination as to whether the public record is trial preparation material.

(e) Following a Legal Proceeding. – Upon the conclusion of a legal proceeding, including the completion of all appeals and postjudgment proceedings, or, in the case where no legal proceeding has been commenced, upon the expiration of all applicable statutes of limitations and periods of repose, the custodian of a public record that is also claimed to be trial preparation material shall permit the inspection, examination, or copying of such record if any law that is applicable so provides.

(f) Effect of Disclosure. – Disclosure pursuant to this section of all or any portion of a public record that is also trial preparation material, whether voluntary or pursuant to an order issued by a court, or issued by an officer in an administrative or quasi-judicial legal proceeding, shall not constitute a waiver of the right to claim that any other document or record constitutes trial preparation material.

(g) Trial Preparation Materials That Are Not Public Records. – This section does not require disclosure, or authorize a court to require disclosure, of trial preparation material that is not also a public record or that is under other provisions of this Chapter exempted or protected from disclosure by law or by an order issued by a court, or by an officer in an administrative or quasi-judicial legal proceeding.

(h) Definitions. – As used in this section, the following definitions apply:

(1) Legal proceeding. – Civil proceedings in any federal or State court. Legal proceeding also includes any federal, State, or local government administrative or quasi-judicial proceeding that is not expressly subject

to the provisions of Chapter 1A of the General Statutes or the Federal Rules of Civil Procedure.

(2) Trial preparation material. – Any record, wherever located and in whatever form, that is trial preparation material within the meaning of G.S. 1A-1, Rule 26(b)(3), any comparable material prepared for any other legal proceeding, and any comparable material exchanged pursuant to a joint defense, joint prosecution, or joint interest agreement in connection with any pending or anticipated legal proceeding."

SECTION 2. G.S. 132-9 reads as rewritten:

"**§ 132-9. Access to records.**

...

(c) In any action brought pursuant to this section in which a party successfully compels the disclosure of public records, the court ~~may, in its discretion,~~ shall allow the prevailing party to recover its reasonable attorneys' fees ~~if:~~if attributed to those public records, unless the court finds

~~(1)~~ ~~The court finds that~~ the agency acted ~~without~~ with substantial justification in denying access to the public ~~records; and~~records or

~~(2)~~ ~~The~~ the court finds ~~that there are no special~~ circumstances that would make the award of attorneys' fees unjust.

Any attorneys' fees assessed against a public agency under this section shall be charged against the operating expenses of the agency; provided, however, that the court may order that all or any portion of any attorneys' fees so assessed be paid personally by any public employee or public official found by the court to have knowingly or intentionally committed, caused, permitted, suborned, or participated in a violation of this Article. No order against any public employee or public official shall issue in any case where the public employee or public official seeks the advice of an attorney and such advice is followed.

(d) If the court determines that an action brought pursuant to this section was filed in bad faith or was frivolous, the court ~~may, in its discretion,~~shall assess a reasonable attorney's fee against the person or persons instituting the action and award it to the public agency as part of the costs."

SECTION 3. This act becomes effective October 1, 2005.

House Judiciary I Committee

August 30, 2005
2:00 p.m.

Minutes

The House Judiciary I Committee met on Tuesday, August 30, 2005, at 2:00 p. m. The Chairman, Representative Hackney, called the meeting to order and the following members were present: Representatives Alexander, Capps, Goodwin, Harrison, Insko, Stiller and Stam. A copy of the agenda and visitor registration is attached, (Attachments I and II).

Under consideration by the Committee was Senate Bill 61, AN ACT TO STRENGTHEN THE LAWS AGAINST IMPAIRED DRIVING BY INCREASING THE PUNISHMENT FOR FELONY DEATH BY VEHICLE AND CREATING THE OFFENSE OF FELONY SERIOUS INJURY BY VEHICLE, (Attachment III). A Proposed Committee Substitute was distributed, (Attachment IV) and Representative Stiller moved that it be adopted for the purpose of discussion. The motion carried.

Ms. Susan Sitze, Committee Counsel, was recognized to explain the bill. She said that the bill was very similar to language that was considered by the Committee in the DWI bill. She said that Section 1 of the committee substitute would increase the penalty from a Class G to a Class E felony. The previous version of the bill had a Class D felony. She said that the serious injury by vehicle portion of the previous bill was removed. Ms. Sitze stated that the Class E felony carries active punishment and is something that the District Attorneys Association has been requesting for some time.

Mr. Jim Mills, Fiscal Research Staff, commented briefly on the cost of the bill.

Representative Stiller asked how this penalty level compared to other states. Ms. Sitze replied that she did not know how the Class E compared to other states' punishment.

Chairman Hackney stated that the second part of the bill was a portion of a bill that was introduced by Representative Blust and had been in the Committee, but not considered prior to the crossover deadline.

Ms. Stize stated that the remainder of the bill deals with the civil no-contact order (Chapter 50C) that was created by the General Assembly during the last session. The bill would add to those provisions the ability for a victim of a sexually violent offense to obtain a civil no-contact order against the person who committed that offense if the respondent resides or works at a place of employment of a quarter of a mile of the victim's residence, school, place of employment or other specified place. She reminded the Committee that "sexually violent offense" is defined in the statutes as those offenses for which one must register as a sex offender. The respondent would be ordered to stay

away from those premises while the victim is present, or any other relief deemed necessary by the court.

Chairman Hackney asked whether the bill applied to any victim and any registered offender or if it was specific to the offender who victimized the victim. Ms. Sitze replied that the language was specific to the offender who victimized the victim and the respondent must be a registered sex offender.

Mr. Doug Holbrook, Fiscal Research Staff, stated that the court system does not anticipate any impact.

Representative Alexander moved a favorable report for the House Committee Substitute bill, unfavorable to the Senate bill, and that the bill be re-referred to the Committee on Rules. The motion carried, (Attachment V).

The meeting was adjourned at 2:40 p.m.

Representative Joe Hackney
Chairman

Emily Reynolds Freeman
Committee Clerk

ATTACHMENT I

HOUSE COMMITTEE ON JUDICIARY I

August 30, 2005
10:00 a.m.

OPENING REMARKS

AGENDA ITEMS

Senate Bill 61 – Felony Death/Serious Injury by Vehicle
Senator Thomas

ADJOURNMENT

ATTACHMENT II

VISITOR REGISTRATION SHEET

House Judiciary I — **Name of Committee**

August 30, 2005 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Peg Dorer	Conference of DAs
Rick Zechini	NC AJC
Jami Fitzgerald	NCFPC
Martha Harris	IOG - UNC

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 2

SENATE BILL 61
House Committee Substitute Favorable 7/28/05

Short Title: Felony Death/Serious Injury by Vehicle. (Public)

Sponsors:

Referred to:

February 7, 2005

A BILL TO BE ENTITLED

AN ACT TO STRENGTHEN THE LAWS AGAINST IMPAIRED DRIVING BY INCREASING THE PUNISHMENT FOR FELONY DEATH BY VEHICLE AND CREATING THE OFFENSE OF FELONY SERIOUS INJURY BY VEHICLE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-141.4 reads as rewritten:

"**§ 20-141.4. Felony and misdemeanor death by ~~vehicle.~~vehicle; serious injury by vehicle.**

(a) Repealed by Session Laws 1983, c. 435, s. 27.

(a1) Felony Death by Vehicle. – A person commits the offense of felony death by vehicle if he unintentionally causes the death of another person while engaged in the offense of impaired driving under G.S. 20-138.1 or G.S. 20-138.2 and commission of that offense is the proximate cause of the death.

(a2) Misdemeanor Death by Vehicle. – A person commits the offense of misdemeanor death by vehicle if he unintentionally causes the death of another person while engaged in the violation of any State law or local ordinance applying to the operation or use of a vehicle or to the regulation of traffic, other than impaired driving under G.S. 20-138.1, and commission of that violation is the proximate cause of the death.

(a3) Felony Serious Injury by Vehicle. – A person commits the offense of felony serious injury by vehicle if he unintentionally causes serious injury to another person while engaged in the offense of impaired driving under G.S. 20-138.1 or G.S. 20-138.2, and commission of that offense is the proximate cause of the serious injury.

(b) Punishments. – Felony death by vehicle is a Class ~~G~~ D felony. Felony serious injury by vehicle is a Class E felony. Misdemeanor death by vehicle is a Class 1 misdemeanor.

(c) No Double Prosecutions. – No person who has been placed in jeopardy upon a charge of death by vehicle may be prosecuted for the offense of manslaughter arising

out of the same death; and no person who has been placed in jeopardy upon a charge of manslaughter may be prosecuted for death by vehicle arising out of the same death."

SECTION 2. G.S. 20-4.01 reads as rewritten:

"...

(24a) Offense Involving Impaired Driving. – Any of the following offenses:

a. Impaired driving under G.S. 20-138.1.

b. Death or serious injury by vehicle under G.S. 20-141.4 when conviction is based upon impaired driving or a substantially similar offense under previous law.

c. First or second degree murder under G.S. 14-17 or involuntary manslaughter under G.S. 14-18 when conviction is based upon impaired driving or a substantially similar offense under previous law.

d. An offense committed in another jurisdiction which prohibits substantially similar conduct prohibited by the offenses in this subsection.

e. A repealed or superseded offense substantially similar to impaired driving, including offenses under former G.S. 20-138 or G.S. 20-139.

f. Impaired driving in a commercial motor vehicle under G.S. 20-138.2, except that convictions of impaired driving under G.S. 20-138.1 and G.S. 20-138.2 arising out of the same transaction shall be considered a single conviction of an offense involving impaired driving for any purpose under this Chapter.

g. Habitual impaired driving under G.S. 20-138.5.

A conviction under former G.S. 20-140(c) is not an offense involving impaired driving.

..."

SECTION 3. G.S. 20-19(c3) reads as rewritten:

"(c3) Restriction; Revocations. – When the Division restores a person's drivers license which was revoked pursuant to G.S. 20-13.2 (a), G.S. 20-23 when the offense involved impaired driving, G.S. 20-23.2, subdivision (2) of G.S. 20-17(a), subdivision ~~(1) or (9)~~(1), (3), or (9) of G.S. 20-17(a) when the offense involved impaired driving, or this subsection, in addition to any other restriction or condition, it shall place the applicable restriction on the person's drivers license as follows:

(1) For the first restoration of a drivers license for a person convicted of driving while impaired, G.S. 20-138.1, or a drivers license revoked pursuant to G.S. 20-23 or G.S. 20-23.2 when the offense for which the person's license was revoked prohibits substantially similar conduct which if committed in this State would result in a conviction of driving while impaired under G.S. 20-138.1, that the person not operate a vehicle with an alcohol concentration of 0.04 or more at any relevant time after the driving;

(2) For the second or subsequent restoration of a drivers license for a person convicted of driving while impaired, G.S. 20-138.1, or a drivers license revoked pursuant to G.S. 20-23 or G.S. 20-23.2 when the offense for which the person's license was revoked prohibits substantially similar conduct which if committed in this State would result in a conviction of driving while impaired under G.S. 20-138.1, that the person not operate a vehicle with an alcohol concentration greater than 0.00 at any relevant time after the driving;

(3) For any restoration of a drivers license for a person convicted of driving while impaired in a commercial motor vehicle, G.S. 20-138.2, driving while less than 21 years old after consuming alcohol or drugs, G.S. 20-138.3, felony death by vehicle, G.S. 20-141.4(a1), felony serious injury by vehicle, G.S. 20-141.4(a3), manslaughter or negligent homicide resulting from the operation of a motor vehicle when the offense involved impaired driving, or a revocation under this subsection, that the person not operate a vehicle with an alcohol concentration of greater than 0.00 at any relevant time after the driving;

(4) For any restoration of a drivers license revoked pursuant to G.S. 20-23 or G.S. 20-23.2 when the offense for which the person's license was revoked prohibits substantially similar conduct which if committed in this State would result in a conviction of driving while impaired in a commercial motor vehicle, G.S. 20-138.2, driving while less than 21 years old after consuming alcohol or drugs, G.S. 20-138.3, felony death by vehicle, G.S. 20-141.4(a1), or manslaughter or negligent homicide resulting from the operation of a motor vehicle when the offense involved impaired driving, that the person not operate a vehicle with an alcohol concentration of greater than 0.00 at any relevant time after the driving.

In addition, the person seeking restoration of a license must agree to submit to a chemical analysis in accordance with G.S. 20-16.2 at the request of a law enforcement officer who has reasonable grounds to believe the person is operating a motor vehicle on a highway or public vehicular area in violation of the restriction specified in this subsection. The person must also agree that, when requested by a law enforcement officer, the person will agree to be transported by the law enforcement officer to the place where chemical analysis is to be administered.

The restrictions placed on a license under this subsection shall be in effect (i) seven years from the date of restoration if the person's license was permanently revoked, (ii) until the person's twenty-first birthday if the revocation was for a conviction under G.S. 20-138.3, and (iii) three years in all other cases.

A law enforcement officer who has reasonable grounds to believe that a person has violated a restriction placed on the person's drivers license shall complete an affidavit pursuant to G.S. 20-16.2(c1). On the basis of information reported pursuant to G.S. 20-16.2, the Division shall revoke the drivers license of any person who violates a

condition of reinstatement imposed under this subsection. An alcohol concentration report from an ignition interlock system shall not be used as the basis for revocation under this subsection. A violation of a restriction imposed under this subsection or the willful refusal to submit to a chemical analysis shall result in a one-year revocation. If the period of revocation was imposed pursuant to subsection (d) or (e), any remaining period of the original revocation, prior to its reduction, shall be reinstated and the one-year revocation begins after all other periods of revocation have terminated."

SECTION 4. G.S. 20-168(b) reads as rewritten:

"(b) While actually engaged in maintenance or construction work on the highways, but not while traveling to or from such work, drivers of vehicles owned or operated by the State or any political subdivision thereof are exempt from all provisions of this Article except:

(1) G.S. 20-138.1. Impaired driving.
(2) Repealed by Session Laws 1983, c. 435, s. 28.
(3) G.S. 20-139.1. Procedures governing chemical analyses; admissibility; evidentiary provisions; controlled-drinking programs.
(4) G.S. 20-140. Reckless driving.
(5) Repealed by Session Laws 1983, c. 435, s. 38.
(6) G.S. 20-141. Speed restrictions.
(7) G.S. 20-141.3. Unlawful racing on streets and highways.
(8) G.S. 20-141.4. Felony and misdemeanor death by ~~vehicle.~~vehicle; serious injury by vehicle."

SECTION 5. G.S. 15A-830(a) reads as rewritten:

"(a) The following definitions apply in this Article:

...

(7) Victim. – A person against whom there is probable cause to believe one of the following crimes was committed:
  a. A Class A, B1, B2, C, D, or E felony.
  b. A Class F felony if it is a violation of one of the following: G.S. 14-16.6(b); 14-16.6(c); 14-18; 14-32.1(e); 14-32.2(b)(3); 14-32.3(a); 14-32.4; 14-34.2; 14-34.6(c); 14-41; 14-43.2; 14-43.3; 14-190.17; 14-190.19; 14-202.1; 14-277.3; 14-288.9; or 20-138.5.
  c. A Class G felony if it is a violation of one of the following: G.S. 14-32.3(b); 14-51; 14-58; ~~14-87.1; or 20-141.4.~~ or 14-87.1.
  d. A Class H felony if it is a violation of one of the following: G.S. 14-32.3(a); 14-32.3(c); 14-33.2, or 14-277.3.
  e. A Class I felony if it is a violation of one of the following: G.S. 14-32.3(b); 14-34.6(b); or 14-190.17A.
  f. An attempt of any of the felonies listed in this subdivision if the attempted felony is punishable as a felony.
  g. Any of the following misdemeanor offenses when the offense is committed between persons who have a personal relationship as

defined in G.S. 50B-1(b): G.S. 14-33(c)(1); 14-33(c)(2); 14-33(a); 14-34; 14-134.3; or 14-277.3."

SECTION 6. This act becomes effective December 1, 2005, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 61

House Committee Substitute Favorable 7/28/05

PROPOSED HOUSE COMMITTEE SUBSTITUTE S61-CSSA-36 [v.1]

Short Title: Felony Death by Vehicle/Sex Offender Amend. (Public)

Sponsors:

Referred to:

February 7, 2005

A BILL TO BE ENTITLED

AN ACT TO STRENGTHEN THE LAWS AGAINST IMPAIRED DRIVING BY INCREASING THE PUNISHMENT FOR FELONY DEATH BY VEHICLE AND TO PROVIDE THAT A VICTIM OF A SEXUALLY VIOLENT OFFENSE OR THE VICTIM'S FAMILY MAY OBTAIN A CIVIL NO-CONTACT ORDER AGAINST A REGISTERED OFFENDER WHO RESIDES OR WORKS AT A PLACE OF EMPLOYMENT WITHIN A QUARTER MILE OF THE VICTIM.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-141.4 reads as rewritten:

"**§ 20-141.4. Felony and misdemeanor death by vehicle.**

(a) Repealed by Session Laws 1983, c. 435, s. 27.

(a1) Felony Death by Vehicle. – A person commits the offense of felony death by vehicle if he unintentionally causes the death of another person while engaged in the offense of impaired driving under G.S. 20-138.1 or G.S. 20-138.2 and commission of that offense is the proximate cause of the death.

(a2) Misdemeanor Death by Vehicle. – A person commits the offense of misdemeanor death by vehicle if he unintentionally causes the death of another person while engaged in the violation of any State law or local ordinance applying to the operation or use of a vehicle or to the regulation of traffic, other than impaired driving under G.S. 20-138.1, and commission of that violation is the proximate cause of the death.

(b) Punishments. – Felony death by vehicle is a Class ~~G~~ E felony. Misdemeanor death by vehicle is a Class 1 misdemeanor.

(c) No Double Prosecutions. – No person who has been placed in jeopardy upon a charge of death by vehicle may be prosecuted for the offense of manslaughter arising out of the same death; and no person who has been placed in jeopardy upon a charge of manslaughter may be prosecuted for death by vehicle arising out of the same death."

SECTION 2. G.S. 50C-1 is amended by adding the following new subdivisions to read:

"(3a) Registered offender means a person who is required to register under Article 27A of Chapter 14 of the General Statutes.

(4b) Sexually violent offense is as defined in G.S. 14-208.6."

SECTION 3. G.S. 50C-2(a) reads as rewritten:

"(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.~~State or who is a victim of a sexually violent offense.

(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.~~State or who is a victim of a sexually violent offense."

SECTION 4. Chapter 50C of the General Statutes is amended by adding a new section to read:

"**§ 50C-5.1. Civil no-contact order for victim of sexually violent offense against registered offender; remedy.**

(a) The court may also issue temporary or permanent civil no-contact orders as authorized in this Chapter if it makes the following findings:

(1) The victim is the victim of a sexually violent offense committed by the respondent.

(2) The respondent is a registered offender.

(3) The respondent resides or works at a place of employment located within a quarter of a mile of the victim's residence, school, place of employment, or other specified place.

(b) The court may grant one or more of the following forms of relief in its orders under this section:

(1) 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.

(2) Order other relief deemed necessary and appropriate by the court.

(c) A civil no-contact order issued under this section 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'."

SECTION 5. G.S. 50C-7 reads as rewritten:

"**§ 50C-7. Permanent civil no-contact order.**

Upon a finding that the ~~victim~~ victim: (i) has suffered unlawful conduct committed by the ~~respondent,~~ respondent, or (ii) is the victim of a sexually violent offense and the respondent is a registered offender who resides or works at a place of employment located within a quarter of a mile of the victim's residence, school, place of employment, or other specified place, 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."

SECTION 6. Section 1 of this act becomes effective December 1, 2005, and applies to offenses committed on or after that date. The remainder of this act becomes effective October 1, 2005.

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative Hackney (Chair) for the Committee on JUDICIARY I.

☒ House Committee Substitute for
SB 61 A BILL TO BE ENTITLED AN ACT TO STRENGTHEN THE LAWS AGAINST IMPAIRED DRIVING BY INCREASING THE PUNISHMENT FOR FELONY DEATH BY VEHICLE AND CREATING THE OFFENSE OF FELONY SERIOUS INJURY BY VEHICLE.

☒ With a favorable report as to House committee substitute bill #2, which changes the title, unfavorable as to House committee substitute bill #1, and recommendation that the bill be re-referred to the Committee on Rules.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

_____ Pursuant to Rule 36(b), the (House/Senate) committee substitute bill/(joint) resolution (No._____) is placed on the Calendar of _____. (The original bill resolution No._____) is placed on the Unfavorable Calendar.

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.
#2