2005

SENATE
JUDICIARY I

COMMITTEE
MINUTES

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Tuesday	February 15, 2005	10:00 AM	1027 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 82	Election Contests.	Senator Clodfelter

Senator Daniel G. Clodfelter, Chair

Judiciary 1 Committee

February 15, 2005

Minutes

Senator Dan Clodfelter, Chair called the meeting to order at 10:05 a.m. with sixteen members present. He introduced the committee staff, Wanda Joyner, Assistant to Senator Clodfelter, and Judiciary 1Committee Assistant. Staff attorneys, Walker Reagan and Bill Gilkeson. Staff attorney, Hal Pell was absent. He introduced Pages Laney Schenk and Charles Merritt, both from Gastonia, NC.

SB-82 (Election Contests) Committee Substitute was introduced by Senator R.C. Soles, Vice Chair. Senator Charlie Albertson moved for adoption of the Committee Substitute. All members voted yes. Motion carried. Senator Dan Clodfelter, bill sponsor explained that the Proposed Committee Substitute bill rewrites the centuries-old procedure for the House and Senate to decide contested elections of their members. It also restores the procedure, for some reason repealed in 1971, for the General Assembly to fulfill its constitutional duty of deciding contested elections for Council of State offices. It makes the restored procedure for Council of State contests parallel to the procedure for contested legislative elections, and makes it clear that the General Assembly's decision in either a legislative or Council of State election contest is not reviewable by State courts. See attached Bill Summary for further information. Senator Clodfelter then asked Mr. Jerry Cohen, Director of NCGA Bill Drafting Division to explain the background of the bill. See attached background material. Staff attorney, Bill Gilkeson explained the different sections of the bill. Senator Soles spoke briefly on the bill, and asked for questions and comments from the members. Senator's David Hoyle, Richard Stevens, Charlie Albertson, Phillip Berger had questions regarding constitutional jurisdiction. Senator Clodfelter and Mr. Cohen answered the questions. Senator Clodfelter offered an amendment to the bill and asked for adoption of the amendment. All members voted yes. Motion carried. Senator R.C. Soles offered a second amendment to the bill. Senator Clodfelter moved for adoption of the amendment. All members voted yes. Motion carried. See attached amendments. Senator's Tony Rand had a question. Senator Clodfelter answered the question, and moved for adoption of the amendment. All members voted yes. Motion carried. Senator Soles moved that the amendments be rolled into a Committee Substitute and the bill be given a Favorable Report as amended. All members voted yes. Motion carried.

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

Senator Dan Clodfelter, Chair **Wanda Joyner, Committee Assistant**

Addendum to Minutes

Senator Dan Clodfelter, Chair called a special meeting immediately after session at 4:08 pm, in the Senate Chamber, with twelve members present. The meeting was called to address some questions that came up after the J-1 Committee adjourned at the 10:55 am meeting. The questions were about the wording used by Senator Soles when he asked for a vote on the bill as amended. Senator Soles, Vice Chair again asked for a vote on all amendments being rolled into a Committee Substitute, and the new Committee Substitute be given a Favorable Report. Majority of members voted yes. Motion carried. Meeting adjourned at 4:12pm.

Senator Dan Clodfelter, Chair **Wanda Joyner, Committee Assistant**

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Daniel G. Clodfelter, Chair

Tuesday, February 15, 2005

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

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

S.B. **82** Election Contests.

Draft Number:	65055
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 82*
PROPOSED COMMITTEE SUBSTITUTE S82-PCS65055-RR-1

Short Title: Election Contests. (Public)

Sponsors:

Referred to:

February 9, 2005

A BILL TO BE ENTITLED

AN ACT TO PROVIDE PROCEDURES FOR RESOLVING ELECTION CONTESTS FOR MEMBERS OF THE GENERAL ASSEMBLY AND COUNCIL OF STATE.

Whereas, Article II, Section 20 of the Constitution provides that each house shall be the judge of the qualifications and elections of its members; and

Whereas, the current statutory procedures for handling contested legislative elections were enacted in 1796, amended slightly in 1893, and are antiquated; and

Whereas, Article VI, Section 5 of the Constitution provides that a contested election for Governor or Council of State member shall be determined by joint ballot of both houses of the General Assembly in the manner described by law; and

Whereas, the constitutional provision on contested executive branch elections was originally enacted in 1835, with the statutory implementing language enacted in 1836; and

Whereas, at the time of their repeal in 1971, those statutory procedures merely referred to the antiquated procedure for contested legislative elections; and

Whereas, it is necessary to revise the antiquated legislative election contest procedure and enact an executive election contest procedure as required by the Constitution; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 120-10 reads as rewritten:

"**§ 120-10. Notice of contest.**

(a) Eligibility to Contest a Seat. – No person ~~shall be allowed to~~ may contest the seat of any member of the General Assembly except as provided in this section. ~~unless he shall have given to the member 30 days' notice thereof in writing, prior to the meeting of the General Assembly, which must state the particular grounds of such contest. If the seat is contested on account of the reception of illegal votes, the notice must set forth the number of such votes, by whom given, and the supposed disqualifications; and if the same is contested on account of the rejection of legal votes,~~

~~the notice must give the names of the persons whose votes were rejected. No evidence shall be admitted to show that the contestant received illegal votes, unless he shall also have been notified the same number of days, and in the same manner. The same notice of time and place required in taking depositions shall be required and proved on the investigation.~~

(b) Initiating a Contest. – A contest of the election of any member to the General Assembly may only be initiated by an unsuccessful candidate in the election, referred to hereafter as the contestant. To initiate a contest, the contestant shall give written notice, in the manner provided in subsection (d) of this section, of the intent to contest the election. The written notice shall be provided to the person or persons apparently elected, hereinafter referred to as the contestee, and to the Principal Clerk of the house to which that person seeks election. The notice of intent shall be provided no later than the latter of: (i) 30 days following the date of the election; (ii) 10 days after a certificate of election has been issued, or (iii) 10 days after the conclusion of the election protest procedure under Article 15A of Chapter 163 of the General Statutes.

The notice of intent shall state the grounds on which the contestant intends to contest the election. The grounds shall include (i) objections to the eligibility or qualifications of the contestee based on specific allegations, (ii) objections to the conduct or results of the election accompanied by specific allegations which, if proven true, would have a probable impact on the outcome of the election, or (iii) both.

The notice shall state that an answer by the contestee must be filed with the clerk of the appropriate house within 10 days following service of the notice. The contestant shall sign and verify the notice by his oath or affirmation.

(c) Answering a Contest. – Within 10 days after service of the contestant's notice on the contestee, the contestee shall file with the clerk of the appropriate house a written answer. The contestee's answer shall admit or deny the allegations on which the contestant relies, or state that the contestee has no knowledge or information concerning an allegation which shall be deemed denial, and state any other defenses, in law or fact, on which the contestee relies. The contestee shall sign and verify his answer by his oath or affirmation.

(d) Filings. – The notice of intent to contest shall be filed by the contestant with the clerk of the appropriate house and copies thereof served by the contestant as provided under the Rules of Civil Procedure on each contestee. The answer, petition, and any reply and copies thereof shall be filed with the appropriate Principal Clerk, and copies shall be served on the opposing party or the opposing party's counsel, if any, in the manner prescribed by the Rules of Civil Procedure.

After service of the notice of intent, any party, after reasonable notice to the other party or parties, may take depositions to sustain or invalidate the election. The contestant shall complete the taking of depositions to submit with his petition at any time within 20 days following the date of the notice of intent to contest the election, and the contestee shall complete the taking of his depositions within 30 days following the date of the notice of intent to contest the election. By written stipulation of the parties, the testimony of any witness may be filed in the form of an affidavit by the witness within the same time limitations prescribed for the taking of depositions.

Subpoenas for witnesses shall be issued upon the application of either party or upon motion of the committee under the same procedures as under Article 5A of this Chapter and shall be enforced as provided under G.S. 120-19.4. Witnesses shall be entitled to the same allowances and privileges, and be subject to the same penalties, as witnesses summoned to attend the courts. Every deposition shall be taken before a person authorized by law to administer oaths, who shall certify and seal the deposition in the same manner as in judicial civil proceedings and file the same with the Principal Clerk of the appropriate house.

(e) Petitions. – A written petition shall be filed by the contestant with the Principal Clerk of the appropriate house within 40 days following the filing of the notice of intent to contest the election. The contestee may file a written reply to the petition within five days following its service on the contestee.

No affidavit may be made a part of, or filed in support of, a petition or reply thereto unless the affidavit has previously been filed with the Principal Clerk of the appropriate house, pursuant to the written stipulation of the parties or their counsel, on or before the date established by subsection (d) of this section for the completion of the taking of depositions by the proponent of the affidavit.

(f) Referral to Committee. – The Principal Clerk shall refer the notice, answer, petition, reply, depositions, and affidavits to the Committee on Rules, which documents shall constitute part of the record in the contest. Unless another committee has been designated by the rules of the house to hear contest matters, the Committee on Rules shall hear the contest and conduct such investigation as has been directed by resolution of its house.

The committee handling the protest shall set a schedule for taking depositions and receiving affidavits. The committee may consider the contestant's and contestee's recommendations for the procedural schedule. The committee may hold hearings and may compel the attendance of witnesses and the production of documents in its inquiry. The committee may order the recount of the ballots in the election.

The committee shall report its findings as to the law and the facts and make recommendations to the house for its action.

(g) New House to Hear. – The contest shall be heard and decided by the newly elected house.

(h) Bad Faith. – The prevailing party in any contest may in a civil action recover that party's costs of the legislative proceeding, upon a showing that the contestor filed, prosecuted, or maintained the contest in bad faith and without substantial justification."

SECTION 2. G.S. 120-11 reads as rewritten:

"**§ 120-11. Depositions taken; ~~penalty and~~ privilege of witnesses.**

Any person duly authorized to take depositions to be read before courts, may take depositions to be used ~~on~~ in the ~~investigation, and may issue subpoenas for witnesses, which shall be executed by any officer authorized to execute process.~~ investigation. ~~And if any witness shall fail to appear and give his deposition according to the subpoena, he shall forfeit and pay to the party causing him to be summoned forty dollars ($40.00).~~ And on such investigation no witness in this or in the case of any other contested election shall be excused from discovering whether he voted at such election, or his

qualification to vote, except as to his conviction for any offense which would disqualify him. And if he was not a qualified voter, he shall be compelled to discover for whom he voted; but any witness making such discovery shall not be subject to criminal or penal prosecution for having voted at such election."

SECTION 3.(a) Article 15A of Chapter 163 of the General Statutes is amended by adding a new section to read:

"**§ 163-182.13A. Contested elections for Executive Branch offices.**

(a) Notice. – Except as provided by this section, in any election for any elective office established by Article III of the Constitution, notice of the intent to contest the election shall be filed with the Principal Clerk of the House of Representatives as if it were a contested election for the House of Representatives as prescribed in G.S. 120-10.

(b) Applicability. – The provisions of G.S. 120-10 and G.S. 120-11 shall apply to contested elections for any elective office established by Article III of the Constitution and shall govern standing, notice of intent to contest, answers, service of process, evidence, the petition, procedures, and relief except as provided in this section. All filings shall be with the Principal Clerk of the House of Representatives.

(c) Jurisdiction of Select Committee. – The matter shall be heard before a select committee consisting of five Senators appointed by the President Pro Tempore and five Representatives appointed by the Speaker of the House of Representatives. That committee shall have the same power as a committee under G.S. 120-10. The committee shall report its findings as to the law and the facts and make recommendations to the General Assembly for its action.

(d) Final Determination. – The final determination on the recommendations of the committee shall be made by the General Assembly, both houses sitting in joint session in the Hall of the House of Representatives, with the Speaker of the House of Representatives presiding. The vote shall be taken as provided by Article VI, Section 5 of the Constitution. In order to find for the contestant and order the contestant elected, the vote on the joint ballot must include the affirmative vote of a majority of the members of the General Assembly voting on the issue. The ballots shall be considered written ballots rather than secret ballots and are subject to the provisions of G.S. 143-318.13(b).

(e) Filing of Judgment. – A copy of the judgment of the General Assembly under this section shall be filed with the Clerk of Superior Court of Wake County and with the State Board of Elections.

(f) Copies to Senate Principal Clerk. – The Principal Clerk of the House of Representatives shall make copies of any filings and transmit them to the Principal Clerk for the Senate."

SECTION 3.(b) For any election in 2004, notice of the intent to contest the election shall be filed within 10 days of this act becoming law, notwithstanding the deadlines established under subsection (a) of this section. In the case of any election in 2004 subject to this act, when as of the fifth day after this act becomes law no certificate of election has been issued, any candidate for that office may initiate a contest under this act. The provisions of this act prevail over any other procedure for protest or contest of the election of any member of the General Assembly or any office created by Article

III of the Constitution. Any election contest petition received prior to this act becoming law may be amended, if necessary, to comply with the provisions of this act.

SECTION 4. G.S. 163-182.14 reads as rewritten:

"**§ 163-182.14. Appeal of a final decision to superior court.**

(a) Final Decision. – A copy of the final decision of the State Board of Elections on an election protest shall be served on the parties personally or by certified mail. A decision to order a new election is considered a final decision for purposes of seeking review of the decision.

(b) Timing of Right of Appeal. – Except in the case of an election to either house of the General Assembly or to an office established by Article III of the Constitution, an ~~An~~ aggrieved party has the right to appeal the final decision to the Superior Court of Wake County within 10 days of the date of service.

After the decision by the State Board of Elections has been served on the parties, the certification of nomination or election or the results of the referendum shall issue pursuant to G.S. 163-182.15 unless an appealing party obtains a stay of the certification from the Superior Court of Wake County within 10 days after the date of service. The court shall not issue a stay of certification unless the petitioner shows the court that the petitioner has appealed the decision of the State Board of Elections, that the petitioner is an aggrieved party, and that the petitioner is likely to prevail in the appeal.

(c) Contests for General Assembly and Executive Branch Offices. – In the case of an election to either house of the General Assembly or to an office established by Article III of the Constitution, an aggrieved party may file an election contest as provided by G.S. 120-10 or G.S. 163-182.13A, as appropriate. There is no review in the General Court of Justice."

SECTION 5. G.S. 163-182.15(b) reads as rewritten:

"(b) Issued by State Board of Elections. – In ballot items within the jurisdiction of the State Board of Elections, the State Board of Elections shall issue a certificate of nomination or election, or a certificate of the results of the referendum, as appropriate. The certificate shall be issued by the State Board six days after the completion of the canvass pursuant to G.S. 163-182.5, unless there is an election protest pending. If there is an election protest, the certificate of nomination or election or the certificate of the result of the referendum shall be issued in one of the following ways, as appropriate:

(1) The certificate shall be issued 10 days after the final decision of the State Board on the election protest, unless the State Board has ordered a new election or the issuance of the certificate is stayed by the Superior Court of Wake County pursuant to G.S. 163-14.

(2) If the decision of the State Board has been appealed to the Superior Court of Wake County and the court has stayed the certification, the certificate shall be issued five days after the entry of a final order in the case in the Superior Court of Wake County, unless that court or an appellate court orders otherwise.

(3) The certificate shall be issued immediately upon the filing of a copy of the judgment of the General Assembly with the State Board of

Elections in contested elections involving any elective office established by Article III of the Constitution.

(4) No certificate of election need be issued for any member of the General Assembly following an election contest decided pursuant to G.S. 120-10 and G.S. 120-11."

SECTION 6. This act is effective when it becomes law.

First printing

SENATE BILL 82: Election Contests.

BILL ANALYSIS

Committee:	General Assembly	**Introduced by:**	Sen. Clodfelter
Date:	March 10, 2005	**Summary by:**	William R. Gilkeson
Version:	Session Law 2005-3		Staff Attorney

SUMMARY: Session Law 2005-3 (Senate Bill 82) rewrites the centuries-old procedure for the House and Senate to decide contested elections of their members. It also restores the procedure, for some reason repealed in 1971, for the General Assembly to fulfill its constitutional duty of deciding contested elections for Council of State offices. The bill makes the restored procedure for Council of State contests parallel to the procedure for contested legislative elections. The bill makes clear that once an election contest is brought before the General Assembly or one of its houses, the resolution of the contest is solely in the jurisdiction of the General Assembly or that house and no longer in the jurisdiction of the courts. And the bill makes clear that the decision of the General Assembly in a Council of State contest or one of its houses legislative election contest is not reviewable by State courts. Effective when it becomes law.

CURRENT LAW: Article II, Sec. 20, of the NC Constitution makes each house of the General Assembly "judge of the qualifications and elections of its members." In 1796 the General Assembly enacted what are now codified as GS 120-10 and 120-11, providing briefly for procedures for each house to hear legislative election contests. No one may contest the seat of any member without giving written notice 30 days before the General Assembly convenes.

Article VI, Sec. 5, states that a contest for any office established by Article III "shall be determined by joint ballot of both houses of the General Assembly in the manner prescribed by law." The offices established by Article III are the 10 executive branch offices elected statewide: Governor, Lieutenant Governor, Secretary of State, Attorney General, Treasurer, Auditor, Commissioners of Agriculture, Insurance, and Labor, and Superintendent of Public Instruction, collectively known as the Council of State. Until 1971, the General Statutes referred to GS 120-10 as the procedure for Council of State election contests. For some reason, the reference was repealed in 1971. The repeal was part of a bill whose main thrust was to relieve the General Assembly of the duty to decide tie votes in legislative races and to break such ties with a new election.

BILL ANALYSIS: The bill replaces the 1796 procedure for legislative election contests with a more detailed statute adapted from the one used in Virginia. *Section 1 of the bill.* The Virginia statute was written in the 1950s and amended in 1981. In the summary below, the procedure is the same for legislative and Council of State contests, except that the legislative procedure involves only one house, and the Council of State procedure involves both houses sitting as one body.

Initiating a Contest. Only an unsuccessful candidate in the contested race may initiate a contest. An unsuccessful candidate is defined as a candidate for General Assembly or Council of State who has not been issued a certificate of election. The person who initiates the contest (the "contestant") must file a notice of intent with the Principal Clerk of the appropriate house no earlier than the day set for the definitive canvass for the election, and no later than the latter of:

- 10 days after a winner is certified by the board of elections, or
- 10 days after the conclusion of the election protest procedure provided for in the election laws,

but in no event may a contest be filed later than 30 days after the session convenes.

The notice must state the grounds: either objections to the eligibility or qualifications of the apparent winner (the "contestee"), objections to the conduct or results of the election, or both.

Answering a Contest. The contestee has 10 days after being served with the notice to file an answer. The answer may raise additional issues not presented in the notice.

Petition. Within 40 days after service of the notice of intent, the contestant must file a petition with the Principal Clerk, and the contestee gets 5 days after being served with the petition to reply to it. The petition sets forth the arguments and facts supporting the contest.

Discovery. The contestant has 20 days after service of the notice to complete depositions, and the contestee has 30 days.

Rules Committee. The Committee on Rules of the appropriate house shall hear the contest, unless another committee is designated by the rules of that house. The Committee may hold hearings, compel witnesses and the production of documents, issue subpoenas, and order the recounting of ballots in the election. It shall make its recommendations to the full house, which shall decide the contest.

Which House Has Jurisdiction. If a contest involves a general election, the house that decides the contest is the house that was elected at that same election, rather than the previous body.

Effect on Litigation in Court. Upon the filing of a contest with a house of the General Assembly, any judicial proceedings involving the contestant or contestee encompassing issues raised in the contest shall abate.

Determination Not Reviewable in Court. Once a house decides a contest, no court may review that decision.

Bad Faith. The prevailing party in a contest may take the other side to court for costs upon a showing of bad faith and lack of substantial justification.

Different Procedures for Council of State Contest. The same basic procedures apply for a Council of State contest. *Section 3 of the bill.* However, because 2 houses are involved rather than one, there are these basic differences:

- The Committee hearing the contest would be a select committee of five senators appointed by the President Pro Tem and five House members appointed by the Speaker. No more than 3 of the 5 members appointed by each presiding officer may be of the same political party.
- The final decision would be, as required by Art. VI, Sec. 2, of the Constitution, by a joint ballot of both house, and a majority of the members of the General Assembly voting on the issue would decide the issue. The ballots would be "written ballot," meaning that the members would sign their ballots and the public record would reflect how each member voted.

Standards for Deciding the Contest. The bill places in statute a set of standards for either house, or for the General Assembly as a whole, to use in determining the contest. If the contest is about the eligibility or qualifications of the contestee, the legislative body shall determine those things, and if it decides the contestee is ineligible or unqualified, it shall order a new election, rather than seat the contestant. If the contest is about the conduct or results of the election, the body shall determine if it can who received the greatest number of votes and seat that candidate. If it cannot determine who got the most votes, it may order a new election or order other relief "as may be necessary and proper." If it determines there was a tie, existing law for the breaking of ties is used.

Application to 2004 Elections. Any election contest notice filed concerning the 2004 election must be filed within 10 days of the bill becoming law. Any papers submitted by a potential contestant or contestee and received by the Principal Clerk of either house before the bill becomes law could be refiled within 10 days of the bill becoming law to comply with the bill's procedures. *Section 3.(b).*

Appellate Jurisdiction. After a final decision of the State Board of Elections in a legislative or Council of State race, an unsuccessful candidate may appeal the decision to the General Assembly or a house thereof, rather than to the courts. *Section 4.* The bill further directs the State Board of Elections to issue a certificate to a winner when the General Assembly decides a Council of State election contest, and it says no certificate need be issued when the General Assembly decides a legislative election contest. *Section 5.*

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HISTORY OF NORTH CAROLINA PROVISIONS ON CONTESTED ELECTIONS

Senate Bill 82 is designed to implement a provision of the State Constitution which grants jurisdiction to the General Assembly to hear contested council of state elections, and to revise the procedure for handling contests for legislative elections.

The office of Governor was made elective by the Convention of 1835. Prior to that, the General Assembly chose the Governor. The group of amendments in Article II adopted by the Convention provided for popular election of the Governor, for the election canvass to be done by the General Assembly, for tie votes to be broken by joint vote of both houses, and for contested elections to be determined by the General Assembly. The 1835 amendments left the Supreme Court appointed by joint ballot of both houses, those offices not being subject to popular election until 1868.

Some have stated that the power to decide an election contest applies only in the case of a tie vote, but the history clearly shows that a contested election is different than a tied election.

It is clear that the Constitutional Convention of 1835 reserved to the General Assembly a power that otherwise would be judicial, to resolve contested elections. At the same time as the Constitutional Convention of 1868 made the judiciary more independent by allowing popular election of the Supreme Court, it revised slightly the procedure for legislative handling of election contests.

In 1925, the General Assembly again amended that provision of the constitution, ceding to the executive branch the power to canvass the election of council of state, but amended and preserved its power to hear contests.

In 1969, the General Assembly again examined the issue of election contests for the Council of State, again preserving that power. While the power has lain dormant, and there have been no contested elections for council of state, the power clearly is inherent in the General Assembly.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

While there exists no current statutory procedure for handling election contests, jurisdiction is not dependent on the existence or not of the statutory enabling legislation.

The fact that the General Assembly has enacted a general law on election protests and not limited its scope does not mean it was constitutional to delegate these powers to the court.

My research shows only one potential contested executive branch election. Ashe's two volume history of North Carolina published in 1925 recounts the 1872 gubernatorial election, when there is an extensive account of proceedings before the state party executive committee of the losing candidate for governor discussing the potential of bringing an election contest before the General Assembly, which would decide the matter. The candidate never brought the contest as insufficient evidence was gathered.

North Carolina is not the only state to have a provision in its constitution calling for the legislative branch to resolve contested elections for executive branch offices. My research shows 12 other states with similar provisions, including Virginia, Alabama, Arkansas, and Washington. The issue has been litigated in several states, and the State Supreme Court rulings I have been able to find indicate that the provisions vest jurisdiction over these matters in the legislative branch. In the Arkansas case, their Supreme Court even noted that failure of the legislature to have a procedure in place did not affect its jurisdiction over the matter.

Constitutional Amendment of 1835 – proposed by Convention, approved by voters
"Article II.
1. The Governor shall be chosen by the qualified voters for the members of the house of commons, at such time and places as members of the General Assembly are elected.
.....
3. The returns of every election for Governor shall be sealed up and transmitted to the seat of government, by the returning officers, directed to the speaker of the senate, who shall open and publish them in the presence of a majority of the members of both houses of the general assembly. The person having the highest number of votes shall be governor; but if two or more shall be equal and highest in votes, one of them shall be chosen governor by joint vote of both houses of the general assembly.
4. Contested elections for governor shall be determined by both houses of the general assembly, in such manner as shall be prescribed by law."

The 1835 Constitutional amendment had four distinct parts to it:
1) The Governor was to be elected by the people
2) The results were canvassed by the General Assembly
3) If the canvass showed a tie vote, a joint vote would be taken by both houses
4) If the election was contested, the contest would be "determined" by both houses "in such manner as shall be prescribed by law. Clearly, a tie vote was NOT a contest.

Sections 1 and 5 of Chapter 21, Laws of 1836 provided the statutory implementation:

"When any person or persons shall contest the election of any person, who may be elected governor, or may have received the largest number of votes, agreeably to the returns of the respective sheriffs of the State, such person or persons shall in writing give notice to him, whose election he or they intend to contest, of such his or their intention, as well as the specific grounds upon which he or they may intend

to contest his election; setting forth the county or counties, in which he or they allege that spurious or illegal votes were given, or any other invasion of the law or constitution, having relation to the case, shall have taken place, at least thirty days before the first day of December in the year in which such election is held, and also in one or more newspapers published in Raleigh; and satisfactory proof that such notice has been given shall be required before the General Assembly proceed to inquire into the truth of such allegations: Provided however, that if the person whose election is contested is out of the State, or not to be found at the time, thirty days' notice, in one or more of the newspapers published in Raleigh, shall be deemed sufficient ...It may be lawful for any person to take depositions to be read in such cases, before two magistrates, which depositions shall have the certificate and seal of the clerk of the county court, in which such depositions are taken, setting forth that such persons are acting justices of the peace for the county: Provided however, that not such depositions shall be deemed evidence, unless ten days notice shall have been given to the person, whose election is contested; which notice shall be given in writing, to be proved by the person delivering it, who shall depose before a justice of the peace that such notice was delivered by him, setting forth the date of its delivery. If, however, the person whose election is contested is out of the State or not to be found, fifteen days notice given in a newspaper published in Raleigh shall be sufficient.

The Constitution of 1868 rewrote the Constitutional language:
"Article III, Section 1. The Executive Department shall consist of a Governor ... a Lieutenant Governor, a Secretary of State, and Auditor, a treasurer, a Superintendent of Public Works, a Superintendent of Public Instruction, and an Attorney General ..."
Article III, Section 3:
Sec. 3. The return of every election for officers of the Executive Department shall be sealed up and transmitted to the seat of Government by the returning officers, directed to the Speaker of the House of Representatives, who shall open and publish the same in the presence of a majority of the members of both Houses of the General Assembly. The person having the highest number of votes, respectively, shall be declared elected; but if two or more be equal and highest in votes for the same office, then one of them shall be chosen by joint ballot, of both Houses of the General Assembly. Contested elections shall be determined by a joint vote of both Houses of the General Assembly, in such manner as shall be prescribed by law."

The 1868 constitutional amendments did the following:
1) added additional elective executive officers
2) changed the presiding officer for the joint session from the Speaker of the Senate to the Speaker of the House
3) a tie vote was to be resolved by "joint ballot" rather than "joint vote"
4) a contest was to be determined by "joint vote of both houses" rather than "by both houses" Again, ties and contests were completely separate circumstances, handled by different procedures.

As mentioned above, the 1868 constitutional rewrite also changed the Supreme Court from a body appointed by the General Assembly to one subject to popular election.

Chapter 89, Section 44, Public Laws of 1901 changed the statutory implementing legislation to read: "Contested elections shall be determined by a joint vote of both Houses of the General Assembly in the same manner and under the same rules and regulations as prescribed in cases of contested election of members of the General Assembly."

A constitutional amendment in 1925 read as follows:

"Section 1. That section three of article three of the Constitution of North Carolina be and the same is hereby amended by striking out all of section three and inserting in lieu thereof the following:
"Section three. The return of every election for officers of the executive department shall be sealed up and transmitted to the seat of government by the returning officer, directed to the Secretary of State. The return shall be canvassed and the result declared in such manner as may be prescribed by law. Contested elections shall be determined by a joint ballot of both houses of the General Assembly in such manner as shall be prescribed by law."

The 1925 amendments did the following:

1) The canvass itself was removed from the General Assembly and was instead the returns were to be sent to the Secretary of State
2) The power in the General Assembly to break ties for executive officers was removed from the Constitution (but was left in the statutes where it now appears in G.S. 147-4)
3) Contests were to be resolved instead of "by a joint vote of both Houses of the General Assembly" to "by a joint ballot of both houses of the General Assembly"

Section 14 of Chapter 260 of the Public Laws of 1927 changed the implementing language again, to be:
"In contested elections, the state board of canvassers shall certify to the speaker of the house of representatives a statement of such facts as the board has relative thereto and such contests shall be determined by joint vote of both houses of the general assembly in the same manner and under the same rules as described in cases of contested elections for members of the general assembly."
The 1967 rewrite of the election laws had moved the election contest provision to be the last paragraph of G.S. 163-191, to read:
"In a contested election for one of the offices referred to in the preceding paragraph, the State Board of Elections shall certify to the Speaker of the House of Representatives a statement of whatever facts the Board has relative thereto, and the contest shall be determined by joint vote of both houses of the General Assembly in the manner and under the rules applicable in cases of contested elections for members of the General Assembly."

The Constitutional Revision Commission of 1968 proposed a new Constitution which was approved by the 1969 General Assembly and by the voters in 1970.
The minutes of the Commission showed that this issue was deliberated and the determination was made to move the language from Article III (Executive Branch) to Article VI (Elections), while deleting the references to who conducts the canvass. The 1969 Constitutional Amendment brought the language to its current status to be found Section 5 of Article VI:
"A contested election for any office established by Article III of this Constitution shall be determined by joint ballot of both houses of the General Assembly in the manner prescribed by law"

In 1971, the provision on how to handle executive branch election contests mysteriously disappeared in the enactment of Section 2 of Chapter 219, which was not even reflected in the title.

"H.B. 121 CHAPTER 219

AN ACT TO PROVIDE THAT A TIE VOTE FOR MEMBERS OF THE GENERAL ASSEMBLY SHALL BE BROKEN BY A SPECIAL ELECTION.

The General Assembly of North Carolina do enact:

SECTION 1. G.S. 163-191 is hereby amended by deleting the second sentence of the second paragraph and by inserting in lieu thereof the following: "But if two or more be equal and highest in votes for the office, then the State Board of Elections shall order a new election for the purpose of breaking the tie vote."

SECTION 2. The last paragraph of G.S. 163-191 is hereby repealed.

SECTION 3. This act shall become effective July 1, 1971."

As to the General Assembly, the contest provisions have been more consistent.

Section 10 of the Constitution of 1776 provided that each house shall "be judges of the qualifications and elections of their members. That language now appears in Article II, Section 20 of the 1969 Constitution as each house shall "judge the qualifications of its own members.

The first statutory implementing statute was Chapter 24 of the Laws of 1796, which read:

It shall not be lawful for any person to vacate the seat of any member of the General Assembly, who has taken his seat in consequence of the return of the sheriff or sheriffs of his county or district, certifying that he is duly elected, unless the person or persons who may intend to dispute such election shall give the member or members, whose election he or they intend to dispute, thirty days notice previous to the meeting of the General Assembly of such his intention, with the ground on which the same will be disputed; and the same notice of time and place, now required in taking depositions at law, shall also be required and proved on such investigation, and all affidavits taken without due notice as aforesaid shall be deemed improper evidence and not suffered to be read in such investigation.

Chapter 192 of the Public Laws of 1893 added the words: " prior to the meeting of the General Assembly,"

The law is now codified as G.S. 120-10, and now reads:
§ 120-10. Notice of contest.
No person shall be allowed to contest the seat of any member of the General Assembly unless he shall have given to the member 30 days' notice thereof in writing, prior to the meeting of the General Assembly, which must state the particular grounds of such contest. If the seat is contested on account of the reception of illegal votes, the notice must set forth the number of such votes, by whom given, and the supposed disqualifications; and if the same is contested on account of the rejection of legal votes, the notice must give the names of the persons whose votes were rejected. No evidence shall be admitted to show that the contestant received illegal votes, unless he shall also have been notified the same number of days, and in the same manner. The same notice of time and place required in taking depositions shall be required and proved on the investigation.

Chapter 16 of the Laws of 1800 enacted the following:
If any person, being legally summoned by any lawful officer by a subpoena issued by a justice of the peace, or any other person authorized by law to take depositions, to appear before them or either of them, to give testimony in behalf of either of the parties disputing any election for members of the General Assembly, he or they failing to attend agreeably to the said subpoena, and give testimony as aforesaid, shall forfeit and pay the party grieved the sum of forty dollars, to be recovered by action of debt, before any jurisdiction having cognizance thereof: *Provided*, nothing herein contained shall be construed to extend to the compelling any such witnesses to answer any question tending directly or indirectly, to discover the person for whom he voted, or to discover his disqualifications as an elector.

this was rewritten by Chapter 270 of the 1868-69 Session, and by Section 68 of Chapter 108 of the 1973 Session Laws. The 1973 amendment eliminated a reference to taking testimony before a justice of the peace. That law is now codified as G.S. 120-11, which reads:

"§ 120-11. Depositions taken; penalty and privilege of witnesses.
Any person duly authorized to take depositions to be read before courts, may take depositions to be used on the investigation, and may issue subpoenas for witnesses, which shall be executed by any officer authorized to execute process. And if any witness shall fail to appear and give his deposition according to the subpoena, he shall forfeit and pay to the party causing him to be summoned forty dollars ($40.00). And on such investigation no witness in this or in the case of any other contested election shall be excused from discovering whether he voted at such election, or his qualification to vote, except as to his conviction for any offense which would disqualify him. And if he was not a qualified voter, he shall be compelled to discover for whom he voted; but any witness making such discovery shall not be subject to criminal or penal prosecution for having voted at such election."

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F:/my documents/SB82 elections
Researched and prepared by Gerry Cohen, Director of Bill Drafting
February 14, 2005

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 82*

Short Title:	Election Contests.	(Public)
Sponsors:	Senators Clodfelter; Dalton, Dannelly, Dorsett, Garrou, Graham, Hagan, Lucas, and Rand.	
Referred to:	Judiciary I.	

February 9, 2005

A BILL TO BE ENTITLED

AN ACT TO PROVIDE PROCEDURES FOR RESOLVING ELECTION CONTESTS FOR MEMBERS OF THE GENERAL ASSEMBLY AND COUNCIL OF STATE.

Whereas, Article II, Section 20 of the Constitution provides that each house shall be the judge of the qualifications and elections of its members; and

Whereas, the current statutory procedures for handling contested legislative elections were enacted in 1796, amended slightly in 1893, and are antiquated; and

Whereas, Article VI, Section 5 of the Constitution provides that a contested election for Governor or Council of State member shall be determined by joint ballot of both houses of the General Assembly in the manner described by law; and

Whereas, the constitutional provision on contested executive branch elections was originally enacted in 1835, with the statutory implementing language enacted in 1836; and

Whereas, at the time of their repeal in 1971, those statutory procedures merely referred to the antiquated procedure for contested legislative elections; and

Whereas, it is necessary to revise the antiquated legislative election contest procedure and enact an executive election contest procedure as required by the Constitution; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 120-10 reads as rewritten:

"**§ 120-10. Notice of contest.**

(a) Eligibility to Contest a Seat. – No person ~~shall be allowed to~~ may contest the seat of any member of the General Assembly except as provided in this section. ~~unless he shall have given to the member 30 days' notice thereof in writing, prior to the meeting of the General Assembly, which must state the particular grounds of such contest. If the seat is contested on account of the reception of illegal votes, the notice must set forth the number of such votes, by whom given, and the supposed disqualifications; and if the same is contested on account of the rejection of legal votes,~~

~~the notice must give the names of the persons whose votes were rejected. No evidence shall be admitted to show that the contestant received illegal votes, unless he shall also have been notified the same number of days, and in the same manner. The same notice of time and place required in taking depositions shall be required and proved on the investigation.~~

(b) Initiating a Contest. – A contest of the election of any member to the General Assembly may only be initiated by an unsuccessful candidate in the election, referred to hereafter as the contestant. To initiate a contest, the contestant shall give written notice, in the manner provided in subsection (d) of this section, of the intent to contest the election. The written notice shall be provided to the person or persons apparently elected, hereinafter referred to as the contestee, and to the Principal Clerk of the house to which that person seeks election. The notice of intent shall be provided no later than the latter of: (i) 30 days following the date of the election; (ii) 10 days after a certificate of election has been issued, or (iii) 10 days after the conclusion of the election protest procedure under Article 15A of Chapter 163 of the General Statutes.

The notice of intent shall state the grounds on which the contestant intends to contest the election. The grounds shall include (i) objections to the eligibility of the contestee based on specific allegations, (ii) objections to the conduct or results of the election accompanied by specific allegations which, if proven true, would have a probable impact on the outcome of the election, or (iii) both.

The notice shall state that an answer by the contestee must be filed with the clerk of the appropriate house within 10 days following service of the notice. The contestant shall sign and verify the notice by his oath or affirmation.

(c) Answering a Contest. – Within 10 days after service of the contestant's notice on the contestee, the contestee shall file with the clerk of the appropriate house a written answer. The contestee's answer shall admit or deny the allegations on which the contestant relies, or state that the contestee has no knowledge or information concerning an allegation which shall be deemed denial, and state any other defenses, in law or fact, on which the contestee relies. The contestee shall sign and verify his answer by his oath or affirmation.

(d) Filings. – The notice of intent to contest shall be filed by the contestant with the clerk of the appropriate house and copies thereof served by the contestant as provided under the Rules of Civil Procedure on each contestee. The answer, petition, and any reply and copies thereof shall be filed with the appropriate Principal Clerk, and copies shall be served on the opposing party or the opposing party's counsel, if any, in the manner prescribed by the Rules of Civil Procedure.

After service of the notice of intent, any party, after reasonable notice to the other party or parties, may take depositions to sustain or invalidate the election. The contestant shall complete the taking of depositions to submit with his petition at any time within 20 days following the date of the notice of intent to contest the election, and the contestee shall complete the taking of his depositions within 30 days following the date of the notice of intent to contest the election. By written stipulation of the parties, the testimony of any witness may be filed in the form of an affidavit by the witness within the same time limitations prescribed for the taking of depositions.

Subpoenas for witnesses shall be issued by the Clerk of the Superior Court of Wake County on the application of either party. Witnesses shall be entitled to the same allowances and privileges, and be subject to the same penalties, as witnesses summoned to attend the courts. Every deposition shall be taken before a person authorized by law to administer oaths, who shall certify and seal the deposition in the same manner as in judicial civil proceedings, and file the same with the Principal Clerk of the appropriate house.

(e) Petitions. – A written petition shall be filed by the contestant with the Principal Clerk of the appropriate house within 10 days following the filing of the notice of intent to contest the election. The contestee may file a written reply to the petition within five days following its service on the contestee.

No affidavit may be made a part of, or filed in support of, a petition or reply thereto unless the affidavit has previously been filed with the Principal Clerk of the appropriate house, pursuant to the written stipulation of the parties or their counsel, on or before the date established by subsection (d) of this section for the completion of the taking of depositions by the proponent of the affidavit.

(f) Referral to Committee. – The Principal Clerk shall refer the notice, answer, petition, reply, depositions, and affidavits to the Committee on Rules, which documents shall constitute part of the record in the contest. Unless another committee has been designated by the rules of the house to hear contest matters, the Committee on Rules shall hear the contest and conduct such investigation as has been directed by resolution of its house.

The committee handling the protest shall set a schedule for taking depositions and affidavits. The committee may consider the contestant's and contestee's recommendations for the procedural schedule. The committee may hold hearings, and may compel the attendance of witnesses and the production of documents in its inquiry. The committee may order the recount of the ballots in the election.

The committee shall report its findings as to the law and the facts and make recommendations to the house for its action.

(g) New House to Hear. – The contest shall be heard and decided by the newly elected house.

(h) Bad Faith. – If the house finds, by two-thirds vote of the house, that the contestant has prosecuted the election contest in bad faith, the house may order the contestant to pay to the contestee a sum that is not more than the contestee's actual costs of defending against the contest, including, but not limited to, reasonable attorneys' fees, expert witnesses' fees, and such costs as would be taxable in an action at law."

SECTION 2. G.S. 120-11 reads as rewritten:

"**§ 120-11. Depositions taken; ~~penalty and~~ privilege of witnesses.**

Any person duly authorized to take depositions to be read before courts, may take depositions to be used ~~on~~ in the ~~investigation, and may issue subpoenas for witnesses, which shall be executed by any officer authorized to execute process.~~ investigation. ~~And if any witness shall fail to appear and give his deposition according to the subpoena, he shall forfeit and pay to the party causing him to be summoned forty dollars ($40.00).~~ And on such investigation no witness in this or in the case of any other contested

election shall be excused from discovering whether he voted at such election, or his qualification to vote, except as to his conviction for any offense which would disqualify him. And if he was not a qualified voter, he shall be compelled to discover for whom he voted; but any witness making such discovery shall not be subject to criminal or penal prosecution for having voted at such election."

SECTION 3.(a) Article 15A of Chapter 163 of the General Statutes is amended by adding a new section to read:

"**§ 163-182.13A. Contested elections for Executive Branch offices.**

(a) Notice. – Except as provided by this section, in any election for any elective office established by Article III of the Constitution, notice of the intent to contest the election shall be filed with the Principal Clerk of the House of Representatives as if it were a contested election for the House of Representatives as prescribed in G.S. 120-10.

(b) Applicability. – The provisions of G.S. 120-10 and G.S. 120-11 shall govern standing, notice of intent to contest, answers, service of process, evidence, the petition, procedures, and relief except as provided in the section. All filings shall be with the Principal Clerk of the House of Representatives.

(c) Jurisdiction of Select Committee. – The matter shall be heard before a select committee consisting of five Senators appointed by the President Pro Tempore and five Representatives appointed by the Speaker of the House of Representatives. That committee shall have the same power as a committee under G.S. 120-10. The committee shall report its findings as to the law and the facts and make recommendations to the General Assembly for its action.

(d) Final Determination. – The final determination on the recommendations of the committee shall be made by the General Assembly, both houses sitting in joint session in the Hall of the House of Representatives, with the Speaker of the House of Representatives presiding. The vote shall be taken as provided by Article VI, Section 5 of the Constitution. In order to find for the contestant and order the contestant elected, the vote on the joint ballot must include the affirmative vote of a majority of the members of the General Assembly voting on the issue. The ballots shall be considered written ballots rather than secret ballots, and are subject to the provisions of G.S. 143-318.13(b).

(e) Filing of Judgment. – A copy of the judgment of the General Assembly under this section shall be filed with the Clerk of Superior Court of Wake County and with the State Board of Elections.

(f) Copies to Senate Principal Clerk. – The Principal Clerk of the House of Representatives shall make copies of any filings and transmit them to the Principal Clerk for the Senate."

SECTION 3.(b) For any election in 2004, notice of the intent to contest the election shall be filed within 10 days of this act becoming law, notwithstanding the deadlines established under subsection (a) of this section. The provisions of this act prevail over any other procedure for protest or contest of the election. Any election contest petition received prior to this act becoming law may be amended, if necessary, to comply with the provisions of this act.

SECTION 4. G.S. 163-182.14 reads as rewritten:

"**§ 163-182.14. Appeal of a final decision to superior court.**

(a) Final Decision. – A copy of the final decision of the State Board of Elections on an election protest shall be served on the parties personally or by certified mail. A decision to order a new election is considered a final decision for purposes of seeking review of the decision.

(b) Timing of Right of Appeal. – Except in the case of an election to either house of the General Assembly or to an office established by Article III of the Constitution, an ~~An~~ aggrieved party has the right to appeal the final decision to the Superior Court of Wake County within 10 days of the date of service.

After the decision by the State Board of Elections has been served on the parties, the certification of nomination or election or the results of the referendum shall issue pursuant to G.S. 163-182.15 unless an appealing party obtains a stay of the certification from the Superior Court of Wake County within 10 days after the date of service. The court shall not issue a stay of certification unless the petitioner shows the court that the petitioner has appealed the decision of the State Board of Elections, that the petitioner is an aggrieved party, and that the petitioner is likely to prevail in the appeal.

(c) Contests for General Assembly and Executive Branch Offices. – In the case of an election to either house of the General Assembly or to an office established by Article III of the Constitution, an aggrieved party may file an election contest as provided by G.S. 120-10 or G.S. 163-182.13A, as appropriate. There is no review in the General Court of Justice."

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

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 82*

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

S82-ALB-6 [v.1]

Date 2-15- ,2005

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

Senator Clodfelter

moves to amend the bill on page 3, line 1, by rewriting the sentence that begins on line 1 to read:
"Subpoenas for witnesses shall be issued upon the application of either party or upon motion of the committee under the same procedures as under Article 5A of this Chapter, and shall be enforced as provided under G.S. 120-19.4."

further moves to amend the bill on page 3, line 9, by deleting "10 days" and substituting "40 days"

further moves to amend the bill on page 3, line 32-36, by rewriting those lines to read:
"(h) The prevailing party in any contest may in a civil action recover that party's costs of the legislative proceeding, upon a showing that the contestor filed, prosecuted or maintained the contest in bad faith and without substantial justification.""

further moves to amend the bill on page 4, line 41, by adding the following after the period: "In the case of any election in 2004 subject to this act, when as of the fifth day after this act becomes law no certificate of election has been issued, any candidate for that office may initiate a contest under this act."

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 82*

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

S82-ALB-6 [v.1]

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 2-15-05

S. B. No. 82 Amendment No. 2
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
) SOLES
Sen.)

moves to amend the bill on page 3, line 23

( ) WHICH CHANGES THE TITLE

by adding at the end of that line the word "receiving".

SIGNED _____

ADOPTED ✓ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE — 02/15/05

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
Michelle Frazier	NC Bar Ass'n
Doug Heron	NC Bar Ass'n
Erica	UNCTV
[illegible]	Chan Obs.
Sharif Durhams	Charlotte O.
Brian Janson	UNC-CH
Barry Smith	Freedom Newspapers
[illegible]	Public School [illegible]
Scott Mooneyham	Inside / Capitol Press Assoc.
Stephanie Dorko	Charlotte Chamber
Mary Thomas	RESIC

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE
Name of Committee

2-15-05
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
Walker Murphy	CCCU, Inc
Susan Harris	WCPSS
[illegible]	Capitol Group
Jessica Sage	NC Family Policy Council
John Rustin	" "
Roz Sauls	NCLCC
John Cyrus	NC State Grange
Tom Coley	CWA
Bill Scoggin	Kennedy Covington
Bill Rustin	ACP

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE — 2-15-05

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
Lisa Martin	NC Home Builders Assoc
R. Paul Wims	NCHBA
Hilary Arthur	NCASA
Katherine Joyce	NCASA
Gary Robertson	AP
Johnnie McLean	SBE
Mike McDonald	Intern
George Reed	NC Council of Churches
John McHugh	Gov Office
Trish Hayes	SBE
Jeanne Winner	NC SBA

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

REVISED NOTICE - ROOM CHANGE

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

DAY	DATE	TIME	ROOM
Thursday	February 17, 2005	10:00 AM	544 LOB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 41	Criminal Records Checks/LTC Changes.	Senator Swindell IV
SB 133	Reconfirming Provisional Voting.	Senator Clodfelter

Senator Daniel G. Clodfelter, Chair

Judiciary 1 Committee

February 17, 2005

Minutes

Senator Dan Clodfelter, Chair called the meeting to order at 10:10 am with sixteen members present. He introduced Pages Charles Merritt from Gastonia, NC, Jody Owens from Spruce Pine, NC and Sarah Hatcher from Wallace, NC.

SB-41 (Criminal Records Checks/LTC Changes) was not heard.

SB-133 (Reconfirming Provisional Voting) Committee Substitute was introduced by Senator R.C. Soles, Vice Chairman. Senator Dan Clodfelter sponsor of the bill asked for adoption of the Committee Substitute. Senator Charlie Albertson moved for adoption. Majority voted yes. Motion carried. Senator Julia Boseman had a question. Senator Clodfelter answered the question. He then explained that the Proposed Committee Substitute would restate and reconfirm that the General Assembly in 2003 intended that voters could cast provisional ballots outside their precincts and that the boards of elections should count those ballots for all races in which the voter was eligible by registration and residency to vote. Also, the bill would direct the State Board of Elections to recommend to the General Assembly by April 15, 2005, how it thinks provisional voting should be handled in the future. See attached Bill Summary for background and further information. Staff attorney, Bill Gilkeson explained the statutes and voting procedures. Mr. Bill McRae a Cabarrus County precinct official spoke on election procedures in his county, making it clear that he was speaking from his own personal opinion. Ms. Anita Earls, with the Center for Civil Rights Democracy of NC spoke on voting rights and instructions giving voters information regarding correct voting places. Mr. Chris Haggerty, NC Center for Voter Education spoke on the policies and urged the members of the Judiciary Committee to support the bill. Ms. Susan Nichols from the Attorney General's office, Voting Rights Act. Explained election administration. Senator's Jerry Tillman, Richard Stevens, Ham Horton, and Phillip Berger had

questions about the bill. Senator Clodfelter and staff attorney, Bill Gilkeson answered their questions. Senator Soles moved for a Favorable Report on the Committee Substitute bill. A majority of the members voted yes. Motion carried.

Being no further business the meeting adjourned at 10:57 am.

Senator Dan Clodfelter, Chair

Wanda Joyner, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Daniel G. Clodfelter, Chair

Thursday, February 17, 2005

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

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

S.B. **133** Reconfirming Provisional Voting.

Draft Number:	PCS 15051
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 133
PROPOSED COMMITTEE SUBSTITUTE S133-PCS15051-RR-2

Short Title: Reconfirming Provisional Voting. (Public)

Sponsors:

Referred to:

February 15, 2005

A BILL TO BE ENTITLED

AN ACT TO RESTATE AND RECONFIRM THE INTENT OF THE GENERAL ASSEMBLY WITH REGARD TO PROVISIONAL VOTING IN 2004; AND TO SEEK THE RECOMMENDATIONS OF THE STATE BOARD OF ELECTIONS ON FUTURE ADMINISTRATION OF OUT-OF-PRECINCT PROVISIONAL VOTING.

The General Assembly of North Carolina enacts:

SECTION 1. The General Assembly makes the following findings:

(1) In 2003, the General Assembly enacted S.L. 2003-226, which contained a number of changes to the State's election laws, designed in part to implement provisions of the federal Help America Vote Act of 2002 (HAVA) in such a way as to avoid having separate laws for federal and State elections and otherwise to encourage and expand the exercise of the franchise. One such enactment was codified as G.S. 163-166.11, which spells out procedures for the casting of provisional official ballots. A voter's eligibility to cast a provisional official ballot depends on being a registered voter in the jurisdiction in which the voter seeks to vote. The "jurisdiction" in which a voter in North Carolina registers to vote is the county. This is the unmistakable meaning of G.S. 163-82.1 and has not heretofore been challenged or questioned.

(2) In S.L. 2003-226, the General Assembly expressly stated its intent to "ensure that the State of North Carolina has a system for all elections that complies with the requirements for federal elections set forth in" HAVA. It was then and is now the intent of the General Assembly that the provisions of HAVA be broadly construed and that they be implemented in North Carolina in a manner to ensure a unified system of federal and State elections in compliance with HAVA.

(3) When it enacted G.S. 163-166.11, it was then and is now the intent of the General Assembly that any individual who is a registered voter in a county but whose name does not appear on the official list of registered voters at the voting place at which that voter appears be allowed to cast a provisional official ballot.

(4) When it enacted G.S. 163-166.11, it was then and is now the intent of the General Assembly that all provisional ballots be counted for all those ballot items for which a voter was eligible to vote. In enacting G.S. 163-166.11 in 2003, the General Assembly was fully mindful of and intended to reinforce the fact that prior statutory enactments in 2001 had already recognized the right of a voter to cast a provisional ballot and to have that ballot counted for all items for which that voter was eligible to vote. See G.S. 163-182.2(a)(4). Even prior to 2003, the General Statutes recognized the right of a registered voter to cast a provisional ballot and to have that ballot counted for all those items for which the voter was duly qualified to vote.

(5) When it enacted G.S. 163-166.11, it was then and is now the intent of the General Assembly that the State Board of Elections act in a manner that would result in a single system for federal and State elections, rather than one system for federal elections and another for State elections. In enacting G.S. 163-166.11 in 2003, the General Assembly was mindful of and intended to reinforce the fact that it had already provided in 2001 in G.S. 163-166.7(c)(6) that the State Board of Elections would adopt rules to ensure that voters "not clearly eligible to vote in the precinct but who seek to vote there are given proper assistance in voting a provisional official ballot or guidance to another voting place where they are eligible to vote." The possibility of out-of-precinct provisional voting was thus recognized by the General Assembly as early as 2001.

(6) The law regarding provisional ballots does not rest solely on G.S. 163-82.15(e), which addresses the narrow circumstance of "Unreported Move[s] to Another Precinct Within the County." Though that statute mentions two ways in which precinct officials may process registrants, it is not exclusive. G.S. 163-82.15(e) is part of the statutory Article on voter registration, rather than on voting, and should be read in that context. It was enacted in 1994, before provisional voting was codified in North Carolina. The enactment of G.S. 163-166.7(c)(6) in 2001 is the authority giving the State Board of Elections the duty to apply the broader laws of provisional voting, including G.S. 163-166.11. Any reading of G.S. 163-166.11 that would limit that statute's provisions to the narrower class of voting situations governed by the earlier enacted provisions of G.S. 163-82.15(e) would ignore the long-standing principle of statutory construction that statutes relating to the same subject matter should be reconciled in such a

manner as to effect the scope and meaning of the later enactment and read in a manner that would tend most completely to secure the rights of all persons affected by the legislation. It was then and is now the intent of the General Assembly in enacting G.S. 163-166.11 to expand the exercise of the franchise, not to limit it or to restrict it by the terms of earlier and narrower enactments.

(7) The State Board of Elections and all county boards of elections were following the intent of the General Assembly when they administered G.S. 163-166.11 and the earlier enacted statutes in G.S. 163-182.2(a)(4) and G.S. 163-166.7(c)(6) to count in whole or in part ballots cast by registered voters in the county who voted outside their resident precincts in the July 20, 2004, Primary, the August 17, 2004, Second Primary, and the November 2, 2004, General Election.

(8) Several hundred thousand registered North Carolina voters cast ballots outside their resident precincts during the one-stop absentee balloting ("early voting") period pursuant to G.S. 163-227.2 prior to the General Election in November 2004, during the two primaries in 2004, and then on the date of the General Election in November 2004. There is no statutory basis upon which to distinguish out-of-precinct voting that occurred on the date of the General Election in November 2004 from out-of-precinct voting that occurred during the First and Second Primaries in 2004 or that occurred during the period of one-stop absentee ("early") voting prior to the General Election of 2004.

(9) The General Assembly takes note of the fact that of those registered voters who happened to vote provisional ballots outside their resident precincts on the day of the November 2004 General Election, a disproportionately high percentage were African-American.

(10) The General Assembly notes that in addition to provisional voting on the date of the General Election pursuant to G.S. 163-166.11, the General Statutes abound with provisions that allow voters to cast votes outside their resident precincts:

a. Civilian absentee voting by mail, G.S. 163-226.
b. Military and overseas citizens absentee voting, G.S. 163-245.
c. One-stop absentee (early) voting, G.S. 163-227.2.
d. Voting in a voting place on a lot adjacent to the precinct, G.S. 163-128.
e. Temporarily voting in an adjacent precinct, G.S. 163-128.
f. Voting in a precinct outside the voting place where no suitable facility exists inside it or adjacent to it, G.S. 163-130.1.
g. Voting at a central location in the county by voters who no longer live in the precinct where their name is listed on registration lists, G.S. 163-82.15(e).

All those provisions were enacted prior to G.S. 163-166.11. Most were enacted decades before. As many as 1,000,000 people in North Carolina may have cast out-of-precinct votes using all out-of-precinct methods in 2004.

(11) It would be fundamentally unfair to discount the provisional official ballots cast by properly registered and duly qualified voters voting and acting in reliance on the statutes adopted by the General Assembly and administered by the State Board of Elections in accordance with its intent. Moreover, to subtract such ballots only from the count for the General Election of 2004 without also doing so for the First or Second Primaries of 2004 would create a bizarre result in which out-of-precinct provisional ballots are allowed to count for some elections but not others. The General Assembly did not and does not now intend to create such a system.

(12) Even if the State Board of Elections had misread the language and intent of the General Statutes concerning provisional voting, which it did not do, it has been the long-standing and hitherto unquestioned law of this State, confirmed by prior decisions of the North Carolina Supreme Court, that an innocent voter's ballot shall not be disqualified because of errors or omissions by elections officials. This fundamental principle was adopted by Justice Samuel J. Ervin Jr. in the case of Owens v. Chaplin, 228 N.C. 705 (1948) using the following language:

> "We can conceive of no principle which permits the disfranchisement of innocent voters for the mistake, or even the willful misconduct, of election officials in performing the duty cast upon them. The object of elections is to ascertain the popular will, and not to thwart it. The object of election laws is to secure the rights of duly-qualified electors, and not to defeat them."

See also Appeal of Judicial Review by Republican Candidates for Election in Clay County, 45 N.C. App. 556 (1980).

The General Assembly endorses and reaffirms this fundamental principle.

(13) It is the will of the people, as expressed through their representatives in the General Assembly, that the validity of the primaries and elections conducted in 2004 and certified by a county board of elections or the State Board of Elections, not be called into question by retroactively revisiting the propriety of provisional ballots cast by duly registered voters of a county.

(14) To avoid all doubt and remove any possible future question as to the General Assembly's plain intent with respect to the subject of provisional voting, and to avoid misinterpretation of any other statute, the General Assembly enacts Sections 2 through 5 of this act.

SECTION 2. G.S. 163-55 reads as rewritten:

"**§ 163-55. Qualifications to vote; exclusion from electoral franchise.**

(a) Residence Period for State Elections. – Every person born in the United States, and every person who has been naturalized, and who shall have resided in the State of North Carolina and in the precinct, ward, or other election district in which ~~he~~ the person offers to ~~register and~~ vote for 30 days next preceding ~~the ensuing~~ an election, shall, if otherwise qualified as prescribed in this Chapter, be qualified to ~~register and~~ vote in ~~the precinct in which he resides: any~~ election held in this State. ~~Provided, that removal~~ Removal from one precinct, ward, or other election district to another in this State shall not operate to deprive any person of the right to vote in the precinct, ward, or other election district from which he has removed until 30 days after ~~his~~ the person's removal.

~~The~~ Except as provided in G.S. 163-59, the following classes of persons shall not be allowed to ~~register or~~ vote in this State:

(1) Persons under 18 years of age.

(2) Any person adjudged guilty of a felony against this State or the United States, or adjudged guilty of a felony in another state that also would be a felony if it had been committed in this State, unless that person shall be first restored to the rights of citizenship in the manner prescribed by law.

(b) Precincts and Election Districts. – For purposes of qualification to vote in an election, a person's residence in a precinct, ward, or election district shall be determined in accordance with G.S. 163-57. When an election district encompasses more than one precinct, then for purposes of those offices to be elected from that election district a person shall also be deemed to be resident in the election district which includes the precinct in which that person resides. An election district may include a portion of a county, an entire county, a portion of the State, or the entire State. When a precinct has been divided among two or more election districts for purposes of elections to certain offices, then with respect to elections to those offices a person shall be deemed to be resident in only that election district which includes the area of the precinct in which that person resides. Qualification to vote in referenda shall be treated the same as qualification for elections to fill offices."

SECTION 3. G.S. 163-82.15(e) reads as rewritten:

"(e) Unreported Move to Another Precinct Within the County. – If a registrant has moved from an address in one precinct to an address in another precinct within the same county more than 30 days before an election and has failed to notify the county board of the change of address before the close of registration for that election, the county board shall permit that person to vote in that election. The county board shall permit the registrant described in this subsection to vote at the registrant's new precinct, upon the registrant's written affirmation of the new address, or, if the registrant prefers, at a central location in the county to be chosen by the county board. If the registrant appears at the old precinct, the precinct officials there shall send the registrant to the new precinct or, if the registrant prefers, to the central location, according to rules which shall be prescribed by the State Board of Elections. At the new precinct, the registrant shall be processed by a precinct transfer assistant, according to rules which shall be

prescribed by the State Board of Elections. Any voter subject to this subsection may instead vote a provisional ballot according to the provisions of G.S. 163-166.11."

SECTION 4. G.S. 163-166.11 reads as rewritten:

"**§ 163-166.11. Provisional voting requirements.**

If an individual seeking to vote claims to be a registered voter in a jurisdiction as provided in G.S. 163-82.1 and though eligible to vote in the election does not appear on the official list of eligible registered voters in the voting place, that individual may cast a provisional official ballot as follows:

(1) An election official at the voting place shall notify the individual that the individual may cast a provisional official ballot in that election.

(2) The individual may cast a provisional official ballot at that voting place upon executing a written affirmation before an election official at the voting place, stating that the individual is a registered voter in the jurisdiction as provided in G.S. 163-82.1 in which the individual seeks to vote and is eligible to vote in that election.

(3) At the time the individual casts the provisional official ballot, the election officials shall provide the individual written information stating that anyone casting a provisional official ballot can ascertain whether and to what extent the ballot was counted and, if the ballot was not counted in whole or in part, the reason it was not counted. The State Board of Elections or the county board of elections shall establish a system for so informing a provisional voter. It shall make the system available to every provisional voter without charge, and it shall build into it reasonable procedures to protect the security, confidentiality, and integrity of the voter's personal information and vote.

(4) The cast provisional official ballot and the written affirmation shall be secured by election officials at the voting place according to guidelines and procedures adopted by the State Board of Elections. At the close of the polls, election officials shall transmit the provisional official ballots cast at that voting place to the county board of elections for prompt verification according to guidelines and procedures adopted by the State Board of Elections.

(5) The county board of elections shall count the individual's provisional official ballot for all ballot items on which it determines that the individual was eligible under State or federal law to vote."

SECTION 5. G.S. 163-182.2(a)(4) reads as rewritten:

"(4) Provisional official ballots shall be counted by the county board of elections before the canvass. If the county board finds that an individual voting a provisional official ballot is not eligible to vote in one or more ballot items on the official ballot, the board shall not count the official ballot in those ballot items, but shall count the official ballot in any ballot items for which the individual is eligible to vote. Eligibility shall be determined by whether the voter is registered

in the county as provided in G.S. 163-82.1 and whether the voter is qualified by residency to vote in the election district as provided in G.S. 163-55 and G.S. 163-57. If a voter was properly registered to vote in the election by the county board, no mistake of an election official in giving the voter a ballot or in failing to comply with G.S. 163-82.15 or G.S. 163-166.11 shall serve to prevent the counting of the vote on any ballot item the voter was eligible by registration and qualified by residency to vote."

SECTION 6. The State Board of Elections shall make recommendations by April 15, 2005, for consideration by the 2005 General Assembly on administration of provisional voting in the future, taking into account the relevant experience in the 2004 elections in this and other states.

SECTION 7. This act is effective when it becomes law and, being declaratory of existing law, applies to all elections held after January 1, 2004, the effective date of G.S. 163-166.11.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

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SENATE BILL 133
PROPOSED COMMITTEE SUBSTITUTE S133-CSRR-2 [v.2]

2/16/2005 12:08:51 PM

Short Title: Reconfirming Provisional Voting. (Public)

Sponsors:

Referred to:

February 15, 2005

A BILL TO BE ENTITLED

AN ACT TO RESTATE AND RECONFIRM THE INTENT OF THE GENERAL ASSEMBLY WITH REGARD TO PROVISIONAL VOTING IN 2004; AND TO SEEK THE RECOMMENDATIONS OF THE STATE BOARD OF ELECTIONS ON FUTURE ADMINISTRATION OF OUT-OF-PRECINCT PROVISIONAL VOTING.

The General Assembly of North Carolina enacts:

SECTION 1. The General Assembly makes the following findings:

(1) In 2003, the General Assembly enacted S.L. 2003-226, which contained a number of changes to the State's election laws, designed in part to implement provisions of the federal Help America Vote Act of 2002 (HAVA) in such a way as to avoid having separate laws for federal and State elections and otherwise to encourage and expand the exercise of the franchise. One such enactment was codified as G.S. 163-166.11, which spells out procedures for the casting of provisional official ballots. A voter's eligibility to cast a provisional official ballot depends on being a registered voter in the jurisdiction in which the voter seeks to vote. The "jurisdiction" in which a voter in North Carolina registers to vote is the county. This is the unmistakable meaning of G.S. 163-82.1 and has not heretofore been challenged or questioned.

(2) In S.L. 2003-226, the General Assembly expressly stated its intent to "ensure that the State of North Carolina has a system for all elections that complies with the requirements for federal elections set forth in" HAVA. It was then and is now the intent of the General Assembly that the provisions of HAVA be broadly construed and that they be implemented in North Carolina in a manner to ensure a unified system of federal and State elections in compliance with HAVA.

(3) When it enacted G.S. 163-166.11, it was then and is now the intent of the General Assembly that any individual who is a registered voter in a county but whose name does not appear on the official list of registered voters at the voting place at which that voter appears be allowed to cast a provisional official ballot.

(4) When it enacted G.S. 163-166.11, it was then and is now the intent of the General Assembly that all provisional ballots be counted for all those ballot items for which a voter was eligible to vote. In enacting G.S. 163-166.11 in 2003, the General Assembly was fully mindful of and intended to reinforce the fact that prior statutory enactments in 2001 had already recognized the right of a voter to cast a provisional ballot and to have that ballot counted for all items for which that voter was eligible to vote. See G.S. 163-182.2(a)(4). Even prior to 2003, the General Statutes recognized the right of a registered voter to cast a provisional ballot and to have that ballot counted for all those items for which the voter was duly qualified to vote.

(5) When it enacted G.S. 163-166.11, it was then and is now the intent of the General Assembly that the State Board of Elections act in a manner that would result in a single system for federal and State elections, rather than one system for federal elections and another for State elections. In enacting G.S. 163-166.11 in 2003, the General Assembly was mindful of and intended to reinforce the fact that it had already provided in 2001 in G.S. 163-166.7(c)(6) that the State Board of Elections would adopt rules to ensure that voters "not clearly eligible to vote in the precinct but who seek to vote there are given proper assistance in voting a provisional official ballot or guidance to another voting place where they are eligible to vote." The possibility of out-of-precinct provisional voting was thus recognized by the General Assembly as early as 2001.

(6) The law regarding provisional ballots does not rest solely on G.S. 163-82.15(e), which addresses the narrow circumstance of "Unreported Move[s] to Another Precinct Within the County." Though that statute mentions two ways in which precinct officials may process registrants, it is not exclusive. G.S. 163-82.15(e) is part of the statutory Article on voter registration, rather than on voting, and should be read in that context. It was enacted in 1994, before provisional voting was codified in North Carolina. The enactment of G.S. 163-166.7(c)(6) in 2001 is the authority giving the State Board of Elections the duty to apply the broader laws of provisional voting, including G.S. 163-166.11. Any reading of G.S. 163-166.11 that would limit that statute's provisions to the narrower class of voting situations governed by the earlier enacted provisions of G.S. 163-82.15(e) would ignore the long-standing principle of statutory construction that statutes relating to the same subject matter should be reconciled in such a

manner as to effect the scope and meaning of the later enactment and read in a manner that would tend most completely to secure the rights of all persons affected by the legislation. It was then and is now the intent of the General Assembly in enacting G.S. 163-166.11 to expand the exercise of the franchise, not to limit it or to restrict it by the terms of earlier and narrower enactments.

(7) The State Board of Elections and all county boards of elections were following the intent of the General Assembly when they administered G.S. 163-166.11 and the earlier enacted statutes in G.S. 163-182.2(a)(4) and G.S. 163-166.7(c)(6) to count in whole or in part ballots cast by registered voters in the county who voted outside their resident precincts in the July 20, 2004 Primary, the August 17, 2004 Second Primary, and the November 2, 2004 General Election.

(8) Several hundred thousand registered North Carolina voters cast ballots outside their resident precincts during the one-stop absentee balloting ("early voting") period pursuant to G.S. 163-227.2 prior to the General Election in November 2004, during the two primaries in 2004, and then on the date of the General Election in November 2004. There is no statutory basis upon which to distinguish out-of-precinct voting that occurred on the date of the General Election in November 2004 from out-of-precinct voting that occurred during the First and Second Primaries in 2004 or that occurred during the period of one-stop absentee ("early") voting prior to the General Election of 2004.

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g. Voting at a central location in the county by voters who no longer live in the precinct where their name is listed on registration lists, G.S. 163-82.15(e).

All those provisions were enacted prior to G.S. 163-166.11. Most were enacted decades before. As many as 1,000,000 people in North Carolina may have cast out-of-precinct votes using all out-of-precinct methods in 2004.

(11) It would be fundamentally unfair to discount the provisional official ballots cast by properly registered and duly qualified voters voting and acting in reliance on the statutes adopted by the General Assembly and administered by the State Board of Elections in accordance with its intent. Moreover, to subtract such ballots only from the count for the General Election of 2004 without also doing so for the First or Second Primaries of 2004 would create a bizarre result in which out-of-precinct provisional ballots are allowed to count for some elections but not others. The General Assembly did not and does not now intend to create such a system.

(12) Even if the State Board of Elections had misread the language and intent of the General Statutes concerning provisional voting, which it did not do, it has been the long-standing and hitherto unquestioned law of this State, confirmed by prior decisions of the North Carolina Supreme Court, that an innocent voter's ballot shall not be disqualified because of errors or omissions by elections officials. This fundamental principle was adopted by Justice Samuel J. Ervin Jr. in the case of Owens v. Chaplin, 228 N.C. 705 (1948) using the following language:

> "We can conceive of no principle which permits the disfranchisement of innocent voters for the mistake, or even the willful misconduct, of election officials in performing the duty cast upon them. The object of elections is to ascertain the popular will, and not to thwart it. The object of election laws is to secure the rights of duly-qualified electors, and not to defeat them."

See also Appeal of Judicial Review by Republican Candidates for Election in Clay County, 45 N.C. App. 556 (1980).

The General Assembly endorses and reaffirms this fundamental principle.

(13) It is the will of the people, as expressed through their representatives in the General Assembly, that the validity of the primaries and elections conducted in 2004 and certified by a county board of elections or the State Board of Elections, not be called into question by retroactively revisiting the propriety of provisional ballots cast by duly registered voters of a county.

(14) To avoid all doubt and remove any possible future question as to the General Assembly's plain intent with respect to the subject of provisional voting, and to avoid misinterpretation of any other statute, the General Assembly enacts Sections 2 through 5 of this act.

SECTION 2. G.S. 163-55 reads as rewritten:

"**§ 163-55. Qualifications to vote; exclusion from electoral franchise.**

(a) Residence Period for State Elections. – Every person born in the United States, and every person who has been naturalized, and who shall have resided in the

State of North Carolina and in the precinct, ward, or other election district in which ~~he~~ the person offers to ~~register and~~ vote for 30 days next preceding ~~the ensuing~~ an election, shall, if otherwise qualified as prescribed in this Chapter, be qualified to ~~register and~~ vote in ~~the precinct in which he resides:~~ any election held in this State. ~~Provided, that removal~~ Removal from one precinct, ward, or other election district to another in this State shall not operate to deprive any person of the right to vote in the precinct, ward, or other election district from which he has removed until 30 days after ~~his~~ the person's removal.

~~The~~ Except as provided in G.S. 163-59, the following classes of persons shall not be allowed to ~~register or~~ vote in this State:

(1) Persons under 18 years of age.

(2) Any person adjudged guilty of a felony against this State or the United States, or adjudged guilty of a felony in another state that also would be a felony if it had been committed in this State, unless that person shall be first restored to the rights of citizenship in the manner prescribed by law.

(b) Precincts and Election Districts. – For purposes of qualification to vote in an election, a person's residence in a precinct, ward, or election district shall be determined in accordance with G.S. 163-57. When an election district encompasses more than one precinct, then for purposes of those offices to be elected from that election district a person shall also be deemed to be resident in the election district which includes the precinct in which that person resides. An election district may include a portion of a county, an entire county, a portion of the State, or the entire State. When a precinct has been divided among two or more election districts for purposes of elections to certain offices, then with respect to elections to those offices a person shall be deemed to be resident in only that election district which includes the area of the precinct in which that person resides. Qualification to vote in referenda shall be treated the same as qualification for elections to fill offices."

SECTION 3. G.S. 163-82.15(e) reads as rewritten:

"(e) Unreported Move to Another Precinct Within the County. – If a registrant has moved from an address in one precinct to an address in another precinct within the same county more than 30 days before an election and has failed to notify the county board of the change of address before the close of registration for that election, the county board shall permit that person to vote in that election. The county board shall permit the registrant described in this subsection to vote at the registrant's new precinct, upon the registrant's written affirmation of the new address, or, if the registrant prefers, at a central location in the county to be chosen by the county board. If the registrant appears at the old precinct, the precinct officials there shall send the registrant to the new precinct or, if the registrant prefers, to the central location, according to rules which shall be prescribed by the State Board of Elections. At the new precinct, the registrant shall be processed by a precinct transfer assistant, according to rules which shall be prescribed by the State Board of Elections. Any voter subject to this subsection may instead vote a provisional ballot according to the provisions of G.S. 163-166.11."

SECTION 4. G.S. 163-166.11 reads as rewritten:

"**§ 163-166.11. Provisional voting requirements.**

If an individual seeking to vote claims to be a registered voter in a jurisdiction as provided in G.S. 163-82.1 and though eligible to vote in the election does not appear on the official list of eligible registered voters in the voting place, that individual may cast a provisional official ballot as follows:

(1) An election official at the voting place shall notify the individual that the individual may cast a provisional official ballot in that election.

(2) The individual may cast a provisional official ballot at that voting place upon executing a written affirmation before an election official at the voting place, stating that the individual is a registered voter in the jurisdiction as provided in G.S. 163-82.1 in which the individual seeks to vote and is eligible to vote in that election.

(3) At the time the individual casts the provisional official ballot, the election officials shall provide the individual written information stating that anyone casting a provisional official ballot can ascertain whether and to what extent the ballot was counted and, if the ballot was not counted in whole or in part, the reason it was not counted. The State Board of Elections or the county board of elections shall establish a system for so informing a provisional voter. It shall make the system available to every provisional voter without charge, and it shall build into it reasonable procedures to protect the security, confidentiality, and integrity of the voter's personal information and vote.

(4) The cast provisional official ballot and the written affirmation shall be secured by election officials at the voting place according to guidelines and procedures adopted by the State Board of Elections. At the close of the polls, election officials shall transmit the provisional official ballots cast at that voting place to the county board of elections for prompt verification according to guidelines and procedures adopted by the State Board of Elections.

(5) The county board of elections shall count the individual's provisional official ballot for all ballot items on which it determines that the individual was eligible under State or federal law to vote."

SECTION 5. G.S. 163-182.2(a)(4) reads as rewritten:

"(4) Provisional official ballots shall be counted by the county board of elections before the canvass. If the county board finds that an individual voting a provisional official ballot is not eligible to vote in one or more ballot items on the official ballot, the board shall not count the official ballot in those ballot items, but shall count the official ballot in any ballot items for which the individual is eligible to vote. Eligibility shall be determined by whether the voter is registered in the county as provided in G.S. 163-82.1 and whether the voter is qualified by residency to vote in the election district as provided in G.S. 163-55 and G.S. 163-57. If a voter was properly registered to vote

in the election by the county board, no mistake of an election official in giving the voter a ballot or in failing to comply with G.S. 163-82.15 or G.S. 163-166.11 shall serve to prevent the counting of the vote on any ballot item the voter was eligible by registration and qualified by residency to vote."

SECTION 6. The State Board of Elections shall make recommendations by April 15, 2005, for consideration by the 2005 General Assembly on administration of provisional voting in the future, taking into account the relevant experience in the 2004 elections in this and other states.

SECTION 7. This act is effective when it becomes law and, being declaratory of existing law, applies to all elections held after January 1, 2004, the effective date of G.S. 163-166.11.

SENATE BILL 133:
Reconfirming Provisional Voting

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Senator Clodfelter
Date:	February 17, 2005	**Summary by:**	William R. Gilkeson
Version:	S133-CSRR-2 [v.2]		Committee Co-Counsel

SUMMARY: ***This Proposed Committee Substitute to Senate Bill 133 would restate and reconfirm that the General Assembly in 2003 intended that voters could cast provisional ballots outside their precincts and that the boards of elections should count those ballots for all races in which the voter was eligible by registration and residency to vote. The bill would also direct the State Board of Elections to recommend to the General Assembly by April 15, 2005, how it thinks provisional voting should be handled in the future.***

BACKGROUND:

2001 Statutory Rewrite. In 2001, after the traumatic 2000 Presidential election, the General Assembly enacted a general rewrite of the statutes on voting procedures. It codified for the first time the practice of "provisional voting." Provisional voting had been used since the mid-1990s, when the National Voter Registration Act required that voters who had moved within the county and failed to report those moves be allowed to go to their new precinct to vote even though their names were not on the books there. Provisional voting allowed the voter to mark a paper ballot, to be placed in an envelope on which the voter would sign an affidavit certifying identity and eligibility to vote. The county board of elections would determine the voter's eligibility and decide how to count the ballot.

The philosophy of the 2001 rewrite was for the General Assembly to pull back from micro-managing election administration in the statutes and to give the State Board of Elections general guidelines with which to administer the process. In G.S. 163-166.7(a)(6) the State Board was directed to adopt rules to ensure that **"Voters not clearly eligible to vote in the precinct but who seek to vote there are given proper assistance in voting a provisional official ballot or guidance to another voting place where they are eligible to vote."** That broad authority reflected the fact that provisional ballots were no longer used simply to accommodate unreported moves in a new precinct, but were being used by voters in a number of other circumstances.

The 2001 rewrite also addressed ballot counting, and set forth this principle in G.S. 163-182.2(a)(4): **"If the county board finds that an individual voting a provisional official ballot is not eligible to vote in one or more ballot items on the official ballot, the board shall not count the official ballot for those ballot items but shall count the official ballot in any ballot items for which the individual is eligible to vote."**

2003 HAVA Compliance. In 2003, the General Assembly undertook to bring NC's election statutes into compliance with the federal Help America Vote Act of 2002 (HAVA). One of HAVA's requirements was that every state permit provisional ballots in federal elections. The General Assembly added G.S. 163-166.11, which partly tracks HAVA's language: **"If an individual seeking to vote claims to be a registered voter in a jurisdiction and though eligible to vote does not appear on the official list of eligible registered voters in the voting place, that individual may cast a provisional official ballot . . ."** Like many things in HAVA, the meaning of the term "in a jurisdiction" was not defined nor was its scope immediately clear.

The General Assembly opened its HAVA compliance legislation, S.L. 2003-226, with a statement of purpose: **"to ensure that the State of North Carolina has a system for all North Carolina elections that complies with the requirements for federal elections set forth in the federal Help America Vote Act . . ."** The intent was to avoid conflict with HAVA's requirements for federal elections so there would be no need for 2 separate systems. Under G.S. 163-82.1, a voter must register with a county to vote, and a person continues to be registered until that person moves out of the county. Therefore, in North Carolina the "jurisdiction" for registration is the county. The State Board instructed county boards that if a person appeared in a precinct not clearly of their residence and asked to vote there, the precinct official should guide the voter to the precinct of residence or let the voter mark a provisional ballot. In counting that ballot, the county board of elections should count it for all races the voter was eligible vote, based on registration in the county, and residence in the proper district covered by the office. On Oct. 26, 2004, one week before the election, the US Circuit Court of Appeals for the 6th Circuit ruled in an Ohio case that HAVA did not require such out-of-precinct provisional voting in federal elections, but that case did not deal with NC law and the court did not have jurisdiction over North Carolina.

James v. Bartlett. After the 2004 election, several plaintiffs, including Bill James and Bill Fletcher, the candidate who was apparently more than 8,000 votes behind in a race for Superintendent of Public Instruction, filed suit challenging NC's practice of allowing voters to vote provisional ballots outside their precinct of residence. The chief allegation was that the practice violated Article VI, Sec. 2, of the NC Constitution, which says in part, **"Removal from one precinct, ward, or election district to another in this State shall not operate to deprive any person of the right to vote in the precinct, ward, or election district from which that person has removed until 30 days after the removal."** The contention was that voters must physically be in their precinct of residence when voting.

The NC Supreme Court decided it did not need to reach the constitutional question because it said a statute, G.S. 163-55, patterned somewhat after the constitutional provision, even more specifically required voting within the precinct, and the State Board had acted without statutory authority to allow voters to vote provisional ballots outside their precinct. The court said there is no evidence of legislative intent to do that. Moreover, the Supreme Court ruled that regardless of the voter's qualification by county registration and residence within an office's district, any out-of-precinct provisional vote in a State race should be discounted and subtracted from the returns.

BILL ANALYSIS: The bill's purpose is to restate and reconfirm legislative intent that voters may cast provisional ballots outside their precinct and that those ballots should be counted for any race in which the voter was eligible by registration and residency to vote.

Section 1. Findings. The bill asserts its position through 14 findings, including the following:

- Restates legislative intent that voters be allowed to vote provisionally outside their precinct.
- Restates legislative intent that the State have one system of elections for State and federal races.
- Restates legislative intent that provisional ballots be counted, as provided in G.S. 163-182.2(a)(4), for any races the voter is eligible to vote.
- Notes that out-of-precinct provisional voters on election day were disproportionately African American.
- Notes 7 ways voters may vote outside their precinct, including such long-time practices as absentee voting.
- Notes that North Carolina has adopted, in no less a hand than that of Justice (later US Senator) Samuel J. Ervin Jr., the Innocent Voter Rule. That Rule does not permit the disenfranchisement of innocent voters because of the mistake of election officials. (The bill, of course, says election officials were correct.)

Section 2. Residence Period for State Elections. The bill amends G.S. 163-55, the earlier statute used by the Supreme Court as its chief basis for invalidating out-of-precinct provisional votes. This statute appears to aim at restating Art. VI, Sec. 2 of the Constitution, but uses more precinct-specific words. This section rewrites 163-55 to follow Art. VI, Sec. 2 more closely, saying the voter is qualified to vote in the "precinct, ward, or other election district" until 30 days after moving out of it. The bill adds language about election districts, clarifying that qualification to vote in a given race means residence in the district covered by the office. The amendment also adds to the statute the caption used in the parent constitutional provision, "Residence Period for State Elections," to indicate the statute's context.

Section 3. Unreported Moves Statute. This section changes G.S. 163-82.15(e), about how voters who have unreported moves within the county are to be guided by precinct officials to their precinct of residence. This adds language saying that instead they may vote a provisional ballot on the spot.

Section 4. The HAVA Provisional Ballot Statute. This section amends only slightly G.S. 163-166.11, the HAVA compliance statute about provisional voting, leaving in the "jurisdiction" language, but saying "as provided in G.S. 163-82.1." That statute makes the basic unit of voter registration the county.

Section 5. Counting Provisionals. This section amends G.S. 163-182.2(a)(4), which says provisional ballots shall be counted for all races the voter was eligible to vote, but not any race the voter was not eligible to vote. The amendment clarifies that "eligible" means being registered in the county and qualified to vote in a race by residing in the territory the office covers. This section also adds language reflecting the Innocent Voter Rule.

Section 6. State Board to Recommend Future Treatment of Provisional Voting. This section requires that the State Board of Elections recommend to the General Assembly by April 15, 2005, how provisional voting should be administered in the future. It should take into account the 2004 experiences of NC and other states.

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IN THE SUPREME COURT OF NORTH CAROLINA

No. 602PA04-2

FILED: 4 FEBRUARY 2005

WILLIAM JAMES, an elector, for himself and others similarly situated; WILLIAM "BILL" FLETCHER, candidate for Superintendent of Public Instruction; and TRUDY WADE, candidate for Guilford County Commissioner at large

v.

GARY O. BARTLETT, as Executive Director of the North Carolina State Board of Elections; LARRY LEAKE, ROBERT CORDLE, GENEVIEVE C. SIMS, LORRAINE G. SHINN, and CHARLES WINFREE, in their official capacity as members of the State Board of Elections; the STATE BOARD OF ELECTIONS; and ROY COOPER, in his official capacity as Attorney General of the State of North Carolina;

and

JUNE S. ATKINSON and W. BRITT COBB, Intervenors

In re Election Protest of Bill Fletcher in the November 2, 2004, General Election for Superintendent of Public Instruction

In re Election Protest of Dr. Trudy Wade in the November 2, 2004, General Election for Guilford County Commissioner at large

On discretionary review pursuant to N.C.G.S. § 7A-31, prior to a determination by the Court of Appeals, of orders entered on 17 December 2004 by Judge Henry W. Hight, Jr. in Superior Court, Wake County. Heard in the Supreme Court 18 January 2005.

Tharrington Smith, L.L.P., by Michael Crowell, and Hunter, Higgins, Miles, Elam and Benjamin, P.L.L.C., by Robert N. Hunter, Jr., for plaintiff-appellants and for petitioner- appellants Bill Fletcher and Trudy Wade.

Roy Cooper, Attorney General, by Christopher G. Browning, Jr., Solicitor General, and Susan K. Nichols and Alexander McC. Peters, Special Deputy Attorneys General, for defendant-appellees.

Wallace, Nordan & Sarda, L.L.P., by John R. Wallace and Joseph A. Newsome, for intervenor_defendant-appellees and for respondent-appellees June S. Atkinson and John Parks.

Anita S. Earls for Rodney J. Sumler, Aljihad Shabazz, Democracy North Carolina, League of Women Voters of North Carolina, North Carolina Fair Share, Southeastern ChurchAction for Safe and Just Communities, and Winston-Salem Voting Rights Coalition, amici curiae.

Marshall Hurley, PLLC, by Marshall Hurley, and Respess & Jud, by W. Wallace Respess, Jr., for Steven W. Troxler, amicus curiae.

WAINWRIGHT, Justice.

This case involves election disputes between plaintiff Bill Fletcher and defendant-intervenor June Atkinson, candidates for North Carolina Superintendent of Public Instruction, and plaintiff Trudy Wade and respondent John Parks, candidates for Guilford County Commissioner at large. (See footnote 1)

The overriding issue that has been thrust upon this Court in the present case, and the concern of this Court, is *not* the ultimate outcome of the two elections involved. Rather, the sole issue and concern for this Court in this matter is whether these two elections were conducted in accord with the will of the people of North Carolina, as expressed by them in their Constitution and in their statutes as enacted by their representatives.

The instant case involves three separate election challenges (See footnote 2) which revolve around one substantive central issue: whether a provisional ballot cast on election day at a precinct other than the voter's correct precinct of residence may be lawfully counted in final election tallies. (See footnote 3) Additionally, we address the following procedural issues raised by defendants and defendant-intervenors: (1) whether this Court has subject matter jurisdiction over Fletcher's election protest and (2) whether plaintiffs filed their claims in a timely manner.

Subject Matter Jurisdiction

We first address defendant-intervenor Atkinson and respondent Parks' contention that subject matter jurisdiction for Fletcher's election protest lies exclusively with the General Assembly because Article VI, Section 5 of the North Carolina Constitution gives the General Assembly exclusive jurisdiction to decide "contested election[s]" for offices established by Article III of the Constitution, which includes the office of Superintendent of Public Instruction. (See footnote 4)

Article VI, Section 5 of the North Carolina Constitution mandates that "[a] contested election for any office established by Article III of this Constitution shall be determined by joint ballot of both houses of the General Assembly in the manner prescribed by law." N.C. Const. art. VI, § 5. The phrase "contested election" is undefined in our Constitution and in our case law. Article VI, Section 5 specifically vests the General Assembly with authority to determine "contested election[s]" only "*in the manner prescribed by law*." *Id.* (emphasis added).

The General Statutes describe only one situation that requires the General Assembly to determine an election dispute "by joint ballot of both houses of the General Assembly." *Id.* Section 147-4 provides that when two or more candidates for an Article III office receive the exact same number of votes, "one of them shall be chosen by joint ballot of both houses of theGeneral Assembly." N.C.G.S. § 147-4 (2003). Because the instant case does not present a numerical tie, section 147-4 is inapplicable to this case.

The General Assembly has enacted a comprehensive statutory scheme to resolve "election protests" filed in any state or national election. *See id.* §§ 163-182.9 to 182.15 (2003). Under this statutory scheme, election protests may be filed with the County Board of Elections by any registered voter or candidate in the election according to the timetable set out in N.C.G.S. § 163-182.9. If the County Board determines that there is probable cause to believe that "a violation of election law or irregularity or misconduct has occurred," the County Board must conduct a formal evidentiary hearing and adjudicate the dispute in a quasi-judicial capacity. *Id.* § 163-182.10. After the County Board enters its final order, the party who filed the protest, or any candidate adversely affected by the County Board's decision, may appeal to the State Board of Elections. *Id.* § 163-182.11. An "aggrieved party" may appeal the State

Board of Election's final decision to Wake County Superior Court for judicial review. *Id.* § 163-182.14; *see also id.* § 163-182.15(b)(2) (which governs election protests and clearly contemplates appellate review of the Wake County Superior Court decision by providing that when the decision of the State Board has been appealed to Wake County Superior Court, and that court has stayed certification of the election, the certificate shall be issued five days after the entry of the court's final order, "unless that court *or an appellate court* orders otherwise" (emphasis added)).

More importantly, our election statutes, including N.C.G.S. § 163-182.14, must comport with the scope of the judicial powerestablished by the people of North Carolina in Article IV of the State Constitution. The North Carolina Constitution vests the Supreme Court with "jurisdiction to review upon appeal *any* decision of the courts below, upon *any* matter of law or legal inference." N.C. Const. art. IV, § 12 (emphasis added). N.C.G.S. § 163-182.14, which vests the Wake County Superior Court with jurisdiction to entertain appeals from rulings of the State Board of Elections, must be construed consistently, if at all possible, with this constitutional provision. *See Mitchell v. N.C. Indus. Dev. Fin. Auth.*, 273 N.C. 137, 143, 159 S.E.2d 745, 750 (1968) (stating that "all doubts" must be resolved in favor of the constitutionality of a statute). Because Article IV, Section 12 of our state constitution grants this Court authority to exercise appellate review of "*any* decision of the courts below," the Supreme Court possesses jurisdiction to review orders of the Wake County Superior Court issued in election protests. Accordingly, Atkinson and Parks' argument that this Court does not have subject matter jurisdiction is without merit. Plaintiffs' appeal from the trial court orders in Fletcher's election protest and declaratory judgment action is properly before this Court.

Timeliness

Defendants contend, along with defendant-intervenor Atkinson and respondent Parks, that plaintiffs' failure to challenge the counting of out-of-precinct provisional ballots before the 2 November 2004 election renders plaintiffs' action untimely and precludes this Court from determining whether the State Board erred by counting those ballots. Defendants allege that plaintiffs knew or should have known the State Board would countout-of-precinct provisional ballots, but nonetheless chose to await the outcome of the election before challenging the results. The facts do not support defendants' allegations.

The 2004 election cycle was the first time in North Carolina history that State election officials counted out-of-precinct provisional ballots. Before the 2004 general election, plaintiff James wrote the State Board of Elections and specifically asked whether the Board planned to count such ballots. The Board's general counsel responded that "North Carolina law is clear on this issue. We have and will continue to enforce and administer the provisions as to provisional voting as set out in North Carolina law." The response of the Board's general counsel failed to indicate that the State Board of Elections would count out-of-precinct provisional ballots. This response, coupled with the absence of any clear statutory or regulatory directive that such action would be taken, failed to provide plaintiffs with adequate notice that election officials would count the 11,310 ballots now at issue. Plaintiffs' action was timely filed.

In-Precinct Voting Requirement

We next turn to the substantive issue presented in the present case: whether, in the November 2004 general election, the Board of Elections properly counted provisional ballots cast on election day at precincts in which voters did not reside.

At the outset, we note that the arguments presented within the parties' briefs are primarily devoted to the constitutional issue of whether the State Board's counting of out-of-precinct provisional ballots violated Article VI, Section 2 of the North Carolina Constitution. However, appellate courts must "avoid constitutional questions, even if properly presented, where acase may be resolved on other grounds." *Anderson v. Assimos*, 356 N.C. 415, 416, 572 S.E.2d 101, 102 (2002); *see also Union Carbide Corp. v. Davis*, 253 N.C. 324, 327, 116 S.E.2d 792, 794 (1960) ("Courts must pass on constitutional questions when, but only when, they are squarely presented and necessary to the disposition of a matter then pending and at issue."); *State v. Blackwell*, 246 N.C. 642, 644, 99 S.E.2d 867, 869 (1957) ("[A] constitutional question will not be passed on even when properly presented if there is also present some

other ground upon which the case may be decided."); *State v. Muse*, 219 N.C. 226, 227, 13 S.E.2d 229, 229 (1941) (an appellate court will not decide a constitutional question "unless it is properly presented, and will not decide such a question even then when the appeal may be properly determined on a question of less moment."). Applying this longstanding principle, we decline to reach plaintiffs' constitutional arguments, as the present case may be resolved on purely statutory grounds.

Section 163-55 of the North Carolina General Statutes sets forth the general rule that voters must cast ballots in their precincts of residence. This section, titled "Qualifications to vote; exclusion from electoral franchise," provides, in pertinent part:

> Every person born in the United States, and every person who has been naturalized, and who shall have *resided* in the State of North Carolina and *in the precinct* in which he offers to register and vote for 30 days next preceding the ensuing election, shall, if otherwise qualified as prescribed in this Chapter, be *qualified to register and vote in the precinct in which he resides*: Provided, that removal from *one precinct* to another in this State shall not operate to deprive any person of the *right to vote in the precinct* from which he has removed until 30 days after his removal.

N.C.G.S. § 163-55 (2003) (emphasis added). The plain language of the statute clearly and unambiguously states that a voter is "qualified to register *and vote in the precinct in which he resides*." *Id.* (emphasis added). Furthermore, N.C.G.S. § 163-55 refers three separate times to "*the* precinct" and one additional time to "one precinct." Had the General Assembly intended that each voter be permitted to cast a ballot at his precinct of choice, this statute would surely have employed the phrase "*any* precinct" or "*a* precinct." "Where the language of a statute is clear and unambiguous, there is no room for judicial construction and the courts must construe the statute using its plain meaning." *Burgess v. Your House of Raleigh, Inc.*, 326 N.C. 205, 209, 388 S.E.2d 134, 136 (1990). The plain meaning of section 163-55 is that voters must cast ballots on election day in their precincts of residence. (See footnote 5)

The precinct voting system is woven throughout the fabric of our election laws. *See, e.g.*, N.C.G.S. § 163-128 (2003) (stating that counties shall be divided into precincts for the purpose of voting); N.C.G.S. § 163-82.15 (2003) (requiring that a voter report a move to a new precinct and vote in that precinct); N.C.G.S. § 163-85(c)(3) (2003) (allowing that any voter may be challenged on the basis that he does not live in the precinct where he attempts to vote); N.C.G.S. § 163-87 (2003) (providing that on the day of a primary or election, at the time a registered voter offers to vote, any other registered voter of that precinct may challenge); N.C.G.S. § 163-88 (2003) (requiringthat a challenged voter prove his continued residency in the precinct and that the challenge shall be heard by the chief judge and judges of election of the precinct).

The conclusion that a provisional ballot must be cast in a voter's precinct of residence is supported by other regulatory and statutory provisions concerning the use of provisional ballots. In 2003, the General Assembly ratified N.C.G.S. § 163- 166.11, which addresses voters who appear at a precinct polling place on election day but are not listed on the registration records for that precinct. Pursuant to section 163-166.11, such voters may cast a provisional ballot at the precinct and later have their ballots counted if it is determined that the voter was eligible to vote. Section 163-166.11 was created in response to Congress' passage of the Help America Vote Act (HAVA) of 2002, 42 U.S.C. §§ 15481-15485 (2002), which mandated that such provisional ballots be made available for federal elections beginning in January 2004. Act of June 11, 2003, ch. 226, sec. 1, 2003 N.C. Sess. Laws 341, 353-54. HAVA, which does not apply to state and local elections, was initiated in the wake of allegations of irregularity and fraud in the 2000 presidential election. 42 U.S.C. § 15482(a) (2004) (stating that HAVA applies only in "election[s] for Federal office"). In our review, we have found no indication that Congress' intent in passing HAVA, or our state legislature's intent in passing N.C.G.S. § 163- 166.11, was to enable voters to cast valid ballots outside their precincts of residence when such a vote would not otherwise be supported by state law. Additionally, the precise circumstances under which provisional ballots may be cast are set out in Subchapter 10B of Title 8 of the North Carolina Administrative Code. The pertinentcode section provides that a

> person is eligible to vote an official provisional ballot *if the person resides in the precinct* and either:

(1) is a registered voter in the county and has moved into the precinct 30 days or more prior to the election and has not reported the change to the board of elections; or

(2) claims to have applied for voter registration in the county but there is no record of the person's name on the registration records; or

(3) was removed from the list, but the person maintains continuous eligibility within the county; or

(4) disputes the voting districts (and ballots) to which the person has been assigned.

8 NCAC 10B .0103(d) (Supp. 2004) (emphasis added). Subchapter 10B further provides that if a voter does not appear on the list of registered voters for that precinct "and the responsible judge of election learns from the person that the person resides in a different precinct, the responsible judge *shall provide the person with adequate information in order to direct the person to the proper voting place*." *Id.* 10B .0103(e) (Supp. 2004) (emphasis added).

Thus, according to the State Board of Elections' own rules, a voter is "eligible" to cast an "official provisional ballot" only if he *resides in the precinct* and is absent from the registration records because those records are incomplete or inaccurate. Also, under the Board's own regulations, when election officials are aware that a voter resides outside the precinct where he has presented himself to vote, those officials must direct the voter to his "proper voting place." "The procedural rules of an administrative agency 'are binding upon the agency which enacts them as well as upon the public.'" *Humble Oil & Ref. Co. v. Bd. of Aldermen*, 284 N.C. 458, 467, 202 S.E.2d 129, 135 (1974) (citations omitted).

These administrative regulations, as issued by the State Board of Elections pursuant to its rulemaking authority under N.C.G.S. § 163-22, are consistent with the statutory scheme set forth in N.C.G.S. § 163-82.15, which details the procedures election officials must follow when voters dispute registration records or present themselves at an incorrect precinct because of unreported moves prior to an election. Subsection 163-82.15(e), titled "Unreported Move to Another Precinct Within the County," concerns the procedures election officials must follow when a voter has moved to another precinct more than thirty days before the election but has failed to notify the county board of elections of that move as required by N.C.G.S. § 163-82.15(a). Under section 163-82.15(e), the precise procedure to be followed depends in part on whether the voter presents himself to vote in the correct precinct, *i.e.*, his current precinct of residency, or the incorrect precinct, *i.e.*, the precinct of his former residence. When the voter presents himself at the "new precinct" following an unreported move within the same county, section 163- 82.15 (e) provides that the county board "shall permit" the voter to cast a provisional ballot at that precinct upon written affirmation of the new address. If the voter appears at the "old precinct," however, section 163-82.15(e) mandates that "precinct officials there *shall* send the registrant to the new precinct, or, if the registrant prefers, to [a central location in the county to be determined by the county board]." N.C.G.S. § 163- 82.15(e) (2003) (emphasis added). Like 8 NCAC 10B .0103(e), section 163-82.15(e) does *not* permit voters to cast provisionalballots outside their precincts of residence. Therefore, the State Board of Elections improperly counted provisional ballots cast outside voters' precincts of residence on election day in the 2004 general election.

It is indeed unfortunate that the statutorily unauthorized actions of the State Board of Elections denied thousands of citizens the right to vote on election day. It is well settled in this State that "the right to vote on equal terms is a fundamental right." *Northampton Cty. Drainage Dist. No. One v. Bailey*, 326 N.C. 742, 746, 392 S.E.2d 352, 355 (1990); *State ex rel. Martin v. Preston*, 325 N.C. 438, 454, 385 S.E.2d 473, 481 (1989); *Texfi Indus., Inc. v. City of Fayetteville*, 301 N.C. 1, 12, 269 S.E.2d 142, 149 (1980). "But the right to vote is the right to participate in an electoral process that is necessarily structured to maintain the integrity of the democratic system." *Burdick v. Takushi*, 504 U.S. 428, 441, 119 L. Ed. 2d 245, 258 (1992). This Court is without power to rectify the Board's unilateral decision to instruct voters to cast provisional ballots in a manner not authorized by State law. To permit unlawful votes to be counted along with lawful ballots in contested elections effectively "disenfranchises" those voters who cast legal ballots, at least where the counting of unlawful votes determines an election's outcome. Mindful of these concerns, and attendant to our unique role as North Carolina's court of last

resort, we cannot allow our reluctance to order the discounting of ballots to cause us to shirk our responsibility to "say what the law is." *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177, 2 L.E.d 60, 72 (1803). Additionally, we note that our State's statutory residency requirement provides protection against election fraud and permits election officials to conduct elections in a timely and efficient manner. *See People ex rel. Van Bokkelen v. Canaday*, 73 N.C. 198, 223 (1875) (holding that "every voter must register in the ward and in the precinct where he lives, and in no other, and must vote where he registers, the object being to prevent fraud by 'repeating.'"); 25 Am. Jur. 2d *Elections* § 3 (2004). The General Assembly recognized in ratifying N.C.G.S. § 163-55 that without a precinct residency requirement, there would be a generous magnification of the potential for mischief in the form of one person voting in numerous precincts.

In North Carolina, where most voters are not required to show identification before voting, a tremendous task is already placed upon precinct officials to ensure that potential voters are legitimately eligible and properly registered to vote. *See* N.C.G.S. § 163-166.12 (requiring voters to show identification only when they have "registered to vote by mail on or after January 1, 2003, and ha[ve] not previously voted in an election that includes a ballot item for federal office in North Carolina"). If voters could simply appear at any precinct to cast their ballot, there would be no way under the present system to conduct elections without overwhelming delays, mass confusion, and the potential for fraud that robs the validity and integrity of our elections process. Indeed, as the U.S. Court of Appeals for the Sixth Circuit has stated:

> The advantages of the precinct system are significant and numerous: it caps the number of voters attempting to vote in the same place on election day; it allows each precinct ballot to list all of the votes a citizen may cast for all pertinent federal, state,and local elections, referenda, initiatives, and levies; it allows each precinct ballot to list only those votes a citizen may cast, making ballots less confusing; it makes it easier for election officials to monitor votes and prevent election fraud; and it generally puts polling places in closer proximity to voter residences.

Sandusky Cty. Democratic Party v. Blackwell, 387 F.3d 565, 569 (6th Cir. 2004) (per curiam).

We conclude that it is but a perfunctory requirement that voters identify their proper precinct and appear within that precinct on election day to cast their ballots. Voters may identify their precinct via mail, telephone, Internet, or in person at their local boards of elections. Election officials are expected to work with voters to help them locate their correct precinct. Indeed, when a voter appears at the wrong polling place, election officials have a statutory duty to assist the voter in finding the correct precinct in which to vote. N.C.G.S. § 163-82.15(e).

In sum, North Carolina law does not permit out-of-precinct provisional ballots to be counted in state and local elections. Accordingly, we reverse the orders of the superior court and remand this case to that court for further proceedings consistent with this opinion.

REVERSED AND REMANDED.

Justices Parker and Edmunds did not participate in the consideration or decision of this case.

Footnote: 1 We note that Fletcher, like Wade, is a plaintiff in the declaratory judgment action brought by William James and a petitioner in his protest. For convenience, we refer to Fletcher and Wade only as plaintiffs. Additionally, we note that Atkinson is both a defendant-intervenor in the declaratory judgment action and a respondent in Fletcher's election protest. For convenience, we refer to Atkinson only as defendant-intervenor.

Footnote: 2 The three challenges are as follows: (1) An election protest filed with the North Carolina State Board of Elections by Bill Fletcher, candidate for the office of North Carolina Superintendent of Public Instruction. His opponent, June Atkinson, is a party to this case. (2) An election protest filed with the North Carolina State Board of Elections by Trudy Wade, candidate for Guilford County Commissioner at large. Heropponent, John Parks, is a party to this case. (3) A declaratory judgment action filed in Wake County Superior Court by Fletcher, Wade, and William James, a Mecklenburg

County voter. Plaintiffs in this case requested the trial court to determine the constitutionality of out-of-precinct provisional voting. Additionally, plaintiffs unsuccessfully sought a temporary restraining order and injunction barring the State Board from counting out-of-precinct provisional votes. Defendants in this case are the North Carolina State Board of Elections, Gary O. Bartlett, Executive Director of the State Board, members of the State Board, and the Attorney General. The trial court allowed motions to intervene in this matter filed by Atkinson and Britt Cobb, candidate for North Carolina Agriculture Commissioner. However, the trial court did not rule on a motion to intervene filed by Steve Troxler, also a candidate for North Carolina Agriculture Commissioner.

Fletcher and Wade appealed their election protests to Superior Court. These appeals were consolidated with the declaratory judgment action and assigned to Wake County Superior Court Judge Henry W. Hight, Jr. Defendants and defendant- intervenors filed motions to dismiss the declaratory judgment action pursuant to N.C.G.S. § 1A-1, Rule 12(b)(6) (2003). The trial court treated the motion to dismiss as a motion for summary judgment and entered an order granting summary judgment in favor of defendants and defendant-intervenors. Additionally, the trial court entered an order affirming the State Board's denial of Fletcher's election protest and entered an order affirming the denial of Wade's election protest. Plaintiffs have appealed these orders to this Court.

Footnote: 3 According to plaintiffs, approximately 75,000 provisional ballots were cast during the 2004 general election. Defendants maintain that 44,843 persons voted provisionally in the race for Superintendent of Public Instruction. According to defendants, only 11,310 of these persons who voted provisionally "are categorized as having voted in the 'incorrect precinct' in the final SEIMS report" and thus constitute the provisional ballots at issue in the Superintendent of Public Instruction election dispute. Plaintiffs contend 441 out-of-precinct votes were counted in the Guilford County Commissioner at large race, and thus there are 441 disputed votes in that race.

Footnote: 4 We note that "the question of subject matter jurisdiction may be raised at any time, even in the Supreme Court." Lemmerman v. A.T. Williams Oil Co., 318 N.C. 577, 580, 350 S.E.2d 83, 85 (1986); see also N.C.G.S. § 1A-1, Rule 12(h)(3) (2003). Therefore, defendant-intervenor and respondent properly raised this defense on appeal.

Footnote: 5 Absentee voting (N.C.G.S. §§ 163-227.2, -231, -248 (2003)) and election day voting at specially created "[o]ut-of-precinct" voting places (N.C.G.S. § 163-130.1 (2003)) are not at issue in the present case.

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Shannah Smith	UNC Center for Civil Rights
Anita Earls	UNC Center for Civil Rights CB #3380, Chapel Hill, NC 27599
Alexander Peters	AGO
Susan Nicholls	AGO
Johnnie McLean	SBE
Linda C. Brust	Cabarrus Co. Bd. of Election
ANDREW HOLTON	Sen. Garrou
Betty Elberbee	LEAGUE OF WOMEN VOTERS OF NC

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE — 2-17-05

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
Chris Heyntz	NC Center for Voter Education
Tom Coley	CWA
J Donaldson	
Alan Briggs	
Cam Cowell	
Tripp Melton	intern Sen. Stevens
John Mabry	Gov office
William MacRae	Poll Worker Cabarrus County
Sarah MacRae	Housewife
Pat Young	ACLU/FRLTC
GERRY COHEN	Bill Drafting

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE — 2-17-05

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
Gordon Smith	340 F Lassiter Falls Civ Rd.
Hilary Arthur	NCASA
James Forte	OSA
Leslie Monnett	OSA
B Turner	KofA
P Stock	NCBA
George Lawrence	NCATC
Avram Friedman	Sylva, NC

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

REVISED NOTICE 02-22-05

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

DAY	DATE	TIME	ROOM
Tuesday	February 22, 2005	10:00 AM	1027 LB

SB 125 WILL NOT BE ON THE AGENDA

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 41	Criminal Records Checks/LTC Changes.	Senator Swindell IV
SB 125	Amend Sex Offender Registration.	Senator Garrou

Senator Daniel G. Clodfelter, Chair

Judiciary 1 Committee

February 22, 2005

Minutes

Senator Dan Clodfelter, Chair called the meeting to order at 10:10 a.m. with eleven members present. He introduced Pages Jazmine Gantz from Raleigh, NC and Breanca Leach from Wake Forest, NC.

SB-125 (Amend Sex Offender Registration) was not heard.

SB-41 (Criminal Records Checks/LTC Changes) Committee Substitute was introduced by Senator Clodfelter. Staff attorney, Walker Reagan spoke on the background of the bill prior to discussing the Committee Substitute. Senator Phillip Berger moved for adoption of the Committee Substitute. All members voted yes. Motion carried. Bill Sponsor, Senator A.B. Swindell spoke on the bill explaining the Proposed Committee Substitute amends the law requiring criminal history background checks for employees of long-term care facilities to make clarifying changes to permit the FBI to share national criminal history information with the State for these purposes by restricting access to the information to the State agency and not permitting distribution of the information to private employers. See attached Bill Summary for further information. Mr. Reagan spoke more on the changes. Senator Phillip Berger had a question about funding for background checks. Mr. Jack Shepherd, Assistant Director from the Department of Health and Human Services, answered Senator Berger's question. Senator Andrew Brock, Ham Horton and Vernon Malone had questions. Mr. Shepherd and Mr. Reagan answered the questions. Senator Jerry Tillman moved for a Favorable Report for the Committee Substitute. Senator Clodfelter stated that he would hold the motion until the bill had been further discussed. Senator Horton moved to amend the bill on Page 1, Line 12 changing the word "apply" to "applies". Senator Clodfelter asked Senator Tillman if he would agree to a motion to amend the word. He replied in the affirmative. All members voted yes on the Amendment. Motion carried. See attached Amendment. Senator Tillman's motion for a Favorable Report was again brought before the committee. Senator Clodfelter called for a vote on the Committee Substitute as amended. All members voted yes. Motion carried.

Being no further business the meeting adjourned at 10:25 a.m.

Senator Dan Clodfelter, Chair

Wanda Joyner, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Daniel G. Clodfelter, Chair

Wednesday, February 23, 2005

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

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

S.B. **41** Criminal Records Checks/LTC Changes.

Draft Number:	PCS 35048
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comments:

FINAL Edition

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 41*
PROPOSED COMMITTEE SUBSTITUTE S41-PCS35048-RU-1

Short Title: Criminal Records Checks/LTC Changes. (Public)

Sponsors:

Referred to:

February 3, 2005

A BILL TO BE ENTITLED

AN ACT TO MAKE CHANGES TO THE PROCEDURE FOR CONDUCTING NATIONAL CRIMINAL HISTORY RECORD CHECKS FOR LONG-TERM CARE FACILITIES TO CONFORM WITH FEDERAL REQUIREMENTS, AS RECOMMENDED BY THE NORTH CAROLINA STUDY COMMISSION ON AGING.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 122C-80(a) reads as rewritten:

"(a) Definition. – As used in this section, ~~"area authority" means an area mental health, developmental disabilities, and substance abuse services area authority, including a contract agency of an area authority that is subject to the provisions of Article 4 of this Chapter.~~the term "providers" applies to area authority/county programs, and providers of mental health, developmental disability, and substance abuse services that are licensable under Article 2 of this Chapter."

SECTION 2. G.S. 122C-80(b) reads as rewritten:

"(b) Requirement. – An offer of employment by ~~an area authority~~ a provider licensed under this Chapter to an applicant to fill a position that does not require the applicant to have an occupational license is conditioned on consent to a State and national criminal history record check of the applicant. If the applicant has been a resident of this State for less than five years, then the offer of employment is conditioned on consent to a State and national criminal history record check of the applicant. The national criminal history record check shall include a check of the applicant's fingerprints. If the applicant has been a resident of this State for five years or more, then the offer is conditioned on consent to a State criminal history record check of the applicant. ~~An area authority~~A provider shall not employ an applicant who refuses to consent to a criminal history record check required by this section. Except as otherwise provided in this subsection, within five business days of making the conditional offer of employment, ~~an area authority~~a provider shall submit a request to the Department of

Justice under G.S. 114-19.10 to conduct a criminal history record check required by this section. Notwithstanding G.S. 114-19.10, the Department of Justice shall return the results of national criminal history record checks for employment positions not covered by Public Law 105-277 to the Department of Health and Human Services, ~~Division of Facility Services.~~ Criminal Records Check Unit. Within five business days of receipt of the national criminal history of the person, the Department of Health and Human Services, ~~Division of Facility Services,~~Criminal Records Check Unit, shall ~~provide to the area authority the results of the national criminal history check.~~notify the provider as to whether the information received may affect the employability of the applicant. In no case shall the results of the national criminal history record check be shared with the provider. ~~Area authorities~~Providers shall make available upon request verification that a criminal history check has been completed on any staff covered by this section. A county that has adopted an appropriate local ordinance and has access to the Division of Criminal Information data bank may conduct on behalf of ~~an area authority~~a provider a State criminal history record check required by this section without the ~~area authority~~provider having to submit a request to the Department of Justice. In such a case, the county shall commence with the State criminal history record check required by this section within five business days of the conditional offer of employment by the ~~area authority.~~provider. All criminal history information received by the ~~area authority~~provider is confidential and may not be disclosed, except to the applicant as provided in subsection (c) of this section."

SECTION 3. G.S. 131D-40(a) reads as rewritten:

"(a) Requirement; Adult Care Home. – An offer of employment by an adult care home licensed under this Chapter to an applicant to fill a position that does not require the applicant to have an occupational license is conditioned on consent to a criminal history record check of the applicant. If the applicant has been a resident of this State for less than five years, then the offer of employment is conditioned on consent to a State and national criminal history record check of the applicant. The national criminal history record check shall include a check of the applicant's fingerprints. If the applicant has been a resident of this State for five years or more, then the offer is conditioned on consent to a State criminal history record check of the applicant. An adult care home shall not employ an applicant who refuses to consent to a criminal history record check required by this section. Within five business days of making the conditional offer of employment, an adult care home shall submit a request to the Department of Justice under G.S. 114-19.10 to conduct a State or national criminal history record check required by this section, or shall submit a request to a private entity to conduct a State criminal history record check required by this section. Notwithstanding G.S. 114-19.10, the Department of Justice shall return the results of national criminal history record checks for employment positions not covered by Public Law 105-277 to the Department of Health and Human Services, ~~Division of Facility Services.~~Criminal Records Check Unit. Within five business days of receipt of the national criminal history of the person, the Department of Health and Human Services, ~~Division of Facility Services,~~ Criminal Records Check Unit, shall ~~provide to~~ notify the adult care home ~~the results of the national criminal history check.~~ as to whether the information received may affect the

employability of the applicant. In no case shall the results of the national criminal history record check be shared with the adult care home. Adult care homes shall make available upon request verification that a criminal history check has been completed on any staff covered by this section. All criminal history information received by the home is confidential and may not be disclosed, except to the applicant as provided in subsection (b) of this section."

SECTION 4. G.S. 131D-40(a1) reads as rewritten:

"(a1) Requirement; Contract Agency of Adult Care Home. – An offer of employment by a contract agency of an adult care home licensed under this Chapter to an applicant to fill a position that does not require the applicant to have an occupational license is conditioned upon consent to a criminal history record check of the applicant. If the applicant has been a resident of this State for less than five years, then the offer of employment is conditioned on consent to a State and national criminal history record check of the applicant. The national criminal history record check shall include a check of the applicant's fingerprints. If the applicant has been a resident of this State for five years or more, then the offer is conditioned on consent to a State criminal history record check of the applicant. A contract agency of an adult care home shall not employ an applicant who refuses to consent to a criminal history record check required by this section. Within five business days of making the conditional offer of employment, a contract agency of an adult care home shall submit a request to the Department of Justice under G.S. 114-19.10 to conduct a State or national criminal history record check required by this section, or shall submit a request to a private entity to conduct a State criminal history record check required by this section. Notwithstanding G.S. 114-19.10, the Department of Justice shall return the results of national criminal history record checks for employment positions not covered by Public Law 105-277 to the Department of Health and Human Services, ~~Division of Facility Services.~~Criminal Records Check Unit. Within five business days of receipt of the national criminal history of the person, the Department of Health and Human Services, ~~Division of Facility Services,~~ Criminal Records Check Unit, shall ~~provide to~~ notify the contract agency of the adult care home ~~the results of the national criminal history check.~~ as to whether the information received may affect the employability of the applicant. In no case shall the results of the national criminal history record check be shared with the contract agency of the adult care home. Contract agencies of adult care homes shall make available upon request verification that a criminal history check has been completed on any staff covered by this section. All criminal history information received by the contract agency is confidential and may not be disclosed, except to the applicant as provided by subsection (b) of this section."

SECTION 5. G.S. 131E-265(a) reads as rewritten:

"(a) Requirement; Nursing Home or Home Care Agency. – An offer of employment by a nursing home licensed under this Chapter to an applicant to fill a position that does not require the applicant to have an occupational license is conditioned on consent to a criminal history record check of the applicant. If the applicant has been a resident of this State for less than five years, then the offer of employment is conditioned on consent to a State and national criminal history record

check of the applicant. The national criminal history record check shall include a check of the applicant's fingerprints. If the applicant has been a resident of this State for five years or more, then the offer is conditioned on consent to a State criminal history record check of the applicant. An offer of employment by a home care agency licensed under this Chapter to an applicant to fill a position that requires entering the patient's home is conditioned on consent to a criminal history record check of the applicant. In addition, employment status change of a current employee of a home care agency licensed under this Chapter from a position that does not require entering the patient's home to a position that requires entering the patient's home shall be conditioned on consent to a criminal history record check of that current employee. If the applicant for employment or if the current employee who is changing employment status has been a resident of this State for less than five years, then the offer of employment or change in employment status is conditioned on consent to a State and national criminal history record check. The national criminal history record check shall include a check of the applicant's or current employee's fingerprints. If the applicant or current employee has been a resident of this State for five years or more, then the offer is conditioned on consent to a State criminal history record check of the applicant or current employee applying for a change in employment status. A nursing home or a home care agency shall not employ an applicant who refuses to consent to a criminal history record check required by this section. In addition, a home care agency shall not change a current employee's employment status from a position that does not require entering the patient's home to a position that requires entering the patient's home who refuses to consent to a criminal history record check required by this section. Within five business days of making the conditional offer of employment, a nursing home or home care agency shall submit a request to the Department of Justice under G.S. 114.19.10 to conduct a State or national criminal history record check required by this section, or shall submit a request to a private entity to conduct a State criminal history record check required by this section. Notwithstanding G.S. 114-19.10, the Department of Justice shall return the results of national criminal history record checks for employment positions not covered by Public Law 105-277 to the Department of Health and Human Services, ~~Division of Facility Services.~~Criminal Records Check Unit. Within five business days of receipt of the national criminal history of the person, the Department of Health and Human Services, ~~Division of Facility Services,~~Criminal Records Check Unit, shall ~~provide to~~ notify the nursing home or home care agency ~~the results of the national criminal history check.~~as to whether the information received may affect the employability of the applicant. In no case shall the results of the national criminal history record check be shared with the nursing home or home care agency. Nursing homes and home care agencies shall make available upon request verification that a criminal history check has been completed on any staff covered by this section. All criminal history information received by the home or agency is confidential and may not be disclosed, except to the applicant as provided in subsection (b) of this section."

SECTION 6. G.S. 131E-265(a1) reads as rewritten:

"(a1) Requirement; Contract Agency of Nursing Home or Home Care Agency. – An offer of employment by a contract agency of a nursing home or home care agency

licensed under this Chapter to an applicant to fill a position that does not require the applicant to have an occupational license is conditioned upon consent to a criminal history record check of the applicant. If the applicant has been a resident of this State for less than five years, then the offer of employment is conditioned on consent to a State and national criminal history record check of the applicant. The national criminal history record check shall include a check of the applicant's fingerprints. If the applicant has been a resident of this State for five years or more, then the offer is conditioned on consent to a State criminal history record check of the applicant. A contract agency of a nursing home or home care agency shall not employ an applicant who refuses to consent to a criminal history record check required by this section. Within five business days of making the conditional offer of employment, a contract agency of a nursing home or home care agency shall submit a request to the Department of Justice under G.S. 114-19.10 to conduct a State or national criminal history record check required by this section, or shall submit a request to a private entity to conduct a State criminal history record check required by this section. Notwithstanding G.S. 114-19.10, the Department of Justice shall return the results of national criminal history record checks for employment positions not covered by Public Law 105-277 to the Department of Health and Human Services, ~~Division of Facility Services.~~ Criminal Records Check Unit. Within five business days of receipt of the national criminal history of the person, the Department of Health and Human Services, ~~Division of Facility Services,~~ Criminal Records Check Unit, shall ~~provide to~~ notify the contract agency of the nursing home or home care agency ~~the results of the national criminal history check.~~ as to whether the information received may affect the employability of the applicant. In no case shall the results of the national criminal history record check be shared with the contract agency of the nursing home or home care agency. Contract agencies of nursing homes and home care agencies shall make available upon request verification that a criminal history check has been completed on any staff covered by this section. All criminal history information received by the contract agency is confidential and may not be disclosed, except to the applicant as provided by subsection (b) of this section."

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

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 2-22-05

S. B. No. 41 Amendment No. #1
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE PCS-S41-CSRV-1

Rep.)
(Sen.) HORTON

moves to amend the bill on page 1, line 12

( ) WHICH CHANGES THE TITLE

by DELETING THE WORD "PROVIDERS" APPLY" AND SUBSTITUTING THE WORDS "THE TERM "PROVIDERS" APPLIES".

SIGNED Horton

ADOPTED X FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

SENATE BILL 41: Criminal Record Checks/Long-Term Care Changes.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Senator Swindell
Date:	February 17, 2005	**Summary by:**	O. Walker Reagan, Committee Co-Counsel
Version:	S41-CSRU-1		

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 41 amends the law requiring criminal history background checks for employees of long-term care facilities to make clarifying changes to permit the FBI to share national criminal history information with the State for these purposes by restricting access to the information to the State agency and not permitting distribution of the information to private employers.***

CURRENT LAW: Current law, effective January 1, 2005, requires long-term care facilities to have criminal history background checks performed on all persons hired to work in long-term care facilities before making offers of permanent employment. Persons who have resided in the State for five or more years need only have a State criminal history check. For persons who have resided in the State for less than five years, a national criminal history check based on fingerprints is required from the FBI. Federal law restricts access to information contained in the national criminal history database generally to governmental entities. In these situations, federal law prohibits states from disclosing information obtained from the FBI to private individuals or entities. Because current law directs the Department of Health and Human Services (DHHS) to provide long-term care facility employers with the national criminal history check contrary to federal law, the FBI has refused to provide this information to the State.

BILL ANALYSIS: Sections 2, 3, 4, 5 and 6 modify the existing law to make it clear that DHHS will only indicate to an employer whether the criminal history record has information that might affect the applicant's employability under the statute. A copy of the relevant offenses used to determine a person's suitability for employment is attached. These changes also make clear that the results of the national criminal history record check will not be shared with the employer. These statutes govern area mental health facilities, adult care homes, nursing homes and home care agencies.

BACKGROUND: The changes being proposed in the bill have been preapproved by the FBI as complying with the federal law and regulations governing the State's right to have access to the national criminal history record information.

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

Relevant Criminal Offenses as used in G.S. 122C-80(e), 131D-40(d) and 131E-265(d):

"(e) Relevant Offense. – As used in this section, "relevant offense" means a county, state, or federal criminal history of conviction or pending indictment of a crime, whether a misdemeanor or felony, that bears upon an individual's fitness to have responsibility for the safety and well-being of persons needing mental health, developmental disabilities, or substance abuse services. These 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. These 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."

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 41*

Short Title:	Criminal Records Checks/LTC Changes.	(Public)
Sponsors:	Senators Swindell, Dannelly, Allran; Albertson, Berger of Franklin, Boseman, Cowell, Dalton, Purcell, Rand, Thomas, and Tillman.	
Referred to:	Judiciary I.	

February 3, 2005

A BILL TO BE ENTITLED

AN ACT TO MAKE CHANGES TO THE PROCEDURE FOR CONDUCTING NATIONAL CRIMINAL HISTORY RECORDS CHECKS FOR LONG-TERM CARE FACILITIES TO CONFORM WITH FEDERAL REQUIREMENTS, AS RECOMMENDED BY THE NORTH CAROLINA STUDY COMMISSION ON AGING.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 122C-80(b) reads as rewritten:

"(b) Requirement. – An offer of employment by an area authority licensed under this Chapter to an applicant to fill a position that does not require the applicant to have an occupational license is conditioned on consent to a State and national criminal history record check of the applicant. If the applicant has been a resident of this State for less than five years, then the offer of employment is conditioned on consent to a State and national criminal history record check of the applicant. The national criminal history record check shall include a check of the applicant's fingerprints. If the applicant has been a resident of this State for five years or more, then the offer is conditioned on consent to a State criminal history record check of the applicant. An area authority shall not employ an applicant who refuses to consent to a criminal history record check required by this section. Except as otherwise provided in this subsection, within five business days of making the conditional offer of employment, an area authority shall submit a request to the Department of Justice under G.S. 114-19.10 to conduct a criminal history record check required by this section. Notwithstanding G.S. 114-19.10, the Department of Justice shall return the results of national criminal history record checks for employment positions not covered by Public Law 105-277 to the Department of Health and Human Services, ~~Division of Facility Services.~~ Criminal Records Check Unit. Within five business days of receipt of the national criminal history of the person, the Department of Health and Human Services, ~~Division of Facility Services,~~Criminal Records Check Unit, shall ~~provide to~~ notify the area authority ~~the results of the national~~

~~criminal history check.~~ as to whether the information received may affect the employability of the applicant. In no case shall the results of the national criminal history record check be shared with the area authority. Area authorities shall make available upon request verification that a criminal history check has been completed on any staff covered by this section. A county that has adopted an appropriate local ordinance and has access to the Division of Criminal Information data bank may conduct on behalf of an area authority a State criminal history record check required by this section without the area authority having to submit a request to the Department of Justice. In such a case, the county shall commence with the State criminal history record check required by this section within five business days of the conditional offer of employment by the area authority. All criminal history information received by the area authority is confidential and may not be disclosed, except to the applicant as provided in subsection (c) of this section."

SECTION 2. G.S. 131D-40(a) reads as rewritten:

"(a) Requirement; Adult Care Home. – An offer of employment by an adult care home licensed under this Chapter to an applicant to fill a position that does not require the applicant to have an occupational license is conditioned on consent to a criminal history record check of the applicant. If the applicant has been a resident of this State for less than five years, then the offer of employment is conditioned on consent to a State and national criminal history record check of the applicant. The national criminal history record check shall include a check of the applicant's fingerprints. If the applicant has been a resident of this State for five years or more, then the offer is conditioned on consent to a State criminal history record check of the applicant. An adult care home shall not employ an applicant who refuses to consent to a criminal history record check required by this section. Within five business days of making the conditional offer of employment, an adult care home shall submit a request to the Department of Justice under G.S. 114-19.10 to conduct a State or national criminal history record check required by this section, or shall submit a request to a private entity to conduct a State criminal history record check required by this section. Notwithstanding G.S. 114-19.10, the Department of Justice shall return the results of national criminal history record checks for employment positions not covered by Public Law 105-277 to the Department of Health and Human Services, ~~Division of Facility Services.~~Criminal Records Check Unit. Within five business days of receipt of the national criminal history of the person, the Department of Health and Human Services, ~~Division of Facility Services,~~ Criminal Records Check Unit, shall ~~provide to~~ notify the adult care home ~~the results of the national criminal history check.~~ as to whether the information received may affect the employability of the applicant. In no case shall the results of the national criminal history record check be shared with the adult care home. Adult care homes shall make available upon request verification that a criminal history check has been completed on any staff covered by this section. All criminal history information received by the home is confidential and may not be disclosed, except to the applicant as provided in subsection (b) of this section."

SECTION 3. G.S. 131D-40(a1) reads as rewritten:

"(a1) Requirement; Contract Agency of Adult Care Home. – An offer of employment by a contract agency of an adult care home licensed under this Chapter to an applicant to fill a position that does not require the applicant to have an occupational license is conditioned upon consent to a criminal history record check of the applicant. If the applicant has been a resident of this State for less than five years, then the offer of employment is conditioned on consent to a State and national criminal history record check of the applicant. The national criminal history record check shall include a check of the applicant's fingerprints. If the applicant has been a resident of this State for five years or more, then the offer is conditioned on consent to a State criminal history record check of the applicant. A contract agency of an adult care home shall not employ an applicant who refuses to consent to a criminal history record check required by this section. Within five business days of making the conditional offer of employment, a contract agency of an adult care home shall submit a request to the Department of Justice under G.S. 114-19.10 to conduct a State or national criminal history record check required by this section, or shall submit a request to a private entity to conduct a State criminal history record check required by this section. Notwithstanding G.S. 114-19.10, the Department of Justice shall return the results of national criminal history record checks for employment positions not covered by Public Law 105-277 to the Department of Health and Human Services, ~~Division of Facility Services.~~Criminal Records Check Unit. Within five business days of receipt of the national criminal history of the person, the Department of Health and Human Services, ~~Division of Facility Services,~~ Criminal Records Check Unit, shall ~~provide to~~ notify the contract agency of the adult care home ~~the results of the national criminal history check.~~ as to whether the information received may affect the employability of the applicant. In no case shall the results of the national criminal history record check be shared with the contract agency of the adult care home. Contract agencies of adult care homes shall make available upon request verification that a criminal history check has been completed on any staff covered by this section. All criminal history information received by the contract agency is confidential and may not be disclosed, except to the applicant as provided by subsection (b) of this section."

SECTION 4. G.S. 131E-265(a) reads as rewritten:

"(a) Requirement; Nursing Home or Home Care Agency. – An offer of employment by a nursing home licensed under this Chapter to an applicant to fill a position that does not require the applicant to have an occupational license is conditioned on consent to a criminal history record check of the applicant. If the applicant has been a resident of this State for less than five years, then the offer of employment is conditioned on consent to a State and national criminal history record check of the applicant. The national criminal history record check shall include a check of the applicant's fingerprints. If the applicant has been a resident of this State for five years or more, then the offer is conditioned on consent to a State criminal history record check of the applicant. An offer of employment by a home care agency licensed under this Chapter to an applicant to fill a position that requires entering the patient's home is conditioned on consent to a criminal history record check of the applicant. In addition, employment status change of a current employee of a home care agency licensed under

this Chapter from a position that does not require entering the patient's home to a position that requires entering the patient's home shall be conditioned on consent to a criminal history record check of that current employee. If the applicant for employment or if the current employee who is changing employment status has been a resident of this State for less than five years, then the offer of employment or change in employment status is conditioned on consent to a State and national criminal history record check. The national criminal history record check shall include a check of the applicant's or current employee's fingerprints. If the applicant or current employee has been a resident of this State for five years or more, then the offer is conditioned on consent to a State criminal history record check of the applicant or current employee applying for a change in employment status. A nursing home or a home care agency shall not employ an applicant who refuses to consent to a criminal history record check required by this section. In addition, a home care agency shall not change a current employee's employment status from a position that does not require entering the patient's home to a position that requires entering the patient's home who refuses to consent to a criminal history record check required by this section. Within five business days of making the conditional offer of employment, a nursing home or home care agency shall submit a request to the Department of Justice under G.S. 114.19.10 to conduct a State or national criminal history record check required by this section, or shall submit a request to a private entity to conduct a State criminal history record check required by this section. Notwithstanding G.S. 114-19.10, the Department of Justice shall return the results of national criminal history record checks for employment positions not covered by Public Law 105-277 to the Department of Health and Human Services, ~~Division of Facility Services.~~Criminal Records Check Unit. Within five business days of receipt of the national criminal history of the person, the Department of Health and Human Services, ~~Division of Facility Services,~~Criminal Records Check Unit, shall ~~provide to~~ notify the nursing home or home care agency ~~the results of the national criminal history check.~~as to whether the information received may affect the employability of the applicant. In no case shall the results of the national criminal history record check be shared with the nursing home or home care agency. Nursing homes and home care agencies shall make available upon request verification that a criminal history check has been completed on any staff covered by this section. All criminal history information received by the home or agency is confidential and may not be disclosed, except to the applicant as provided in subsection (b) of this section."

SECTION 5. G.S. 131E-265(a1) reads as rewritten:

"(a1) Requirement; Contract Agency of Nursing Home or Home Care Agency. – An offer of employment by a contract agency of a nursing home or home care agency licensed under this Chapter to an applicant to fill a position that does not require the applicant to have an occupational license is conditioned upon consent to a criminal history record check of the applicant. If the applicant has been a resident of this State for less than five years, then the offer of employment is conditioned on consent to a State and national criminal history record check of the applicant. The national criminal history record check shall include a check of the applicant's fingerprints. If the applicant has been a resident of this State for five years or more, then the offer is conditioned on

consent to a State criminal history record check of the applicant. A contract agency of a nursing home or home care agency shall not employ an applicant who refuses to consent to a criminal history record check required by this section. Within five business days of making the conditional offer of employment, a contract agency of a nursing home or home care agency shall submit a request to the Department of Justice under G.S. 114-19.10 to conduct a State or national criminal history record check required by this section, or shall submit a request to a private entity to conduct a State criminal history record check required by this section. Notwithstanding G.S. 114-19.10, the Department of Justice shall return the results of national criminal history record checks for employment positions not covered by Public Law 105-277 to the Department of Health and Human Services, ~~Division of Facility Services.~~ Criminal Records Check Unit. Within five business days of receipt of the national criminal history of the person, the Department of Health and Human Services, ~~Division of Facility Services,~~ Criminal Records Check Unit, shall ~~provide to~~ notify the contract agency of the nursing home or home care agency ~~the results of the national criminal history check.~~ as to whether the information received may affect the employability of the applicant. In no case shall the results of the national criminal history record check be shared with the contract agency of the nursing home or home care agency. Contract agencies of nursing homes and home care agencies shall make available upon request verification that a criminal history check has been completed on any staff covered by this section. All criminal history information received by the contract agency is confidential and may not be disclosed, except to the applicant as provided by subsection (b) of this section."

SECTION 6. This act is effective when it becomes law.

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE — 2-22-05

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
	Bode & Assn.
Hal M. Miller	NCAOC
Christopher Jackson	UNC School of Law
Andrew Holton	Sen. Garrou's office
Shilpa Sejpal	UNC School of Law
Kelley Shaevitz	UNC Student at Law
Peter Murphy	Visitor
Francis Murphy	Visitor
Walter Murphy	CCCU, Inc
Melissa Pack	NASW-NC
Jeremy Cooper	NCALA

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE — 2-22-05

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
Will Cannon	Visitor
Jon Treadway	visitor
Shawn Troxler	Visitor
Mary Beason	Capitol Tours
Lu Hodge	KCCA
DAVID BARNES	Poyner Spruill LLP
John Motley	Governor
Doug Heron	NC BAR ASSOC
Michelle Frazier	NC Bar Assoc
Stephanie Ceccato	Visitor
Adrienne Allison	visitor

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE
Name of Committee

2-22-05
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
Bob Hedrick	NCCSPC
Robin D. Young	FRLTC/ACLU
Rogan Bone	Bone + Assoc.
Lou Wilson	NCAATCF
Barbara Conklin	BSCGR
Stacy Flannery	NCNCFA
Jessie Goodmon	NCDHHS
Jackie Sheppard	NCDHHS
Mary Rinehart	Poyner + Spruill
Bruce Thompson	PARKER POE
Evelyn Hawthorne	GTCVC

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Thursday	March 24, 2005	10:00 AM	1027 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 320	Jury Fee Waiver Program.	Senator Clodfelter
SB 355	Federal Jurisdiction.	Senator Jenkins
SB 533	Child's Allowance From Estate.	Senator Berger

Senator Daniel G. Clodfelter, Chair

Judiciary 1 Committee

March 24, 2005

Minutes

Senator Clodfelter, Chair called the meeting to order at 10:05 a.m. with seventeen members present. He introduced Pages, Clint Lunau from Pittsboro, NC, Brian Mathis and April Gaddy, both from Raleigh.

SB-533 (Child's Allowance From Estate) Committee Substitute was introduced by Senator Clodfelter. Senator Phillip Berger, bill sponsor explained that the bill would amend the law providing for a child's allowance from the estate of a deceased parent to eliminate the requirement that the amount of the allowance be adjusted by the value of any articles consumed by the child since the time of the parent's death. He then offered an Amendment to the bill (see attached Amendment), and moved for adoption of the Amendment. All members voted yes. Motion carried. Senator's Jeanne Lucas, Charlie Albertson, R.C. Soles and Richard Stevens had questions. Senator Berger and Senator Clodfelter answered the questions. Senator Stevens moved for a Favorable Report. All members voted yes. Motion carried.

SB-355 (Federal Jurisdiction) Committee Substitute was introduced by Senator Clodfelter. Senator Clark Jenkins bill sponsor explained the bill and changes made to the bill, then moved for adoption of the Committee Substitute. All members voted yes. Motion carried. Senator Tony Rand questioned the federal acquisition of land. Staff attorney, George Givens answered the questions, reading from the NC General Statutes book. Senator Clodfelter stated that the House has introduced a similar bill. Senator's Phillip Berger, Charlie Albertson, Vernon Malone, R.C. Soles and Ham Horton had questions. Mr. Givens and Senator Jenkins answered the questions. Senator Clodfelter said the bill would not be voted on at this time, and would be displaced, and brought back to committee at a later date. He asked staff attorney's to distribute a list containing information about what other states do when land is acquired by the Federal Government, to all committee members, so they would have an opportunity to read it, and be more informed when the bill is brought back to committee.

SB-320 (Jury Fee Waiver Program) Committee Substitute was introduced by Vice Chair, Senator R.C. Soles. Senator Tony Rand moved for adoption of the Committee Substitute. All members voted yes. Motion carried. Senator Clodfelter, bill sponsor, explained that the bill would permit jurors to waive the payment of

their juror fees and designate certain specified human services programs in the judicial district for those funds to be used. Senator's R.C. Soles, Tony Rand, Richard Stevens, Charlie Albertson and Martin Nesbitt had questions. Senator Clodfelter answered the questions and offered an Amendment on Page 1, line 27 (see attached Amendment) and moved for adoption of the Amendment. All members voted yes. Motion carried. Senator Jeanne Lucas moved for a Favorable Report as amended. All members voted yes. Motion carried.

Being no further business the meeting adjourned at 10:58 a.m.

Senator Dan Clodfelter, Chair **Wanda Joyner, Committee Assistant**

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 533
PROPOSED COMMITTEE SUBSTITUTE S533-PCS15219-RU-3

Short Title: Child's Allowance From Estate. (Public)

Sponsors:

Referred to:

March 15, 2005

A BILL TO BE ENTITLED

AN ACT TO REVISE AND CLARIFY THE LAW PROVIDING FOR A CHILD'S ALLOWANCE FROM A DECEDENT'S ESTATE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 30-17 reads as rewritten:

"**§ 30-17. When children entitled to an allowance.**

Whenever any parent dies ~~leaving~~ survived by any child under the age of 18 years, including an adopted child or a child with whom the widow may be pregnant at the death of her husband, or a child who is less than 22 years of age and is a full-time student in any educational institution, or a child under 21 years of age who has been declared mentally incompetent, or a child under 21 years of age who is totally disabled, or any other person under the age of 18 years residing with the deceased parent at the time of death to whom the deceased parent or the surviving parent stood in loco parentis, every such child shall be ~~entitled, besides its share of the estate of such deceased parent, to~~entitled to receive an allowance of two thousand dollars ($2,000) for ~~its~~ the child's support for the year next ensuing the death of such ~~parent, less, however, the value of any articles consumed by said child since the death of said~~ parent. Such allowance shall be in addition to the child's share of the deceased parent's estate and shall be exempt from any lien by judgment or execution against the property of such parent. The personal representative of the deceased ~~parent,~~ parent shall, within one year after the parent's death, ~~shall~~ assign to every such child the allowance herein provided for; but if there is no personal representative or if he fails or refuses to act within 10 days after written request by a guardian or next friend on behalf of such child, the allowance may be assigned by a magistrate or clerk of court upon application of said guardian or next friend.

If the child resides with the widow of the deceased parent at the time such allowance is paid, the allowance shall be paid to said widow for the benefit of said child. If the child resides with its surviving parent who is other than the widow of the deceased

parent, such allowance shall be paid to said surviving parent for the use and benefit of such child, regardless of whether the deceased died testate or intestate or whether the widow dissented from the will. Provided, however, the allowance shall not be available to an illegitimate child of a deceased father, unless such deceased father shall have recognized the paternity of such illegitimate child by deed, will or other paper-writing. If the child does not reside with a parent when the allowance is paid, ~~it~~ the allowance shall be paid to ~~its~~ the child's general guardian, if any, and if none, to the clerk of the superior court who shall receive and disburse same for the benefit of such child."

SECTION 2. This act becomes effective October 1, 2005, and applies to estates of persons dying on or after that date.

SENATE BILL 533:
Child's Allowance From Estate.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Sen. Phil Berger
Date:	March 24, 2005	**Summary by:**	O. Walker Reagan, Committee Co-Counsel
Version:	First Edition		

SUMMARY: ***Senate Bill 533 would amend the law providing for a child's allowance from the estate of a deceased parent to eliminate the requirement that the amount of the allowance be adjusted by the value of any articles consumed by the child since the time of the parent's death.***

CURRENT LAW: Under G.S. 30-17, a dependent child, as defined in the statute as generally being age 21 or younger, is entitled to a child's allowance of $2000 as a priority claim from the estate of a deceased parent. The allowance is intended to provide for the child's support for the first year following the parent's death. This allowance is in addition to the child's share of the estate. The amount of the allowance is reduced by the value of any articles consumed (presumably from the assets of the estate) by the child since the death of the parent. A child's allowance is exempt from judgment or execution for an obligation of the estate. The allowance is paid to the surviving parent or guardian of the child.

BILL ANALYSIS: Senate Bill 533 would delete the requirement that a child's allowance be reduced by the value of any articles consumed by the child since the death of the parent.

EFFECTIVE DATE: The bill would become effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 533

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

S533-ARU-6 [v.1]

Date March 24 ,2005

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

Senator Berger of Rockingham

moves to amend the bill on page 2, line 8, by rewriting the line to read:

"**SECTION 2.** This act becomes effective October 1, 2005 and applies to estates of persons dying on or after that date.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED X FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 533

Short Title:	Child's Allowance From Estate.	(Public)
Sponsors:	Senators Berger of Rockingham; and Goodall.	
Referred to:	Judiciary I.	

March 15, 2005

A BILL TO BE ENTITLED

AN ACT TO REVISE AND CLARIFY THE LAW PROVIDING FOR A CHILD'S ALLOWANCE FROM A DECEDENT'S ESTATE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 30-17 reads as rewritten:

"**§ 30-17. When children entitled to an allowance.**

Whenever any parent dies ~~leaving~~ survived by any child under the age of 18 years, including an adopted child or a child with whom the widow may be pregnant at the death of her husband, or a child who is less than 22 years of age and is a full-time student in any educational institution, or a child under 21 years of age who has been declared mentally incompetent, or a child under 21 years of age who is totally disabled, or any other person under the age of 18 years residing with the deceased parent at the time of death to whom the deceased parent or the surviving parent stood in loco parentis, every such child shall be ~~entitled, besides its share of the estate of such deceased parent, to~~entitled to receive an allowance of two thousand dollars ($2,000) for ~~its~~ the child's support for the year next ensuing the death of such ~~parent, less, however, the value of any articles consumed by said child since the death of said~~ parent. Such allowance shall be in addition to the child's share of the deceased parent's estate and shall be exempt from any lien by judgment or execution against the property of such parent. The personal representative of the deceased ~~parent,~~ parent shall, within one year after the parent's death, ~~shall~~ assign to every such child the allowance herein provided for; but if there is no personal representative or if he fails or refuses to act within 10 days after written request by a guardian or next friend on behalf of such child, the allowance may be assigned by a magistrate or clerk of court upon application of said guardian or next friend.

If the child resides with the widow of the deceased parent at the time such allowance is paid, the allowance shall be paid to said widow for the benefit of said child. If the child resides with its surviving parent who is other than the widow of the deceased parent, such allowance shall be paid to said surviving parent for the use and benefit of

such child, regardless of whether the deceased died testate or intestate or whether the widow dissented from the will. Provided, however, the allowance shall not be available to an illegitimate child of a deceased father, unless such deceased father shall have recognized the paternity of such illegitimate child by deed, will or other paper-writing. If the child does not reside with a parent when the allowance is paid, ~~it~~ the allowance shall be paid to ~~its~~ the child's general guardian, if any, and if none, to the clerk of the superior court who shall receive and disburse same for the benefit of such child."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 320
PROPOSED COMMITTEE SUBSTITUTE S320-PCS75275-RU-2

Short Title: Jury Fee Waiver Program. (Public)

Sponsors:

Referred to:

March 3, 2005

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE A PROGRAM ALLOWING JURORS TO WAIVE PAYMENT OF THE UNIFORM JUROR FEE AND TO DESIGNATE THE WAIVED FEES TO BE USED FOR SPECIFIED SERVICES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-312 reads as rewritten:

"**§ 7A-312. Uniform fees for jurors; meals.**

(a) A juror in the General Court of Justice including a petit juror, or a coroner's juror, but excluding a grand juror, shall receive twelve dollars ($12.00) per day, except that if any person serves as a juror for more than five days in any 24-month period, the juror shall receive thirty dollars ($30.00) per day for each day of service in excess of five days. A grand juror shall receive twelve dollars ($12.00) per day. However, any juror may waive payment of the per diem fees provided for in this section. A juror waiving the fee may designate that the fee be used for any of various services provided in that district, as designated by the senior resident superior court judge in accordance with the provisions of subsection (b) of this section. A juror required to remain overnight at the site of the trial shall be furnished adequate accommodations and subsistence. If required by the presiding judge to remain in a body during the trial of a case, meals shall be furnished the jurors during the period of sequestration. Jurors from out of the county summoned to sit on a special venire shall receive mileage at the same rate as State employees.

(b) The senior resident superior court judge in each district may provide jurors with a choice of various services in that district to which they may designate their waived juror fees. The services designated by the senior resident superior court judge shall be human services provided either by a government agency or a charitable nonprofit corporation and may include drug treatment court client services, courthouse self-help centers, and courthouse child care centers. The choice may also include the Crime Victims Compensation Fund and designation to a fund for the establishment of a

service not yet available in that district to be provided by a governmental agency or a charitable nonprofit corporation. If the senior resident superior court judge elects not to provide jurors with a choice of human services to designate their waived fees to, or if jurors elect not to designate the fees to a particular service, the waived fees shall represent cost savings to the Judicial Department."

SECTION 3. This act becomes effective July 1, 2005, and applies to jury service that begins on or after that date.

SENATE BILL 320:
Jury Fee Waiver Program.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Senator Clodfelter
Date:	March 24, 2005	**Summary by:**	O. Walker Reagan, Committee Co-Counsel
Version:	Proposed Committee Substitute S320-CSRU-2 [v.1]		

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 320 would permit jurors to waive the payment of their juror fees and designate certain specified human services programs in the judicial district for those funds to be used.***

CURRENT LAW: Currently a juror, other than a person serving on a grand jury, is entitled to be paid $12 a day for the first 5 days of service in a 24-month period, and $30 per day for all subsequent days of service in the 24-month period. Persons serving on grand juries are paid at a straight rate of $12 per day, regardless of the number of days of service in a 24-month period. There is no option for a juror to waive payment of the juror fee.

BILL ANALYSIS: The Proposed Committee Substitute for Senate Bill 320 would permit a juror to waive the per day juror fee, and when human services programs in the district have been selected by the senior resident superior court judge of the district, designate how the juror would like their juror fee applied. If the judge fails to select specified human services programs for which juror fees can be designated, or if the juror waives the fee without designating a program for the fee to be paid to, the waived juror fees remain as unspent funds in the Judicial Department.

In selecting a human service program that may be designated, the senior resident superior court judge must select human services programs in the judicial district sponsored by governmental agencies or charitable nonprofit corporations, or a fund for the establishment of a qualified service that is not yet available in the judicial district. Included in the list of possible human services are drug treatment court services, courthouse self-help centers, and courthouse child care centers.

BACKGROUND: A provisions was included in the 1995 Budget Bill (S.L. 1995-324, Sec. 21.1) that permitted a juror to waive the juror fee without a right to designate how that fee was to be used. That provision was allowed to sunset on June 30, 1997.

EFFECTIVE DATE: The bill becomes effective July 1, 2005 and applies to jury service that begins on or after that date.

S320-SMRU-001

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 3-24-05

S. B. No. ~~S 320~~ 320 Amendment No. # 1

COMMITTEE SUBSTITUTE ~~S 320~~ S320-CSRU-2 (to be filled in by Principal Clerk)

Rep.)
Sen.) Clodfelter

1 moves to amend the bill on page #1, line 27

2 ( ) WHICH CHANGES THE TITLE

3 by INSERTING AFTER THE WORD "INCLUDE" THE

4 FOLLOWING " THE CRIME VICTIMS COMPENSATION FUND

5 AND "

6

7

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9

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17

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19

SIGNED Daniel G Clodfelter

ADOPTED X FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 320

Short Title:	Jury Fee Waiver Program.	(Public)
Sponsors:	Senators Clodfelter; Atwater, Rand, and Weinstein.	
Referred to:	Judiciary I.	

March 3, 2005

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE A PROGRAM ALLOWING JURORS TO WAIVE PAYMENT OF THE UNIFORM JUROR FEE AND TO DESIGNATE THE WAIVED FEES TO BE USED FOR SPECIFIED SERVICES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-312 reads as rewritten:

"**§ 7A-312. Uniform fees for jurors; meals.**

A juror in the General Court of Justice including a petit juror, or a coroner's juror, but excluding a grand juror, shall receive twelve dollars ($12.00) per day, except that if any person serves as a juror for more than five days in any 24-month period, the juror shall receive thirty dollars ($30.00) per day for each day of service in excess of five days. A grand juror shall receive twelve dollars ($12.00) per day. However, any juror may waive payment of the per diem fees provided for in this section; a juror waiving the fee may designate that the fee be used for any of various services provided in that district, as designated by the senior resident superior court judge. A juror required to remain overnight at the site of the trial shall be furnished adequate accommodations and subsistence. If required by the presiding judge to remain in a body during the trial of a case, meals shall be furnished the jurors during the period of sequestration. Jurors from out of the county summoned to sit on a special venire shall receive mileage at the same rate as State employees."

SECTION 2. The senior resident superior court judge in each district may provide jurors with a choice of various services in that district to which they may designate their waived juror fees, including drug treatment court client services, courthouse self-help centers, and courthouse child care centers; the choice may also include designation to a fund for the establishment of a service not yet available in that district. If the senior resident superior court judge elects not to provide jurors with a choice of services to designate their waived fees to, or if jurors elect not to designate the fees to a particular service, the waived fees shall represent cost savings to the Judicial Department.

SECTION 3. This act becomes effective July 1, 2005, and applies to jury service that begins on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 355*
PROPOSED COMMITTEE SUBSTITUTE S355-CSRR-10 [v.2]

3/23/2005 6:47:06 PM

Short Title: Federal Jurisdiction Over Land. (Public)

Sponsors:

Referred to:

March 3, 2005

A BILL TO BE ENTITLED

AN ACT TO LIMIT THE AUTOMATIC GRANT OF EXCLUSIVE JURISDICTION OVER LANDS ACQUIRED BY THE FEDERAL GOVERNMENT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 104-7 reads as rewritten:

"**§ 104-7. Acquisition of lands by the United States for ~~public buildings;~~ customhouses, courthouses, post offices, forts, arsenals, or armories; cession of jurisdiction; exemption from taxation.**

"(a) The consent of the State is hereby given, in accordance with the seventeenth clause, eighth section, of the first article of the Constitution of the United States, to the acquisition by the United States, by purchase, condemnation, or otherwise, of any land in the ~~State required for the sites~~ State that either is:

(1) Required for customhouses, courthouses, post offices, forts, arsenals, or armories; provided that the total land to be acquired for a particular facility does not exceed 25 acres; or ~~other public buildings whatever, or for any other purposes of the government.~~

(2) To be added to Fort Bragg, Pope Air Force Base, Camp Lejeune, Seymour Johnson Air Force Base, Cherry Point Marine Corps Air Station, Military Ocean Terminal at Sunny Point, or the United States Coast Guard Air Station at Elizabeth City. Any of the land to be added to a military base named in this subdivision shall be contiguous to and within a 25-mile radius of the military base for which the property is acquired.

(b) Exclusive jurisdiction in and over any land ~~so~~ acquired by the United States ~~shall be and the same~~ with the consent of the State under subsection (a) of this section is hereby ceded to the United States for all purposes for which the United States requests cession of jurisdiction except that jurisdiction in and over these lands with respect to: (i) the service ~~upon such sites~~ of all civil and criminal process of the courts of this ~~State;~~

State, (ii) the concurrent power to enforce the criminal law, (iii) the power to enforce State laws for the protection of public health and the environment and for the conservation of natural resources, and (iv) the entire legislative jurisdiction of the State with respect to marriage, divorce, annulment, adoption, commitment of the mentally incompetent, and descent and distribution of property is reserved to the State. ~~but the~~ Cession of jurisdiction ~~so ceded~~ shall continue ~~no longer than~~ only so long as the ~~said~~ United States ~~shall own such lands.~~ owns the land.

(c) The jurisdiction ceded shall not vest until the United States ~~shall have~~has acquired title to ~~said lands~~ the land by purchase, condemnation, or ~~otherwise.~~otherwise; accepted the cession of jurisdiction in writing; and filed a certified copy of the acceptance in the office of the registrar of deeds in the county or counties in which the land is located. The acceptance of jurisdiction shall be made by an authorized official of the United States and shall include a precise description of the land involved and a statement of the extent to which cession of jurisdiction is accepted.

(d) So long as ~~the said lands shall remain~~ land acquired with the consent of the State under subsection (a) of this section remains the property of the United ~~States when acquired as aforesaid, and no longer, the same shall be and continue~~ States, and no longer, the land shall be exempt and exonerated from all State, county, and municipal taxation, assessment, or other charges ~~which~~ that may be levied or imposed under the authority of this State.

(e) Persons residing on lands in the State for which any jurisdiction has been ceded under this section shall not be deprived of any civil or political rights, including the right of suffrage, by reason of the cession of jurisdiction to the United States."

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

SENATE BILL 355:
Federal Jurisdiction Over Land

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Sen. Jenkins
Date:	March 24, 2005	**Summary by:**	George Givens and Jennifer McGinnis, Staff Attorneys, with William R. Gilkeson Committee Co-Counsel
Version:	S355-CSRR-10 [v.2]		

SUMMARY: ***This PCS for Senate Bill 355 would provide that the State automatically consents only to certain land acquisitions by the federal government. In addition, the PCS would provide that the State only cedes partial jurisdiction to the federal government over land acquired with the State's consent. The PCS would also provide that the federal government must indicate its acceptance of jurisdiction by filing a notice with the registrar of deeds in the applicable county or counties. Effective when it becomes law.***

BACKGROUND: Article I, Section 8, Clause 17 of the United States Constitution (Art. I, §8, cl. 17) provides that Congress shall have power "to exercise exclusive legislation . . . over all places purchased by the consent of the legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dockyards and other needful buildings." Thus, if a state legislature consents to a federal purchase of land within the state, then the federal government obtains exclusive jurisdiction over the land acquired. States are not, however, limited to a choice between simply granting or withholding consent. A state may qualify its consent or cession by reservations consistent with the governmental purposes for which the property was acquired.

A state may cede exclusive, concurrent, or partial jurisdiction to the federal government over federally acquired lands. Where federal jurisdiction over a federal enclave is exclusive, the state retains no legislative or political authority over that property. It is accepted, however, that a reservation by a state of only the right to serve criminal and civil process in an area is not inconsistent with exclusive legislative jurisdiction. With concurrent jurisdiction, a state has reserved to itself the right to exercise, concurrently with the United States, all of the same authority. With partial jurisdiction, a state has reserved to itself the right to exercise, by itself or concurrently with the United States, other authority constituting more than merely the right to serve civil and criminal process. For example, the United States is considered to have partial legislative jurisdiction where the State has reserved the right to tax private property.

In the absence of a state's consent to federal acquisition or cession of jurisdiction, the federal government nevertheless has the power to acquire land within a state, but the position of the federal government in that situation is that of an ordinary landed proprietor. The Property Clause of the United States Constitution (Art. I, §3, cl. 2), gives Congress the power to "make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States." Thus, even absent state legislative consent, the Congress can enact regulations that are designed to maintain safety and order on government property, although, absent state legislative consent, it must do so in the context of continuing concurrent state jurisdiction.

Under federal law, the federal government must accept cession of jurisdiction by the State in order to effect exclusive jurisdiction over lands by filing a notice of acceptance with the Governor of the State or in another manner prescribed by the laws of the State where the land is situated. Since no other manner

for acceptance has been provided by the State under existing law, notice of acceptance of jurisdiction by the Federal government must be filed with the Governor.

CURRENT LAW: Under existing State law, consent of the State is given to all acquisitions by the federal government, in accordance with Art. I, §8, cl. 17, to the acquisition by the United States, by purchase, condemnation, or otherwise, of any land in the State required for the sites for customhouses, courthouses, post offices, arsenals, other public buildings, or for any other purposes of government. The State cedes exclusive jurisdiction over any land acquired by the United States for these purposes, reserving only the right to serve civil and criminal process of the courts of the State. The jurisdiction ceded continues as long as the United States owns the lands. Lands acquired by the United States for these purposes are exempt from all State, county, and municipal taxation, assessment, or other charges that may be levied or imposed under the authority of this State.

BILL ANALYSIS: The PCS would provide that the State automatically consents to land acquisitions by the federal government of land required for customhouses, courthouses, post offices, forts, arsenals, or armories; provided that the total land to be acquired for a particular facility does not exceed 25 acres. In addition, the State would automatically consent to acquisitions for additions of land contiguous to and within a 25-mile radius of existing military bases as listed in the PCS. The PCS provides that the State would cede only partial jurisdiction over the land acquired by the federal government for these purposes, retaining to the State the following authority: service of civil and criminal process; the concurrent power to enforce the criminal law; the power to enforce State laws for the protection of public health and the environment and for the conservation of natural resources; and the entire legislative jurisdiction of the State with respect to marriage, divorce, annulment, adoption, commitment of the mentally incompetent, and descent and distribution of property. The PCS would require that the federal government file notice of acceptance of the jurisdiction ceded with the registrar of deeds in the applicable county or counties. The PCS also provides that persons residing on ceded lands shall not be deprived of any civil or political rights, including the right of suffrage, by reason of the cession of jurisdiction.

The PCS is identical to a PCS adopted by the House Environment and Natural Resources Committee March 22, 2005, to HB 236, a companion bill to SB 355.

S355-SMRR05-1

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 355*

Short Title:	Federal Jurisdiction. (Public)
Sponsors:	Senators Jenkins; Allran and Atwater.
Referred to:	Judiciary I.

March 3, 2005

A BILL TO BE ENTITLED

AN ACT TO LIMIT THE AUTOMATIC GRANT OF EXCLUSIVE JURISDICTION OVER PROPERTY ACQUIRED BY THE FEDERAL GOVERNMENT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 104-7 reads as rewritten:

"**§ 104-7. Acquisition of lands for public buildings; cession of jurisdiction; exemption from taxation.**

The consent of the State is hereby given, in accordance with the seventeenth clause, eighth section, of the first article of the Constitution of the United States, to the acquisition by the United States, by purchase, condemnation, or otherwise, of any land in the State required for the sites for customhouses, courthouses, post offices, ~~arsenals,~~ or armories; provided that the total land to be acquired for a particular project does not exceed 25 acres. ~~or other public buildings whatever, or for any other purposes of the government.~~

Exclusive jurisdiction in and over any land so acquired by the United States shall be and the same is hereby ceded to the United States for all purposes except the service upon such sites of all civil and criminal process of the courts of this State; but the jurisdiction so ceded shall continue no longer than the said United States shall own such lands. The jurisdiction ceded shall not vest until the United States shall have acquired title to said lands by purchase, condemnation, or otherwise.

So long as the said lands shall remain the property of the United States when acquired as aforesaid, and no longer, the same shall be and continue exempt and exonerated from all State, county, and municipal taxation, assessment, or other charges which may be levied or imposed under the authority of this State."

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

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE — 3/24/05

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
Doug Heron	NC Bar Assoc.
Jessica Sage	NCFPC
Kasey Isenhower	Intern
Lenne [illegible]	[illegible]
Tom Regan	NC Enviro Defense
Rebecca Troxler	NCACC
David Meredith	NC State College
John Medlin	GOV affairs
Bill Sloggin	KCCH
Michael Nelson	Conservation Council - NC
[illegible]	NMFS
[illegible]	NCBSNR

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE
Name of Committee

3/24/05
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
Gary Robertson	AP

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Tuesday	March 29, 2005	10:00 AM	1027 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 468	Crime Lab Cost Recovery Fee.	Senator Graham
SB 517	Account Transfers and Agency Appointments.	Senator Clodfelter
SB 519	Interstate Trust Services on Reciprocal Basis.	Senator Clodfelter
SB 883	Dispose of Firearm/Modify Notice Requirement.	Senator Goodall

Senator Daniel G. Clodfelter, Chair

Judiciary 1 Committee

March 29, 2005

Minutes

Senator Dan Clodfelter, Chair called the meeting to order at 10: 04 a.m. with fourteen members present. He introduced Pages Catherine Allran from Hickory, NC and Johnson Biggs from Edenton, NC.

SB-468 (Crime Lab Cost Recovery Fee) Committee Substitute was introduced by Senator Clodfelter. Senator Phillip Berger moved for adoption of the Committee Substitute. All members voted yes. Motion carried. Senator Malcolm Graham, bill sponsor explained that the bill amends the Trust Companies and Interstate Trust Business Act to permit an out-of-state or foreign trust company to do business in the State on a reciprocal basis even when the trust company does not have a physical office in the State. Also, the bill makes other technical changes to the Act. (See attached Bill Summary for more information). Senator's Ham Horton, Richard Stevens, Phillip Berger, and Tony Rand had questions about test fees. Mr. Roger Thompson, Director of the Crime Lab in Charlotte, and Senator Clodfelter answered the questions. Senator Clodfelter said the staff attorneys would get more information regarding blood test and lab fees, and bring it to a future meeting. The bill was displaced to be heard at a later date.

SB-517 (Account Transfers and Agency Appointments) was introduced by Vice Chair, Senator R.C. Soles. Senator Dan Clodfelter, bill sponsor explained that the bill would amend the Trust Company and Interstate Trust Business Act by adding a new Part to govern the transfer of trust accounts among affiliate trust companies and to authorize a trust institution to appoint another trust institution to act as the original trust institution's agent for trust administration purposes. Senator Clodfelter introduced Mr. Joe Smith, Commissioner of NC Banking Association. Mr. Smith spoke on the bill, explaining trust business transferred to other accounts, and spoke on the bill. Senator's Charlie Albertson, David Hoyle, Ham Horton, Martin Nesbitt and Tony Rand had questions. Mr. Knox Proctor, attorney with the NC Bar Association answered questions and spoke on the bill. Mr. McNeil Chestnut from the NC Attorney General's office answered questions and spoke on the bill. Senator Clodfelter offered an Amendment to the bill. Senator Horton moved for

adoption of the Amendment. All members voted yes. Motion carried. Senator Clark Jenkins moved for a Favorable Report as amended. All members voted yes. Motion carried.

SB-519 (Interstate Trust Services on Reciprocal Basis) was introduced by Vice Chair, Senator R.C. Soles. Senator Dan Clodfelter, bill sponsor explained that the bill amends the Trust Companies and Interstate Trust Business Act to permit an out-of-state or foreign company to do business in the State on a reciprocal basis even when the trust company does not have a physical office in the State. The bill also makes other technical changes to the Act. See attached Bill Summary for more information. Senator Richard Stevens moved for a Favorable Report. Senator's Tony Rand and Martin Nesbitt had questions. Mr. Smith answered the questions. Senator Soles recalled Senator Stevens's motion for a Favorable Report. All members voted yes. Motion carried

Senator Clodfelter announced that he is forming a Subcommittee to study SB-468, with the following members; Senator's Julia Boseman, Janet Cowell, Richard Stevens and Jerry Tillman. He stated that if anyone else would like to be on the committee, they should inform him.

SB-883 (Dispose of Firearm/Modify Notice Requirement) was not heard.

Being no further business the meeting adjourned at 11:52 a.m.

Senator Dan Clodfelter, Chair

Wanda Joyner, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Daniel G. Clodfelter, Chair

Wednesday, March 30, 2005

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

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

S.B. **517** Account Transfers and Agency Appointments.

Draft Number:	PCS85227
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comments:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Daniel G. Clodfelter, Chair

Tuesday, March 29, 2005

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

FAVORABLE

S.B. **519** Interstate Trust Services on Reciprocal Basis.
Sequential Referral: None
Recommended Referral: None

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

S.B. **320** Jury Fee Waiver Program.
Draft Number: PCS75275
Sequential Referral: Appropriations/Base Budget
Recommended Referral: None
Long Title Amended: No

S.B. **533** Child's Allowance From Estate.
Draft Number: PCS15219
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

TOTAL REPORTED: 3

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 468
PROPOSED COMMITTEE SUBSTITUTE S468-CSRR-11 [v.1]

3/28/2005 4:51:44 PM

Short Title: Crime Lab Cost Recovery Fee. (Public)

Sponsors:

Referred to:

March 10, 2005

A BILL TO BE ENTITLED

AN ACT AUTHORIZING THE COURT TO ASSESS A FEE FOR THE COSTS OF THE SERVICES OF A MUNICIPAL CRIME LABORATORY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-304(a) is amended by adding a new subdivision to read:

"(8) For the services of any municipal police laboratory facility, the district or superior court judge shall, upon conviction, order payment of the sum of three hundred dollars ($300.00) to be remitted to the general fund of the laboratory's municipality to be used for law enforcement purposes. The cost shall be assessed only in cases in which, as part of the investigation leading to the defendant's conviction, the municipal laboratory has performed DNA analysis of the crime, test of bodily fluids of the defendant for the presence of alcohol or controlled substances, or analysis of any controlled substance possessed by the defendant or the defendant's agent. The court may waive or reduce the amount of the payment required by this subdivision upon a finding of just cause to grant such a waiver or reduction."

SECTION 2. This act becomes effective July 1, 2005, and applies to court costs assessed or collected on or after that date for offenses committed on or after that date.

SENATE BILL 468:
Crime Lab Cost Recovery Fee

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Senator Graham
Date:	March 29, 2005	**Summary by:**	William R. Gilkeson
Version:	S468-CSRR-11 [v.1]		Committee Co-Counsel

SUMMARY: This Proposed Committee Substitute for Senate Bill 468 would require a District or Superior Court judge to charge $300 in a criminal case for the services of a municipal crime. Effective July 1, 2005.

CURRENT LAW: Current law requires trial judges to charge criminal defendants (or in some cases prosecuting witnesses) $300 for the use of the State Bureau of Investigation crime lab. It is charged only if, in that case, the SBI lab has performed DNA analysis, done body-fluid analysis for the presence of alcohol or drugs, or done analysis of drugs in the defendant's possession. The court may waive or reduce the amount if it finds just cause to do so. The statute says the $300 is to be "remitted to the Department of Justice for support of the State Bureau of Investigation.

The Charlotte-Mecklenburg Police Department also has a crime lab, but no court costs are authorized to be charged for its use.

BILL ANALYSIS: SB 468 would amend G.S. 7A-304, the same criminal court costs statute that contains the $300 fee for use of the SBI lab, to add a parallel provision for $300 charge for the use of any municipal police laboratory facility. Charlotte-Mecklenburg is reported to have the only one currently. The bill's language tracks that of the SBI provision. It provides that the money must be "remitted to the general fund of the laboratory's municipality to be used for law enforcement purposes."

The original bill made its provisions effective July 1, 2005, and applicable to court costs assessed or collected on or after that date. **The PCS adds to the effective date the condition that the costs would be applicable only to offenses committed on or after July 1.**

LAST DRAFT

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

S D

SENATE BILL 517
PROPOSED COMMITTEE SUBSTITUTE S517-PCS85227-RU-5

Short Title: Account Transfers and Agency Appointments. (Public)

Sponsors:

Referred to:

March 15, 2005

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR ACCOUNT TRANSFERS AND AGENCY APPOINTMENTS BETWEEN AFFILIATED TRUST INSTITUTIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 53-301(a) is amended by adding the following new subdivisions to read:

"(3a) "Affiliate transfer" means a transfer of an account pursuant to Part 7 of this Article by one trust institution affiliate of that trust institution.

...

(49a) "Transferring trust institution" means a trust institution that proposes to make, or does make, an affiliate transfer.

(49b) "Transferee trust institution" means a trust institution to which an affiliate transfer is proposed to be made, or is made.

...."

SECTION 2. Article 24 of Chapter 53 of the General Statutes is amended by adding the following new Part to read:

"Part 7. Affiliate Transfers; Agent Appointments.

"**§ 53-420. Affiliate transfers authorized; procedure.**

(a) A trust institution may make an affiliate transfer of one or more accounts subject to the provisions of this Part unless the provisions governing the account explicitly provide that an affiliate transfer shall not be made.

(b) The affiliate transfer shall be made pursuant to a written agreement between the transferring trust institution and the transferee trust institution.

(c) Between 90 and 30 days prior to the proposed date of the affiliate transfer, the transferring trust institution shall give written notice of the proposed affiliate transfer to all clients and other persons to whom the transferring trust institution last sent reports or statements for the account or to whom the next regular report or statement would be sent. The notice shall include the following information:

(1) A brief description of the proposed affiliate transfer.
(2) The client's right to object in writing to the affiliate transfer, and the physical and mailing addresses to which the written objection may be sent; the transferring trust institution also may provide electronic mail or facsimile addresses, or both, as additional methods for giving written notice of objection.
(3) The date upon which the affiliate transfer is proposed to be effective.
(4) The identity, mailing address, and telephone number of one or more employees of the transferee trust institution who can respond to inquiries if the affiliate transfer is complete.
(5) The identity, mailing address, and telephone number of one or more employees of the transferring trust institution who can respond to inquiries about the proposed affiliate transfer.

(d) Notices shall be sent to the addresses for clients or their representatives on record with the transferring trust institution and shall be effective upon receipt. Notices shall be deemed received three days after they have been posted for mailing with the United States Postal Service or deposited for delivery with a reputable courier service, with all postage or delivery charges prepaid.

"**§ 53-421. Objection to affiliate transfer.**

If a client, or a person acting on behalf of the client, delivers a written objection to the affiliate transfer to the transferring trust institution at anytime prior to the date of the affiliate transfer, the transferring trust institution shall exclude that account from the affiliate transfer unless the objection is withdrawn. An objection to an affiliate transfer shall not affect the right of the transferring trust institution to continue to administer the account or to seek to transfer the account pursuant to the documents and law governing the account.

"**§ 53-422. Effect of affiliate transfer.**

(a) Following an affiliate transfer, the transferee trust institution shall have all of the rights, powers, privileges, appointments, accounts, and designations of the transferring trust institution and shall be deemed successor to the transferring trust institution in any deed, trust, agreement, filing, instrument, notice, certificate, pleading, or other document related to the account.

(b) Following an affiliate transfer, the transferee trust institution is responsible for the performance of all duties, responsibilities, and obligations related to an account subject to the affiliate transfer.

(c) The affiliate transfer does not limit the transferring trust institution's liability for any of its acts as fiduciary.

(d) Unless the affiliate transfer is authorized by the documents governing the account, the transferring trust institution remains liable and responsible, while affiliated with the transferee trust institution, for the transferee trust institution's administration of accounts subject to an affiliate transfer. For purposes of this subsection, an affiliate transfer of an account made in reliance on subsection (e) of this section shall not be deemed to be authorized by the documents governing the account.

(e) Except as explicitly provided in provisions or laws governing accounts:

(1) Qualifications for administration such as capital, assets, assets under management, or similar standards set forth in documents or laws governing the account may be satisfied by the combined financial resources of the transferring trust institution and the transferee trust institution.

(2) Standards relating to the location or charter of the trust institution administering the account may be satisfied by the transferring trust institution or the transferee trust institution.

(f) Nothing in this Part shall be construed to impair any right of a trust institution to resign from administration of an account, or the right of a trust institution or a person interested in the account to seek the appointment of a replacement.

(g) Neither the rights of creditors to nor any liens upon the property held in an account shall be impaired by an affiliate transfer.

(h) Any claim or proceeding by or against the transferring trust institution pending at the time of the affiliate transfer may proceed as if the affiliate transfer had not taken place.

"**§ 53-423. Trust institution as agent.**

A trust institution may appoint another trust institution that is its affiliate as its agent for the performance of acts, obligations, and responsibilities with respect to any account. In that event, the trust institution shall remain fully responsible and liable with respect to all actions of the affiliated trust institution as if those actions were performed by the trust institution. Except as explicitly provided in documents or laws governing an account, appointment of an affiliate agent is not:

(1) An impermissible delegation of responsibility or duty by the appointing trust institution.

(2) A transfer or relinquishment of account powers by the appointing institution.

(3) A resignation or disqualification from the account by the appointing trust institution.

"**§ 53-424. Construction.**

(a) Except as expressly provided in this Part, nothing in this Part shall be construed to amend or modify the laws of this State governing the establishment or administration of accounts or the actions of trust institutions.

(b) An affiliate transfer is not, in itself, a transfer of substantially all of the transferring trust institution's assets and liabilities.

(c) Except as explicitly provided by the documents governing the account, neither an affiliate transfer nor an agency appointment under G.S. 53-423 shall be subject to G.S. 36A-13 or any other provision requiring court approval for removal of fiduciary funds from this State.

(d) Except as explicitly provided by the documents governing the account, an affiliate transfer, but not an agency appointment, shall be subject to any provision of law requiring notice of a transfer of the principal place of administration of the account. The manner or timing of a notice required under G.S. 53-420(c) may be altered to comport

with any provision of law requiring notice of a transfer of the principal place of administration of the account."

SECTION 3. This act becomes effective October 1, 2005.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 517

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

S517-ARU-7 [v.1]

Date 3-29-05 ,2005

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

Senator Clodfelter

moves to amend the bill on page 2, line 38, by rewriting the line to read:
"account, the transferring trust institution remains liable and responsible, while affiliated with the transferee trust institution, for the".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED X FAILED _____ TABLED _____

last

SENATE BILL 517:
Account Transfer and Agency Appointment.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Senator Clodfelter
Date:	March 29, 2005	**Summary by:**	O. Walker Reagan, Committee Co-Counsel
Version:	First Edition		

SUMMARY: ***Senate Bill 517 would amend the Trust Company and Interstate Trust Business Act by adding a new Part to govern the transfer of trust accounts among affiliate trust companies and to authorize a trust institution to appoint another trust institution to act as the original trust institution's agent for trust administration purposes.***

CURRENT LAW: Current law does not provide for the transfer of trust accounts or trust account administration to another trust company except when specifically authorized by instrument establishing the trust account.

BILL ANALYSIS: Senate Bill 517 would add a new Part 7 to the Article 24 of Chapter 53.

G.S. 53-420 would permit trust companies to transfer trust accounts to affiliate trust institutions unless the provisions creating and governing the trust account specifically prohibit such a transfer. Such a transfer must be made in writing and requires prior notice to all clients or persons entitled to notice of trust account activity between 90 and 30 days prior to the transfer taking place.

G.S. 53-421 provides that if any person entitled to notice of the transfer objects to the transfer prior to the effective date of the transfer, the transfer will not be made.

G.S. 53-422 provides that the transfer does not affect the liability of the transferring trust institution to the trust beneficiaries. The trust institution accepting the transfer of the account also agrees to assume all responsibilities for the trust account and to be governed by the provisions establishing and governing the account applicable immediately prior to the transfer.

G.S. 53-423 authorizes a trust institution to appoint another affiliate trust institution to act as its agent for the performance of any acts it is required or authorized to make.

The following definitions in G.S. 53-301 would apply to this new Part:

(1) "Account" means the client relationship established with a trust institution involving the transfer of real or personal property to the trust institution or the assumption of duties by the trust institution concerning real or personal property.

(3) "Affiliate" means a company that directly or indirectly controls, is controlled by, or is under common control with another company.

(9) "Client" means a person to whom a trust institution owes a duty or obligation under an account.

(52) "Trust institution" means any company lawfully acting as a fiduciary in a state or in a foreign country.

EFFECTIVE DATE: The bill becomes effective October 1, 2005.

S517-SMRU-001

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 517

Short Title: Account Transfers and Agency Appointments. (Public)

Sponsors: Senator Clodfelter.

Referred to: Judiciary I.

March 15, 2005

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR ACCOUNT TRANSFERS AND AGENCY APPOINTMENTS BETWEEN AFFILIATED TRUST INSTITUTIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 53-301(a) is amended by adding the following new subdivisions to read:

"(3a) "Affiliate transfer" means a transfer of an account pursuant to Part 7 of this Article by one trust institution affiliate of that trust institution.

...

(49a) "Transferring trust institution" means a trust institution that proposes to make, or does make, an affiliate transfer.

(49b) "Transferee trust institution" means a trust institution to which an affiliate transfer is proposed to be made, or is made.

...."

SECTION 2. Article 24 of Chapter 53 of the General Statutes is amended by adding the following new Part to read:

"Part 7. Affiliate Transfers; Agent Appointments.

"**§ 53-420. Affiliate transfers authorized; procedure.**

(a) A trust institution may make an affiliate transfer of one or more accounts subject to the provisions of this Part unless the provisions governing the account explicitly provide that an affiliate transfer shall not be made.

(b) The affiliate transfer shall be made pursuant to a written agreement between the transferring trust institution and the transferee trust institution.

(c) Between 90 and 30 days prior to the proposed date of the affiliate transfer, the transferring trust institution shall give written notice of the proposed affiliate transfer to all clients and other persons to whom the transferring trust institution last sent reports or statements for the account or to whom the next regular report or statement would be sent. The notice shall include the following information:

(1) A brief description of the proposed affiliate transfer.

(2) The client's right to object in writing to the affiliate transfer, and the physical and mailing addresses to which the written objection may be sent; the transferring trust institution also may provide electronic mail or facsimile addresses, or both, as additional methods for giving written notice of objection.

(3) The date upon which the affiliate transfer is proposed to be effective.

(4) The identity, mailing address, and telephone number of one or more employees of the transferee trust institution who can respond to inquiries if the affiliate transfer is complete.

(5) The identity, mailing address, and telephone number of one or more employees of the transferring trust institution who can respond to inquiries about the proposed affiliate transfer.

(d) Notices shall be sent to the addresses for clients or their representatives on record with the transferring trust institution and shall be effective upon receipt. Notices shall be deemed received three days after they have been posted for mailing with the United States Postal Service or deposited for delivery with a reputable courier service, with all postage or delivery charges prepaid.

"**§ 53-421. Objection to affiliate transfer.**

If a client, or a person acting on behalf of the client, delivers a written objection to the affiliate transfer to the transferring trust institution at anytime prior to the date of the affiliate transfer, the transferring trust institution shall exclude that account from the affiliate transfer unless the objection is withdrawn. An objection to an affiliate transfer shall not affect the right of the transferring trust institution to continue to administer the account or to seek to transfer the account pursuant to the documents and law governing the account.

"**§ 53-422. Effect of affiliate transfer.**

(a) Following an affiliate transfer, the transferee trust institution shall have all of the rights, powers, privileges, appointments, accounts, and designations of the transferring trust institution and shall be deemed successor to the transferring trust institution in any deed, trust, agreement, filing, instrument, notice, certificate, pleading, or other document related to the account.

(b) Following an affiliate transfer, the transferee trust institution is responsible for the performance of all duties, responsibilities, and obligations related to an account subject to the affiliate transfer.

(c) The affiliate transfer does not limit the transferring trust institution's liability for any of its acts as fiduciary.

(d) Unless the affiliate transfer is authorized by the documents governing the account, the transferring trust institution remains liable and responsible for the transferee trust institution's administration of accounts subject to an affiliate transfer. For purposes of this subsection, an affiliate transfer of an account made in reliance on subsection (e) of this section shall not be deemed to be authorized by the documents governing the account.

(e) Except as explicitly provided in provisions or laws governing accounts:

(1) Qualifications for administration such as capital, assets, assets under management, or similar standards set forth in documents or laws governing the account may be satisfied by the combined financial resources of the transferring trust institution and the transferee trust institution.

(2) Standards relating to the location or charter of the trust institution administering the account may be satisfied by the transferring trust institution or the transferee trust institution.

(f) Nothing in this Part shall be construed to impair any right of a trust institution to resign from administration of an account, or the right of a trust institution or a person interested in the account to seek the appointment of a replacement.

(g) Neither the rights of creditors to nor any liens upon the property held in an account shall be impaired by an affiliate transfer.

(h) Any claim or proceeding by or against the transferring trust institution pending at the time of the affiliate transfer may proceed as if the affiliate transfer had not taken place.

"**§ 53-423. Trust institution as agent.**

A trust institution may appoint another trust institution that is its affiliate as its agent for the performance of acts, obligations, and responsibilities with respect to any account. In that event, the trust institution shall remain fully responsible and liable with respect to all actions of the affiliated trust institution as if those actions were performed by the trust institution. Except as explicitly provided in documents or laws governing an account, appointment of an affiliate agent is not:

(1) An impermissible delegation of responsibility or duty by the appointing trust institution.

(2) A transfer or relinquishment of account powers by the appointing institution.

(3) A resignation or disqualification from the account by the appointing trust institution.

"**§ 53-424. Construction.**

(a) Except as expressly provided in this Part, nothing in this Part shall be construed to amend or modify the laws of this State governing the establishment or administration of accounts or the actions of trust institutions.

(b) An affiliate transfer is not, in itself, a transfer of substantially all of the transferring trust institution's assets and liabilities.

(c) Except as explicitly provided by the documents governing the account, neither an affiliate transfer nor an agency appointment under G.S. 53-423 shall be subject to G.S. 36A-13 or any other provision requiring court approval for removal of fiduciary funds from this State.

(d) Except as explicitly provided by the documents governing the account, an affiliate transfer, but not an agency appointment, shall be subject to any provision of law requiring notice of a transfer of the principal place of administration of the account. The manner or timing of a notice required under G.S. 53-420(c) may be altered to comport

with any provision of law requiring notice of a transfer of the principal place of administration of the account."

SECTION 3. This act becomes effective October 1, 2005.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 519

Short Title:	Interstate Trust Services on Reciprocal Basis.	(Public)
Sponsors:	Senator Clodfelter.	
Referred to:	Judiciary I.	

March 15, 2005

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR INTERSTATE SERVICES ON A RECIPROCAL BASIS AND TO MAKE TECHNICAL CORRECTIONS TO ARTICLE 24 OF CHAPTER 53 OF THE GENERAL STATUTES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 53-301(a)(34) reads as rewritten:

"(34) "Office" with respect to a trust institution means its principal office, a trust office, or a representative trust office, but not a ~~branch.~~ branch, with respect to an out-of-state trust institution or a foreign trust institution without a physical office in this State, the term "office" also means the registered office."

SECTION 2. G.S. 53-301(a) is amended by adding the following new subdivision to read:

"(39a) "Registered office" means a registered office as described in G.S. 55D-30."

SECTION 3. G.S. 53-301(a)(54) reads as rewritten:

"(54) "Trust office" means an office, other than the principal office, ~~at~~ through which a trust institution acts as a ~~fiduciary.~~ fiduciary, including, with respect to an out-of-state trust institution or a foreign trust institution without a physical office in this State, the registered office."

SECTION 4. G.S. 53-306 reads as rewritten:

"**§ 53-306. Trust business of out-of-state trust institution.**

An out-of-state trust institution that establishes or acquires and maintains one or more trust offices or representative trust offices in this State under the provisions of this Part or that maintains one or more branches in this State may, subject to the provisions of this Part, conduct any activity ~~at~~ through such a trust office, representative trust office, or branch that a State trust company or a State bank is authorized to conduct ~~at~~ through a trust office, representative trust office, or branch under the laws of this State."

SECTION 5. G.S. 53-307 reads as rewritten:

"**§ 53-307. Trust business of foreign trust institution.**

A foreign trust institution that establishes or acquires and maintains one or more trust offices in this State under the provisions of this Part may, subject to the provisions of this Part, also establish or acquire one or more representative trust offices and conduct any activity ~~at~~ through the trust offices or representative trust offices that a State trust company is authorized to conduct ~~at~~ through trust offices or representative trust offices under the laws of this State."

SECTION 6. G.S. 53-310 reads as rewritten:

"**§ 53-310. Offices of State trust companies.**

(a) A State trust company may engage in trust business or trust marketing ~~at~~ through its principal office and ~~at~~ through each trust office as permitted by this Part.

(b) A State trust company may engage in trust marketing ~~at~~ through a representative trust office as permitted by this Part.

(c) A State trust company may engage in trust business and trust marketing ~~in~~ through out-of-state trust offices or representative trust offices to the same extent permitted for trust institutions located in the host state ~~in~~ through which those out-of-state trust offices or representative trust offices are located, subject to the laws of this State and as provided by rules, orders, or declaratory rulings of the Commissioner."

SECTION 7. G.S. 53-314 reads as rewritten:

"**§ 53-314. Trust business ~~at~~ through a branch or trust office.**

An out-of-state trust institution may engage in trust business in this State only if it (i) maintains a trust office in this State as permitted by this Subpart, (ii) was allowed to maintain a trust office in this State under laws, or rules or orders of the Commissioner in effect prior to the date of enactment of this Article, but only to the extent allowed and subject to all limitations and conditions imposed under those laws, rules, or orders, or (iii) is a depository institution that maintains a branch in this State."

SECTION 8. G.S. 53-317 reads as rewritten:

"**§ 53-317. Requirement of notice.**

Before establishing or acquiring and maintaining a trust office in this State, an out-of-state trust institution shall provide, or cause its home state regulator to provide, notice to the Commissioner, in the form required by the Commissioner, along with copies of any applications, notices, or similar filings made with the home state regulator regarding the trust office. The notice shall be preceded or accompanied by:

(1) Evidence satisfactory to the Commissioner of compliance by the out-of-state trust institution with ~~any~~ all applicable requirements of Article 15 of Chapter 55 of the General Statutes;

(2) Evidence satisfactory to the Commissioner of compliance by the out-of-state trust institution with any applicable requirements of its home state regulator for maintenance of capital, for expansion within the borders of the home state, and for acquiring or establishing and maintaining each trust office in this State;

(3) Evidence satisfactory to the Commissioner that the out-of-state trust institution is not in a hazardous condition;

(4) ~~A~~ Unless waived by the Commissioner, a copy of the resolution adopted by the board of directors of the out-of-state trust institution (or similar governing body or a duly-authorized committee thereof) authorizing the trust office; and

(5) Payment of any fee set by rule."

SECTION 9. G.S. 53-318(a) reads as rewritten:

"(a) The out-of-state trust institution may commence business in this State ~~at~~ through the trust office on the sixty-first day following the date the Commissioner receives the notice described in G.S. 53-317 unless the Commissioner, within 60 days of receiving the notice:

(1) Specifies an earlier or later date for commencing business,

(2) Extends the period of review on a determination that the notice raises issues that require additional information or additional time for analysis; or

(3) Disapproves the proposed trust office."

SECTION 10. G.S. 53-319(b) reads as rewritten:

"(b) An out-of-state trust institution that does not maintain a trust office in this State shall file a notice with the Commissioner, in the form required by the Commissioner, before establishing or acquiring a representative trust office in this State. The notice shall be preceded or accompanied by:

(1) Evidence satisfactory to the Commissioner of compliance by the out-of-state trust institution with ~~any~~ all applicable requirements of Article 15 of Chapter 55 of the General Statutes;

(2) Evidence satisfactory to the Commissioner of compliance by the out-of-state trust institution with any applicable requirements of its home state regulator for maintenance of capital, for expansion within the borders of the home state, and for acquiring or establishing and maintaining each representative trust office in this State;

(3) Evidence satisfactory to the Commissioner that the out-of-state trust institution is not in a hazardous condition;

(4) ~~A~~ Unless waived by the Commissioner, a copy of the resolution adopted by the board of directors of the out-of-state trust institution (or similar governing body or a duly authorized committee thereof) authorizing the representative trust office;

(5) The proposed location of each proposed representative trust office; and

(6) Payment of any fee set by rule."

SECTION 11. G.S. 53-320(a) reads as rewritten:

"(a) The Commissioner may examine any activity conducted through a trust office or representative trust office maintained in this State by an out-of-state trust institution to determine whether these activities are being conducted ~~the trust office or representative trust office is being operated~~ in compliance with the laws of this State and in accordance with safe and sound practices. The pertinent provisions of Part 4 of this Article shall apply to these examinations."

SECTION 12. G.S. 53-321(a) reads as rewritten:

"(a) Consistent with Article 3A of Chapter 150B of the General Statutes, after notice and opportunity for hearing, the Commissioner may determine:

(1) That activities of a trust office maintained by an out-of-state trust institution in this State ~~is being operated~~ are being conducted in violation of the laws of this State or any rule, order, or declaratory ruling issued by the Commissioner, or in an unsafe and unsound manner, or that the out-of-state trust institution does not meet or no longer meets the requirements of this Subpart for maintaining a trust office in this State; or

(2) That an out-of-state trust institution is engaged in unauthorized trust activity.

In either event, the Commissioner may take any enforcement actions the Commissioner would be authorized to take if the trust office or the out-of-state trust institution were a State trust company and may issue an order temporarily or permanently prohibiting the out-of-state trust institution from engaging in trust business in this State."

SECTION 13. G.S. 53-322 reads as rewritten:

"**§ 53-322. Notice of transactions that cause a change in control.**

Each out-of-state trust institution that maintains a trust office or representative trust office in this State, or the home state regulator of the trust institution, shall give at least 30 days' notice or, in the case of an emergency ~~transaction,~~ transaction or the cessation of trust activity in this State by an out-of-state trust institution or foreign trust institution whose only office in this State is a registered office, as much notice as practicable, to the Commissioner of:

(1) Any merger, consolidation, share exchange, or other transaction that would cause a change in control of an out-of-state trust institution (i) that would be subject to Subpart D of Part 3 of this Article if the out-of-state trust institution were a State trust company or (ii) is required to be filed with any bank supervisory agency;

(2) Any transfer of all or substantially all of the accounts or account assets of the out-of-state trust institution to another person; or

(3) The ~~closing or transfer~~ closing, transfer, or discontinuance of any trust office or representative trust office in this State."

SECTION 14. G.S. 53-323 reads as rewritten:

"**§ 53-323. Foreign trust institution application for trust office or representative trust office.**

Before establishing or acquiring and maintaining a trust office in this State, a foreign trust institution shall make application to the Commissioner for permission to do so in the English language and in the form required by the Commissioner. The application shall be preceded or accompanied by:

(1) Evidence satisfactory to the Commissioner of compliance with ~~any~~ all applicable requirements of Article 15 of Chapter 55 of the General Statutes;

(2) Evidence satisfactory to the Commissioner of compliance by the foreign trust institution with any applicable requirements of its home country regulator for maintenance of capital, for expansion within the borders of its home country or within a political subdivision of its home country, and for acquiring or establishing and maintaining the trust office in this State;

(3) Evidence satisfactory to the Commissioner that the foreign trust institution is not in a hazardous condition;

(4) ~~A~~ Unless waived by the Commissioner, a copy of the resolution adopted by the board of directors of the foreign trust institution, or similar governing body or a duly-authorized committee thereof, authorizing the trust office; and

(5) Payment of any fee set by rule.

The Commissioner may require any materials not written in the English language to be translated, and the translation certified in a manner satisfactory to the Commissioner, at the expense of the foreign trust institution."

SECTION 15. G.S. 53-324(a) reads as rewritten:

"(a) A foreign trust institution may engage in trust business in this State only on approval by the Commissioner of an application described in G.S. 53-323, which may be given upon conditions required by the ~~the~~ Commissioner for prudential reasons consistent with any applicable international agreements to which the United States is a party."

SECTION 16. G.S. 53-326(a) reads as rewritten:

"(a) The Commissioner may examine any activity conducted through a trust office or representative trust office maintained in this State by a foreign trust institution to determine whether ~~the trust office or representative trust office is being operated~~ these activities are being conducted in compliance with the laws of this State and in accordance with safe and sound practices. The pertinent provisions of Part 4 of this Article shall apply to these examinations."

SECTION 17. G.S. 53-327(a) reads as rewritten:

"(a) Consistent with Article 3A of Chapter 150B of the General Statutes, after notice and opportunity for hearing, the Commissioner may determine:

(1) That activities of a trust office or representative trust office maintained by a foreign trust institution in this State ~~is being operated~~ are being conducted in violation of the laws of this State or any rule, order, or declaratory ruling issued by the Commissioner, or in an unsafe and unsound manner, or that the foreign trust institution does not meet or no longer meets the requirements of this Subpart for maintaining a trust office or representative trust office in this State; or

(2) That a foreign trust institution is engaged in unauthorized trust activity.

In either event, the Commissioner may take any enforcement actions the Commissioner would be authorized to take if the foreign trust institution were a State trust company and may issue an order temporarily or permanently prohibiting the foreign trust institution from engaging in trust business or trust marketing in this State."

SECTION 18. G.S. 53-328 reads as rewritten:

"**§ 53-328. Notice of transactions that cause a change in control.**

Each foreign trust institution that maintains a trust office or representative trust office in this State, or the home country regulator of the foreign trust institution, shall give at least 30 days' notice (or, in the case of an emergency ~~transaction,~~ transaction or the cessation of trust activity in this State by an out-of-state trust institution or foreign trust institution whose only office in this State is a registered office, as much notice as practicable) to the Commissioner, in the form required by the Commissioner, of:

(1) Any merger, consolidation, share exchange, or other transaction that would cause a change of control of a foreign trust institution:
   a. That would be subject to Subpart D of Part 3 of this Article if the foreign trust institution were a State trust company; or
   b. Is required to be filed with any bank supervisory agency;

(2) Any transfer of all or substantially all of the accounts or account assets of the foreign trust institution to another person; or

(3) The ~~closing or transfer~~ closing, transfer, or discontinuance of any trust office or representative trust office in this State."

SECTION 19. This act becomes effective October 1, 2005.

last

SENATE BILL 519:
Interstate Trust Services on Reciprocal Basis.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Senator Clodfelter
Date:	March 29, 2005	**Summary by:**	O. Walker Reagan, Committee Co-Counsel
Version:	First Edition		

SUMMARY: ***Senate Bill 519 amends the Trust Companies and Interstate Trust Business Act to permit an out-of-state or foreign trust company to do business in the State on a reciprocal basis even when the trust company does not have a physical office in the State. The bill also makes other technical changes to the Act.***

CURRENT LAW: Current law requires an out-of-state or foreign trust company to have a physical, principal office in the State from which its business in the State is conducted.

BILL ANALYSIS: Senate Bill 519 amends the Interstate Trust Act to permit out-of-state and foreign trust companies to operate in the State only through the use of a registered office, and to no longer require that these trust companies have a physical office in the State at which trust business done in the State is conducted. The bill provides that all other requirements of the Interstate Trust Act apply to these trust companies including the right of the Commissioner of Banks to regulate all activities conducted by these trust companies through these registered offices. These trust companies would still have to register with the Commissioner to do business in the State as is currently required.

The bill also authorizes the Commissioner of Banks to waive the requirement that the trust company furnish the Commissioner with a copy of the board of directors' resolution authorizing the trust company's operations in the State.

The following definitions in G.S. 53-301 would apply to the changes being made in this bill:

(22) "Foreign trust institution" means a trust institution, other than a foreign bank, chartered in a foreign country.

(35) "Out-of-state trust institution" means a trust institution that is neither a State trust institution nor a foreign trust institution.

(37) "Principal office" means:

b. With respect to a trust institution other than a State trust company, its principal place of business.

(50) "Trust business" means acting as a fiduciary or in other capacities permissible for a trust institution under G.S. 53-331.

(52) "Trust institution" means any company lawfully acting as a fiduciary in a state or in a foreign country.

EFFECTIVE DATE: The bill becomes effective October 1, 2005.

S519-SMRU-001

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE — 3-29-05

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
Paul Stock	NC Bankers
Mabel Chatman	Spec. Asst to Sen Cus
Joseph A. Smith, Jr.	NC Comm of Banks
Knox Proctor	Ward and Smith, New Bern
Roger C. Thompson	Charlotte-Mecklenburg Police
Marsha A. Dearing	" " " "
Matt Osborne	AOC
Kary Isenhour	Intern
Tripp Melton	Intern
Boyd Cansler	City of Charlotte
	Asst City Govt Rel

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE — 3-29-05

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
Heman Huntaff	N.C.S.D.A
Christine Wunsche	NCPIRG
Cindy McCall	NC-Community Network.
Ron Aycock	County Commissioners Assn.
David Crawford	AIA NC
Patrice Lacey	NCARC

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Thursday	March 31, 2005	10:00 AM	1027 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 290	Securities Transfer on Death.	Senator Hoyle
SB 468	Crime Lab Cost Recovery Fee.	Senator Graham
SB 527	Campus Police Act.	Senator Clodfelter
SB 612	Amend Lobbying Laws.	Senator Rand

Senator Daniel G. Clodfelter, Chair

Judiciary 1 Committee

March 31, 2005

Minutes

Senator Dan Clodfelter, Chair called the meeting to order at 10:10 a.m. with eighteen members present. He introduced Pages Garrett Parrish from Clayton, NC, Laura Bradley from Lexington, NC and Jason Cooke from Raleigh, NC.

SB-468 (Crime Lab Cost Recovery Fee) Committee Substitute was introduced by Senator Clodfelter. Senator Richard Stevens moved for adoption of the Committee Substitute. All members voted yes. Motion carried. Staff attorney, Bill Gilkeson explained that bill would require a District or Superior Court Judge to charge $300 in a criminal case for the services of a crime lab operated by a local governmental unit or a group of local governmental units. (See Bill Summary for further information). Senator Phillip Berger offered an Amendment to the bill. (See attached Amendment). All members voted yes. Motion carried. Senator's R.C. Soles, David Hoyle and Harry Brown had questions. Mr. Gilkeson answered the questions. Senator Hoyle moved for a Favorable Report. All members voted yes. Motion carried.

SB-527 (Campus Police Act) Committee Substitute was introduced by Vice Chair, Senator R.C. Soles. Bill sponsor, Senator Dan Clodfelter explained that this bill would create a Campus Police law enforcement agency. The agency's purpose would be to protect the welfare and safety of students, faculty, and staff in institutions of higher learning. The Attorney General's Office would establish the education, experience, and training standards for applicants for certification. (See attached Bill Summary for further information). Mr. Eddie Speas, attorney with NC Association of Colleges and Independent Universities spoke on the bill. Senator's Charlie Albertson, Ham Horton and Phillip Berger had questions. Mr. Speas and Ms. Hope Williams, Executive Director of NC Colleges and Universities, answered the questions. Senator Clodfelter offered a technical Amendment to the bill on Pg.5, line 15. (See attached Amendment), and moved for adoption of the Amendment. All members voted yes. Motion carried. Senator Stevens moved for a Favorable Report. All members voted yes. Motion carried.

SB-612 (Amend Lobbying Laws) Committee Substitute was introduced by Senator Clodfelter. Bill sponsor, Senator Tony Rand explained that the bill would amend the lobbying laws by restricting the amounts and quantities of gifts a lobbyist can give for legislative lobbying purposes, including a goodwill lobbying, increasing the frequency and details of legislative lobbyist' 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 in much the same ways that legislative lobbying is governed. See attached Bill Summary for further information. Mr. Gene Nichols, UNC School of Law, and Chair of Secretary of State'sAdvisory Council on Legislative Lobbying Policy and Regulation, spoke on the bill. Senator's David Hoyle, Vernon Malone, Richard Stevens Jeanne Lucas, Phillip Berger, Martin Nesbitt, Jerry Tillman, Andrew Brock and Tony Rand had questions on the bill. Staff attorney, Walker Reagan answered the questions. Senator Stevens offered an Amendment to the bill that will be taken up in Finance Committee. Senator Tony Rand moved for a Favorable Report. All members voted yes. Motion carried. SB-612 passes with a Favorable Report and will be referred to Finance.

Being no further business the meeting adjourned at 10:57 a.m.

Senator Dan Clodfelter, Chair

Wanda Joyner, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Daniel G. Clodfelter, Chair

Monday, April 04, 2005

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

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

S.B. **527** Campus Police Act.

Draft Number:	PCS85230
Sequential Referral:	Finance
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comments:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Daniel G. Clodfelter, Chair

Thursday, March 31, 2005

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

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

S.B. **612** Amend Lobbying Laws.

Draft Number:	PCS75280
Sequential Referral:	None
Recommended Referral:	Finance
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comments:

last 60

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 468
PROPOSED COMMITTEE SUBSTITUTE S468-PCS35195-RR-11

Short Title: Crime Lab Cost Recovery Fee. (Public)

Sponsors:

Referred to:

March 10, 2005

A BILL TO BE ENTITLED

AN ACT AUTHORIZING THE COURT TO ASSESS A FEE FOR THE COSTS OF THE SERVICES OF A CRIME LABORATORY OPERATED BY A LOCAL GOVERNMENT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-304(a) is amended by adding a new subdivision to read:

"(8) For the services of any crime laboratory facility operated by a local government or group of local governments, the district or superior court judge shall, upon conviction, order payment of the sum of three hundred dollars ($300.00) to be remitted to the general fund of the local governmental unit that operates the laboratory to be used for law enforcement purposes. The cost shall be assessed only in cases in which, as part of the investigation leading to the defendant's conviction, the laboratory has performed DNA analysis of the crime, test of bodily fluids of the defendant for the presence of alcohol or controlled substances, or analysis of any controlled substance possessed by the defendant or the defendant's agent. The costs shall be assessed only if the court finds that the work performed at the local government's laboratory is the equivalent of the same kind of work performed by the State Bureau of Investigation under subdivision (7) of this subsection. The court may waive or reduce the amount of the payment required by this subdivision upon a finding of just cause to grant such a waiver or reduction. The costs assessed in one case against one individual under both this subdivision and subdivision (7) of this subsection shall not exceed three hundred dollars ($300.00). If more than one laboratory has performed work under either or both of the two subdivisions in the same case, or if multiple local

governmental units jointly operate the same laboratory performing work, the court shall apportion the proceeds from the fee between or among the governmental units on the basis of the relative contribution of each governmental unit to the work performed."

SECTION 2. This act becomes effective July 1, 2005, and applies to court costs assessed or collected on or after that date for offenses committed on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 468

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

S468-ARR-32 [v.1]

Date 3-31- ,2005

Comm. Sub. [YES]
Amends Title [NO]
S468-CSRR-11 [v.4]

Senator Berger

moves to amend the bill on page 2, line 2,
by deleting the term "three hundred dollars ($300.00)" and substituting the term "proceeds from the fee".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

SENATE BILL 468:
Crime Lab Cost Recovery Fee

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Senator Graham
Date:	March 29, 2005	**Summary by:**	William R. Gilkeson
Version:	S468-CSRR-11 [v.4]		Committee Co-Counsel

SUMMARY: This Proposed Committee Substitute for Senate Bill 468 would require a District or Superior Court judge to charge $300 in a criminal case for the services of a crime lab operated by a local governmental unit or group of local governmental units. Effective July 1, 2005.

CURRENT LAW: Current law requires trial judges to charge criminal defendants (or in some cases prosecuting witnesses) $300 for the use of the State Bureau of Investigation crime lab. It is charged only if, in that case, the SBI lab has performed DNA analysis, done body-fluid analysis for the presence of alcohol or drugs, or done analysis of drugs in the defendant's possession. The court may waive or reduce the amount if it finds just cause to do so. The statute says the $300 is to be "remitted to the Department of Justice for support of the State Bureau of Investigation.

The Charlotte-Mecklenburg Police Department also has a crime lab, but no court costs are authorized to be charged for its use. Raleigh and Wake County also jointly sponsor a crime lab, again unassisted by court costs.

BILL ANALYSIS: The PCS would amend G.S. 7A-304, the same criminal court costs statute that contains the $300 fee for use of the SBI lab, to add a parallel provision for $300 charge for the use of any crime laboratory facility operated by a local governmental unit or group of local governmental units. Much of the bill's language tracks that of the SBI provision. It provides that the money must be "remitted to the general fund of the local governmental unit that operates the laboratory to be used for law enforcement purposes."

Like the SBI provision, the new local government lab provision gives the court discretion to waive or reduce the court costs in any case where it finds just cause. The new local government provision would also rely on the court's judgment to decide these other questions:

- Whether the work done in the case by the local government's lab is the equivalent of what would be done by the SBI lab. Only if is would the $300 fee be assessed.
- How the $300 should be distributed in case more than one lab did work on the same case. The new provision would cap at $300 the crime lab costs that would be assessed against one individual in one case. The court would apportion the $300 according to relative contributions of the labs to the work.
- How the $300 should be distributed in case more than one unit of government jointly operated the same lab. Again, the court would apportion the $300 according to the relative contributions of the governments to the lab work.

The bill is effective July 1, 2005. It applies to court costs assessed or collected on or after that date for offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 468

Short Title:	Crime Lab Cost Recovery Fee.	(Public)
Sponsors:	Senators Graham; Dannelly and Pittenger.	
Referred to:	Judiciary I.	

March 10, 2005

A BILL TO BE ENTITLED

AN ACT AUTHORIZING THE COURT TO ASSESS A FEE FOR THE COSTS OF THE SERVICES OF A MUNICIPAL CRIME LABORATORY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-304(a) is amended by adding a new subdivision to read:

"(8) For the services of any municipal police laboratory facility, the district or superior court judge shall, upon conviction, order payment of the sum of three hundred dollars ($300.00) to be remitted to the general fund of the laboratory's municipality to be used for law enforcement purposes. The cost shall be assessed only in cases in which, as part of the investigation leading to the defendant's conviction, the municipal laboratory has performed DNA analysis of the crime, test of bodily fluids of the defendant for the presence of alcohol or controlled substances, or analysis of any controlled substance possessed by the defendant or the defendant's agent. The court may waive or reduce the amount of the payment required by this subdivision upon a finding of just cause to grant such a waiver or reduction."

SECTION 2. This act becomes effective July 1, 2005, and applies to court costs assessed or collected on or after that date.

LAST DRAFT

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 527
PROPOSED COMMITTEE SUBSTITUTE S527-PCS85230-RK-4

Short Title: Campus Police Act. (Public)

Sponsors:

Referred to:

March 15, 2005

A BILL TO BE ENTITLED

AN ACT TO ENHANCE THE CAPACITY OF PRIVATE INSTITUTIONS OF HIGHER EDUCATION TO PROTECT THE SAFETY AND WELFARE OF THEIR STUDENTS, FACULTY, AND STAFF BY ENACTING THE CAMPUS POLICE ACT.

The General Assembly of North Carolina enacts:

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

"**Chapter 74G.**

"**Campus Police Act.**

"**§ 74G-1. Title.**

This Chapter is the "Campus Police Act" and may be cited by that name.

"**§ 74G-2. Policy and scope.**

(a) The purpose of this Chapter is to protect the safety and welfare of students, faculty, and staff in institutions of higher education by fostering integrity, proficiency, and competence among campus police agencies and campus police officers. To achieve this purpose, the General Assembly finds that a Campus Police Program needs to be established. As part of the Campus Police Program, the Attorney General is given the authority to certify a private, nonprofit institution of higher education, other than those described by G.S. 116-15(d), as a campus police agency and to commission an individual as a campus police officer.

(b) The purpose of this Chapter is also to assure, to the extent consistent with the State and federal constitutions, that this protection is not denied to students, faculty, and staff at private, nonprofit institutions of higher education originally established by or affiliated with religious denominations. To achieve this purpose, the General Assembly finds that:

(1) Most of the State's private, nonprofit institutions of higher education were originally established by or affiliated with religious denominations;
(2) These institutions have made and continue to make significant contributions in education to the State and the nation;
(3) These institutions admit students regardless of their spiritual or religious beliefs;
(4) These institutions' principal mission is educational;
(5) All of these institutions are accredited by the Commission on Colleges of the Southern Association of Colleges and Schools and as such have independent governing boards of trustees;
(6) The principal State power conferred on campus police by this Chapter is the power of arrest;
(7) This power is important to protect the safety and welfare of students, faculty, and staff at these institutions;
(8) In exercising the power of arrest, these officers apply standards established by State and federal law only; and
(9) The exercise of this power is reviewable by the General Court of Justice and the federal courts.

(c) Public educational institutions operating under the authority of the Board of Governors of The University of North Carolina or the State Board of Community Colleges and private educational institutions that are licensed by the Board of Governors of The University of North Carolina pursuant to G.S. 116-15 or that are exempt from licensure by the Board of Governors pursuant to G.S. 116-15(c) may apply to the Attorney General to be certified as a campus police agency. A campus police agency may apply to the Attorney General to commission an individual designated by the agency to act as a campus police officer for the agency.

"**§ 74G-3. Liability insurance policy or certificate of self-insurance required; suspension of campus police agency certification for failure to comply.**

(a) An applicant for certification as a campus police agency must file with the Attorney General either a copy of a liability insurance policy that meets the requirements of this section or a certificate of self-insurance designating assets sufficient to satisfy the coverage requirements of this section if the applicant is a nonpublic entity. The policy or certificate of self-insurance must provide not less than one million dollars ($1,000,000) of coverage per incident for personal injury or property damage resulting from a negligent act of the applicant or an agent or employee of the applicant operating in the course and scope of employment or under color of law. The form, execution, and terms of a liability insurance policy must meet the requirements of the Attorney General.

(b) An insurance carrier that issues a liability insurance policy required by this section may cancel the policy upon giving 30 days' written notice to both the campus police agency and the Attorney General. The written notice must be given by certified mail, return receipt requested. Cancellation of a liability insurance policy does not affect any liability on the policy that accrued prior to the effective cancellation date.

(c) A campus police agency that is a nonpublic entity must maintain the liability insurance policy or certificate of self-insurance required by this section in effect at all times. The Attorney General shall suspend the certification of a campus police agency that fails to maintain a liability insurance policy or certificate of self-insurance when required to do so by this section. A certification suspended for this reason may not be reinstated until the person whose certification was suspended files with the Attorney General an application for reinstatement and either the required liability insurance policy or certificate of self-insurance.

"**§ 74G-4. Powers of Attorney General.**

The Attorney General has the following powers in addition to those conferred elsewhere in this Chapter:

(1) To establish minimum education, experience, and training standards and establish and require written or oral examinations for an applicant for certification as a campus police agency, a certified campus police agency, an applicant for commission as a campus police officer, or a commissioned campus police officer.

(2) To require a campus police agency or a campus police officer to submit reports or other information.

(3) To inspect records maintained by a campus police agency.

(4) To conduct investigations regarding alleged violations of this Chapter or a rule adopted under this Chapter and to make evaluations as may be necessary to determine if a campus police agency or a campus police officer is complying with this Chapter or a rule adopted under this Chapter.

(5) To deny, suspend, or revoke a certification as a campus police agency or a commission as a campus police officer for failure to meet the requirements of or comply with this Chapter or a rule adopted under this Chapter, in accordance with Article 3 of Chapter 150B of the General Statutes.

(6) To appear in the name of the Campus Police Program and apply to the courts having jurisdiction for injunctions to prevent a violation of this Chapter or a rule adopted under this Chapter.

(7) To delegate the authority to administer this Chapter.

(8) To require that the Criminal Justice Standards Division provide administrative support staff for the Campus Police Program.

(9) To adopt rules needed to implement this Chapter, in accordance with Chapter 150B of the General Statutes.

"**§ 74G-5. Records.**

(a) The Attorney General is the legal custodian of all books, papers, documents, or other records and property of the Campus Police Program.

(b) Any papers, documents, or other records that become the property of the Campus Police Program and are placed in a campus police officer's personnel file maintained by the Attorney General are subject to the same restrictions concerning

disclosure as set forth in Chapters 126, 153A, and 160A of the General Statutes for other personnel records.

(c) Notwithstanding the provisions of subsection (b) of this section, the Attorney General may disclose the contents of any records maintained under the authority of this Chapter to the Criminal Justice Education and Training Standards Commission, the Sheriff's Education and Training Standards Commission, or any other criminal justice agency for certification or employment purposes.

"**§ 74G-6. Oaths, powers, and authority of campus police officers.**

(a) Requirements. – An individual who is commissioned as a campus police officer must take the oath of office required of a law enforcement officer before the individual assumes the duties of a campus police officer. The person in each campus police agency who is responsible for the agency's campus police officers must be commissioned as a campus police officer.

(b) Powers and Authority of Officers. – Campus 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 the institution employing the officer.

(2) Any portion of any public road or highway passing through the real property described in subdivision (1) of this subsection or immediately adjoining it, wherever located.

(3) Any other real property while in continuous and immediate pursuit of a person for an offense committed upon property described in subdivision (1) or (2) of this subsection.

In exercising the powers conferred by this subsection, campus police officers shall apply the standards established by the law of this State and the United States.

(c) Powers and Authority of Institutions. – The governing body of any private educational institution that has a campus police agency may:

(1) Enter into joint agreements with the governing board of any municipality to extend the law enforcement authority of campus police officers into any or all of the municipality's jurisdiction and to determine the circumstances in which this extension of authority may be granted;

(2) Enter into joint agreements with the governing board of any county and, with the consent of the sheriff, to extend the law enforcement authority of campus police officers into any or all of the county's jurisdiction and to determine the circumstances in which this extension of authority may be granted; and

(3) Enter into joint agreements with the governing board of any other public or private educational institution that has a campus police agency pursuant to this Chapter or pursuant to G.S. 116-40.5 to extend the law enforcement authority of its campus police officers into any or

all of the other institution's jurisdiction and to determine the circumstances as to which its extension of authority may be granted.

(d) Concealed Weapons. – Notwithstanding the provisions of G.S. 14-269, campus police officers may carry a concealed weapon in performing their duties to the extent authorized by their campus police agency and approved by the sheriff of the county in which the campus police agency is located.

(e) Public Institutions Option. – Notwithstanding any of the provisions of this Chapter, the board of trustees of any constituent institution of The University of North Carolina may elect to have its officers certified under Chapter 17C and Chapter 116 of the General Statutes, and the board of trustees of any community college may elect to have its officers certified under Chapter 17C and Chapter 115D of the General Statutes rather than requesting certification as a campus police agency and campus police commission pursuant to the provisions of this Chapter.

(f) Exclusive Authority. – Notwithstanding any other provision of law, the authority granted to campus police officers certified under this Chapter shall be limited to the provisions of this Chapter.

"**§ 74G-7. Badges, uniforms, weapons, and vehicles.**

Campus police agencies shall be responsible for ensuring that all employees, whether or not commissioned, comply with the provisions of this Chapter and the rules adopted under this Chapter, including those provisions pertaining to the wearing of badges and uniforms, the carrying of weapons, and the operation of vehicles.

"**§ 74G-8. Minimum standards for campus police officers.**

Applicants for commission as a campus police officer and a commissioned campus police officer must meet and maintain the same minimum preemployment and in-service standards as are required for State law enforcement officers by the North Carolina Criminal Justice Education and Training Standards Commission and must meet and maintain any other preemployment and in-service requirements set by the Attorney General.

"**§ 74G-9. Compensation of campus police officers.**

The compensation of a campus police officer shall be paid by the campus police agency for which the officer is commissioned, as may be agreed on between them.

"**§ 74G-10. Expiration, renewal, and termination of agency certification or officer commission.**

(a) Agency. – Unless sooner suspended or revoked by the Attorney General, a campus police agency's certification expires on June 30 of the calendar year following the date it is issued. A campus police agency may renew the certification upon payment of the appropriate fee and compliance with this Chapter and the rules adopted under this Chapter. An entity whose campus police agency's certification was denied or revoked for a violation of this Chapter or a rule adopted under this Chapter is not eligible to apply again for that certification for three years.

(b) Officer. – Unless sooner suspended or revoked by the Attorney General, a campus police officer's commission expires on June 30 of the calendar year following the date it is issued. A campus police officer may renew a commission upon payment of the appropriate fee and compliance with this Chapter and the rules adopted under this

Chapter. The Attorney General shall immediately revoke the commission of a campus police officer when any of the following occurs:

(1) Termination of employment with the campus police agency for which the officer is commissioned.

(2) Termination, suspension, or revocation of the certification of the campus police agency for which the officer is commissioned.

(3) Failure to meet in-service training requirements as required by this Chapter or the rules adopted under this Chapter.

(4) Violation of this Chapter or a rule adopted under this Chapter.

An individual whose campus police officer's commission was denied or revoked for a violation of this Chapter or a rule adopted under this Chapter is not eligible to apply again for a commission for three years.

"**§ 74G-11. Immunity.**

Neither the Attorney General nor any of the Attorney General's employees may be held criminally or civilly liable for any acts or omissions in carrying out the provisions of this Chapter or for the acts or omissions of agencies or officers certified or commissioned under this Chapter.

"**§ 74G-12. Fees.**

The Attorney General may charge fees for the items listed in the following table, not to exceed the amounts listed in the table:

Item	Maximum Fee
Application for certification as a campus police agency	$ 250.00
Annual renewal of certification as a campus police agency	$ 200.00
Application for reinstatement of certification as a campus police agency	$ 1,000
Application for commission as a campus police officer	$ 100.00
Annual renewal of commission as a campus police officer	$ 50.00
Application for reinstatement of commission as a campus police officer	$ 150.00

The fees imposed under this section are not refundable. Fees collected under this section shall be applied to the cost of administering this Chapter.

"**§ 74G-13. Penalties and enforcement.**

(a) No private person, firm, association, or corporation, and no public institution, agency, or other entity shall engage in, perform any services as, or in any way hold itself out as a campus police agency or engage in the recruitment or hiring of campus police officers without having first complied with the provisions of this Chapter. Any person, firm, association, or corporation or their agents and employees violating any of the provisions of this Chapter shall be guilty of a Class 1 misdemeanor.

(b) The Campus Police Program may apply in its own name to the superior court for an injunction to prevent any violation or threatened violation of this Chapter or a rule adopted under this Chapter, and the superior courts have jurisdiction to grant the requested relief, irrespective of whether or not criminal prosecution has been instituted or administrative sanctions imposed because of the violation. The venue for an action brought under this subsection shall be in any county selected by the Attorney General.

(c) This section does not relieve a campus police agency from any civil liability for the acts of its campus police officers in exercising or attempting to exercise the powers conferred by this Chapter."

SECTION 2. G.S. 74E-2(b) reads as rewritten:

"(b) A ~~public or private educational institution or~~ hospital, a State institution, or a corporation engaged in providing on-site police security personnel services for persons or property may apply to the Attorney General to be certified as a company police agency. A company police agency may apply to the Attorney General to commission an individual designated by the agency to act as a company police officer for the agency."

SECTION 3. G.S. 74E-6 reads as rewritten:

"**§ 74E-6. Oaths, powers, and authority of company police officers.**

(a) Requirements. – An individual who is commissioned as a company police officer must take the oath of office required of a law enforcement officer before the individual assumes the duties of a company police officer. The person in each company police agency who is responsible for the agency's company police officers must be commissioned as a company police officer.

(b) Categories. – The following three distinct classifications of company police officers are established:

(1) Campus Police Officers – Only ~~Those~~ those company police officers who are employed by any college or university that is a constituent institution of The University of North Carolina or any private college or university that is licensed or exempted from licensure as prescribed by ~~G.S. 116-15.~~G.S. 116-15, and who are employed by a campus police agency that was licensed pursuant to this Chapter prior to the enactment of Chapter 74G of the General Statutes.

(2) Railroad Police Officers – Those company police officers who are employed by a certified rail carrier and commissioned as company police officers under this Chapter.

(3) Special Police Officers – All company police officers not designated as a campus police officer or railroad police officer.

(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).

(d) Campus Police. – Campus police officers have the powers contained in subsection (c) of this section and also have the powers in that subsection upon that portion of any public road or highway passing through or immediately adjoining the property described in that subsection, wherever located. The board of trustees of any college or university that qualifies as a campus police agency pursuant to this Chapter may enter into a mutual aid agreement with the governing board of a municipality or, with the consent of the county sheriff, a county to the same extent as a municipal police department pursuant to Chapter 160A.

(e) Railroad Police. – Railroad police officers have the powers contained in subsection (c) and also have the powers and authority granted by federal law or by a regulation promulgated by the United States Secretary of Transportation. Notwithstanding any of the provisions of this Chapter, the limitations on the power to make arrests contained in subsection (c) above, shall not be applicable to railroad police officers commissioned by the Attorney General pursuant to the authority of this Chapter.

~~(f) Campus Option. – Notwithstanding any of the provisions of this Chapter, the Board of Trustees of any constituent institution of The University of North Carolina may elect to have its officers certified under Chapter 17C and Chapter 116 of the General Statutes and the board of trustees of any community college may elect to have its officers certified under Chapter 17C and Chapter 115D of the General Statutes rather than requesting certification as a company police agency and company police commission pursuant to the provisions of this Chapter.~~

(g) Exclusive Authority. – Notwithstanding any other provision of law, the authority granted to company police officers shall be limited to the provisions of this Chapter."

SECTION 4. G.S. 14-415.10(4) reads as rewritten:

"(4) Qualified former sworn law enforcement officer. – An individual who retired from service as a law enforcement officer with a local, State, campus police, or company police agency in North Carolina, other than for reasons of mental disability, who has been retired as a sworn law enforcement officer two years or less from the date of the permit application, and who satisfies all of the following:

a. Immediately before retirement, the individual was a qualified law enforcement officer with a local, State, or company police agency in North Carolina.

b. The individual has a nonforfeitable right to benefits under the retirement plan of the local, State, or company police agency as a law enforcement officer or has 20 or more aggregate years of law enforcement service and has retired from a company police agency that does not have a retirement plan.

c. The individual is not prohibited by State or federal law from receiving a firearm."

SECTION 5. G.S. 14-415.10(5) reads as rewritten:

"(5) Qualified sworn law enforcement officer. – A law enforcement officer employed by a local, State, campus police, or company police agency in North Carolina who satisfies all of the following:

a. The individual is authorized by the agency to carry a handgun in the course of duty.

b. The individual is not the subject of a disciplinary action by the agency that prevents the carrying of a handgun.

c. The individual meets the requirements established by the agency regarding handguns."

SECTION 6. When this act becomes law, all certificates issued to police agencies at private institutions of higher education and commissions issued to their police officers pursuant to Chapter 74E of the General Statutes shall automatically convert to certification and commissions issued pursuant to this act and shall be administered in conformity with this act. Notwithstanding any of the provisions of Chapter 74G of the General Statutes, as enacted by this act, or the provisions of Chapter 74E of the General Statutes, the board of trustees of any educational institution that, on the effective date of this act, has a company police agency licensed pursuant to Chapter 74E of the General Statutes, may elect to continue to have its officers certified under Chapter 74E of the General Statutes rather than pursuant to Chapter 74G of the General Statutes, as enacted by this act, by making a written request to the Attorney General no later than July 1, 2005.

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

SENATE BILL 527: Campus Police Act.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Senators Clodfelter; and Hartsell
Date:	March 31, 2005		
Version:	PCS S527-csrk-4[v.1]	**Summary by:**	Hal Pell Committee Co-Counsel

SUMMARY: ***This act would create a Campus Police law enforcement agency. The agency's purpose would be to protect the welfare and safety of students, faculty, and staff in institutions of higher learning. The Attorney General's Office would establish the education, experience, and training standards for applicants for certification. The act is effective when it becomes law.***

CURRENT LAW: Campus police officers are currently certified under the Company Police statute. There are three categories of Company Police:

- Campus police officers,
- Railroad police officers, and
- Special police officers.

A campus police officer must be employed by a UNC constituent institution, or by any private college or university that is licensed or exempted from licensure. Special police officers are all officers not categorized as campus or railroad officers.

A UNC constituent institution, or a community college, also have the option of having police officers certified under Chapter 74C, and their own authorizing statutes.

BILL ANALYSIS:

I. General Provisions

The stated purposes of the act include

- Protecting the safety and welfare of students, faculty, and staff in institutions of higher learning by fostering integrity, proficiency, and competence among campus police agencies and officers
- Insuring that the protection is not denied to students, faculty, and staff at private, nonprofit institutions that were originally established by or affiliated with religious denominations.

The following entities may apply to the Attorney General for certification as a Campus Police agency:

- Public educational institutions operating under the Board of Governors of The University of North Carolina or the State Board of Community Colleges
- Private educational institutions licensed under state statute or exempt from licensure
- Private, nonprofit institutions of higher education

The Campus Police Act contains parallel provisions to the current campus police sections of the Company Police Act, including: fees; liability insurance; Attorney General's authority to establish minimum

standards for education and training; record keeping; oaths and authority; and terms for renewal, termination, and expiration of certification.

The jurisdiction of a campus police officer under the act would be the same as under the Company Police Act. Officers would 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:

- Real property owned by or in possession and control of the employing institution
- Any portion of any public road or highway passing through the real property, or adjoining it
- Any other real property while in continuous and immediate pursuit of a person committing an offense on property described above

II. Technical/conforming amendments

The Company Police act is amended to preclude any future certifications of "campus police" agencies. Campus police agencies that are licensed prior to the enactment of the Campus Police Act may continue under the current statute, and continue to employ officers.

The bill also adds "campus police" to current law that defines "qualified" law enforcement officers for purposes of the concealed carry permit statutes.

III. Conversion/Opt out provisions

Upon enactment, all certificates issued to police agencies at private institutions of higher education, and commissions to their police officers, automatically convert to certification and commissions under the new Campus Police Act. Any educational institutional that has a licensed campus police agency may elect to continue under the Company Police Act by written request to the Attorney General. The request must be filed no later than July 1, 2005.

The act is effective when it becomes law.

BACKGROUND:

In *State v. Pendleton*, the Campbell University campus police had arrested the defendant for driving while impaired. In reviewing the case in 1994, the North Carolina Supreme Court concluded that the police power was an important discretionary governmental power. Consequently, because Campbell University was a "religious institution" under the first Amendment of the US Constitution, the Court held that the campus police provisions under G.S. 74A [prior authorizing statute] fostered an excessive entanglement with religion. The Court ruled that the statute was unconstitutional as applied in Pendleton's case.

In 2002, the North Carolina Court of Appeals addressed a similar argument in *State v. Jordan*. The defendant had been stopped for driving while impaired on the campus of Pfeiffer University. The University's campus police was certified under Chapter 74E. The court found that Pfeiffer also was a religious institution, and held that Chapter 74E was unconstitutional as applied.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 31 MAR 05

S. B. No. 527 Amendment No. 1

(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE PCS

Rep.) CLODFELTER

Sen.)

1 moves to amend the bill on page 5, line 15

2 ( ) WHICH CHANGES THE TITLE

3 by inserting the following after the word

4 "officers":

5

6 "certified under this Chapter".

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SIGNED Daniel G. Clodfelter

ADOPTED ✓ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 527

Short Title:	Campus Police Act.	(Public)
Sponsors:	Senators Clodfelter; and Hartsell.	
Referred to:	Judiciary I.	

March 15, 2005

A BILL TO BE ENTITLED

AN ACT TO ENHANCE THE CAPACITY OF PRIVATE INSTITUTIONS OF HIGHER EDUCATION TO PROTECT THE SAFETY AND WELFARE OF THEIR STUDENTS, FACULTY, AND STAFF BY ENACTING THE CAMPUS POLICE ACT.

The General Assembly of North Carolina enacts:

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

"**Chapter 74G.**

"**Campus Police Act.**

"**§ 74G-1. Title.**

This Chapter is the "Campus Police Act" and may be cited by that name.

"**§ 74G-2. Policy and scope.**

(a) The purpose of this Chapter is to protect the safety and welfare of students, faculty, and staff in institutions of higher education by fostering integrity, proficiency, and competence among campus police agencies and campus police officers. To achieve this purpose, the General Assembly finds that a Campus Police Program needs to be established. As part of the Campus Police Program, the Attorney General is given the authority to certify a private, nonprofit institution of higher education, other than those described by G.S. 116-15(d), as a campus police agency and to commission an individual as a campus police officer.

(b) The purpose of this Chapter is also to assure, to the extent consistent with the State and federal constitutions, that this protection is not denied to students, faculty, and staff at private, nonprofit institutions of higher education originally established by or affiliated with religious denominations. To achieve the purpose, the General Assembly finds that:

(1) Most of the State's private, nonprofit institutions of higher education were originally established by or affiliated with religious denominations;

(2) These institutions have made and continue to make significant contributions in education to the State and the nation;
(3) These institutions admit students regardless of their spiritual or religious beliefs;
(4) These institutions' principal mission is educational;
(5) All of these institutions are accredited by the Commission on Colleges of the Southern Association of Colleges and Schools and as such have independent governing boards of trustees;
(6) The principal State power conferred on campus police by this Chapter is the power of arrest;
(7) This power is important to protect the safety and welfare of students, faculty, and staff at these institutions;
(8) In exercising the power of arrest, these officers apply standards established by State and federal law only; and
(9) The exercise of this power is reviewable by the General Court of Justice and the federal courts.

(c) Public educational institutions operating under the authority of the Board of Governors of The University of North Carolina or the State Board of Community Colleges and private educational institutions that are licensed by the Board of Governors of The University of North Carolina pursuant to G.S. 116-15 or that are exempt from licensure by the Board of Governors pursuant to G.S. 116-15(c) may apply to the Attorney General to be certified as a campus police agency. A campus police agency may apply to the Attorney General to commission an individual designated by the agency to act as a campus police officer for the agency.

"**§ 74G-3. Liability insurance policy or certificate of self-insurance required; suspension of campus police agency certification for failure to comply.**

(a) An applicant for certification as a campus police agency must file with the Attorney General either a copy of a liability insurance policy that meets the requirements of this section or a certificate of self-insurance designating assets sufficient to satisfy the coverage requirements of this section if the applicant is a nonpublic entity. The policy or certificate of self-insurance must provide not less than one million dollars ($1,000,000) of coverage per incident for personal injury or property damage resulting from a negligent act of the applicant or an agent or employee of the applicant operating in the course and scope of employment or under color of law. The form, execution, and terms of a liability insurance policy must meet the requirements of the Attorney General.

(b) An insurance carrier that issues a liability insurance policy required by this section may cancel the policy upon giving 30 days' written notice to both the campus police agency and the Attorney General. The written notice must be given by certified mail, return receipt requested. Cancellation of a liability insurance policy does not affect any liability on the policy that accrued prior to the effective cancellation date.

(c) A campus police agency that is a nonpublic entity must maintain the liability insurance policy or certificate of self-insurance required by this section in effect at all times. The Attorney General shall suspend the certification of a campus police agency

that fails to maintain a liability insurance policy or certificate of self-insurance when required to do so by this section. A certification suspended for this reason may not be reinstated until the person whose certification was suspended files with the Attorney General an application for reinstatement and either the required liability insurance policy or certificate of self-insurance.

"**§ 74G-4. Powers of Attorney General.**

The Attorney General has the following powers in addition to those conferred elsewhere in this Chapter:

(1) To establish minimum education, experience, and training standards and establish and require written or oral examinations for an applicant for certification as a campus police agency, a certified campus police agency, an applicant for commission as a campus police officer, or a commissioned campus police officer.

(2) To require a campus police agency or a campus police officer to submit reports or other information.

(3) To inspect records maintained by a campus police agency.

(4) To conduct investigations regarding alleged violations of this Chapter or a rule adopted under this Chapter and to make evaluations as may be necessary to determine if a campus police agency or a campus police officer is complying with this Chapter or a rule adopted under this Chapter.

(5) To deny, suspend, or revoke a certification as a campus police agency or a commission as a campus police officer for failure to meet the requirements of or comply with this Chapter or a rule adopted under this Chapter, in accordance with Article 3 of Chapter 150B of the General Statutes.

(6) To appear in the name of the Campus Police Program and apply to the courts having jurisdiction for injunctions to prevent a violation of this Chapter or a rule adopted under this Chapter.

(7) To delegate the authority to administer this Chapter.

(8) To require that the Criminal Justice Standards Division provide administrative support staff for the Campus Police Program.

(9) To adopt rules needed to implement this Chapter, in accordance with Chapter 150B of the General Statutes.

"**§ 74G-5. Records.**

(a) The Attorney General is the legal custodian of all books, papers, documents, or other records and property of the Campus Police Program.

(b) Any papers, documents, or other records that become the property of the Campus Police Program and are placed in a campus police officer's personnel file maintained by the Attorney General are subject to the same restrictions concerning disclosure as set forth in Chapters 126, 153A, and 160A of the General Statutes for other personnel records.

(c) Notwithstanding the provisions of subsection (b) of this section, the Attorney General may disclose the contents of any records maintained under the authority of this

Chapter to the Criminal Justice Education and Training Standards Commission, the Sheriff's Education and Training Standards Commission, or any other criminal justice agency for certification or employment purposes.

"**§ 74G-6. Oaths, powers, and authority of campus police officers.**

(a) Requirements. – An individual who is commissioned as a campus police officer must take the oath of office required of a law enforcement officer before the individual assumes the duties of a campus police officer. The person in each campus police agency who is responsible for the agency's campus police officers must be commissioned as a campus police officer.

(b) Powers and Authority of Officers. – Campus 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 the institution employing the officer.

(2) Any portion of any public road or highway passing through the real property described in subdivision (1) of this subsection or immediately adjoining it, wherever located.

(3) Any other real property while in continuous and immediate pursuit of a person for an offense committed upon property described in subdivision (1) or (2) of this subsection.

In exercising the powers conferred by this subsection, campus police officers shall apply the standards established by the law of this State and the United States.

(c) Powers and Authority of Institutions. – The governing body of any private educational institution that has a campus police agency may:

(1) Enter into joint agreements with the governing board of any municipality to extend the law enforcement authority of campus police officers into any or all of the municipality's jurisdiction and to determine the circumstances in which this extension of authority may be granted;

(2) Enter into joint agreements with the governing board of any county and, with the consent of the sheriff, to extend the law enforcement authority of campus police officers into any or all of the county's jurisdiction and to determine the circumstances in which this extension of authority may be granted; and

(3) Enter into joint agreements with the governing board of any other public or private educational institution that has a campus police agency pursuant to this Chapter or pursuant to G.S. 116-40.5 to extend the law enforcement authority of its campus police officers into any or all of the other institution's jurisdiction and to determine the circumstances as to which its extension of authority may be granted.

(d) Concealed Weapons. – Notwithstanding the provisions of G.S. 14-269, campus police officers may carry a concealed weapon in performing their duties to the

extent authorized by their campus police agency and approved by the sheriff of the county in which the campus police agency is located.

(e) Public Institutions Option. – Notwithstanding any of the provisions of this Chapter, the board of trustees of any constituent institution of The University of North Carolina may elect to have its officers certified under Chapter 17C and Chapter 116 of the General Statutes, and the board of trustees of any community college may elect to have its officers certified under Chapter 17C and Chapter 115D of the General Statutes rather than requesting certification as a campus police agency and campus police commission pursuant to the provisions of this Chapter.

(f) Exclusive Authority. – Notwithstanding any other provision of law, the authority granted to campus police officers shall be limited to the provisions of this Chapter.

"**§ 74G-7. Badges, uniforms, weapons, and vehicles.**

Campus police agencies shall be responsible for ensuring that all employees, whether or not commissioned, comply with the provisions of this Chapter and the rules adopted under this Chapter, including those provisions pertaining to the wearing of badges and uniforms, the carrying of weapons, and the operation of vehicles.

"**§ 74G-8. Minimum standards for campus police officers.**

Applicants for commission as a campus police officer and a commissioned campus police officer must meet and maintain the same minimum preemployment and in-service standards as are required for State law enforcement officers by the North Carolina Criminal Justice Education and Training Standards Commission and must meet and maintain any other preemployment and in-service requirements set by the Attorney General.

"**§ 74G-9. Compensation of campus police officers.**

The compensation of a campus police officer shall be paid by the campus police agency for which the officer is commissioned, as may be agreed on between them.

"**§ 74G-10. Expiration, renewal, and termination of agency certification or officer commission.**

(a) Agency. – Unless sooner suspended or revoked by the Attorney General, a campus police agency's certification expires on June 30 of the calendar year following the date it is issued. A campus police agency may renew the certification upon payment of the appropriate fee and compliance with this Chapter and the rules adopted under this Chapter. An entity whose campus police agency's certification was denied or revoked for a violation of this Chapter or a rule adopted under this Chapter is not eligible to apply again for that certification for three years.

(b) Officer. – Unless sooner suspended or revoked by the Attorney General, a campus police officer's commission expires on June 30 of the calendar year following the date it is issued. A campus police officer may renew a commission upon payment of the appropriate fee and compliance with this Chapter and the rules adopted under this Chapter. The Attorney General shall immediately revoke the commission of a campus police officer when any of the following occurs:

(1) Termination of employment with the campus police agency for which the officer is commissioned.

(2) Termination, suspension, or revocation of the certification of the campus police agency for which the officer is commissioned.

(3) Failure to meet in-service training requirements as required by this Chapter or the rules adopted under this Chapter.

(4) Violation of this Chapter or a rule adopted under this Chapter.

An individual whose campus police officer's commission was denied or revoked for a violation of this Chapter or a rule adopted under this Chapter is not eligible to apply again for a commission for three years.

"**§ 74G-11. Immunity.**

Neither the Attorney General nor any of the Attorney General's employees may be held criminally or civilly liable for any acts or omissions in carrying out the provisions of this Chapter or for the acts or omissions of agencies or officers certified or commissioned under this Chapter.

"**§ 74G-12. Fees.**

The Attorney General may charge fees for the items listed in the following table, not to exceed the amounts listed in the table:

Item	Maximum Fee
Application for certification as a campus police agency	$ 250.00
Annual renewal of certification as a campus police agency	$ 200.00
Application for reinstatement of certification as a campus police agency	$ 1,000
Application for commission as a campus police officer	$ 100.00
Annual renewal of commission as a campus police officer	$ 50.00
Application for reinstatement of commission as a campus police officer	$ 150.00

The fees imposed under this section are not refundable. Fees collected under this section shall be applied to the cost of administering this Chapter.

"**§ 74G-13. Penalties and enforcement.**

(a) No private person, firm, association, or corporation, and no public institution, agency, or other entity shall engage in, perform any services as, or in any way hold itself out as a campus police agency or engage in the recruitment or hiring of campus police officers without having first complied with the provisions of this Chapter. Any person, firm, association, or corporation, or their agents and employees violating any of the provisions of this Chapter shall be guilty of a Class 1 misdemeanor.

(b) The Campus Police Program may apply in its own name to the superior court for an injunction to prevent any violation or threatened violation of this Chapter or a rule adopted under this Chapter, and the superior courts have jurisdiction to grant the requested relief, irrespective of whether or not criminal prosecution has been instituted

or administrative sanctions imposed because of the violation. The venue for an action brought under this subsection shall be in any county selected by the Attorney General.

(c) This section does not relieve a campus police agency from any civil liability for the acts of its campus police officers in exercising or attempting to exercise the powers conferred by this Chapter."

SECTION 2. G.S. 74E-2(b) reads as rewritten:

"(b) A ~~public or private educational institution or~~ hospital, a State institution, or a corporation engaged in providing on-site police security personnel services for persons or property may apply to the Attorney General to be certified as a company police agency. A company police agency may apply to the Attorney General to commission an individual designated by the agency to act as a company police officer for the agency."

SECTION 3. G.S. 74E-6 reads as rewritten:

"**§ 74E-6. Oaths, powers, and authority of company police officers.**

(a) Requirements. – An individual who is commissioned as a company police officer must take the oath of office required of a law enforcement officer before the individual assumes the duties of a company police officer. The person in each company police agency who is responsible for the agency's company police officers must be commissioned as a company police officer.

(b) Categories. – The following ~~three~~ two distinct classifications of company police officers are established:

~~(1) Campus Police Officers. – Those company police officers who are employed by any college or university that is a constituent institution of The University of North Carolina or any private college or university that is licensed or exempted from licensure as prescribed by G.S. 116-15.~~

(2) Railroad Police Officers – Those company police officers who are employed by a certified rail carrier and commissioned as company police officers under this Chapter.

(3) Special Police Officers – All company police officers not designated as a campus police officer or railroad police officer.

(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).

~~(d) Campus Police. – Campus police officers have the powers contained in subsection (c) of this section and also have the powers in that subsection upon that portion of any public road or highway passing through or immediately adjoining the property described in that subsection, wherever located. The board of trustees of any college or university that qualifies as a campus police agency pursuant to this Chapter may enter into a mutual aid agreement with the governing board of a municipality or, with the consent of the county sheriff, a county to the same extent as a municipal police department pursuant to Chapter 160A.~~

(e) Railroad Police. – Railroad police officers have the powers contained in subsection (c) and also have the powers and authority granted by federal law or by a regulation promulgated by the United States Secretary of Transportation. Notwithstanding any of the provisions of this Chapter, the limitations on the power to make arrests contained in subsection (c) above, shall not be applicable to railroad police officers commissioned by the Attorney General pursuant to the authority of this Chapter.

~~(f) Campus Option. – Notwithstanding any of the provisions of this Chapter, the Board of Trustees of any constituent institution of The University of North Carolina may elect to have its officers certified under Chapter 17C and Chapter 116 of the General Statutes and the board of trustees of any community college may elect to have its officers certified under Chapter 17C and Chapter 115D of the General Statutes rather than requesting certification as a company police agency and company police commission pursuant to the provisions of this Chapter.~~

(g) Exclusive Authority. – Notwithstanding any other provision of law, the authority granted to company police officers shall be limited to the provisions of this Chapter."

SECTION 4. G.S. 14-415.10(4) reads as rewritten:

"(4) Qualified former sworn law enforcement officer. – An individual who retired from service as a law enforcement officer with a local, State, campus police, or company police agency in North Carolina, other than for reasons of mental disability, who has been retired as a sworn law enforcement officer two years or less from the date of the permit application, and who satisfies all of the following:

a. Immediately before retirement, the individual was a qualified law enforcement officer with a local, State, or company police agency in North Carolina.

b. The individual has a nonforfeitable right to benefits under the retirement plan of the local, State, or company police agency as a law enforcement officer or has 20 or more aggregate years of law enforcement service and has retired from a company police agency that does not have a retirement plan.

c. The individual is not prohibited by State or federal law from receiving a firearm."

SECTION 5. G.S. 14-415.10(5) reads as rewritten:

"(5) Qualified sworn law enforcement officer. – A law enforcement officer employed by a local, State, campus police, or company police agency in North Carolina who satisfies all of the following:

a. The individual is authorized by the agency to carry a handgun in the course of duty.

b. The individual is not the subject of a disciplinary action by the agency that prevents the carrying of a handgun.

c. The individual meets the requirements established by the agency regarding handguns."

SECTION 6. When this act becomes law, all certificates issued to police agencies at private institutions of higher education and commissions issued to their police officers pursuant to Chapter 74E of the General Statutes shall automatically convert to certification and commissions issued pursuant to this act and shall be administered in conformity with this act. Notwithstanding any of the provisions of Chapter 74G of the General Statutes, as enacted by this act, or the provisions of Chapter 74E of the General Statutes, the board of trustees of any private educational institution that, on the effective date of this act, has a company police agency licensed pursuant to Chapter 74E of the General Statutes, may elect to continue to have its officers certified under Chapter 74E of the General Statutes rather than pursuant to Chapter 74G of the General Statutes, as enacted by this act, by making a written request to the Attorney General no later than July 1, 2005.

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

LAST DRAFT

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

S D

SENATE BILL 612*
PROPOSED COMMITTEE SUBSTITUTE S612-PCS75280-RU-6

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 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.

"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.

(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.

(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 employee" means a legislative employee as the term is defined in G.S. 120-129(2).

(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.

(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~~Assembly, a person elected or appointed a legislator prior to taking office, or a legislative staff person or a legislative employee.

b. Solicitation of others by lobbyists to influence legislative 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 General Assembly.

(7) The terms "lobbyist's principal" and "principal" mean the entity in whose behalf the legislative lobbyist influences or attempts to influence 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 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 an executive lobbyist, legislative lobbyist, 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;~~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 in any manner upon 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.

No legislative lobbyist, lobbyist's principal, legislative liaison personnel, or the Governor, a member of the Council of State, appointed heads of State departments, agencies, and institutions who employs the legislative liaison personnel, shall give to, or pay for any of the following for, any legislator, legislative staff person, legislative employee, any other person elected or appointed a legislator prior to taking office, or the immediate family of any of these listed individuals:

(1) Gifts, meals, event tickets, transportation, speaking fees, and other expenses made directly or indirectly to support lobbying, including developing legislative goodwill, having a cumulative value in excess of one hundred dollars ($100.00) in a calendar year that benefits one legislator, legislative staff person, legislative employee, or any person elected or appointed a legislator prior to taking office. Expenses benefiting more than one recipient shall be prorated among the recipients. Expenses benefiting a family member count toward the limit of expenses for the legislator, legislative staff, or legislative employee. Expenses paid by a legislative lobbyist count toward the limit of the lobbyist's principal.

(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.

"§ 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 legislative 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 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 amount, date, the name and address of the beneficiary, and the type of item or activity of each expenditure made directly or indirectly to support lobbying, including developing legislative goodwill, that benefited any legislator, legislative staff person, legislative employee, or that person's immediate family member, and the name of each such person who benefited.

(2) The date, the name and address of the beneficiary, 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 legislator, legislative staff 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. Appeal of a decision by the Secretary of State shall be in accordance with Article 3 of 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 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 lobbyist's 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 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 amount, date, the name and address of the beneficiary, and the type of item or activity of each expenditure made directly or indirectly to support lobbying, including developing legislative goodwill, which benefited any legislator, legislative staff person, legislative employee, or that person's immediate family member, and the name of each such person who benefited.

(2) The date, the name and address of the beneficiary, 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 legislator, legislative staff 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 legislators, legislative staff 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.

(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.

(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. Prohibitions.**

(a) No legislator or former legislator 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 legislator has been elected or appointed.

(b) Elected executive branch officer, as defined in G.S. 147-54.31(3), 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 person 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 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.

(4) A person performing professional services in drafting bills or in advising and rendering opinions to clients, or to legislators 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 12 hours during a 12-month 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 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. 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 "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.

(3) 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.

(3) The term "executive lobbyist" means any lobbyist for or against executive action.

(4) The term "legislative lobbyist" means a lobbyist registered pursuant to Article 9A of Chapter 120 of the General Statutes.

(5) 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.

(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. 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.

(7) The terms "lobbyist's principal" and "principal" mean the entity in whose behalf the executive lobbyist influences or attempts to influence executive action.

(8) The term "person" means any individual, firm, partnership, committee, association, corporation, 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.

(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 in any manner upon 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.**

No executive lobbyist or lobbyist's principal shall give to, or pay for any of the following for, any executive branch officer or employee, or the immediate family of any executive branch officer or employee:

(1) Gifts, meals, event tickets, transportation, speaking fees, and other expenses made directly or indirectly to support lobbying, including developing executive branch goodwill, having a cumulative value in excess of one hundred dollars ($100.00) in a calendar year that benefit one executive branch officer or employee. Expenses benefiting more than one recipient shall be prorated among the recipients. Expenses benefiting a family member count toward the limit of expenses for the executive branch officer or employee. Expenses paid by a lobbyist count toward the limit of the lobbyist's principal.

(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.

"**§ 147-54.37. Statements of lobbyist's lobbying expenses required.**

(a) Each executive lobbyist shall file semiannual expense reports 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 amount, date, the name and address of the beneficiary, 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 date, the name and address of the beneficiary, 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) 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 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 amount, date, the name and address of the beneficiary, 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 date, the name and address of the beneficiary, 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 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 lobbyists' reports.

(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 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) 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.

(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.

SENATE BILL 612:
Amend Lobbying Laws.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Senator Rand
Date:	March 31, 2005	**Summary by:**	O. Walker Reagan, Committee Co-Counsel
Version:	Proposed Committee Substitute S612-CSRU-6		

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 612 would amend the lobbying laws by restricting the amounts and quantities of gifts a lobbyist can give for legislative lobbying purposes, 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 in much the same ways that legislative lobbying is governed.***

CURRENT LAW: Under current law, a person who tries 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 does 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 goodwill lobbying under the law.
- Restricts giving gifts or expending money to influence legislative staff and employees and the immediate family of legislators, legislative staff and employees.
- Limits the total annual cumulative value that can be spent on lobbying on an individual legislator, legislative staff or employee to $100 per year. Expenditures on legislator or staff's family members counts towards the limit per legislator or staff person. Certain loans and contributions, other than normal commercial loans or campaign contributions, are also prohibited. 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.
- Increases the details of lobbying expense reports to include the amount, payee, type of expenditure, and beneficiary of every lobbying expenditure. Also included in the report is the date and type of payment of each contractual arrangement or direct business relationship between a lobbyist, or the lobbyist's principal, and the legislator, legislative staff, or the person's immediate

family member. The lobbyist 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 lobbyist during any biennial legislative session to which the legislator was elected or appointed.
- An additional exception to this law is made for an employee who represents an employer's interest before the General Assembly for no more than 12 hours in a year, and who does not spend money on a legislator, legislative staff or an immediate family member that would otherwise be required to be reported by a registered lobbyist.

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, State official, member of a State board, commission, council or authority, or State employee. Executive branch lobbying does not include action by an attorney in connection with litigation involving a State agency or official, or an administrative hearing under the Administrative Procedures Act, or the appearance before an executive branch agency or department on an individual application for a license or permit, or a disciplinary action on a license.
- Lobbyist and lobbyist's principals' reports are due every 6 months.
- No cooling-off period prior to doing executive branch lobbying either by a legislator or a former executive branch officer or employee.

EFFECTIVE DATE: The bill would become effective January 1, 2006.

S612-SMRU-001

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 612*

Short Title:	Amend Lobbying Laws.	(Public)
Sponsors:	Senators Rand; Kinnaird and Thomas.	
Referred to:	Judiciary I.	

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 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.

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE — 3/31/05

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
Bill Coggin	KCCH
Andy Ellen	NC Retail Merchants Association
ED FARTHING	EQUALITY NC
Jeanne Bonds	ElectriCities
Estherine Davis	"
John Bowdish	ADA
Barbara Canelo	BSCGR
Amy Jo Hamm	NCMS
Jack Maynard	GMA

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE
Name of Committee

3/31/05
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
AMY KEMPLE	NORTH CAROLINA BAR ASSOCIATION
JACK BETD	CHARLOTTE OBSERVER
PAUL STOCK	NC BANKERS ASSN.
Larry Beasley	LBA
Bob Hall	Democracy North Carolina
Mike Olan	NC State AFL CIO
Adrian Blackwell	French - West - Vaughan
Roger C. Thompson	Charlotte-Mecklenburg Police
R.A. Hoch Jet.	CHAR-MECK POLICE DEPT.
Eddie Caldwell	NC Sheriffs Assn.
Peg O'Connell	MRNC
Anne Dennis	atty

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE — 3/31/05

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
Molly Ryan	NCSBA
~~Joyce Peters~~	JP Assoc
Angie Hairr	Margin Taylor
Butch Gunnells	NC Soft Drink Association
Lu-Ann Coe	SIA
Ken Melton	D.O.R.
Johanna Reese	DENR
Lisa Martin	NC Home Builders Assoc.
Summer Hood	John Locke Foundation
John Hood	John Locke Foundation
~~Bailey Montgomery~~	SOS
Robert Wilson	S.O.S.

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE — 3/31/05

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
David Ingram	WSJ
Michelle BANK	State Govt Radio
Matt Wilson	NCNN
Julia Leggett	NC Lobbying Reform - Intern
Marc Siegel	NC Coalition for Lobbying Reform
Bob Phillips	Common Cause N.C.
Gene Nichol	Chapel Hill, NC
Paula A. Wolf	NC Coalition for Lobbying Reform
Hope Williams	NCAE
Tim McDowell	NCICU
Edwin Speas	Poyner & Spruill
Shane Reese	NCVCE

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE — 3/31/05

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
Toni Young	NC Chiefs Association
Colleen Kochanek	NC Chiefs Association
Christie Barker	CAPA
George Reed	NC Council of Churches
P Bly Hall	Annual Statutes Commission
Natalie Fixmer	Planned Parenthood of Central NC
Grady McCallie	NC Conservation Network
Erin Kinney	NC Conservation Network
Christine Wunsche	NCPIRG
Ashby Ray	NC DOJ
Kim Wright	BCBSNC
Alan Mebane	Poyner & Spruill
Tony Adams	NCOAA

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE
Name of Committee

3/31/05
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
Andy Romanet	NCAM
R. Paul Wilms	NCHBA
Mike Mann	DST
Kevin Howell	Gov's office
Paige Johnson	Planned Parenthood
Mark Fleming	University

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Tuesday	April 5, 2005	10:00 AM	1027 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 290	Securities Transfer on Death.	Senator Hoyle
SB 428	No Lasers Pointed at Planes.	Senator Rand
SB 564	Drug Treatment Ct/DART Referral.	Senator Boseman
SB 600	Crime to Falsify Highway Inspection Reports.-AB	Senator Jenkins
SB 611	Debarment of DOT Contractors.-AB	Senator Jenkins
SB 707	Agent/Bail Bonds Applicant Petition Deadline.	Senator Berger
SB 737	County Gov't. Criminal Records Checks.	Senator Rand
SB 763	Notary Public Public Official Recommendation.	Senator Cowell
SB 897	Restructure Parole Commission.	Senator Rand

Senator Daniel G. Clodfelter, Chair

Judiciary 1 Committee

April 5, 2005

Minutes

Senator Dan Clodfelter, Chair called the meeting to order at 10:08 a.m. with fourteen members present. He introduced Pages Elizabeth Riddick from Ahoskie, NC and Kelli Gurley from Goldsboro, NC.

Senator Clodfelter announced that SB-428, SB-564, SB-600, SB-611, SB-737 and SB-897 would not be heard at this time.

SB-290 (Securities Transfer on Death) Committee Substitute was introduced by Senator Clodfelter. Bill sponsor, Senator David Hoyle moved for adoption of the Committee Substitute. All members voted yes. Motion carried. Senator Hoyle explained that the bill would amend Chapter 41-Estates, to allow owners of securities to register their title in transfer-on-death form. This would allow the transfer of securities, including stocks, bonds, mutual funds, and security accounts, to a beneficiary upon death based on a prior beneficiary designation by registration. (See Bill Summary for further information). Senator Phillip Berger had a question. Staff attorney, Walker Reagan answered the question. Mr. Dick Hatch, volunteer for AARP and Mr. Dick Carlton, NC Securities Dealers Association spoke on the bill. Senator Jeanne Lucas moved for a Favorable Report. All members voted yes. Motion carried. The bill will be referred to Finance.

SB-707 (Agent/Bail Bonds Applicant Petition Deadline) Committee Substitute was introduced by Senator Clodfelter. Bill sponsor, Senator Phillip Berger moved for adoption of the Committee Substitute. All members voted yes. Motion carried. Senator Berger explained that the bill would make clear that if a person denied a license to be an insurance agent, bail bondsman (or bail bondsman's runner wants a review of that denial, that person must demand a review within thirty days. The current law may leave the impression that making the demand within thirty days is optional. (See Bill Summary for further information). Mr. Frank Folger, NC Insurance Department spoke on the bill. Senator Jeanne Lucas moved for a Favorable Report. All members voted yes. Motion carried.

SB-763 (Notary Public Public Official Recommendation) Committee Substitute was introduced by Senator Clodfelter. Bill sponsor, Senator Janet Cowell moved for adoption of the Committee Substitute. All members voted yes. Motion carried. Senator Cowell explained that the bill would remove the requirement that applicants to be notaries public seeking to receive the oath of office from registers of deeds of NC counties with at least two hundred and fifty thousand people must have the recommendation of an elected public official. (See Bill Summary for further information). Senator's Jerry Tillman, RC Soles, Jeanne Lucas, and Phillip Berger had questions. Senator Clodfelter stated that there might be an Amendment to the bill, so he would displace it at this time, and hear the bill again at a later date.

Being no further business the meeting adjourned at 10:28 a.m.

Senator Dan Clodfelter, Chair

Wanda Joyner, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Daniel G. Clodfelter, Chair

Wednesday, April 06, 2005

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

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

S.B. **290** Securities Transfer on Death.

Draft Number:	PCS65297
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

S.B. **707** Agent/Bail Bonds Applicant Petition Deadline.

Draft Number:	PCS15222
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 2

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 290
PROPOSED COMMITTEE SUBSTITUTE S290-PCS65297-RU-10

Short Title: Securities Transfer on Death. (Public)

Sponsors:

Referred to:

March 2, 2005

A BILL TO BE ENTITLED

AN ACT TO ENACT THE UNIFORM TRANSFER ON DEATH (TOD) SECURITY REGISTRATION ACT.

The General Assembly of North Carolina enacts:

SECTION 1. The General Statutes are amended by rewriting the title of Chapter 41 of the General Statutes to read "Estates and Interests in Property", and Chapter 41 of the General Statutes is amended by adding a new Article to read:

"Article 4.

"The Uniform Transfer on Death (TOD) Security Registration Act.

"**§ 41-40. Definitions.**

In this Article, unless the context otherwise requires:

(1) 'Beneficiary form' means a registration of a security that indicates the present owner of the security and the intention of the owner regarding the person who will become the owner of the security upon the death of the owner.

(2) 'Devisee' means any person designated in a will to receive a disposition of real or personal property.

(3) 'Heirs' means those persons, including the surviving spouse, who are entitled under Chapter 29 of the General Statutes or the statutes of intestate succession of other states to take the property of a decedent by intestate succession.

(4) 'Person' means an individual, a corporation, an organization, or other legal entity.

(5) 'Personal representative' includes executor, administrator, collector, successor personal representative, special administrator, and persons who perform substantially the same function under the law governing their status.

(6) 'Property' includes both real and personal property or any interest in real or personal property and means anything that may be the subject of ownership.

(7) 'Register', including its derivatives, means to issue a certificate showing the ownership of a certificated security or, in the case of an uncertificated security, to initiate or transfer an account showing ownership of securities.

(8) 'Registering entity' means a person who originates or transfers a security title by registration and includes a broker maintaining security accounts for customers and a transfer agent or other person acting for or as an issuer of securities.

(9) 'Security' means a share, participation, or other interest in property, a business, or an obligation of an enterprise or other issuer, and includes a certificated security, an uncertificated security, a security account, and a security entitlement as defined in G.S. 25-8-102.

(10) 'Security account' means (i) a reinvestment account associated with a security, a securities account with a broker, a cash balance in a brokerage account, cash, interest, earnings, or dividends earned or declared on a security in an account, a reinvestment account, or a brokerage account, whether or not credited to the account before the owner's death, or (ii) a cash balance or other property held for or due to the owner of a security as a replacement for or product of an account security, whether or not credited to the account before the owner's death.

(11) 'State' includes any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession subject to the legislative authority of the United States.

"**§ 41-41. Registration in beneficiary form; sole or joint tenancy ownership.**

Only individuals whose registration of a security shows sole ownership by one individual or multiple ownership by two or more individuals with right of survivorship, rather than as tenants in common, may obtain registration in beneficiary form. Multiple owners of a security registered in beneficiary form hold as joint tenants with right of survivorship, as tenants by the entireties, or as owners of community property held in survivorship form, and not as tenants in common.

"**§ 41-42. Registration in beneficiary form; applicable law.**

A security may be registered in beneficiary form if the form is authorized by this or a similar statute of the state of organization of the issuer or registering entity, the location of the registering entity's principal office, the office of its transfer agent or its office making the registration, or by this or a similar statute of the law of the state listed as the owner's address at the time of registration. A registration governed by the law of a jurisdiction in which this or similar legislation is not in force or was not in force when a registration in beneficiary form was made is nevertheless presumed to be valid and authorized as a matter of contract law.

"**§ 41-43. Origination of registration in beneficiary form.**

A security, whether evidenced by certificate or account, is registered in beneficiary form when the registration includes a designation of a beneficiary to take the ownership at the death of the owner or the deaths of all multiple owners.

"**§ 41-44. Form of registration in beneficiary form.**

Registration in beneficiary form may be shown by the words 'transfer on death' or the abbreviation 'TOD', or by the words 'pay on death' or the abbreviation 'POD', after the name of the registered owner or owners and before the name of a beneficiary.

"**§ 41-45. Effect of registration in beneficiary form.**

The designation of a TOD beneficiary on a registration in beneficiary form has no effect on ownership of the security until the owner's death. A registration of a security in beneficiary form may be cancelled or changed at any time by the sole owner or all then-surviving owners, without the consent of the beneficiary.

"**§ 41-46. Ownership on death of owner.**

On death of a sole owner or the last to die of all multiple owners, ownership of securities registered in beneficiary form passes to the beneficiary or beneficiaries who survive all owners. On proof of death of all owners and compliance with any applicable requirements of the registering entity, a security registered in beneficiary form may be reregistered in the name of the beneficiary or beneficiaries who survive the death of all owners. Until division of the security after the death of all owners, multiple beneficiaries surviving the death of all owners hold their interests as tenants in common. If no beneficiary survives the death of all owners, the security belongs to the estate of the deceased sole owner or the estate of the last to die of all multiple owners.

"**§ 41-47. Protection of registering entity.**

(a) A registering entity is not required to offer or to accept a request for security registration in beneficiary form. If a registration in beneficiary form is offered by a registering entity, the owner requesting registration in beneficiary form assents to the protections given to the registering entity by this Article.

(b) By accepting a request for registration of a security in beneficiary form, the registering entity agrees that the registration will be implemented on death of the deceased owner as provided in this Article.

(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 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.

(d) The protection provided by this Article to the registering entity of a security does not affect the rights of beneficiaries in disputes between themselves and other claimants to ownership of the security transferred or its value or proceeds.

"**§ 41-48. Nontestamentary transfer on death.**

(a) A transfer on death resulting from a registration in beneficiary form is effective by reason of the contract regarding the registration between the owner and the registering entity and this Article and is not testamentary.

(b) The interest of a deceased owner when there are one or more surviving owners remains liable for the debts of the decedent in the same manner as the personal property included in the decedent's estate, and recovery of that interest shall be made from the surviving owner or owners when the decedent's estate is insufficient to satisfy the debts. The interest of a deceased sole owner, or the last to die of several owners, remains liable for the debts of the decedent in the same manner as the personal property included in the decedent's estate, and recovery of that interest shall be made from the TOD beneficiary when the decedent's estate is insufficient to satisfy the debts.

(c) This Article does not repeal or modify any provision of law relating to estate taxes.

"**§ 41-49. Terms, conditions, and forms for registration.**

(a) A registering entity offering to accept registrations in beneficiary form may establish the terms and conditions under which it will receive requests (i) for registrations in beneficiary form, and (ii) for implementation of registrations in beneficiary form, including requests for cancellation of previously registered TOD beneficiary designations and requests for reregistration to effect a change of beneficiary. The terms and conditions established may provide for proving death, avoiding or resolving any problems concerning fractional shares, and designating primary or contingent beneficiaries. Forms of identifying beneficiaries who are to take on one or more contingencies, and rules for providing proofs and assurances needed to satisfy reasonable concerns by registering entities regarding conditions and identities relevant to accurate implementation of registrations in beneficiary form, may be contained in a registering entity's terms and conditions.

(b) The following are illustrations of registrations in beneficiary form that a registering entity may authorize:

(1) Sole owner-sole beneficiary: 'John S. Brown TOD (or POD) John S. Brown, Jr.'

(2) Multiple owners-sole beneficiary: 'John S. Brown, Mary B. Brown JT TEN WROS TOD John S. Brown, Jr.'

(3) Multiple owners-primary and secondary (substituted) beneficiaries: 'John S. Brown, Mary B. Brown JT TEN WROS TOD John S. Brown, Jr. SUB BENE Peter O. Brown'.

"**§ 41-50. Short title; rules of construction.**

(a) This Article shall be known as and may be cited as the 'Uniform TOD Security Registration Act'.

(b) This Article shall be applied and construed to effectuate its general purposes and to make uniform the laws with respect to the subject of this Article among states enacting it.

(c) This Article does not repeal G.S. 41-2.2. G.S. 41-2.2 applies in determining whether a right of survivorship exists among multiple owners of a security.

"§ 41-51. Application of Article.

This Article applies to registrations of securities in beneficiary form made before, on, or after the effective date of this Article, by decedents dying on or after the effective date of this Article."

SECTION 2. G.S. 28A-15-10(a) reads as rewritten:

"(a) When needed to satisfy claims against a decedent's estate, assets may be acquired by a personal representative or collector from the following sources:

(1) Tentative trusts created by the decedent in savings accounts for other ~~persons;~~ persons.

(2) Gifts causa mortis made by the ~~decedent;~~decedent.

(3) Joint deposit accounts with right of survivorship created by decedent pursuant to the provisions of G.S. 41-2.1 or otherwise; and joint tenancies with right of survivorship created by decedent in corporate stocks or other investment securities.

(4) An interest in a security passing to a beneficiary pursuant to the provisions of Article 4 of Chapter 41 of the General Statutes.

Such assets shall be acquired solely for the purpose of satisfying such claims, however, and shall not be available for distribution to heirs or devisees."

SECTION 3. G.S. 41-2.2 reads as rewritten:

"**§ 41-2.2. Joint ownership of ~~corporate stock and investment~~ securities.**

(a) In addition to other forms of ownership, ~~shares of corporate stock or investment~~ securities may be owned by any parties as joint tenants with rights of survivorship, and not as tenants in common, in the manner provided in this section.

(b) (1) A joint tenancy in ~~shares of corporate stock or investment~~ securities as provided by this section shall exist when such ~~shares or~~ securities indicate that they are owned with the right of survivorship, or otherwise clearly indicate an intention that upon the death of either party the interest of the decedent shall pass to the surviving party.

(2) Such a joint tenancy may also exist when a broker or custodian holds the ~~shares or~~ securities for the joint tenants and by book entry or otherwise indicates (i) that the ~~shares or~~ securities are owned with the right of survivorship, or (ii) otherwise clearly indicates that upon the death of either party, the interest of the decedent shall pass to the surviving party. Money in the hands of such broker or custodian derived from the sale of, or held for the purpose of, such ~~shares or~~ securities shall be treated in the same manner as such ~~shares or~~ securities.

(c) Upon the death of a joint tenant his interest shall pass to the surviving joint tenant. The interest of the deceased joint tenant, even though it has passed to the surviving joint tenant, remains liable for the debts of the decedent in the same manner as the personal property included in his estate, and recovery thereof shall be made from the surviving joint tenant when the decedent's estate is insufficient to satisfy such debts.

(d) This section does not repeal or modify any provisions of the law relating to estate or inheritance taxes.

(e) As used in this section, "securities" has the same meaning as in G.S. 41-40(9) and includes "security account" as that term is defined in G.S. 41-40(10)."

SECTION 4. The Revisor of Statutes shall cause to be printed along with this act all relevant portions of the Official Commentary to the Uniform TOD Security Registration Act and all explanatory comments of the drafters of this act as the Revisor may deem appropriate.

SECTION 5. This act becomes effective October 1, 2005.

SENATE BILL 290:
Securities Transfer on Death.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Senator Hoyle
Date:	March 31, 2005	**Summary by:**	O. Walker Reagan, Committee Co-Counsel
Version:	Proposed Committee Substitute S290-CSRU-10		

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 290 would amend Chapter 41 - Estates, to allow owners of securities to register their title in transfer-on-death (TOD) form. This would allow the transfer of securities, including stocks, bonds, mutual funds, and security accounts, to a beneficiary upon death based on a prior beneficiary designation by registration. The bill previously came to the General Assembly as a recommendation of the General Statutes Commission and is modeled after the Uniform Transfer on Death (TOD) Securities Registration Act. The Uniform Act has been adopted in 46 states and the District of Columbia.***

CURRENT LAW: Under current law securities can only be passed upon death by probate or by joint tenancy with right of survivorship.

BILL ANALYSIS: Senate Bill 290 would rename Chapter 41 of the General Statutes as "Estates and Interests in Property" and would add a new Article 4 to that Chapter, entitled "The Uniform Transfer on Death (TOD) Security Registration Act". This act would allow the owner of securities to designate a beneficiary of the securities to be received upon the death of the owner. The owner may revoke or modify this designation at any time up until death. Also, this designation does not convey any right or interest in the beneficiary until the time of death. Title to the securities would be transferred as a matter of contract (like life insurance policies or individual retirement accounts), not as a testamentary bequest, and as such would not be part of the probate estate.

Some of the advantages provided by the bill appear to be: 1) provides an alternative to joint ownership with right of survivorship, avoiding the complications and restrictions of dealing with a co-owner but effecting the same transfer upon death; 2) avoids probate and probate fees; and 3) simplifies the process of changing names on securities after death. The bill would not affect claims creditors, who would still be able to claim these securities if necessary to satisfy claims against the decedent's estate in the same ways as with joint bank accounts with right of survivorship. This form of ownership would not affect estate tax collection, and these securities would be counted as part of the taxable estate.

One change that would result from this bill would be a reduction in the collection of probate fees by the clerks of court. Probate fees are collected on all personal property that passes through the probate estate. Because these changes would transfer these securities outside the probate estate, probate fees would not be collected on the value of the securities transferred by this method.

Section 2 of this bill would make a conforming change to the statute governing the rights of creditors to collect estate debts from assets passing outside the estate. This statute is only triggered when other assets of the estate are insufficient to satisfy all claims.

Section 3 amends G.S. 41-2.2 (Joint Ownership of corporate stock and investment securities) by adding a new subsection. The new subsection clarifies that "securities" is as defined in the Uniform Act.

Section 4 would authorize the Revisor of Statutes to include the Official Comments to the Uniform Act from the Uniform Commissioners with the published statutes.

EFFECTIVE DATE: The bill would take effect October 1, 2005.

BACKGROUND: Similar bills were introduced in the 1997, 1999, 2001 and the 2003 Sessions of the General Assembly. In 2003, House Bill 798, which was virtually identical to this bill, passed the House and was given a favorable report by the Senate Judiciary II Committee.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 290

Short Title:	Securities Transfer on Death.	(Public)
Sponsors:	Senators Hoyle; Albertson, Allran, Apodaca, Berger of Rockingham, Bingham, Blake, Brock, Brown, Dalton, East, Forrester, Garwood, Goodall, Hartsell, Holloman, Horton, Hunt, Jacumin, Malone, Nesbitt, Pittenger, Presnell, Purcell, Shaw, Smith, Soles, Stevens, Swindell, Thomas, Tillman, and Weinstein.	
Referred to:	Judiciary I.	

March 2, 2005

A BILL TO BE ENTITLED

AN ACT TO ENACT THE UNIFORM TRANSFER ON DEATH (TOD) SECURITY REGISTRATION ACT.

The General Assembly of North Carolina enacts:

SECTION 1. The General Statutes are amended by rewriting the title of Chapter 41 of the General Statutes to read "Estates and Interests in Property", and Chapter 41 of the General Statutes is amended by adding a new Article to read:

"Article 4.

"The Uniform Transfer on Death (TOD) Security Registration Act.

"**§ 41-40. Definitions.**

In this Article, unless the context otherwise requires:

(1) 'Beneficiary form' means a registration of a security which indicates the present owner of the security and the intention of the owner regarding the person who will become the owner of the security upon the death of the owner.

(2) 'Devisee' means any person designated in a will to receive a disposition of real or personal property.

(3) 'Heirs' means those persons, including the surviving spouse, who are entitled under Chapter 29 of the General Statutes or the statutes of intestate succession of other states to take the property of a decedent by intestate succession.

(4) 'Person' means an individual, a corporation, an organization, or other legal entity.

(5) 'Personal representative' includes executor, administrator, collector, successor personal representative, special administrator, and persons

who perform substantially the same function under the law governing their status.

(6) 'Property' includes both real and personal property or any interest in real or personal property and means anything that may be the subject of ownership.

(7) 'Register', including its derivatives, means to issue a certificate showing the ownership of a certificated security or, in the case of an uncertificated security, to initiate or transfer an account showing ownership of securities.

(8) 'Registering entity' means a person who originates or transfers a security title by registration and includes a broker maintaining security accounts for customers and a transfer agent or other person acting for or as an issuer of securities.

(9) 'Security' means a share, participation, or other interest in property, in a business, or in an obligation of an enterprise or other issuer, and includes a certificated security, an uncertificated security, a security account, and a security entitlement as defined in G.S. 25-8-102.

(10) 'Security account' means (i) a reinvestment account associated with a security, a securities account with a broker, a cash balance in a brokerage account, cash, interest, earnings, or dividends earned or declared on a security in an account, a reinvestment account, or a brokerage account, whether or not credited to the account before the owner's death, or (ii) a cash balance or other property held for or due to the owner of a security as a replacement for or product of an account security, whether or not credited to the account before the owner's death.

(11) 'State' includes any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession subject to the legislative authority of the United States.

"**§ 41-41. Registration in beneficiary form; sole or joint tenancy ownership.**

Only individuals whose registration of a security shows sole ownership by one individual or multiple ownership by two or more individuals with right of survivorship, rather than as tenants in common, may obtain registration in beneficiary form. Multiple owners of a security registered in beneficiary form hold as joint tenants with right of survivorship, as tenants by the entireties, or as owners of community property held in survivorship form, and not as tenants in common.

"**§ 41-42. Registration in beneficiary form; applicable law.**

A security may be registered in beneficiary form if the form is authorized by this or a similar statute of the state of organization of the issuer or registering entity, the location of the registering entity's principal office, the office of its transfer agent or its office making the registration, or by this or a similar statute of the law of the state listed as the owner's address at the time of registration. A registration governed by the law of a jurisdiction in which this or similar legislation is not in force or was not in force when a

registration in beneficiary form was made is nevertheless presumed to be valid and authorized as a matter of contract law.

"**§ 41-43. Origination of registration in beneficiary form.**

A security, whether evidenced by certificate or account, is registered in beneficiary form when the registration includes a designation of a beneficiary to take the ownership at the death of the owner or the deaths of all multiple owners.

"**§ 41-44. Form of registration in beneficiary form.**

Registration in beneficiary form may be shown by the words 'transfer on death' or the abbreviation 'TOD', or by the words 'pay on death' or the abbreviation 'POD', after the name of the registered owner or owners and before the name of a beneficiary.

"**§ 41-45. Effect of registration in beneficiary form.**

The designation of a TOD beneficiary on a registration in beneficiary form has no effect on ownership of the security until the owner's death. A registration of a security in beneficiary form may be cancelled or changed at any time by the sole owner or all then-surviving owners, without the consent of the beneficiary.

"**§ 41-46. Ownership on death of owner.**

On death of a sole owner or the last to die of all multiple owners, ownership of securities registered in beneficiary form passes to the beneficiary or beneficiaries who survive all owners. On proof of death of all owners and compliance with any applicable requirements of the registering entity, a security registered in beneficiary form may be reregistered in the name of the beneficiary or beneficiaries who survive the death of all owners. Until division of the security after the death of all owners, multiple beneficiaries surviving the death of all owners hold their interests as tenants in common. If no beneficiary survives the death of all owners, the security belongs to the estate of the deceased sole owner or the estate of the last to die of all multiple owners.

"**§ 41-47. Protection of registering entity.**

(a) A registering entity is not required to offer or to accept a request for security registration in beneficiary form. If a registration in beneficiary form is offered by a registering entity, the owner requesting registration in beneficiary form assents to the protections given to the registering entity by this Article.

(b) By accepting a request for registration of a security in beneficiary form, the registering entity agrees that the registration will be implemented on death of the deceased owner as provided in this Article.

(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 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.

(d) The protection provided by this Article to the registering entity of a security does not affect the rights of beneficiaries in disputes between themselves and other claimants to ownership of the security transferred or its value or proceeds.

"**§ 41-48. Nontestamentary transfer on death.**

(a) A transfer on death resulting from a registration in beneficiary form is effective by reason of the contract regarding the registration between the owner and the registering entity and this Article and is not testamentary.

(b) The interest of a deceased owner when there are one or more surviving owners remains liable for the debts of the decedent in the same manner as the personal property included in the decedent's estate, and recovery of that interest shall be made from the surviving owner or owners when the decedent's estate is insufficient to satisfy the debts. The interest of a deceased sole owner, or the last to die of several owners, remains liable for the debts of the decedent in the same manner as the personal property included in the decedent's estate, and recovery of that interest shall be made from the TOD beneficiary when the decedent's estate is insufficient to satisfy the debts.

(c) This Article does not repeal or modify any provision of law relating to estate taxes.

"**§ 41-49. Terms, conditions, and forms for registration.**

(a) A registering entity offering to accept registrations in beneficiary form may establish the terms and conditions under which it will receive requests (i) for registrations in beneficiary form, and (ii) for implementation of registrations in beneficiary form, including requests for cancellation of previously registered TOD beneficiary designations and requests for reregistration to effect a change of beneficiary. The terms and conditions established may provide for proving death, avoiding or resolving any problems concerning fractional shares, and designating primary or contingent beneficiaries. Forms of identifying beneficiaries who are to take on one or more contingencies, and rules for providing proofs and assurances needed to satisfy reasonable concerns by registering entities regarding conditions and identities relevant to accurate implementation of registrations in beneficiary form, may be contained in a registering entity's terms and conditions.

(b) The following are illustrations of registrations in beneficiary form which a registering entity may authorize:

(1) Sole owner-sole beneficiary: 'John S. Brown TOD (or POD) John S. Brown, Jr.'

(2) Multiple owners-sole beneficiary: 'John S. Brown, Mary B. Brown JT TEN WROS TOD John S. Brown, Jr.'

(3) Multiple owners-primary and secondary (substituted) beneficiaries: 'John S. Brown, Mary B. Brown JT TEN WROS TOD John S. Brown, Jr. SUB BENE Peter O. Brown'.

"**§ 41-50. Short title; rules of construction.**

(a) This Article shall be known as and may be cited as the 'Uniform TOD Security Registration Act'.

(b) This Article shall be applied and construed to effectuate its general purposes and to make uniform the laws with respect to the subject of this Article among states enacting it.

(c) This Article does not repeal G.S. 41-2.2. G.S. 41-2.2 applies in determining whether a right of survivorship exists among multiple owners of a security interest in beneficiary form.

"**§ 41-51. Application of Article.**

This Article applies to registrations of securities in beneficiary form made before, on, or after the effective date of this Article, by decedents dying on or after the effective date of this Article."

SECTION 2. G.S. 28A-15-10(a) reads as rewritten:

"(a) When needed to satisfy claims against a decedent's estate, assets may be acquired by a personal representative or collector from the following sources:

(1) Tentative trusts created by the decedent in savings accounts for other ~~persons;~~ persons.

(2) Gifts causa mortis made by the ~~decedent;~~decedent.

(3) Joint deposit accounts with right of survivorship created by decedent pursuant to the provisions of G.S. 41-2.1 or otherwise; and joint tenancies with right of survivorship created by decedent in corporate stocks or other investment securities.

(4) An interest in a security passing to a beneficiary pursuant to the provisions of Article 4 of Chapter 41 of the General Statutes.

Such assets shall be acquired solely for the purpose of satisfying such claims, however, and shall not be available for distribution to heirs or devisees."

SECTION 3. G.S. 41-2.2 is amended by adding a new subsection to read:

"(e) As used in this section, "securities" has the same meaning as in G.S. 41-40(9) and includes "security account" as that term is defined in G.S. 41-40(10)."

SECTION 4. The Revisor of Statutes shall cause to be printed along with this act all relevant portions of the Official Commentary to the Uniform TOD Security Registration Act and all explanatory comments of the drafters of this act as the Revisor may deem appropriate.

SECTION 5. This act becomes effective October 1, 2005.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 707
PROPOSED COMMITTEE SUBSTITUTE S707-PCS15222-RR-13

Short Title: Agent/Bail Bonds Applicant Petition Deadline. (Public)

Sponsors:

Referred to:

March 21, 2005

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THAT THE THIRTY-DAY DEADLINES IMPOSED UPON AGENTS AND BAIL BONDSMEN SEEKING INTERNAL ADMINISTRATIVE REVIEW OF A DENIAL OF LICENSURE AND SUBSEQUENTLY SEEKING A HEARING UNDER ARTICLE 3A OF CHAPTER 150B OF THE GENERAL STATUTES ARE MANDATORY, NOT OPTIONAL.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-33-30(g) reads as rewritten:

"(g) Denial of License. – If the Commissioner finds that the applicant has not fully met the requirements for licensing, ~~he~~ the Commissioner shall refuse to issue the license and shall notify in writing the applicant and the appointing insurer, if any, of ~~such~~ the denial, stating the grounds ~~therefor.~~ for the denial. The application may also be denied for any reason for which a license may be suspended or revoked or not renewed under G.S. 58-33-46. ~~Within 30 days after service of the notification, the applicant may~~ In order for an applicant to be entitled to a review of the Commissioner's action to determine the reasonableness of the action, the applicant must make a written demand upon the Commissioner for a review ~~to determine the reasonableness of the Commissioner's action.~~ no later than 30 days after service of the notification upon the applicant. The review shall be completed without undue delay, and the applicant shall be notified promptly in writing ~~as to the~~ of the outcome of the review. ~~Within 30 days after service of the notification as to the outcome, the applicant may~~ In order for an applicant who disagrees with the outcome of the review to be entitled to a hearing under Article 3A of Chapter 150B of the General Statutes, the applicant must make a written demand upon the Commissioner for a hearing ~~under Article 3A of Chapter 150B of the General Statutes if the applicant disagrees with the outcome.~~ no later than 30 days after service upon the applicant of the notification of the outcome."

SECTION 2. G.S. 58-71-85(b) reads as rewritten:

"(b) Whenever the Commissioner denies an initial application for a license or an application for a reissuance of a license, ~~he~~ the Commissioner shall notify the applicant and advise, in writing, the applicant of the reasons for the denial of the license. The application may also be denied for any reason for which a license may be suspended or revoked or not renewed under G.S. 58-71-80(a). ~~Within 30 days after service of the notification, the applicant may~~ In order for an applicant to be entitled to a review of the Commissioner's action to determine the reasonableness of the action, the applicant must make a written demand upon the Commissioner for a review ~~to determine the reasonableness of the Commissioner's action.~~ no later than 30 days after service of the notification upon the applicant. The review shall be completed without undue delay, and the applicant shall be notified promptly in writing ~~as to~~ of the outcome of the review. ~~Within 30 days after service of the notification as to the outcome, the applicant may~~ In order for an applicant who disagrees with the outcome of the review to be entitled to a hearing under Article 3A of Chapter 150B of the General Statutes, the applicant must make a written demand upon the Commissioner for a hearing ~~under Article 3A of Chapter 150B of the General Statutes if the applicant disagrees with the outcome.~~ no later than 30 days after service upon the applicant of the notification of the outcome."

SECTION 3. This act becomes effective October 1, 2005. This act applies to all notices of applications denied by the Commissioner served on or after that date and to all notices of review outcomes served on or after that date.

SENATE BILL 707:
Agent/Bail Bonds Applicant Petition Deadline

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Senator Philip Berger
Date:	April 5, 2005	**Summary by:**	William R. Gilkeson
Version:	S707-CSRR-13 [v.3]		Committee Co-Counsel

SUMMARY: The First Edition of Senate Bill 707 would make clear that if a person denied a license to be an insurance agent, bail bondsman (or bail bondsman's runner) wants a review of that denial, that person must demand a review within 30 days. Current law may leave the impression that making the demand within 30 days is optional. Effective October 1, 2005.

CURRENT LAW: Currently, the Commissioner of Insurance has the job of approving or denying licenses for insurance agents and bail bondsmen and runners. If the Commissioner denies a license, the statutes say the applicant "may make a written demand on the Commissioner for a review" of the denial within 30 days of the applicant's being served with the denial. The statute then goes on to say that the review shall be completed without undue delay.

The Department of Insurance believes the intent of the statute was clearly that the applicant has a choice of whether or not to seek a review of the denial. But if the applicant does seek a review, the applicant must meet the 30-day deadline in order to be entitled to one. The problem is caused by the wording of the statutes, which compresses into one verb clause, "may make a written demand," the two thoughts that seeking a review is optional, but that if you want a review demanding one within 30 days is not optional.

There is a parallel problem with ambiguous language about the applicant's 30-day deadline in demanding a hearing on the Commissioner's review with an administrative law judge under the Administrative Procedure Act.

BILL ANALYSIS: The bill rewords the statutes in an attempt to be clear that if the denied applicant for an agent's license or bail bondsman's license is to be entitled to a review, that applicant must demand a review within 30 days of being served with the notice of denial. The same rewording is done for the 30-day deadline for taking the Commissioner's decision on review before an administrative law judge. Section 1 of the bill deals with insurance agents. Section 2 deals with bail bondsmen.

The bill is made effective October 1, 2005, and it applies to notices of license denials and notices of review outcomes served on or after that date.

SENATE BILL 707:
Agent/Bail Bonds Applicant Petition Deadline

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Senator Philip Berger
Date:	April 5, 2005	**Summary by:**	William R. Gilkeson
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The bill is made effective October 1, 2005, and it applies to notices of license denials and notices of review outcomes served on or after that date.

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GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 707

Short Title: Agent/Bail Bonds Applicant Petition Deadline. (Public)

Sponsors: Senator Berger of Rockingham.

Referred to: Judiciary I.

March 21, 2005

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THAT THE THIRTY-DAY DEADLINES IMPOSED UPON AGENTS AND BAIL BONDSMEN SEEKING INTERNAL ADMINISTRATIVE REVIEW OF A DENIAL OF LICENSURE AND SUBSEQUENTLY SEEKING A HEARING UNDER ARTICLE 3A OF CHAPTER 150B OF THE GENERAL STATUTES ARE MANDATORY, NOT DISCRETIONARY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-33-30(g) reads as rewritten:

"(g) Denial of License. – If the Commissioner finds that the applicant has not fully met the requirements for licensing, he shall refuse to issue the license and shall notify in writing the applicant and the appointing insurer, if any, of such denial, stating the grounds therefor. The application may also be denied for any reason for which a license may be suspended or revoked or not renewed under G.S. 58-33-46. ~~Within 30 days after service of the notification, the applicant may~~ In order for an applicant to be entitled to a review of the Commissioner's action to determine the reasonableness of the action, the applicant shall make a written demand upon the Commissioner for a review ~~to determine the reasonableness of the Commissioner's action.~~ no later than 30 days after service of the notification upon the applicant. The review shall be completed without undue delay, and the applicant shall be notified promptly in writing as to the outcome of the review. ~~Within 30 days after service of the notification as to the outcome, the applicant may~~ In order for an applicant who disagrees with the outcome of the review to be entitled to a hearing under Article 3A of Chapter 150B of the General Statutes, the applicant shall make a written demand upon the Commissioner for a hearing ~~under Article 3A of Chapter 150B of the General Statutes if the applicant disagrees with the outcome.~~ no later than 30 days after service of the notification upon the applicant as to the outcome."

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writing, the applicant of the reasons for the denial of the license. The application may also be denied for any reason for which a license may be suspended or revoked or not renewed under G.S. 58-71-80(a). ~~Within 30 days after service of the notification, the applicant may~~ In order for an applicant to be entitled to a review of the Commissioner's action to determine the reasonableness of the action, the applicant shall make a written demand upon the Commissioner for a review ~~to determine the reasonableness of the Commissioner's action.~~ no later than 30 days after service of the notification upon the applicant. The review shall be completed without undue delay, and the applicant shall be notified promptly in writing as to the outcome of the review. ~~Within 30 days after service of the notification as to the outcome, the applicant may~~ In order for an applicant who disagrees with the outcome of the review to be entitled to a hearing under Article 3A of Chapter 150B of the General Statutes, the applicant shall make a written demand upon the Commissioner for a hearing ~~under Article 3A of Chapter 150B of the General Statutes if the applicant disagrees with the outcome.~~ no later than 30 days after service of the notification upon the applicant as to the outcome."

SECTION 3. This act becomes effective October 1, 2005.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 763
PROPOSED COMMITTEE SUBSTITUTE S763-CSRR-12 [v.5]

4/4/2005 5:38:32 PM

Short Title: Notary Public Public Official Recommendation. (Public)

Sponsors:

Referred to:

March 22, 2005

A BILL TO BE ENTITLED

AN ACT TO ELIMINATE THE REQUIREMENT OF AN ELECTED OFFICIAL RECOMMENDATION FOR NOTARY PUBLIC APPLICANTS IN CERTAIN LARGE COUNTIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 10A-4(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.

(2) Reside or work in this State.

(3) Satisfactorily complete a course of study that is approved by the Secretary and consists of not less than three hours nor more than six hours of classroom instruction provided by community colleges throughout the State, unless the person is a licensed member of the Bar of this State.

(4) Purchase and keep as a reference a manual approved by the Secretary that describes the duties, authority, and ethical responsibilities of notaries public.

(5) 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 bear 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. ~~The~~ Except for any applicant who seeks to receive the oath of office from the register of deeds of a North Carolina county with a population of 250,000 or more according to the most recent federal decennial census, the applicant shall also obtain the recommendation of one publicly

elected official in North Carolina whose recommendation shall be contained on the application.

(6) Pay a nonrefundable fee of fifty dollars ($50.00)."

SECTION 2. This act becomes effective December 1, 2005.

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE — 4-5-05

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
Lanie Bembry	LBA
Dick Carlton	AARP
Dick Hatch	AARP
Tracy Little	DOC
Karen Jones	NC Sentencing Comm.
[illegible]	AOC
Frank W. Folger	NCDOT
Jim Blackburn	N.C. Association of County Commissioners
Henry Hatch	N.C.S.D.A.
Natalie Fixmer	Planned Parenthood of Central NC
Andy Romanet	NCLM

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE — 4-5-05

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
Lesa Martin	NC Home Builders
Patrice Roesen	NAACP

Principal Clerk ____
Reading Clerk ____

Corrected:

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Thursday	April 7, 2005	10:00 AM	1027 LB

REVISED NOTICE

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 542	Blakely Decision/Amend Aggravating Factors.	Senator Clodfelter
SB 600	Crime to Falsify Highway Inspection Reports.-AB	Senator Jenkins
SB 611	Debarment of DOT Contractors.-AB	Senator Jenkins
SB 737	County Gov't. Criminal Records Checks.	Senator Rand
SB 897	Restructure Parole Commission.	Senator Rand
SB 1070	Balance Fair Sentencing/Structured Sentencing.	Senator Rand

Senator Daniel G. Clodfelter, Chair

Judiciary 1 Committee

April 7, 2005

Minutes

Senator Dan Clodfelter, Chair called the meeting to order at 10:10 a.m. with eighteen members present. He introduced Pages Sarah Brown from Wake Forest, NC, Chris Hoover from Richlands, NC and Katlin Chrishan from West End, NC.

Senator Clodfelter stated SB-611 and SB-1070 would not be heard.

SB-542 (Blakely Decision/Amend Aggravating Factors) Committee Substitute was introduced by Second Vice Chair, Senator Phillip Berger. Senator Dan Clodfelter, bill sponsor, moved for adoption of the Committee Substitute. All members voted yes. Motion carried. Senator Clodfelter explained that the bill provides the procedure for determining the existence of aggravating factors that will comply with the decisions in Blakely and Allen. New procedures in the act include: notice to the defendant of intent to prove aggravating factors; jury trials or the admission of aggravating factors by a defendant; and, where applicable, an inquiry by the court to insure that a defendant knowingly and intelligently waives any rights to a hearing and jury determination. (See attached Bill Summary for further information). Senator's RC Soles and Charlie Albertson had questions. Staff attorney, Hal Pell, answered the questions. Senator Tony Rand moved for a Favorable Report. All members voted yes. Motion carried.

SB-600 (Crime to Falsify Highway Inspection Reports. -AB) Committee Substitute was introduced by Senator Clodfelter. Senator Clark Jenkins, bill sponsor, moved for adoption of the Committee Substitute. All members voted yes. Motion carried. Senator Jenkins explained that the bill would broaden the category of persons subject to prosecution for falsifying, or directing the falsifying, of an inspection or test report required by the Department of Transportation. (See attached Bill Summary for further information). Senator Ham Horton and Charlie Albertson had questions. Mr. Ellis Powell from the NC Department of Transportation answered the questions. Senator Phillip Berger moved for a Favorable Report. All members voted yes. Motion carried.

SB-737 (County Gov't Criminal Records Checks) Committee Substitute was introduced by Senator Clodfelter. Bill sponsor, Senator Tony Rand, moved for adoption of the Committee Substitute. All members voted yes. Motion carried. Senator Rand explained that the bill gives county governments the authority to have criminal background checks performed by the SBI and FBI on its prospective employees and to use these background checks in determining employment. (See attached Bill Summary for further information). Senator Charlie Albertson moved for a Favorable Report. Senator's Richard Stevens and RC Soles had questions. Senator Clodfelter answered the questions and stated that the bill would be displaced at this time. Senator Albertson withdrew his motion.

SB-897 (Restructure Parole Commission) Committee Substitute was introduced by Senator Clodfelter. Senator Tony Rand, bill sponsor, moved for adoption of the Committee Substitute. All members voted yes. Motion carried. Senator Rand explained that the bill would end the terms of the three full-time members of the Post-Release Supervision and Parole Commission on June 30, 2005, and restructure the Commission to have one full-time member and two half-time members. (See attached Bill Summary for further information) Senator RC Soles had a question. Ms. Elita Grooms from the NC Parole Commission answered the question. Senator Jerry Tillman moved for a Favorable Report. All members voted yes. Motion carried.

Being no further business the meeting adjourned at 10:52 a.m.

Senator Dan Clodfelter, Chair

Wanda Joyner, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Daniel G. Clodfelter, Chair

Monday, April 11, 2005

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

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

S.B. **542** Blakely Decision/Amend Aggravating Factors.

Draft Number:	PCS75283
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

S.B. **600** Crime to Falsify Highway Inspection Reports.-AB

Draft Number:	PCS15224
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

S.B. **897** Restructure Parole Commission.

Draft Number:	PCS65299
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 3

Committee Clerk Comments:

SENATE
COMMITTEE SUBSTITUTE

GENERAL ASSEMBLY OF NORTH CAROLINA

APR 11 2005

SESSION 2005

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ADOPTED[D]

SENATE BILL 542
PROPOSED COMMITTEE SUBSTITUTE S542-PCS75283-RK-6

Short Title: Blakely Decision/Amend Aggravating Factors. (Public)

Sponsors:

Referred to:

March 15, 2005

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.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-1340.16 reads as rewritten:

"**§ 15A-1340.16. Aggravated and mitigated sentences.**

(a) Generally, Burden of Proof. – The court shall consider evidence of aggravating or mitigating factors present in the offense that make an aggravated or mitigated sentence appropriate, but the decision to depart from the presumptive range is in the discretion of the court. The State bears the burden of proving ~~by a preponderance of the evidence~~ 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.

(a1) Jury to Determine Aggravating Factors; Jury Procedure if Trial Bifurcated. – 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 subsection. Admissions of the existence of an aggravating factor must be consistent with the provisions of G.S. 15A-1022.1. If the defendant does not so admit, only a jury may determine if an aggravating factor is present in an offense. The jury impaneled for the trial of the felony 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. 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. 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) Procedure if Defendant Admits Aggravating Factor Only. – If the defendant admits that an aggravating factor exists, but pleads not guilty to the underlying felony, a jury shall be impaneled to dispose of the felony charge. In that case, evidence that relates solely to the establishment of an aggravating factor shall not be admitted in the felony trial.

(a3) Procedure if Defendant Pleads Guilty to the Felony Only. – If the defendant pleads guilty to the felony, but contests the existence of one or more aggravating factors, a jury shall be impaneled to determine if the aggravating factor or factors exist.

(a4) Pleading of Aggravating Factors. – Aggravating factors set forth in subsection (d) of this section need not be included in an indictment or other charging instrument. Any aggravating factor alleged under subdivision (d)(20) of this section shall be included in an indictment or other charging instrument, as specified in G.S. 15A-924.

(a5) Procedure to Determine Prior Record Level Points Not Involving Prior Convictions. – If the State seeks to establish the existence of a prior record level point under G.S. 15A-1340.14(b)(7), the jury shall determine whether the point should be assessed using the procedures specified in subsections (a1) through (a3) of this section. The State need not allege in an indictment or other pleading that it intends to establish the point.

(a6) Notice of Intent to Use Aggravating Factors or Prior Record Level Points. – The State must provide a defendant with written notice of its intent to prove the existence of one or more aggravating factors under subsection (d) of this section or a prior record level point under G.S. 15A-1340.14(b)(7). A defendant may waive the right to receive such notice. The notice must list all the aggravating factors the State seeks to establish.

(1) If the defendant requests discovery, and the State is in possession of the underlying facts that it intends to use to prove the existence of an aggravating factor or a prior record level point under G.S. 15A-1340.14(b)(7), it shall provide the notice no later than 10 days after receiving possession of the underlying facts. Any notice required by this section shall be provided no later than 20 days before trial.

(2) If the defendant does not request discovery, then the notice shall be provided no later than 20 days before trial.

(b) When Aggravated or Mitigated Sentence Allowed. – If the ~~court~~ jury, or with respect to an aggravating factor under G.S. 15A-1340.16(d)(18a), the court, finds that

aggravating factors exist or the court finds that mitigating factors exist, ~~it~~ the court may depart from the presumptive range of sentences specified in G.S. 15A-1340.17(c)(2). If ~~the court finds that~~ aggravating factors are present and the court determines they are sufficient to outweigh any mitigating factors that are present, it may impose a sentence that is permitted by the aggravated range described in G.S. 15A-1340.17(c)(4). If the court finds that mitigating factors are present and are sufficient to outweigh any aggravating factors that are present, it may impose a sentence that is permitted by the mitigated range described in G.S. 15A-1340.17(c)(3).

(c) Written Findings; When Required. – The court shall make findings of the aggravating and mitigating factors present in the offense only if, in its discretion, it departs from the presumptive range of sentences specified in G.S. 15A-1340.17(c)(2). 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. The requirement to make findings in order to depart from the presumptive range applies regardless of whether the sentence of imprisonment is activated or suspended.

(d) Aggravating Factors. – The following are aggravating factors:

(1) The defendant induced others to participate in the commission of the offense or occupied a position of leadership or dominance of other participants.

(2) The defendant joined with more than one other person in committing the offense and was not charged with committing a conspiracy.

(2a) The offense was committed for the benefit of, or at the direction of, any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, and the defendant was not charged with committing a conspiracy. A "criminal street gang" means any ongoing organization, association, or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of felony or violent misdemeanor offenses, or delinquent acts that would be felonies or violent misdemeanors if committed by an adult, and having a common name or common identifying sign, colors, or symbols.

(3) The offense was committed for the purpose of avoiding or preventing a lawful arrest or effecting an escape from custody.

(4) The defendant was hired or paid to commit the offense.

(5) The offense was committed to disrupt or hinder the lawful exercise of any governmental function or the enforcement of laws.

(6) The offense was committed against or proximately caused serious injury to a present or former law enforcement officer, employee of the Department of Correction, jailer, fireman, emergency medical technician, ambulance attendant, justice or judge, clerk or assistant or deputy clerk of court, magistrate, prosecutor, juror, or witness against the defendant, while engaged in the performance of that person's official duties or because of the exercise of that person's official duties.

(7) The offense was especially heinous, atrocious, or cruel.
(8) The defendant knowingly created a great risk of death to more than one person by means of a weapon or device which would normally be hazardous to the lives of more than one person.
(9) The defendant held public office at the time of the offense and the offense related to the conduct of the office.
(10) The defendant was armed with or used a deadly weapon at the time of the crime.
(11) The victim was very young, or very old, or mentally or physically infirm, or handicapped.
(12) The defendant committed the offense while on pretrial release on another charge.
(13) The defendant involved a person under the age of 16 in the commission of the crime.
(14) The offense involved an attempted or actual taking of property of great monetary value or damage causing great monetary loss, or the offense involved an unusually large quantity of contraband.
(15) The defendant took advantage of a position of trust or confidence, including a domestic relationship, to commit the offense.
(16) The offense involved the sale or delivery of a controlled substance to a minor.
(16a) The offense is the manufacture of methamphetamine and was committed where a person under the age of 18 lives, was present, or was otherwise endangered by exposure to the drug, its ingredients, its by-products, or its waste.
(17) The offense for which the defendant stands convicted was committed against a victim because of the victim's race, color, religion, nationality, or country of origin.
(18) The defendant does not support the defendant's family.
(18a) The defendant has previously been adjudicated delinquent for an offense that would be a Class A, B1, B2, C, D, or E felony if committed by an adult.
(19) The serious injury inflicted upon the victim is permanent and debilitating.
(20) Any other aggravating factor reasonably related to the purposes of sentencing.

Evidence necessary to prove an element of the offense shall not be used to prove any factor in aggravation, and the same item of evidence shall not be used to prove more than one factor in aggravation. Evidence necessary to establish that an enhanced sentence is required under G.S. 15A-1340.16A may not be used to prove any factor in aggravation.

The judge shall not consider as an aggravating factor the fact that the defendant exercised the right to a jury trial.

Notwithstanding the provisions of subsection (a1) of this section, the determination that an aggravating factor under G.S. 15A-1340.16(d)(18a) is present in a case shall be made by the court and not by the jury. That determination shall be made in the sentencing hearing.

(e) Mitigating Factors. – The following are mitigating factors:

(1) The defendant committed the offense under duress, coercion, threat, or compulsion that was insufficient to constitute a defense but significantly reduced the defendant's culpability.

(2) The defendant was a passive participant or played a minor role in the commission of the offense.

(3) The defendant was suffering from a mental or physical condition that was insufficient to constitute a defense but significantly reduced the defendant's culpability for the offense.

(4) The defendant's age, immaturity, or limited mental capacity at the time of commission of the offense significantly reduced the defendant's culpability for the offense.

(5) The defendant has made substantial or full restitution to the victim.

(6) The victim was more than 16 years of age and was a voluntary participant in the defendant's conduct or consented to it.

(7) The defendant aided in the apprehension of another felon or testified truthfully on behalf of the prosecution in another prosecution of a felony.

(8) The defendant acted under strong provocation, or the relationship between the defendant and the victim was otherwise extenuating.

(9) The defendant could not reasonably foresee that the defendant's conduct would cause or threaten serious bodily harm or fear, or the defendant exercised caution to avoid such consequences.

(10) The defendant reasonably believed that the defendant's conduct was legal.

(11) Prior to arrest or at an early stage of the criminal process, the defendant voluntarily acknowledged wrongdoing in connection with the offense to a law enforcement officer.

(12) The defendant has been a person of good character or has had a good reputation in the community in which the defendant lives.

(13) The defendant is a minor and has reliable supervision available.

(14) The defendant has been honorably discharged from the United States armed services.

(15) The defendant has accepted responsibility for the defendant's criminal conduct.

(16) The defendant has entered and is currently involved in or has successfully completed a drug treatment program or an alcohol treatment program subsequent to arrest and prior to trial.

(17) The defendant supports the defendant's family.

(18) The defendant has a support system in the community.

(19) The defendant has a positive employment history or is gainfully employed.

(20) The defendant has a good treatment prognosis, and a workable treatment plan is available.

(21) Any other mitigating factor reasonably related to the purposes of sentences."

SECTION 2. G.S. 15A-1340.14 reads as rewritten:

"**§ 15A-1340.14. Prior record level for felony sentencing.**

(a) Generally. – The prior record level of a felony offender is determined by calculating the sum of the points assigned to each of the offender's prior convictions that the court or, with respect to subdivision (b)(7) of this section, the jury, finds to have been proved in accordance with this section.

(b) Points. – Points are assigned as follows:

(1) For each prior felony Class A conviction, 10 points.

(1a) For each prior felony Class B1 conviction, 9 points.

(2) For each prior felony Class B2, C, or D conviction, 6 points.

(3) For each prior felony Class E, F, or G conviction, 4 points.

(4) For each prior felony Class H or I conviction, 2 points.

(5) For each prior misdemeanor conviction as defined in this subsection, 1 point. For purposes of this subsection, misdemeanor is defined as any Class A1 and Class 1 nontraffic misdemeanor offense, impaired driving (G.S. 20-138.1), impaired driving in a commercial vehicle (G.S. 20-138.2), and misdemeanor death by vehicle (G.S. 20-141.4(a2)), but not any other misdemeanor traffic offense under Chapter 20 of the General Statutes.

(6) If all the elements of the present offense are included in any prior offense for which the offender was convicted, whether or not the prior offense or offenses were used in determining prior record level, 1 point.

(7) If the offense was committed while the offender was on supervised or unsupervised probation, parole, or post-release supervision, or while the offender was serving a sentence of imprisonment, or while the offender was on escape from a correctional institution while serving a sentence of imprisonment, 1 point.

For purposes of determining prior record points under this subsection, a conviction for a first degree rape or a first degree sexual offense committed prior to the effective date of this subsection shall be treated as a felony Class B1 conviction, and a conviction for any other felony Class B offense committed prior to the effective date of this subsection shall be treated as a felony Class B2 conviction. G.S. 15A-1340.16(a5) specifies the procedure to be used to determine if a point exists under subdivision (7) of this subsection. The State must provide a defendant with written notice of its intent to prove the existence of the prior record point under subdivision (7) of this subsection as required by G.S. 15A-1340.16(a6).

(c) Prior Record Levels for Felony Sentencing. – The prior record levels for felony sentencing are:

(1) Level I – 0 points.
(2) Level II – At least 1, but not more than 4 points.
(3) Level III – At least 5, but not more than 8 points.
(4) Level IV – At least 9, but not more than 14 points.
(5) Level V – At least 15, but not more than 18 points.
(6) Level VI – At least 19 points.

In determining the prior record level, the classification of a prior offense is the classification assigned to that offense at the time the offense for which the offender is being sentenced is committed.

(d) Multiple Prior Convictions Obtained in One Court Week. – For purposes of determining the prior record level, if an offender is convicted of more than one offense in a single superior court during one calendar week, only the conviction for the offense with the highest point total is used. If an offender is convicted of more than one offense in a single session of district court, only one of the convictions is used.

(e) Classification of Prior Convictions From Other Jurisdictions. – Except as otherwise provided in this subsection, a conviction occurring in a jurisdiction other than North Carolina is classified as a Class I felony if the jurisdiction in which the offense occurred classifies the offense as a felony, or is classified as a Class 3 misdemeanor if the jurisdiction in which the offense occurred classifies the offense as a misdemeanor. If the offender proves by the preponderance of the evidence that an offense classified as a felony in the other jurisdiction is substantially similar to an offense that is a misdemeanor in North Carolina, the conviction is treated as that class of misdemeanor for assigning prior record level points. If the State proves by the preponderance of the evidence that an offense classified as either a misdemeanor or a felony in the other jurisdiction is substantially similar to an offense in North Carolina that is classified as a Class I felony or higher, the conviction is treated as that class of felony for assigning prior record level points. If the State proves by the preponderance of the evidence that an offense classified as a misdemeanor in the other jurisdiction is substantially similar to an offense classified as a Class A1 or Class 1 misdemeanor in North Carolina, the conviction is treated as a Class A1 or Class 1 misdemeanor for assigning prior record level points.

(f) Proof of Prior Convictions. – A prior conviction shall be proved by any of the following methods:

(1) Stipulation of the parties.
(2) An original or copy of the court record of the prior conviction.
(3) A copy of records maintained by the Division of Criminal Information, the Division of Motor Vehicles, or of the Administrative Office of the Courts.
(4) Any other method found by the court to be reliable.

The State bears the burden of proving, by a preponderance of the evidence, that a prior conviction exists and that the offender before the court is the same person as the offender named in the prior conviction. The original or a copy of the court records or a

copy of the records maintained by the Division of Criminal Information, the Division of Motor Vehicles, or of the Administrative Office of the Courts, bearing the same name as that by which the offender is charged, is prima facie evidence that the offender named is the same person as the offender before the court, and that the facts set out in the record are true. For purposes of this subsection, "a copy" includes a paper writing containing a reproduction of a record maintained electronically on a computer or other data processing equipment, and a document produced by a facsimile machine. The prosecutor shall make all feasible efforts to obtain and present to the court the offender's full record. Evidence presented by either party at trial may be utilized to prove prior convictions. Suppression of prior convictions is pursuant to G.S. 15A-980. If a motion is made pursuant to that section during the sentencing stage of the criminal action, the court may grant a continuance of the sentencing hearing. If asked by the defendant in compliance with G.S. 15A-903, the prosecutor shall furnish the defendant's prior criminal record to the defendant within a reasonable time sufficient to allow the defendant to determine if the record available to the prosecutor is accurate. Upon request of a sentencing services program established pursuant to Article 61 of Chapter 7A of the General Statutes, the district attorney shall provide any information the district attorney has about the criminal record of a person for whom the program has been requested to provide a sentencing plan pursuant to G.S. 7A-773.1."

SECTION 3. G.S. 15A-924(a) is amended by adding a new subdivision to read:

"(a) A criminal pleading must contain:

(1) The name or other identification of the defendant but the name of the defendant need not be repeated in each count unless required for clarity.

(2) A separate count addressed to each offense charged, but allegations in one count may be incorporated by reference in another count.

(3) A statement or cross reference in each count indicating that the offense charged therein was committed in a designated county.

(4) A statement or cross reference in each count indicating that the offense charged was committed on, or on or about, a designated date, or during a designated period of time. Error as to a date or its omission is not ground for dismissal of the charges or for reversal of a conviction if time was not of the essence with respect to the charge and the error or omission did not mislead the defendant to his prejudice.

(5) A plain and concise factual statement in each count which, without allegations of an evidentiary nature, asserts facts supporting every element of a criminal offense and the defendant's commission thereof with sufficient precision clearly to apprise the defendant or defendants of the conduct which is the subject of the accusation. When the pleading is a criminal summons, warrant for arrest, or magistrate's order, or statement of charges based thereon, both the statement of the crime and any information showing probable cause which was considered by the judicial official and which has been furnished to the

defendant must be used in determining whether the pleading is sufficient to meet the foregoing requirement.

(6) For each count a citation of any applicable statute, rule, regulation, ordinance, or other provision of law alleged therein to have been violated. Error in the citation or its omission is not ground for dismissal of the charges or for reversal of a conviction.

(7) A statement that the state intends to use one or more aggravating factors under G.S. 15A-1340.16(d)(20), with a plain and concise factual statement indicating the factor or factors it intends to use under the authority of that subdivision."

SECTION 4. Article 58 of Chapter 15A of the General Statutes is amended by adding a new section to read:

"**§ 15A-1022.1. Procedure in accepting admissions of the existence of aggravating factors in felonies.**

(a) Before accepting a plea of guilty or no contest to a felony, the court shall determine whether the State intends to seek a sentence in the aggravated range. If the State does intend to seek an aggravated sentence, the court shall determine which factors the State seeks to establish. The court shall determine whether the State seeks a finding that a prior record level point should be found under G.S. 15A-1340.14(b)(7). The court shall also determine whether the State has provided the notice to the defendant required by G.S. 15A-1340.16(a6) or whether the defendant has waived his or her right to such notice.

(b) In all cases in which a defendant admits to the existence of an aggravating factor or to a finding that a prior record level point should be found under G.S. 15A-1340.14(b)(7), the court shall comply with the provisions of G.S. 15A-1022(a). In addition, the court shall address the defendant personally and advise the defendant that:

(1) He or she is entitled to have a jury determine the existence of any aggravating factors or points under G.S. 15A-1340.14(b)(7); and

(2) He or she has the right to prove the existence of any mitigating factors at a sentencing hearing before the sentencing judge.

(c) Before accepting an admission to the existence of an aggravating factor or a prior record level point under G.S. 15A-1340.14(b)(7), the court shall determine that there is a factual basis for the admission and that the admission is the result of an informed choice by the defendant. The court may base its determination on the factors specified in G.S. 15A-1022(c), as well as any other appropriate information.

(d) A defendant may admit to the existence of an aggravating factor or to the existence of a prior record level point under G.S. 15A-1340.14(b)(7) before or after the trial of the underlying felony.

(e) The procedures specified in this Article for the handling of pleas of guilty are applicable to the handling of admissions to aggravating factors and prior record points under G.S. 15A-1340.14(b)(7), unless the context clearly indicates that they are inappropriate."

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

SENATE BILL 542:
Blakely Decision/Amend Aggravating Factors.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	
Date:	April 7, 2005	**Summary by:**	Hal Pell
Version:	PCS		Committee Co-Counsel

BACKGROUND AND SUMMARY:

In *Blakely v. Washington*, decided by the United States Supreme Court in June 2004, the Court held that the facts supporting the imposition of a sentence longer than the statutory maximum must be found by a jury beyond a reasonable doubt, or be admitted by the defendant. In *State v. Allen*, the North Carolina Court of Appeals, in applying *Blakely* under North Carolina's Structured Sentencing Act, held that the existence of aggravating factors that will increase a felony sentence beyond that which is permitted under the presumptive range must be found by a jury beyond a reasonable doubt, or be admitted by the defendant.

S542 provides the procedure for determining the existence of aggravating factors that will comply with the decisions in *Blakely* and *Allen*. New procedures in the act include: notice to the defendant of intent to prove aggravating factors; jury trials or the admission of aggravating factors by a defendant; and, where applicable, an inquiry by the court to insure that a defendant knowingly and intelligently waives any rights to a hearing and jury determination. The act is effective when it becomes law.

CURRENT LAW:

Under the Structured Sentencing Act, the judge may impose a sentence for conviction of a felony offense from the presumptive range, the aggravated range, or the mitigated range. In order to impose a sentence from the aggravated range, the State must prove by a preponderance of the evidence that an aggravating factor exists. The defendant bears the burden of proving by a preponderance of the evidence that a mitigating factor exists. The judge has the discretion to sentence from the aggravated range, if the judge finds one or more aggravating factors, and that the aggravating factors outweigh any mitigating factors.

BILL ANALYSIS:

Section 1. Amends G.S. 15A-1340.16, the current aggravated and mitigated sentencing statute, to add new procedural steps for the jury to find aggravating factors.

- Subsection (a). Raises the standard of proof for finding aggravating factors from "a preponderance of the evidence" to "beyond a reasonable doubt." The standard for mitigating factors remains a preponderance of the evidence.

- Subsection (a1). Provides that only the jury may determine if an aggravating factor is present, unless the defendant admits to its existence. The jury may make this determination at the time of trial. If the judge finds that the interests of justice require a separate sentencing proceeding, it may be held after the guilty verdict is returned.

- Subsection (a2). Allows the defendant to plead guilty to the aggravating factor, but still have a jury trial on the underlying felony. The evidence of the aggravating factor would be excluded from the trial.

- Subsection (a3). Allows the defendant to plead guilty to the underlying felony, but have a jury trial on the aggravating factor.

- Subsection (a4). Requires the State to include non-statutory aggravating factors [under subdivision (d)(20)] in the indictment or other charging instrument. Aggravating factors under subdivision (d)(20) are factors not specifically denominated in subsection (d) that are reasonably related to the purposes of sentencing.

  Statutory aggravating factors do not have to be included in the indictment or other charging instrument but the defendant must receive written notice. [See subsection (a6) below.]

- Subsection (a5). Requires the State to follow the procedures in subdivisions (a1) through (a3) (jury trial and proof beyond a reasonable doubt, or admission by defendant) if it seeks to establish a prior record level point under G.S. 15A-1340.14(b)(7). [The offense was committed while the offender was on supervised or unsupervised probation, parole, or post-release supervision, or while the offender was serving a sentence of imprisonment, or while the offender was on escape from a correctional institution while serving a sentence of imprisonment.]

- Subsection (a6). Requires the State to provide notice to the defendant of its intent to prove the existence of one or more aggravating factors or prior record level point under G.S. 15A-1340.14(b)(7). The notice must list all of the aggravating factors the State seeks to establish and the defendant may waive his right to receive notice.

  If the defendant requests discovery, and the State has evidence that it intends to use to prove an aggravating factor, then it must provide the notice within 10 days after it came into possession of the evidence. Any notice required by the section must be provided no later than 20 days prior to trial.

  If the defendant does not request discovery, the notice must be provided no later than 20 days prior to trial.

- Subsection (b). Conforming change. States that the jury determines whether aggravating factors exist. The judge continues to find mitigating factors and to weigh the aggravating and mitigating factors to determine the appropriate sentence range.

- Subsection (c). Requires the judge to enter the jury's finding of aggravating factors on the appropriate judgment form.

- Subsection (d). States that the judge finds whether an aggravating factor under subdivision (18a) exists. This factor relates to prior juvenile adjudications. [The finding of prior convictions was expressly excluded from the Blakely decision.]

Section 2. Amends G.S. 15A-1340.14 by requiring that a prior record level point under subdivision (b)(7) must be found by a jury. [See description under subsection (a5) above.] Makes other conforming changes.

Section 3. Adds the requirement that the State must set out in the indictment that it intends to use one or more non-statutory aggravating factors [G.S. 15A-1340.16(d)(20)] and a factual statement indicating the factors it intends to use. This is a conforming change.

Section 4. Adds a new statute that establishes the procedure for the judge to accept the defendant's admission of the existence of one or more aggravating factors or the prior record level point.

- Subsection (a). Requires the judge to determine whether the State intends to seek a sentence in the aggravated range or the prior record level point before he or she accepts a plea of guilty or no contest. If the State does intend to seek aggravating factors, the judge must determine which factors the State will seek to establish and whether the State has provided the written notice required by law.

- Subsection (b). Requires the judge, in all cases where a defendant admits to the existence of an aggravating factor or a prior record level point, to advise the defendant that he or she has the right to have a jury determine the existence of the aggravating factor or prior record level point and that he or she has the right to prove the existence of any mitigating factors.

- Subsection (c). Requires the judge, before accepting an admission to the existence of an aggravating factor or prior record level point, to determine that there is a factual basis for the admission and that the admission is the result of an informed choice by the defendant.

- Subsection (d). Allows the defendant to admit an aggravating factor or the prior record level point before or after the trial of the underlying felony.

- Subsection (e). Applies the procedures for handling guilty pleas (Article 58 of Chapter 15A of the North Carolina General Statutes) to the handling of admissions to aggravating factors and prior record points.

Section 5. Provides that the act is effective when it becomes law and applies to offenses committed on or after that date.

*Summary Contribution by Steve Rose, Staff Attorney

*John Madler, Associate Director for Policy and Staff Attorney for the North Carolina Sentencing and Policy Advisory Commission, substantially contributed to the preparation of this summary. His assistance is gratefully acknowledged.

S543-smrk-01

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 542

Short Title:	Blakely Decision/Amend Aggravating Factors.	(Public)
Sponsors:	Senator Clodfelter.	
Referred to:	Judiciary I.	

March 15, 2005

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.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-1340.16 reads as rewritten:

"**§ 15A-1340.16. Aggravated and mitigated sentences.**

(a) Generally, Burden of Proof. – The court shall consider evidence of aggravating or mitigating factors present in the offense that make an aggravated or mitigated sentence appropriate, but the decision to depart from the presumptive range is in the discretion of the court. The State bears the burden of proving ~~by a preponderance of the evidence~~ 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.

(a1) Jury to Determine Aggravating Factors; Jury Procedure if Trial Bifurcated. – 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 subsection. Admissions of the existence of an aggravating factor must be consistent with the provisions of G.S. 15A-1022.1. If the defendant does not so admit, only a jury may determine if an aggravating factor is present in an offense. The jury impaneled for the trial of the felony 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. 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. 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) Procedure if Defendant Admits Aggravating Factor Only. – If the defendant admits that an aggravating factor exists, but pleads not guilty to the underlying felony, a jury shall be impaneled to dispose of the felony charge. In that case, evidence that relates solely to the establishment of an aggravating factor shall not be admitted in the felony trial.

(a3) Procedure if Defendant Pleads Guilty to the Felony Only. – If the defendant pleads guilty to the felony, but contests the existence of one or more aggravating factors, a jury shall be impaneled to determine if the aggravating factor or factors exist.

(a4) Pleading of Aggravating Factors. – Aggravating factors set forth in subsection (d) of this section need not be included in an indictment or other charging instrument. Any aggravating factor alleged under subdivision (d)(20) of this section shall be included in an indictment or other charging instrument, as specified in G.S. 15A-924.

(a5) Procedure to Determine Prior Record Level Points Not Involving Prior Convictions. – If the State seeks to establish the existence of a prior record level point under G.S. 15A-1340.14(b)(7), the jury shall determine whether the point should be assessed using the procedures specified in subsections (a1) through (a3) of this section. The State need not allege in an indictment or other pleading that it intends to establish the point.

(a6) Notice of Intent to Use Aggravating Factors or Prior Record Level Points. – The State must provide a defendant with written notice of its intent to prove the existence of one or more aggravating factors or a prior record level point under G.S. 15A-1340.14(b)(7) at the same time it provides discovery under G.S. 15A-902. If the defendant does not request discovery, then the notice shall be provided no later than 20 days before trial. A defendant may waive the right to receive such notice. The notice must list all the aggravating factors the State seeks to establish.

(b) When Aggravated or Mitigated Sentence Allowed. – If the ~~court~~ jury, or with respect to an aggravating factor under G.S. 15A-1340.16(d)(18a), the court, finds that aggravating factors exist or the court finds that mitigating factors exist, ~~it~~ the court may depart from the presumptive range of sentences specified in G.S. 15A-1340.17(c)(2). If ~~the court finds that~~ aggravating factors are present and the court determines they are sufficient to outweigh any mitigating factors that are present, it may impose a sentence that is permitted by the aggravated range described in G.S. 15A-1340.17(c)(4). If the court finds that mitigating factors are present and are sufficient to outweigh any aggravating factors that are present, it may impose a sentence that is permitted by the mitigated range described in G.S. 15A-1340.17(c)(3).

(c) Written Findings; When Required. – The court shall make findings of the aggravating and mitigating factors present in the offense only if, in its discretion, it departs from the presumptive range of sentences specified in G.S. 15A-1340.17(c)(2). 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. The requirement to make findings in order to depart from the presumptive range applies regardless of whether the sentence of imprisonment is activated or suspended.

(d) Aggravating Factors. – The following are aggravating factors:

(1) The defendant induced others to participate in the commission of the offense or occupied a position of leadership or dominance of other participants.

(2) The defendant joined with more than one other person in committing the offense and was not charged with committing a conspiracy.

(2a) The offense was committed for the benefit of, or at the direction of, any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, and the defendant was not charged with committing a conspiracy. A "criminal street gang" means any ongoing organization, association, or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of felony or violent misdemeanor offenses, or delinquent acts that would be felonies or violent misdemeanors if committed by an adult, and having a common name or common identifying sign, colors, or symbols.

(3) The offense was committed for the purpose of avoiding or preventing a lawful arrest or effecting an escape from custody.

(4) The defendant was hired or paid to commit the offense.

(5) The offense was committed to disrupt or hinder the lawful exercise of any governmental function or the enforcement of laws.

(6) The offense was committed against or proximately caused serious injury to a present or former law enforcement officer, employee of the Department of Correction, jailer, fireman, emergency medical technician, ambulance attendant, justice or judge, clerk or assistant or deputy clerk of court, magistrate, prosecutor, juror, or witness against the defendant, while engaged in the performance of that person's official duties or because of the exercise of that person's official duties.

(7) The offense was especially heinous, atrocious, or cruel.

(8) The defendant knowingly created a great risk of death to more than one person by means of a weapon or device which would normally be hazardous to the lives of more than one person.

(9) The defendant held public office at the time of the offense and the offense related to the conduct of the office.

(10) The defendant was armed with or used a deadly weapon at the time of the crime.

(11) The victim was very young, or very old, or mentally or physically infirm, or handicapped.
(12) The defendant committed the offense while on pretrial release on another charge.
(13) The defendant involved a person under the age of 16 in the commission of the crime.
(14) The offense involved an attempted or actual taking of property of great monetary value or damage causing great monetary loss, or the offense involved an unusually large quantity of contraband.
(15) The defendant took advantage of a position of trust or confidence, including a domestic relationship, to commit the offense.
(16) The offense involved the sale or delivery of a controlled substance to a minor.
(16a) The offense is the manufacture of methamphetamine and was committed where a person under the age of 18 lives, was present, or was otherwise endangered by exposure to the drug, its ingredients, its by-products, or its waste.
(17) The offense for which the defendant stands convicted was committed against a victim because of the victim's race, color, religion, nationality, or country of origin.
(18) The defendant does not support the defendant's family.
(18a) The defendant has previously been adjudicated delinquent for an offense that would be a Class A, B1, B2, C, D, or E felony if committed by an adult.
(19) The serious injury inflicted upon the victim is permanent and debilitating.
(20) Any other aggravating factor reasonably related to the purposes of sentencing.

Evidence necessary to prove an element of the offense shall not be used to prove any factor in aggravation, and the same item of evidence shall not be used to prove more than one factor in aggravation. Evidence necessary to establish that an enhanced sentence is required under G.S. 15A-1340.16A may not be used to prove any factor in aggravation.

The judge shall not consider as an aggravating factor the fact that the defendant exercised the right to a jury trial.

Notwithstanding the provisions of subsection (a1) of this section, the determination that an aggravating factor under G.S. 15A-1340.16(d)(18a) is present in a case shall be made by the court, and not by the jury. That determination shall be made in the sentencing hearing.

(e) Mitigating Factors. – The following are mitigating factors:
(1) The defendant committed the offense under duress, coercion, threat, or compulsion that was insufficient to constitute a defense but significantly reduced the defendant's culpability.

(2) The defendant was a passive participant or played a minor role in the commission of the offense.
(3) The defendant was suffering from a mental or physical condition that was insufficient to constitute a defense but significantly reduced the defendant's culpability for the offense.
(4) The defendant's age, immaturity, or limited mental capacity at the time of commission of the offense significantly reduced the defendant's culpability for the offense.
(5) The defendant has made substantial or full restitution to the victim.
(6) The victim was more than 16 years of age and was a voluntary participant in the defendant's conduct or consented to it.
(7) The defendant aided in the apprehension of another felon or testified truthfully on behalf of the prosecution in another prosecution of a felony.
(8) The defendant acted under strong provocation, or the relationship between the defendant and the victim was otherwise extenuating.
(9) The defendant could not reasonably foresee that the defendant's conduct would cause or threaten serious bodily harm or fear, or the defendant exercised caution to avoid such consequences.
(10) The defendant reasonably believed that the defendant's conduct was legal.
(11) Prior to arrest or at an early stage of the criminal process, the defendant voluntarily acknowledged wrongdoing in connection with the offense to a law enforcement officer.
(12) The defendant has been a person of good character or has had a good reputation in the community in which the defendant lives.
(13) The defendant is a minor and has reliable supervision available.
(14) The defendant has been honorably discharged from the United States armed services.
(15) The defendant has accepted responsibility for the defendant's criminal conduct.
(16) The defendant has entered and is currently involved in or has successfully completed a drug treatment program or an alcohol treatment program subsequent to arrest and prior to trial.
(17) The defendant supports the defendant's family.
(18) The defendant has a support system in the community.
(19) The defendant has a positive employment history or is gainfully employed.
(20) The defendant has a good treatment prognosis, and a workable treatment plan is available.
(21) Any other mitigating factor reasonably related to the purposes of sentences."

SECTION 2. G.S. 15A-1340.14 reads as rewritten:

"**§ 15A-1340.14. Prior record level for felony sentencing.**

(a) Generally. – The prior record level of a felony offender is determined by calculating the sum of the points assigned to each of the offender's prior convictions that the court or, with respect to subdivision (b)(7) of this section, the jury, finds to have been proved in accordance with this section.

(b) Points. – Points are assigned as follows:

(1) For each prior felony Class A conviction, 10 points.

(1a) For each prior felony Class B1 conviction, 9 points.

(2) For each prior felony Class B2, C, or D conviction, 6 points.

(3) For each prior felony Class E, F, or G conviction, 4 points.

(4) For each prior felony Class H or I conviction, 2 points.

(5) For each prior misdemeanor conviction as defined in this subsection, 1 point. For purposes of this subsection, misdemeanor is defined as any Class A1 and Class 1 nontraffic misdemeanor offense, impaired driving (G.S. 20-138.1), impaired driving in a commercial vehicle (G.S. 20-138.2), and misdemeanor death by vehicle (G.S. 20-141.4(a2)), but not any other misdemeanor traffic offense under Chapter 20 of the General Statutes.

(6) If all the elements of the present offense are included in any prior offense for which the offender was convicted, whether or not the prior offense or offenses were used in determining prior record level, 1 point.

(7) If the offense was committed while the offender was on supervised or unsupervised probation, parole, or post-release supervision, or while the offender was serving a sentence of imprisonment, or while the offender was on escape from a correctional institution while serving a sentence of imprisonment, 1 point.

For purposes of determining prior record points under this subsection, a conviction for a first degree rape or a first degree sexual offense committed prior to the effective date of this subsection shall be treated as a felony Class B1 conviction, and a conviction for any other felony Class B offense committed prior to the effective date of this subsection shall be treated as a felony Class B2 conviction. G.S. 15A-1340.16(a5) specifies the procedure to be used to determine if a point exists under subdivision (b)(7). The state must provide a defendant with written notice of its intent to prove the existence of the prior record point under subdivision (b)(7) of this section as required by G.S. 15A-1340.16(a6).

(c) Prior Record Levels for Felony Sentencing. – The prior record levels for felony sentencing are:

(1) Level I – 0 points.

(2) Level II – At least 1, but not more than 4 points.

(3) Level III – At least 5, but not more than 8 points.

(4) Level IV – At least 9, but not more than 14 points.

(5) Level V – At least 15, but not more than 18 points.

(6) Level VI – At least 19 points.

In determining the prior record level, the classification of a prior offense is the classification assigned to that offense at the time the offense for which the offender is being sentenced is committed.

(d) Multiple Prior Convictions Obtained in One Court Week. – For purposes of determining the prior record level, if an offender is convicted of more than one offense in a single superior court during one calendar week, only the conviction for the offense with the highest point total is used. If an offender is convicted of more than one offense in a single session of district court, only one of the convictions is used.

(e) Classification of Prior Convictions From Other Jurisdictions. – Except as otherwise provided in this subsection, a conviction occurring in a jurisdiction other than North Carolina is classified as a Class I felony if the jurisdiction in which the offense occurred classifies the offense as a felony, or is classified as a Class 3 misdemeanor if the jurisdiction in which the offense occurred classifies the offense as a misdemeanor. If the offender proves by the preponderance of the evidence that an offense classified as a felony in the other jurisdiction is substantially similar to an offense that is a misdemeanor in North Carolina, the conviction is treated as that class of misdemeanor for assigning prior record level points. If the State proves by the preponderance of the evidence that an offense classified as either a misdemeanor or a felony in the other jurisdiction is substantially similar to an offense in North Carolina that is classified as a Class I felony or higher, the conviction is treated as that class of felony for assigning prior record level points. If the State proves by the preponderance of the evidence that an offense classified as a misdemeanor in the other jurisdiction is substantially similar to an offense classified as a Class A1 or Class 1 misdemeanor in North Carolina, the conviction is treated as a Class A1 or Class 1 misdemeanor for assigning prior record level points.

(f) Proof of Prior Convictions. – A prior conviction shall be proved by any of the following methods:

(1) Stipulation of the parties.

(2) An original or copy of the court record of the prior conviction.

(3) A copy of records maintained by the Division of Criminal Information, the Division of Motor Vehicles, or of the Administrative Office of the Courts.

(4) Any other method found by the court to be reliable.

The State bears the burden of proving, by a preponderance of the evidence, that a prior conviction exists and that the offender before the court is the same person as the offender named in the prior conviction. The original or a copy of the court records or a copy of the records maintained by the Division of Criminal Information, the Division of Motor Vehicles, or of the Administrative Office of the Courts, bearing the same name as that by which the offender is charged, is prima facie evidence that the offender named is the same person as the offender before the court, and that the facts set out in the record are true. For purposes of this subsection, "a copy" includes a paper writing containing a reproduction of a record maintained electronically on a computer or other data processing equipment, and a document produced by a facsimile machine. The prosecutor shall make all feasible efforts to obtain and present to the court the offender's

full record. Evidence presented by either party at trial may be utilized to prove prior convictions. Suppression of prior convictions is pursuant to G.S. 15A-980. If a motion is made pursuant to that section during the sentencing stage of the criminal action, the court may grant a continuance of the sentencing hearing. If asked by the defendant in compliance with G.S. 15A-903, the prosecutor shall furnish the defendant's prior criminal record to the defendant within a reasonable time sufficient to allow the defendant to determine if the record available to the prosecutor is accurate. Upon request of a sentencing services program established pursuant to Article 61 of Chapter 7A of the General Statutes, the district attorney shall provide any information the district attorney has about the criminal record of a person for whom the program has been requested to provide a sentencing plan pursuant to G.S. 7A-773.1."

SECTION 3. G.S. 15A-924(a) is amended by adding a new subdivision to read:

"(a) A criminal pleading must contain:

(1) The name or other identification of the defendant but the name of the defendant need not be repeated in each count unless required for clarity.

(2) A separate count addressed to each offense charged, but allegations in one count may be incorporated by reference in another count.

(3) A statement or cross reference in each count indicating that the offense charged therein was committed in a designated county.

(4) A statement or cross reference in each count indicating that the offense charged was committed on, or on or about, a designated date, or during a designated period of time. Error as to a date or its omission is not ground for dismissal of the charges or for reversal of a conviction if time was not of the essence with respect to the charge and the error or omission did not mislead the defendant to his prejudice.

(5) A plain and concise factual statement in each count which, without allegations of an evidentiary nature, asserts facts supporting every element of a criminal offense and the defendant's commission thereof with sufficient precision clearly to apprise the defendant or defendants of the conduct which is the subject of the accusation. When the pleading is a criminal summons, warrant for arrest, or magistrate's order, or statement of charges based thereon, both the statement of the crime and any information showing probable cause which was considered by the judicial official and which has been furnished to the defendant must be used in determining whether the pleading is sufficient to meet the foregoing requirement.

(6) For each count a citation of any applicable statute, rule, regulation, ordinance, or other provision of law alleged therein to have been violated. Error in the citation or its omission is not ground for dismissal of the charges or for reversal of a conviction.

(7) A statement that the state intends to use one or more aggravating factors under G.S. 15A-1340.16(d)(20), with a plain and concise

factual statement indicating the factor or factors it intends to use under the authority of that subdivision."

SECTION 4. Article 58 of Chapter 15A of the General Statutes is amended by adding a new section to read:

"**§ 15A-1022.1. Procedure in accepting admissions of the existence of aggravating factors in felonies.**

(a) Before accepting a plea of guilty or no contest to a felony, the court shall determine whether the State intends to seek a sentence in the aggravated range. If the State does intend to seek an aggravated sentence, the court shall determine which factors the State seeks to establish. The court shall determine whether the State seeks a finding that a prior record level point should be found under G.S. 15A-1340.14(b)(7). The court shall also determine whether the State has provided the notice to the defendant required by G.S. 15A-1340.16(a6) or whether the defendant has waived his or her right to such notice.

(b) In all cases in which a defendant admits to the existence of an aggravating factor or to a finding that a prior record level point should be found under G.S. 15A-1340.14(b)(7), the court shall comply with the provisions of G.S. 15A-1022(a). In addition, the court shall address the defendant personally and advise the defendant that:

(1) He or she is entitled to have a jury determine the existence of any aggravating factors or points under G.S. 15A-1340.14(b)(7); and

(2) He or she has the right to prove the existence of any mitigating factors at a sentencing hearing before the sentencing judge.

(c) Before accepting an admission to the existence of an aggravating factor or a prior record level point under G.S. 15A-1340.14(b)(7), the court shall determine that there is a factual basis for the admission, and that the admission is the result of an informed choice by the defendant. The court may base its determination on the factors specified in G.S. 15A-1022(c), as well as any other appropriate information.

(d) A defendant may admit to the existence of an aggravating factor or to the existence of a prior record level point under G.S. 15A-1340.14(b)(7) before or after the trial of the underlying felony.

(e) The procedures specified in this Article for the handling of pleas of guilty are applicable to the handling of admissions to aggravating factors and prior record points under G.S. 15A-1340.14(b)(7), unless the context clearly indicates that they are inappropriate."

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

SENATE
COMMITTEE SUBSTITUTE

APR 11 2005

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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ADOPTED

SENATE BILL 600*
PROPOSED COMMITTEE SUBSTITUTE S600-PCS15224-RK-8

Short Title: Crime to Falsify Highway Inspection Reports.-AB (Public)

Sponsors:

Referred to:

March 16, 2005

A BILL TO BE ENTITLED

AN ACT TO MAKE IT UNLAWFUL FOR ANY PERSON TO FALSIFY, OR DIRECT ANOTHER TO FALSIFY, A HIGHWAY CONSTRUCTION INSPECTION REPORT OR TEST REPORT REQUIRED BY THE DEPARTMENT OF TRANSPORTATION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 136-13.2 reads as rewritten:

"**§ 136-13.2. Falsifying highway inspection reports.**

(a) Any ~~employee or agent employed by the Department of Transportation or by an engineering or consulting firm engaged by the Department of Transportation,~~ person who knowingly falsifies any inspection report or test report required by the Department of Transportation in connection with the construction of highways, shall be guilty of a Class H felony.

(b) Any ~~employee, supervisor, or officer of the Department of Transportation~~ person who directs a subordinate under his direct or indirect supervision to falsify an inspection report or test report required by the Department of Transportation in connection with the construction of highways, shall be guilty of a Class H felony.

(c) Repealed by Session Laws 1979, c. 786, s. 2, effective May 8, 1979."

SECTION 2. This act becomes effective December 1, 2005, and applies to offenses committed on or after that date.

SENATE BILL 600:
Crime to Falsify Highway Inspection Reports.-AB

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Senator Jenkins
Date:	April 5, 2005	**Summary by:**	Hal Pell
Version:	PCS		Committee Co-Counsel

SUMMARY: ***This bill would broaden the category of persons subject to prosecution for falsifying, or directing the falsifying, of an inspection or test report required by the Department of Transportation. The act becomes effective on December 1, 2005, and applies to offenses occurring on or after that date.***

CURRENT LAW:

A Department of Transportation employee, or an agent of a firm hired by the DOT, who falsifies an inspection or test report, is guilty of a Class H felony. A DOT employee who directs the filing of a false report is guilty of a Class H felony.

BILL ANALYSIS:

The proposed committee substitute would amend the law to provide that "any person" [not just those specified under current law] who falsifies a test or inspection report is guilty of a Class H felony. The bill would also provide that "any person" [not just those specified under current law] who directs a subordinate to falsify an inspection or test report required by the DOT is guilty of a Class H felony.

A Class H felon, with no prior offenses, is subject to a penalty of community service, an intermediate punishment, or an active sentence. The minimum presumptive active sentence would be from 5 to 6 months in prison.

The act becomes effective on December 1, 2005, and applies to offenses committed on or after that date.

S600-smrk-01

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 600*

Short Title:	Crime to Falsify Highway Inspection Reports.-AB	(Public)
Sponsors:	Senator Jenkins.	
Referred to:	Judiciary I.	

March 16, 2005

A BILL TO BE ENTITLED

AN ACT TO MAKE IT UNLAWFUL FOR AN ENGINEERING, CONSULTING, OR CONTRACTING FIRM EMPLOYEE, SUPERVISOR, OR OFFICER TO FALSIFY A DEPARTMENT OF TRANSPORTATION REQUIRED HIGHWAY INSPECTION OR TEST REPORT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 136-13.2 reads as rewritten:

"**§ 136-13.2. Falsifying highway inspection reports.**

(a) Any ~~employee or agent employed by the Department of Transportation or by an engineering or consulting firm engaged by the Department of Transportation,~~ person who knowingly falsifies any inspection report or test report required by the Department of Transportation in connection with the construction of highways, shall be guilty of a Class H felony.

(b) Any employee, supervisor, or officer of the Department of Transportation or any employee, supervisor, or officer of an engineering, consulting, or contracting firm who directs a subordinate under his direct or indirect supervision to falsify an inspection report or test report required by the Department of Transportation in connection with the construction of highways, shall be guilty of a Class H felony.

(c) Repealed by Session Laws 1979, c. 786, s. 2, effective May 8, 1979."

SECTION 2. 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 737
PROPOSED COMMITTEE SUBSTITUTE S737-CSRY-2 [v.4]

4/6/2005 5:10:46 PM

Short Title: County Gov't. Criminal Records Checks. (Public)

Sponsors:

Referred to:

March 22, 2005

A BILL TO BE ENTITLED

AN ACT AUTHORIZING CRIMINAL RECORDS CHECKS FOR COUNTY GOVERNMENTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 114-19.14 reads as rewritten:

"**§ 114-19.14. Criminal record checks for ~~municipalities.~~municipalities and county governments.**

The Department of Justice may provide to a city or county from the State and National Repositories of Criminal Histories the criminal history of any person who applies for employment with the ~~city.~~ city or county. The city or county shall provide to the Department of Justice, along with the request, the fingerprints of the applicant, a form signed by the applicant consenting to the criminal record check and use of fingerprints and other identifying information required by the State and National Repositories, and any additional information required by the Department of Justice. The applicant's fingerprints shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The city or county 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 2. Article 5 of Chapter 153A of the General Statues is amended by adding a new section to read:

"**§ 153A-94.2 Criminal history record checks of employees permitted.**

The board of commissioners may adopt or provide for rules and regulations or ordinances concerning a requirement that any applicant for employment be subject to a criminal history record check of State and National Repositories of Criminal Histories

conducted by the Department of Justice in accordance with G.S.114–19.14. The county may consider the results of these criminal history record checks in its hiring decisions."

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

SENATE BILL 737:
County Government Criminal Records Checks.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Senator Rand
Date:	April 7, 2005	**Summary by:**	O.Walker Reagan, Committee Co-Counsel, Dickie Brown Committee Staff
Version:	Proposed Committee Substitute S737-CSRY-2		

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 737 gives county governments the authority to have criminal background checks performed by the SBI and FBI on its prospective employees and to use these background checks in determining employment.***

CURRENT LAW: Current law does not give county governments the authority to perform criminal background checks on its prospective employees. City governments were given the authority requested in this bill in 2003.

BILL ANALYSIS: Section 1 of the bill authorizes the Department of Justice (SBI) to conduct criminal history background checks on persons who apply for employment with a county, as is currently permitted for a city. The county would submit the prospective employee's fingerprints along with a form signed by the individual giving consent to the background check. The SBI would search the State's criminal history file and forward the information to the FBI for a national criminal history record check. Information obtained by the county is to be kept confidential. The SBI may charge a fee for this service but not more than the actual costs accrued.

Section 2 adds a new section that would give county governments the authority to perform criminal records background checks of its prospective employees. This authority mirrors the authority given to cities in 2003.

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

SENATE
COMMITTEE SUBSTITUTE
APR 11 2005

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

S D

ADOPTED

SENATE BILL 897
PROPOSED COMMITTEE SUBSTITUTE S897-PCS65299-RR-14

Short Title: Restructure Parole Commission. (Public)

Sponsors:

Referred to:

March 23, 2005

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT THE TERMS OF THE MEMBERS OF THE POST-RELEASE SUPERVISION AND PAROLE COMMISSION SERVING ON JUNE 30, 2005, SHALL EXPIRE ON THAT DATE; AND TO RESTRUCTURE THE COMMISSION TO CONSIST OF ONE FULL-TIME MEMBER AND TWO HALF-TIME MEMBERS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143B-267 reads as rewritten:

"**§ 143B-267. Post-Release Supervision and Parole Commission – members; selection; removal; chairman; compensation; quorum; services.**

~~The~~Effective July 1, 2005, the Post-Release Supervision and Parole Commission shall consist of ~~three~~one full-time ~~members.~~member and two half-time members. The three ~~full-time~~ members shall be appointed by the Governor from persons whose recognized ability, training, experience, and character qualify them for service on the Commission. The terms of office of ~~the five members presently~~ any member serving on the Commission on June 30, 2005, shall expire on ~~July 31, 1999.~~that date. ~~The term of one of the members appointed effective August 1, 1999, shall be for one year. The term of one of the members appointed effective August 1, 1999, shall be for two years. The term of one of the members appointed effective August 1, 1999, shall be for three years. Thereafter, the~~ The terms of office of persons appointed by the Governor as members of the Commission shall be for four years or until their successors are appointed and qualify. Any appointment to fill a vacancy on the Commission created by the resignation, removal, death or disability of a ~~full-time~~ member shall be for the balance of the unexpired term only.

The Governor shall have the authority to remove any member of the Commission from office for misfeasance, malfeasance or nonfeasance, pursuant to the provisions of G.S. 143B-13. The Governor shall designate a ~~full-time~~ member of the Commission to serve as ~~chairman~~chair of the Commission at the pleasure of the Governor.

The granting, denying, revoking, or rescinding of parole, the authorization of work-release privileges to a prisoner, or any other matters of business coming before the Commission for consideration and action shall be decided by majority vote of the full Commission.

The ~~full-time~~ members of the Commission shall receive the salary fixed by the General Assembly in the Current Operations Appropriations Act and shall receive necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-6.

All clerical and other services required by the Commission shall be supplied by the Secretary of Correction."

SECTION 2. This act becomes effective June 30, 2005.

SENATE BILL 897:
Restructure Parole Commission

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Sen. Rand
Date:	April 5, 2005	**Summary by:**	William R. Gilkeson
Version:	S897-CSRR-14 [v.2]		Committee Co-Counsel

SUMMARY: This Proposed Committee Substitute for Senate Bill 897 would end the terms of the three full-time members of the Post-Release Supervision and Parole Commission on June 30, 2005, and restructure the Commission to have one full-time member and two half-time members. Effective June 30, 2005.

CURRENT LAW: Currently, the Post-Release Supervision and Parole Commission consists of three full-time members. They are appointed by the Governor and have four-year terms. The Governor designates a chair from among the full-time members. The chair serves at the pleasure of the Governor, as chair, but the Governor may remove a member, as member, only for cause.

The Commission has the authority, among other things, to decide on parole for all the prisoners who were sentenced before October 1, 1994. The Structured Sentencing Act abolished parole for prisoners sentenced on or after that date.

The Commission makes its decisions by majority vote.

The salary of Commission members is set by the General Assembly in the Appropriations Act. The 2004 Act set the salary of the Chair at $89,993, and the salary of the other two members at $80,315.

BILL ANALYSIS: The bill would end the terms of the three current members of the Commission on June 30, 2005. (Assuming all the current members are still members on that date.) The next day, July 1, 2005, the Commission would consist of one full-time member and two half-time members. The Governor would appoint all three and designate a chair from among them. As under current law, the chair would serve at the pleasure of the Governor, as chair, but the Governor could remove a member, as member, only for cause.

The Commission would continue to make its decisions by majority vote.

The salary of the members would continue to be set by General Assembly in the Appropriations Act.

Effective June 30, 2005.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 897

Short Title:	Restructure Parole Commission.	(Public)
Sponsors:	Senator Rand.	
Referred to:	Judiciary I.	

March 23, 2005

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE EXPIRATION OF THE TERMS OF THE CURRENT MEMBERS OF THE POST-RELEASE SUPERVISION AND PAROLE COMMISSION AND TO RESTRUCTURE THE COMMISSION TO CONSIST OF ONE FULL-TIME MEMBER AND TWO HALF-TIME MEMBERS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143B-267 reads as rewritten:

"**§ 143B-267. Post-Release Supervision and Parole Commission – members; selection; removal; chairman; compensation; quorum; services.**

~~The~~ Effective July 1, 2005, the Post-Release Supervision and Parole Commission shall consist of ~~three~~ one full-time ~~members.~~ member and two half-time members. The three ~~full-time~~ members shall be appointed by the Governor from persons whose recognized ability, training, experience, and character qualify them for service on the Commission. The terms of office of the five members presently serving on the Commission shall expire on ~~July 31, 1999.~~ June 30, 2005. ~~The term of one of the members appointed effective August 1, 1999, shall be for one year. The term of one of the members appointed effective August 1, 1999, shall be for two years. The term of one of the members appointed effective August 1, 1999, shall be for three years. Thereafter, the~~ The terms of office of persons appointed by the Governor as members of the Commission shall be for four years or until their successors are appointed and qualify. Any appointment to fill a vacancy on the Commission created by the resignation, removal, death or disability of a ~~full-time~~ member shall be for the balance of the unexpired term only.

The Governor shall have the authority to remove any member of the Commission from office for misfeasance, malfeasance or nonfeasance, pursuant to the provisions of G.S. 143B-13. ~~The Governor shall designate a~~ The full-time member of the Commission ~~to~~ shall serve as ~~chairman~~ chair of the Commission at the pleasure of the Governor.

The granting, denying, revoking, or rescinding of parole, the authorization of work-release privileges to a prisoner, or any other matters of business coming before the Commission for consideration and action shall be decided by majority vote of the full Commission.

The ~~full-time~~ members of the Commission shall receive the salary fixed by the General Assembly in the Current Operations Appropriations Act and shall receive necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-6.

All clerical and other services required by the Commission shall be supplied by the Secretary of Correction."

SECTION 2. This act becomes effective June 30, 2005.

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Tuesday	April 12, 2005	10:00 AM	1027 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 324	Revise Business Corporation Act.	Senator Clodfelter
SB 465	Civil Rules--Filing of Pleadings Clarified.	Senator Berger
SB 492	Jury Exhibits.	Senator Hagan
SB 893	State Health Plan Subrogation.	Senator Rand
SB 929	Prison Escape/Juvenile Detention Facility.	Senator Clodfelter

Senator Daniel G. Clodfelter, Chair

Judiciary 1 Committee

April 12, 205

Minutes

Senator Dan Clodfelter, Chair called the meeting to order at 10:04 a.m. with fifteen members present. He introduced Pages Bria Sledge and Shaday King both from Raleigh, NC.

SB-492 (Jury Exhibits) Committee Substitute was in introduced by Senator Clodfelter. Senator RC Soles moved for adoption of the Committee Substitute. All members voted yes. Motion carried. Bill sponsor, Senator Karen Ray explained that the bill removes the requirement in criminal cases that both parties (prosecution and defense) must consent when the jury requests to review evidentiary exhibits in the jury room before the court in its discretion can grant the request. The bill would leave the decision to allow review of the exhibits in the jury room solely in the discretion of the court in both civil and criminal cases. She asked Judge Kathryn Eagles from Greensboro to speak on the bill. Senator Clodfelter also spoke on the bill. Senator Soles and Senator Charlie Albertson had questions. Judge Eagles and staff attorney Walker Reagan answered the questions. Senator Albertson moved for a Favorable Report. All members voted yes. Motion carried.

SB 465 (Civil Rules Filing of Pleadings Clarified) Committee Substitute was introduced by Senator Clodfelter. Senator Philip Berger moved for adoption of the Committee Substitute. All members voted yes. Motion carried. Senator Berger, bill sponsor, explained that the bill would amend several rules of civil procedure to provide that not every paper required to be served on parties to a lawsuit must also be filed with the court. The changes are designed to make the rules on filing papers with a court clearer and more rational. Mr. Steve Epstein from the NC Bar Association Litigation Section spoke on the bill. Senator's Harry Brown, and Richard Stevens had questions. Mr. Epstein answered the questions. Senator Stevens moved for a Favorable Report. All members voted yes. Motion carried.

SB-324 (Revise Business Corporation Act.) Committee Substitute was introduced by Vice Chair, Senator RC Soles. Senator Clodfelter moved for adoption of the Committee Substitute. All members voted yes. Motion carried. Senator Clodfelter bill sponsor, explained that the bill would make various amendments to the Business

Corporation Act to modernize NC's law to reflect additional revisions that have been made to Revised Model Business Corporation Act since the law was adopted in NC in 1989. The changes make NC's corporation law more consistent with the laws of many other states. (See attached Bill Summary for further information) Mr. Mark Davidson, NC Bar Association Business Law Section, spoke on the bill. Senator's David Hoyle and RC Soles had questions. Senator Clodfelter and Mr. Davidson answered the questions. Senator Jerry Tillman moved for a Favorable Report. All members voted yes. Motion carried.

SB-929 (Prison Escape/Juvenile Detention Facility) was introduced by Vice Chair, Senator RC Soles. Bill sponsor, Senator Dan Clodfelter explained the bill. Ms. Judy Stevens from the Department of Juvenile Justice spoke in favor of the bill. Senator's Philip Berger and Jeanne Lucas had questions. Staff attorney, Hal Pell answered the questions. Senator Clodfelter stated that the bill would be displaced at this time for some changes, and would be heard at a future date.

SB-893 (State Health Plan Subrogation) Committee Substitute was introduced by Senator Clodfelter. Senator Tony Rand, bill sponsor moved for adoption of the Committee Substitute. All members voted yes. Motion carried. Senator Rand explained that the bill would amend the governing the right of subrogation that the State Health Plan has in third-party payments owed to a Plan member arising from and injury caused by a liable third party by clarifying what payments subrogation rights attach to an allowing for a reduction in the State Health Plan's claim based on the Plan's proportionate share of the costs of collection and the degree to which the Plan member would be made whole by the recovery. It also provides that the limits for recovery by third-party medical providers in wrongful death cases do not apply to the State Health Plan. Mr. Mike Colombo, NC Bar Association spoke briefly on the bill. Senator's RC Soles and Martin Nesbitt had questions. Staff attorney, Walker Reagan answered the questions. Senator Clodfelter stated the bill would be displaced at this time for further research for a possible amendment.

Being no further business the meeting adjourned at 10:58 a.m.

Senator Dan Clodfelter, Chair

Wanda Joyner, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Daniel G. Clodfelter, Chair

Wednesday, April 13, 2005

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

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

S.B. **324** Revise Business Corporation Act.

Draft Number:	PCS35205
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

S.B. **468** Crime Lab Cost Recovery Fee.

Draft Number:	PCS35195
Sequential Referral:	Finance
Recommended Referral:	None
Long Title Amended:	Yes

S.B. **492** Jury Exhibits.

Draft Number:	PCS35206
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 3

Committee Clerk Comments:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Daniel G. Clodfelter, Chair

Thursday, April 14, 2005

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

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

S.B. **465** Civil Rules--Filing of Pleadings Clarified.

Draft Number:	PCS35207
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comments:

last Ed.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

S D

SENATE BILL 492
PROPOSED COMMITTEE SUBSTITUTE S492-PCS35206-RU-12

Short Title: Jury Exhibits. (Public)

Sponsors:

Referred to:

March 15, 2005

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT THE PRESIDING TRIAL JUDGE IN BOTH CIVIL AND CRIMINAL CASES HAS THE SOLE DISCRETION TO DETERMINE WHETHER JURORS MAY TAKE EXHIBITS INTRODUCED INTO EVIDENCE IN THE JURY ROOM AND THAT THE CONSENT OF ALL PARTIES IS NOT NECESSARY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-1233 reads as rewritten:

"**§ 15A-1233. Review of testimony; use of evidence by the jury.**

(a) If the jury after retiring for deliberation requests a review of certain testimony or other evidence, the jurors must be conducted to the courtroom. The ~~judge~~ court in ~~his~~ its discretion, after notice to the prosecutor and defendant, may direct that requested parts of the testimony be read to the jury and may permit the jury to reexamine in open court the requested materials admitted into evidence. ~~In his discretion the judge~~ The court in its discretion may also have the jury review other evidence relating to the same factual issue so as not to give undue prominence to the evidence requested.

(b) ~~Upon request by the jury and with consent of all parties, the judge may in his discretion permit the jury to take to the jury room exhibits and writings which have been received in evidence. If the judge permits the jury to take to the jury room requested exhibits and writings, he may have the jury take additional material or first review other evidence relating to the same issue so as not to give undue prominence to the exhibits or writings taken to the jury room. If the judge permits an exhibit to be taken to the jury room, he must, upon request, instruct the jury not to conduct any experiments with the exhibit.~~ The court in its discretion may permit the jury, upon retiring for deliberation, to take to the jury room a copy of the charges against the defendant. The court should permit the jury to take exhibits and writings that have been received in evidence, except depositions, and copies of instructions previously given.

(c) The court may refrain from sending certain material to the jury room if the court determines either of the following:

(1) That the material may be subjected to improper use by the jury or unduly prejudicial to any party.

(2) That the material might be dangerous to jurors or to others.

(d) In sending any exhibits to the jury, the court should ensure that the evidentiary integrity of the exhibit is preserved."

SECTION 2. Article 19 of Chapter 1 of the General Statutes is amended by adding a new section to read:

"**§ 1-181.2. Use of evidence by the jury.**

(a) If the jury after retiring for deliberation requests a review of certain testimony or other evidence, the jurors must be conducted to the courtroom. The court in its discretion, after notice to the plaintiff and defendant, may direct that requested parts of the testimony be read to the jury and may permit the jury to reexamine in open court the requested materials admitted into evidence. The court in its discretion may also have the jury review other evidence relating to the same factual issue so as not to give undue prominence to the evidence requested.

(b) The court in its discretion may permit the jury, upon retiring for deliberation, to take to the jury room a copy of the charges against the defendant. The court should permit the jury to take exhibits and writings that have been received in evidence, except depositions, and copies of instructions previously given.

(c) The court may refrain from sending certain material to the jury room if the court determines either of the following:

(1) That the material may be subjected to improper use by the jury or unduly prejudicial to any party.

(2) That the material might be dangerous to jurors or to others.

(d) In sending any exhibits to the jury, the court should ensure that the evidentiary integrity of the exhibit is preserved."

SECTION 3. This act becomes effective October 1, 2005.

SENATE BILL 492: Jury Exhibits.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Senator Hagan
Date:	April 12, 2005	**Summary by:**	O.Walker Reagan, Committee Co-Counsel; Dickie L. Brown, Committee Staff
Version:	Proposed Committee Substitute S492-CSRU-12		

*SUMMARY: **The Proposed Committee Substitute for Senate Bill 492 removes the requirement in criminal cases that both parties (prosecution and defense) must consent when the jury requests to review evidentiary exhibits in the jury room before the court in its discretion can grant the request. The bill would leave the decision to allow review of the exhibits in the jury room solely in the discretion of the court in both civil and criminal cases.***

CURRENT LAW: Current law requires that if a jury in a criminal case requests to review evidentiary exhibits in the jury room both parties must first consent. There is no parallel statute pertaining to this issue in civil procedure, but it has traditionally been held that the same practice applies in civil cases.

BILL ANALYSIS: Section 1 of the bill eliminates the requirement in subsection (b) of G.S. 15A-1233 that both parties consent before the jury is allowed to review evidence in the jury room. The decision whether or not to allow exhibits in the jury room is left in the court's discretion. This section sets out the criteria the court is to consider including whether the material may be subjected to improper use by the jury, unduly prejudicial to any party, or dangerous to the jurors or others. Depositions and copies of previously given instructions are not to be allowed in the jury room. The court should also ensure that the evidentiary integrity of the exhibit is preserved.

Section 2 of the bill amends the civil law to conform the law on the use of evidence by the jury in civil cases, as is the law for criminal cases.

BACKGROUND: As a part of a larger Criminal Code Revision in 1977, G.S. 15A-1233 was enacted regarding use of evidence by the jury in criminal proceedings. Section (a) of G.S. 15A-1233 followed standards established in the ABA Standards for Criminal Justice whereas section (b) of that statute did not. This bill brings the entire statute in line with the ABA Standards.

EFFECTIVE DATE: This bill becomes effective October 1, 2005.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 492

Short Title:	Jury Exhibits.	(Public)
Sponsors:	Senator Hagan.	
Referred to:	Judiciary I.	

March 15, 2005

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT THE PRESIDING TRIAL JUDGE IN BOTH CIVIL AND CRIMINAL CASES HAS THE SOLE DISCRETION TO DETERMINE WHETHER JURORS MAY TAKE EXHIBITS INTRODUCED INTO EVIDENCE IN THE JURY ROOM AND THAT THE CONSENT OF ALL PARTIES IS NOT NECESSARY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-1233(b) reads as rewritten:

"(b) Upon request by the ~~jury and with consent of all parties,~~ jury, the judge may in his or her discretion permit the jury to take to the jury room exhibits and writings which have been received in evidence. If the judge permits the jury to take to the jury room requested exhibits and writings, ~~he~~ the judge may have the jury take additional material or first review other evidence relating to the same issue so as not to give undue prominence to the exhibits or writings taken to the jury room. If the judge permits an exhibit to be taken to the jury room, ~~he~~ the judge must, upon request, instruct the jury not to conduct any experiments with the exhibit."

SECTION 2. Article 19 of Chapter 1 of the General Statutes is amended by adding a new section to read:

"**§ 1-181.2. Use of evidence by the jury.**

Upon request by the jury, the judge may in his or her discretion permit the jury to take to the jury room exhibits and writings which have been received in evidence. If the judge permits the jury to take to the jury room requested exhibits and writings, the judge may have the jury take additional material or first review other evidence relating to the same issue so as not to give undue prominence to the exhibits or writings taken to the jury room. If the judge permits an exhibit to be taken to the jury room, the judge must, upon request, instruct the jury not to conduct any experiments with the exhibit."

SECTION 3. This act becomes effective December 1, 2005.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 465
PROPOSED COMMITTEE SUBSTITUTE S465-PCS35207-RR-16

Short Title: Civil Rules – Filing of Papers Clarified. (Public)

Sponsors:

Referred to:

March 10, 2005

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE SERVICE AND FILING REQUIREMENTS OF THE NORTH CAROLINA RULES OF CIVIL PROCEDURE.

The General Assembly of North Carolina enacts:

SECTION 1. Subsection (b) of G.S. 1A-1, Rule 5, reads as rewritten:

"(b) Service – How made. – A pleading setting forth a counterclaim or cross claim shall be filed with the court and a copy thereof shall be served on the party against whom it is asserted or on the party's attorney of record. With respect to all pleadings subsequent to the original complaint and other papers required or permitted to be served, service with due return may be made in the manner provided for service and return of process in Rule 4 and may be made upon either the party or, unless service upon the party personally is ordered by the court, upon the party's attorney of record. With respect to such other pleadings and papers, service upon the attorney or upon a party may also be made by delivering a copy to the party or by mailing it to the party at the party's last known address or, if no address is known, by filing it with the clerk of court. Delivery of a copy within this rule means handing it to the attorney or to the party, leaving it at the attorney's office with a partner or employee, or by sending it to the attorney's office by a confirmed telefacsimile transmittal for receipt by 5:00 P.M. Eastern Time on a regular business day, as evidenced by a telefacsimile receipt confirmation. If receipt of delivery by telefacsimile is after 5:00 P.M., service will be deemed to have been completed on the next business day. Service by mail shall be complete upon deposit of the pleading or paper enclosed in a post-paid, properly addressed wrapper in a post office or official depository under the exclusive care and custody of the United States Postal Service.

A certificate of service shall accompany every pleading and every paper required to be served on any party or nonparty to the litigation, except with respect to pleadings and papers whose service is governed by Rule 4. The certificate shall show the date and method of service or the date of acceptance of service and shall show the name and

service address of each person upon whom the paper has been served. If one or more persons are served by facsimile transmission, the certificate shall also show the telefacsimile number of each person so served. Each certificate of service shall be signed in accordance with and subject to Rule 11 of these rules."

SECTION 2. Subsection (d) of G.S. 1A-1, Rule 5, reads as rewritten:

"(d) Filing. – ~~All pleadings subsequent to the complaint shall be filed with the court. All other papers required to be served upon a party, including requests for admissions, shall be filed with the court either before service or within five days thereafter, except that subpoenas, objections to subpoenas under Rule 45(c)(3), depositions, interrogatories, requests for documents, and answers and responses to those requests may not be filed unless ordered by the court or until used in the proceeding. Briefs and memoranda provided to the court may not be filed with the clerk of the court unless ordered by the court. The party taking a deposition or obtaining material through discovery is responsible for its preservation and delivery to the court if needed or so ordered. With respect to all pleadings and other papers as to which service and return has not been made in the manner provided in Rule 4, proof of service shall be made by filing with the court a certificate either by the attorney or the party that the paper was served in the manner prescribed by this rule, or a certificate of acceptance of service by the attorney or the party to be served. Such certificate shall show the date and method of service or the date of acceptance of service.~~ The following papers shall be filed with the court, either before service or within five days after service:

(1) All pleadings, as defined by Rule 7(a) of these rules, subsequent to the complaint, whether such pleadings are original or amended.

(2) Written motions and all notices of hearing.

(3) Any other application to the court for an order that may affect the rights of or in any way commands any individual, business entity, governmental agency, association, or partnership to act or to forego action of any kind.

(4) Notices of appearance.

(5) Any other paper required by rule or statute to be filed.

(6) Any other paper so ordered by the court.

(7) All orders issued by the court.

All other papers, regardless of whether these rules require them to be served upon a party, should not be filed with the court unless (i) the filing is agreed to by all parties, or (ii) the papers are submitted to the court in relation to a motion or other request for relief, or (iii) the filing is permitted by another rule or statute. Briefs or memoranda provided to the court may not be filed with the clerk of court unless ordered by the court. The party taking a deposition or obtaining material through discovery is responsible for its preservation and delivery to the court if needed or so ordered."

SECTION 3. Subsection (f) of G.S. 1A-1, Rule 30, reads as rewritten:

"(f) Certification ~~and filing~~ by person administering the oath; exhibits; ~~copies; notice of filing.~~ copies. –

(1) The person administering the oath shall certify that the deponent was duly sworn by him and that the deposition is a true record of the

testimony given by the deponent. This certificate shall be in writing and accompany the sound-and-visual or sound recording or transcript of the deposition. He shall then place the deposition in an envelope or package endorsed with the title of the action and marked "Deposition of (here insert name of witness)" and shall personally deliver it or mail it by first class mail to the party taking the deposition or his attorney who shall preserve it as the court's copy.

Documents and things produced for inspection during the examination of the deponent shall, upon the request of a party, be marked for identification and annexed to and returned with the deposition, and may be inspected and copied by any party, except that (i) the person producing the materials may substitute copies to be marked for identification, if he affords to all parties fair opportunity to verify the copies by comparison with the originals, and (ii) if the person producing the materials requests their return, the person before whom the deposition is taken shall mark them, give each party an opportunity to inspect and copy them, and return them to the person producing them, and the materials may then be used in the manner as if annexed to and returned with the deposition. Any party may move for an order that the original be annexed to and returned with the deposition to the court, pending final disposition of the case.

(2) Upon payment of reasonable charges therefor, the person administering the oath shall furnish a copy of the deposition to any party or to the deponent.

~~(3) The clerk shall give prompt notice of the filing of a deposition to all parties.~~"

SECTION 4. G.S. 1A-1, Rule 31, reads as rewritten:

"**Rule 31. Depositions upon written questions.**

(a) Serving questions; notice. – After commencement of the action, any party may take the testimony of any person, including a party, by deposition upon written questions. The attendance of witnesses may be compelled by the use of subpoena as provided in Rule 45 provided that no subpoena need be served on a deponent who is a party or an officer, director or managing agent of a party, provided the party has been served with notice pursuant to this rule. Such a deposition shall be taken in the county where the witness resides or is employed or transacts his business in person unless the witness agrees that it may be taken elsewhere. The deposition of a person confined in prison or of a patient receiving in-patient care in or confined to an institution or hospital for the mentally ill or mentally handicapped may be taken only by leave of court on such terms as the court prescribes.

A party desiring to take a deposition upon written questions shall serve them upon every other party with a notice stating (i) the name and address of the person who is to answer them, if known, and if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs, and (ii) the name or descriptive title and address of the officer before whom the deposition is to be taken. A

deposition upon written questions may be taken of a public or private corporation or a partnership or association or governmental agency in accordance with the provisions of Rule 30(b)(6).

Within 30 days after the notice and written questions are served, a party may serve cross questions upon all other parties. Within 10 days after being served with cross questions, a party may serve redirect questions upon all other parties. Within 10 days after being served with redirect questions, a party may serve recross questions upon all other parties. The court may for cause shown enlarge or shorten the time.

(b) Person to take responses and prepare record. – A copy of the notice and copies of all questions served shall be delivered by the party taking the deposition to the person designated in the notice to take the deposition, who shall proceed promptly, in the manner provided by Rule 30(c), (e), and (f), to take the testimony of the deponent in response to the questions and to prepare, certify, and ~~file or~~ mail the deposition, attaching thereto the copy of the notice and the questions received by him.

~~(c) Notice of filing. – When the deposition is filed the clerk shall promptly give notice thereof to all parties.~~"

SECTION 5. Subsection (a) of G.S. 1A-1, Rule 32, reads as rewritten:

"(a) Use of depositions. – At the trial or upon the hearing of a motion or an interlocutory proceeding or upon a hearing before a referee, any part or all of a deposition, so far as admissible under the rules of evidence applied as though the witness were then present and testifying, may be used against any party who was present or represented at the taking of the deposition or who had reasonable notice thereof, in accordance with any of the following provisions:

(1) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of deponent as a witness.

(2) The deposition of a person called as a witness may also be used as substantive evidence by any party adverse to the party who called the deponent as a witness and it may be used by the party calling deponent as a witness as substantive evidence of such facts stated in the deposition as are in conflict with or inconsistent with the testimony of deponent as a witness.

(3) The deposition of a party or of any one who at the time of taking the deposition was an officer, director, or managing agent, or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf of a public or private corporation, partnership or association or governmental agency which is a party may be used by an adverse party for any purpose, whether or not the deponent testifies at the trial or hearing.

(4) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the court finds: that the witness is dead; or that the witness is at a greater distance than 100 miles from the place of trial or hearing, or is out of the United States, unless it appears that the absence of the witness was procured by the party offering the deposition; or that the witness is unable to attend or testify because of age, illness, infirmity, or imprisonment; or that the party offering the

deposition has been unable to procure the attendance of the witness by subpoena; or upon application and notice, that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting testimony of witnesses orally in open court, to allow the deposition to be used; or the witness is an expert witness whose testimony has been procured by videotape as provided for under Rule 30(b)(4).

(5) If only part of a deposition is offered in evidence by a party, an adverse party may require him to introduce any other part which is relevant to the part introduced, and any party may introduce any other parts.

Substitution of parties pursuant to Rule 25 does not affect the right to use depositions previously taken; and, when an action in any court of the United States or of any state has been dismissed and another action involving the same subject matter is afterward brought between the same parties or their representatives or successors in interest, all depositions lawfully taken in the former action and duly ~~filed in the former action~~ prepared, certified, and delivered in accordance with Rule 30 may be used in the latter as if originally taken therefor."

SECTION 6. Subsection (d) of G.S. 1A-1, Rule 32, reads as rewritten:

"(d) Effect of errors and irregularities in depositions. –

(1) As to Notice. – All errors and irregularities in the notice for taking a deposition are waived unless written objection is promptly served upon the party giving the notice.

(2) As to Disqualification of Person before Whom Taken. – Objection to taking a deposition because of disqualification of the person before whom it is to be taken is waived unless made before the taking of the deposition begins or as soon thereafter as the disqualification becomes known or could be discovered with reasonable diligence.

(3) As to Taking of Deposition. –

a. Objections to the competency of a witness or to the competency, relevancy, or materiality of testimony are not waived by failure to make them before or during the taking of the deposition, unless the ground of the objection is one which might have been obviated or removed if presented at that time.

b. Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of parties, and errors of any kind which might be obviated, removed, or cured if promptly presented, are waived unless seasonable objection thereto is made at the taking of the deposition.

c. Objections to the form of written questions submitted under Rule 31 are waived unless served in writing upon the party propounding them within the time allowed for serving the

succeeding cross or other questions and within five days after service of the last questions authorized.

(4) As to Completion and Return of Deposition. – Errors and irregularities in the manner in which the testimony is transcribed or the deposition is prepared, signed, certified, sealed, indorsed, transmitted, ~~filed,~~ or otherwise dealt with by the person taking the deposition under Rules 30 and 31 are waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defeat is, or with due diligence might have been, ascertained."

SECTION 7. This act becomes effective October 1, 2005, and applies to all pending cases and all cases filed after the effective date of this act.

SENATE BILL 465:
Civil Rules--Filing of Papers Clarified.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Senator Berger
Date:	April 12, 2005	**Summary by:**	William R. Gilkeson
Version:	S465-CSRR-16 [v.2]		Committee Co-Counsel

SUMMARY: This Proposed Committee Substitute for Senate Bill 465 would amend several rules of civil procedure to provide that not every paper required to be served on parties to a lawsuit must also be filed with the court. The PCS also makes other changes designed to make the rules on filing papers with a court clearer and more rational. Effective October 1, 2005. The bill was recommended by the Litigation Section of the NC Bar Association.

CURRENT LAW: The general rule in subsection (d) of Rule 5 of the NC Rules of Civil Procedure is that papers that are required to be served on parties to a lawsuit are also required to be filed with the court. The filing requirement covered not only pleadings and motions, but also notices of depositions. In 2003, when the General Assembly at the urging of the Bar Association required that subpoenas and objections to subpoenas be served on all parties, it indirectly through the operation of Rule 5(d) required that those subpoenas and objections be filed with the court.

The Litigation Section of the NC Bar Association, realizing the unintended consequence of the subpoena change, looked at the service-and-filing rules generally and decided they needed more comprehensive change to prune back unnecessary filing requirements that were cluttering up court files. In 2004 they were able to get subpoenas exempted from the filing requirement in a Technical Corrections bill, but wanted a more general rewrite.

BILL ANALYSIS: The PCS rewrites subsection (d) of Rule 5 to remove the general rule that every document that must be served on parties to a lawsuit must also be filed with the court. Instead it specifies (in Section 2 of the bill) which documents must be filed with the court, as follows:

- Pleadings.
- Motions and notices of hearing.
- Any other application to the court for an order that affects anyone's rights or commands anyone to do something or not do something.
- Notices of appearance.
- Any other paper required to be filed by rule or statute.
- Any other paper required to be filed by the court.
- All orders issued by the court.

This section says all other papers "should not" be filed except in certain narrow circumstances. The Bar Association preferred advisory rather than prohibitory language, because they thought a prohibition would logically involve a penalty, and a penalty would be overkill.

Section 2 of the PCS also removes language from (b) of Rule 5 concerning proof of service. Subsection (d) focuses on filing; it is subsection (b) that focuses on service. So the PCS moves the language about proof of service to (b), which is rewritten in Section 1 of the PCS. There the repositioned language on proof of service is updated to reflect that service by fax is allowed, and it makes express the requirement that a certificate of service be signed.

Sections 3, 4, 5, and 6 remove the requirement for filing notices of depositions.

Section 7 makes the bill effective October 1, 2005, and applies to all pending cases on that date and all cases filed after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 465

Short Title:	Civil Rules–Filing of Pleadings Clarified.	(Public)
Sponsors:	Senator Berger of Rockingham.	
Referred to:	Judiciary I.	

March 10, 2005

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE SERVICE AND FILING REQUIREMENTS OF THE NORTH CAROLINA RULES OF CIVIL PROCEDURE.

The General Assembly of North Carolina enacts:

SECTION 1. Subsection (b) of G.S. 1A-1, Rule 5 reads as rewritten:

"(b) Service – How made. – A pleading setting forth a counterclaim or cross claim shall be filed with the court and a copy thereof shall be served on the party against whom it is asserted or on the party's attorney of record. With respect to all pleadings subsequent to the original complaint and other papers required or permitted to be served, service with due return may be made in the manner provided for service and return of process in Rule 4 and may be made upon either the party or, unless service upon the party personally is ordered by the court, upon the party's attorney of record. With respect to such other pleadings and papers, service upon the attorney or upon a party may also be made by delivering a copy to the party or by mailing it to the party at the party's last known address or, if no address is known, by filing it with the clerk of court. Delivery of a copy within this rule means handing it to the attorney or to the party, leaving it at the attorney's office with a partner or employee, or by sending it to the attorney's office by a confirmed telefacsimile transmittal for receipt by 5:00 P.M. Eastern Time on a regular business day, as evidenced by a telefacsimile receipt confirmation. If receipt of delivery by telefacsimile is after 5:00 P.M., service will be deemed to have been completed on the next business day. Service by mail shall be complete upon deposit of the pleading or paper enclosed in a post-paid, properly addressed wrapper in a post office or official depository under the exclusive care and custody of the United States Postal Service.

A certificate of service shall accompany every pleading and every paper required to be served on any party or nonparty to the litigation. Such certificate shall show the date and method of service or the date of acceptance of service and shall show the name and service address of each person upon whom the paper has been served. If one or more persons are served by facsimile transmission, the certificate shall also show the

telefacsimile number of each person so served. Each certificate of service shall be signed in accordance with and subject to Rule 11 of these rules."

SECTION 2. Subsection (d) of G.S. 1A-1, Rule 5 reads as rewritten:

"(d) ~~Filing. All pleadings subsequent to the complaint shall be filed with the court. All other papers required to be served upon a party, including requests for admissions, shall be filed with the court either before service or within five days thereafter, except that subpoenas, objections to subpoenas under Rule 45(c)(3), depositions, interrogatories, requests for documents, and answers and responses to those requests may not be filed unless ordered by the court or until used in the proceeding. Briefs and memoranda provided to the court may not be filed with the clerk of the court unless ordered by the court. The party taking a deposition or obtaining material through discovery is responsible for its preservation and delivery to the court if needed or so ordered. With respect to all pleadings and other papers as to which service and return has not been made in the manner provided in Rule 4, proof of service shall be made by filing with the court a certificate either by the attorney or the party that the paper was served in the manner prescribed by this rule, or a certificate of acceptance of service by the attorney or the party to be served. Such certificate shall show the date and method of service or the date of acceptance of service.~~ The following papers shall be filed with the court, either before service or within five days after service:

(1) All pleadings, as defined by Rule 7(a) of these rules, subsequent to the complaint, whether such pleadings are original or amended.

(2) Written motions and all notices of hearing.

(3) Any other application to the court for an order that may affect the rights of or in any way commands any individual, business entity, governmental agency, association, or partnership to act or to forego action of any kind.

(4) Notices of appearance.

(5) Any other paper required by rule or statute to be filed.

(6) Any other paper so ordered by the court.

(7) All orders issued by the court.

All other papers, regardless of whether these rules require them to be served upon a party, should not be filed with the court unless (i) the filing is agreed to by all parties, or (ii) the papers are submitted to the court in relation to a motion or other request for relief, or (iii) the filing is permitted by another rule or statute. Briefs or memoranda provided to the court may not be filed with the clerk of court unless ordered by the court. The party taking a deposition or obtaining material through discovery is responsible for its preservation and delivery to the court if needed or so ordered."

SECTION 3. Subsection (f) of G.S. 1A-1, Rule 30 reads as rewritten:

"(f) Certification ~~and filing~~ by person administering the oath; exhibits; ~~copies; notice of filing.~~ copies. –

(1) The person administering the oath shall certify that the deponent was duly sworn by him and that the deposition is a true record of the testimony given by the deponent. This certificate shall be in writing and accompany the sound-and-visual or sound recording or transcript

of the deposition. He shall then place the deposition in an envelope or package endorsed with the title of the action and marked "Deposition of (here insert name of witness)" and shall personally deliver it or mail it by first class mail to the party taking the deposition or his attorney who shall preserve it as the court's copy.

Documents and things produced for inspection during the examination of the deponent shall, upon the request of a party, be marked for identification and annexed to and returned with the deposition, and may be inspected and copied by any party, except that (i) the person producing the materials may substitute copies to be marked for identification, if he affords to all parties fair opportunity to verify the copies by comparison with the originals, and (ii) if the person producing the materials requests their return, the person before whom the deposition is taken shall mark them, give each party an opportunity to inspect and copy them, and return them to the person producing them, and the materials may then be used in the manner as if annexed to and returned with the deposition. Any party may move for an order that the original be annexed to and returned with the deposition to the court, pending final disposition of the case.

(2) Upon payment of reasonable charges therefor, the person administering the oath shall furnish a copy of the deposition to any party or to the deponent.

~~(3) The clerk shall give prompt notice of the filing of a deposition to all parties.~~"

SECTION 4. Subsection (c) of G.S. 1A-1, Rule 31 is repealed.

SECTION 5. Subsection (a) of G.S. 1A-1, Rule 32 reads as rewritten:

"(a) Use of depositions. – At the trial or upon the hearing of a motion or an interlocutory proceeding or upon a hearing before a referee, any part or all of a deposition, so far as admissible under the rules of evidence applied as though the witness were then present and testifying, may be used against any party who was present or represented at the taking of the deposition or who had reasonable notice thereof, in accordance with any of the following provisions:

(1) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of deponent as a witness.

(2) The deposition of a person called as a witness may also be used as substantive evidence by any party adverse to the party who called the deponent as a witness and it may be used by the party calling deponent as a witness as substantive evidence of such facts stated in the deposition as are in conflict with or inconsistent with the testimony of deponent as a witness.

(3) The deposition of a party or of any one who at the time of taking the deposition was an officer, director, or managing agent, or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf of a public or private corporation, partnership or association or governmental

agency which is a party may be used by an adverse party for any purpose, whether or not the deponent testifies at the trial or hearing.

(4) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the court finds: that the witness is dead; or that the witness is at a greater distance than 100 miles from the place of trial or hearing, or is out of the United States, unless it appears that the absence of the witness was procured by the party offering the deposition; or that the witness is unable to attend or testify because of age, illness, infirmity, or imprisonment; or that the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or upon application and notice, that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting testimony of witnesses orally in open court, to allow the deposition to be used; or the witness is an expert witness whose testimony has been procured by videotape as provided for under Rule 30(b)(4).

(5) If only part of a deposition is offered in evidence by a party, an adverse party may require him to introduce any other part which is relevant to the part introduced, and any party may introduce any other parts.

Substitution of parties pursuant to Rule 25 does not affect the right to use depositions previously taken; and, when an action in any court of the United States or of any state has been dismissed and another action involving the same subject matter is afterward brought between the same parties or their representatives or successors in interest, all depositions lawfully taken in the former action and duly ~~filed in the former action~~ prepared, certified, and delivered in accordance with Rule 30 may be used in the latter as if originally taken therefor."

SECTION 6. Subsection (d) of G.S. 1A-1, Rule 32 reads as rewritten:

"(d) Effect of errors and irregularities in depositions. –

(1) As to Notice. – All errors and irregularities in the notice for taking a deposition are waived unless written objection is promptly served upon the party giving the notice.

(2) As to Disqualification of Person before Whom Taken. – Objection to taking a deposition because of disqualification of the person before whom it is to be taken is waived unless made before the taking of the deposition begins or as soon thereafter as the disqualification becomes known or could be discovered with reasonable diligence.

(3) As to Taking of Deposition. –

a. Objections to the competency of a witness or to the competency, relevancy, or materiality of testimony are not waived by failure to make them before or during the taking of the deposition, unless the ground of the objection is one which might have been obviated or removed if presented at that time.

b. Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of parties, and errors of any kind which might be obviated, removed, or cured if promptly presented, are waived unless seasonable objection thereto is made at the taking of the deposition.

c. Objections to the form of written questions submitted under Rule 31 are waived unless served in writing upon the party propounding them within the time allowed for serving the succeeding cross or other questions and within five days after service of the last questions authorized.

(4) As to Completion and Return of Deposition. – Errors and irregularities in the manner in which the testimony is transcribed or the deposition is prepared, signed, certified, sealed, indorsed, transmitted, ~~filed,~~ or otherwise dealt with by the person taking the deposition under Rules 30 and 31 are waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defeat is, or with due diligence might have been, ascertained."

SECTION 7. This act becomes effective October 1, 2006, and applies to all pending cases and all cases filed after the effective date of this act.

last ed.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

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SENATE BILL 324
PROPOSED COMMITTEE SUBSTITUTE S324-PCS35205-RY-1

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:	Senate Judiciary I	**Date:**	April 11, 2005
Introduced by:	Sen. Clodfelter	**Summary by:**	Walker Reagan
Version:	First Edition		Committee Counsel
	S324-CSRY-1		

SUMMARY: ***The Proposed Committee Substitute for 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.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 324

Short Title:	Revise Business Corporation Act.	(Public)
Sponsors:	Senator Clodfelter.	
Referred to:	Judiciary I.	

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's written consent to an action may be revoked by the shareholder by delivering a written revocation to the corporation prior to the corporation's receipt of 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:

(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; or

(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 of a committee pursuant to G.S. 55-7-44(b)(2) may be appointed in the manner set forth in that section.

(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. 55-8-43 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 12. 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.

(6) To make any other change expressly permitted by this ~~act~~ Chapter to be made without shareholder ~~action.~~approval.

(7) 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.

(8) 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."

SECTION 13. 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 in accordance with 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 14. 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 to 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 15. 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 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 16. 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 17. 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 18. 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 the corporation will be the surviving corporation in the merger and 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 19. 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 20. 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. 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 require approval of the shareholders 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 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 21. 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 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 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 22. 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 23. 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 24. 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 25. G.S. 55-11-10(c) 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.

The plan of merger may contain other provisions relating to the merger. The provisions of the plan of merger, other than the provisions referred to in subdivisions (1), (2), and (5) of this subsection, may be 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 (i) statistical or market indices, market prices of any security or group of securities, interest rates, currency exchange rates, or similar economic or financial data; (ii) a determination or action by the corporation or by any other person, group, or body; or (iii) the terms of, or actions taken under, an agreement to which the corporation is a party, or any other agreement or document.

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.

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 26. 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 27. 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 28. G.S. 55-11A-02(a) 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.

The plan of conversion may contain other provisions relating to the conversion.

The provisions of the plan of conversion, other than the provisions required by subdivisions (1) and (2) of this subsection, may be 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 (i) statistical or market indices, market prices of any security or group of securities, interest rates, currency exchange rates, or similar economic or financial data; (ii) a determination or action by the converting business entity or by any other person, group, or body; or (iii) 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 29. G.S. 55-11A-11(a) 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.

The plan of conversion may contain other provisions relating to the conversion.

The provisions of the plan of conversion, other than the provisions required by subdivisions (1) and (2) of this subsection, may be 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 (i) statistical or market indices, market prices of any security or group of securities, interest rates, currency exchange rates, or similar economic or financial data; (ii) a determination or action by the converting domestic corporation or by any other person, group, or body; or (iii) 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 30. 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 31. 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 32. 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 33. 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 for 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 the federal statute of the United States."

SECTION 34. 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 35. 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:

(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; or

(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 any shareholder delivers to the corporation a written notice setting forth the shareholder's current address, the requirement that notice be given to the shareholder shall be reinstated."

SECTION 36. G.S. 55-16-21 is repealed.

PART II. CONFORMING AMENDMENTS TO CHAPTER 55A, CHAPTER 57C, AND CHAPTER 59 OF THE GENERAL STATUTES.

SECTION 37. 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 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 38. 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 39. 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 and, if applicable, by any

other person required by G.S. 55A-11-03(a)(3), 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 40. 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

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 41. 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 42. 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 43. G.S. 55A-11-09(c) 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.

The plan of merger may contain other provisions relating to the merger. The provisions of the plan of merger, other than the provisions referred to in subdivisions (1), (2), and (5) of this subsection, may be 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 (i) statistical or market indices, market prices of any security or group of securities, interest rates, currency exchange rates, or similar economic or financial data; (ii) a determination or action by the domestic nonprofit corporation or by any other person, group, or body; or (iii) the terms of, or actions taken under, an agreement to which the domestic nonprofit corporation is a party, or any other agreement or document.

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.

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 44. 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 45. 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 46. G.S. 57C-9A-02(a) 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.

The plan of conversion may contain other provisions relating to the conversion.

The provisions of the plan of conversion, other than the provisions required by subdivisions (1) and (2) of this subsection, 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 (i) statistical or market indices, market prices of any security or group of securities, interest rates, currency exchange rates, or similar economic or financial data; (ii) a determination or action by the converting business entity or by any other person, group, or body; or (iii) 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 47. G.S. 57C-9A-11(a) 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.

The plan of conversion may contain other provisions relating to the conversion.

The provisions of the plan of conversion, other than the provisions required by subdivisions (1) and (2) of this subsection, 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 (i) statistical or market indices, market prices of any security or group of securities, interest rates, currency exchange rates, or similar economic or financial data; (ii) a determination or action by the converting domestic limited liability company or by any other person, group, or body; or (iii) 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 48. G.S. 57C-9A-21(a) 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.

The plan of merger may contain other provisions relating to the merger.

The provisions of the plan of merger, other than the provisions referred to in subdivisions (1), (2), and (5) of this subsection, 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 (i) statistical or market indices, market prices of any security or group of securities, interest rates, currency exchange rates, or similar economic or financial data; (ii) a determination or action by the domestic limited liability company or by any other person, group, or body; or (iii) 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 49. 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 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 50. 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 51. G.S. 59-73.11(a) 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.

The plan of conversion may contain other provisions relating to the conversion.

The provisions of the plan of conversion, other than the provisions required by subdivisions (1) and (2) of this subsection, 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 (i) statistical or market indices, market prices of any security or group of securities, interest rates, currency exchange rates, or similar economic or financial data; (ii) a determination or action by the converting business entity or by any other person,

group, or body; or (iii) 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 52. G.S. 59-73.21(a) 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.

The plan of conversion may contain other provisions relating to the conversion.

The provisions of the plan of conversion, other than the provisions required by subdivisions (1) and (2) of this subsection, 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 (i) statistical or market indices, market prices of any security or group of securities, interest rates, currency exchange rates, or similar economic or financial data; (ii) a determination or action by the converting domestic partnership or by any other person, group, or body; or (iii) 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 53. G.S. 59-73.31(a) 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.

The plan of merger may contain other provisions relating to the merger.

The provisions of the plan of merger, other than the provisions referred to in subdivisions (1) and (2) of this subsection, 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 (i) statistical or market indices, market prices of any security or group of securities, interest rates, currency exchange rates, or similar economic or financial data; (ii) a determination or action by the domestic partnership or by any other person, group, or

body; or (iii) the terms of, or actions taken under, an agreement to which the domestic partnership is a party, or any other agreement or document."

SECTION 54. 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 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 55. G.S. 59-1051(a) 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.

The plan of conversion may contain other provisions relating to the conversion.

The provisions of the plan of conversion, other than the provisions required by subdivisions (1) and (2) of this subsection, 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 (i) statistical or market indices, market prices of any security or group of securities, interest rates, currency exchange rates, or similar economic or financial data; (ii) a determination or action by the converting business entity or by any other person, group, or body; or (iii) 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 56. G.S. 59-1061(a) 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.

The plan of conversion may contain other provisions relating to the conversion.

The provisions of the plan of conversion, other than the provisions required by subdivisions (1) and (2) of this subsection, 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 (i) statistical or market indices, market prices of any security or group of securities, interest rates, currency exchange rates, or similar economic or financial data; (ii) a determination or action by the converting domestic limited partnership or by any other person, group, or body; or (iii) 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 57. G.S. 59-1071(a) 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.

The plan of merger may contain other provisions relating to the merger.

The provisions of the plan of merger, other than the provisions referred to in subdivisions (1), (2), and (5) of this subsection, 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 (i) statistical or market indices, market prices of any security or group of securities, interest rates, currency exchange rates, or similar economic or financial data; (ii) a determination or action by the domestic limited partnership or by any other person, group, or body; or (iii) 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 58. 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 59. 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 60. This act becomes effective October 1, 2005.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 929

Short Title:	Prison Escape/Juvenile Dentention Facility.	(Public)
Sponsors:	Senator Clodfelter.	
Referred to:	Judiciary I.	

March 24, 2005

A BILL TO BE ENTITLED

AN ACT TO MAKE IT A CRIMINAL OFFENSE TO BREAK OUT OF A JUVENILE DETENTION FACILITY OR YOUTH DEVELOPMENT CENTER.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-256 reads as rewritten:

"**§ 14-256. Prison breach and escape from county or municipal confinement facilities or ~~officers.~~officers; breach and escape from juvenile detention facility or youth development center.**

(a) If any person shall break any prison, jail or lockup maintained by any county or municipality in North Carolina, being lawfully confined therein, or shall escape from the lawful custody of any superintendent, guard or officer of such prison, jail or lockup, he shall be guilty of a ~~Class 1~~Class A1 misdemeanor, except that the person is guilty of a Class H felony if:

(1) He has been convicted of a felony and has been committed to the facility pending transfer to the State prison system; or

(2) He is serving a sentence imposed upon conviction of a felony.

(b) If any person shall break any juvenile detention facility or youth development center maintained by any county or municipality in North Carolina or by the Department of Juvenile Justice and Delinquency Prevention, or shall escape from the lawful custody of any superintendent, guard, officer, or employee of the facility or center, the person is guilty of a Class A1 misdemeanor."

SECTION 2. This act becomes effective December 1, 2005, and applies to offenses committed on or after that date.

SENATE BILL 929:
Prison Escape/Juvenile Detention Facility.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Sen. Clodfelter
Date:	April 12, 2005	**Summary by:**	Hal Pell
Version:	First Edition		Committee Co-Counsel

SUMMARY: ***This act increases the penalty for a person who escapes from a county or municipal confinement facility. It also creates a new offense: breaking from a juvenile detention facility or youth development center, or escaping from the custody of an officer or employee of a facility or center. A person committing the offense would be guilty of a Class A1 misdemeanor. The act becomes effective December 1, 2005, and applies to offenses committed on or after that date.***

BILL ANALYSIS:

The act amends the law to provide that it is a Class A1 misdemeanor for a person to break from any county or municipal confinement facility, or escape from the custody of a facility superintendent, guard or officer. Currently, the offense is a Class 1 misdemeanor.

The law would also be amended to provide it is a Class A1 misdemeanor for a person to break from a juvenile detention facility or youth development center, or escape from the custody of a superintendent, guard, officer, or employee of a facility or center.

The act becomes effective December 1, 2005, and applies to offenses committed on or after that date.

S929-smrk-01

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 893
PROPOSED COMMITTEE SUBSTITUTE S893-CSRU-13 [v.1]

4/11/2005 6:31:06 PM

Short Title: State Health Plan Subrogation. (Public)

Sponsors:

Referred to:

March 23, 2005

A BILL TO BE ENTITLED

AN ACT PERTAINING TO SUBROGATION RIGHTS OF THE TEACHERS' AND STATE EMPLOYEES' COMPREHENSIVE MAJOR MEDICAL PLAN.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 135-40.13A reads as rewritten:

"**§ 135-40.13A. Liability of third person; right of subrogation; right of first recovery.**

(a) ~~Whenever the Plan pays benefits for hospital, surgical, medical, or prescription drug expenses, with respect to any Plan member, the Plan shall be subrogated, to the extent of any payments under the Plan, to all of the Plan member's rights of recovery against liable third parties, regardless of the entity or individual from whom recovery may be due.~~The Plan shall have the right of subrogation upon all of the Plan member's right to recover from a liable third party for payment made under the Plan, for all medical expenses, including provider, hospital, surgical, or prescription drug expenses, to the extent those payments are related to an injury caused by a liable third party. The Plan member shall do nothing to prejudice these rights. The Plan has the right to first recovery on any amounts so recovered, whether by the Plan or the Plan member, and whether recovered by litigation, arbitration, mediation, settlement, or otherwise. Notwithstanding any other provision of law to the contrary, the recovery limitation set forth in G.S. 28A-18-2 shall not apply to the Plan's right of subrogation of Plan members.

(b) If the Plan is precluded from exercising its right of subrogation, it may exercise its rights of recovery pursuant to G.S. 135-40.13(g) ~~to the extent allowed by law~~. If the Plan recovers damages from a liable third party in excess of the claims paid, any excess will be paid to the member, less a proportionate share of the costs of collection.

(c) In the event a Plan member recovers any amounts from a liable third party to which the Plan is entitled under this section, the Plan may recover the amounts directly

from the Plan member. The Plan has a lien, for not more than the value of claims paid related to the liability of the third party, on any damages subsequently recovered against the liable third party. If the Plan member fails to pursue the remedy against a liable third party, the Plan is subrogated to the rights of the Plan member and is entitled to enforce liability in the Plan's own name or in the name of the Plan member for the amount paid by the Plan.

(d) The Plan may reduce the amount of its lien after considering relevant equities such as the Plan's proportionate share of the costs of collection and the degree to which the Plan member would be made whole by the recovery. The decision by the Plan to reduce the amount of its lien is not a "final agency decision" for purposes of a contested case under Chapter 150B of the General Statutes. Notice of the Plan's lien or right to recovery shall be presumed when a Plan member is represented by an attorney and the attorney shall disburse proceeds pursuant to this section. It is the intent of the General Assembly that the Plan bear its proportionate share of the reasonable costs of collection."

SECTION 2. G.S. 28A-18-2(a) reads as rewritten:

"**§ 28A-18-2. Death by wrongful act of another; recovery not assets.**

(a) When the death of a person is caused by a wrongful act, neglect or default of another, such as would, if the injured person had lived, have entitled him to an action for damages therefor, the person or corporation that would have been so liable, and his or their personal representatives or collectors, shall be liable to an action for damages, to be brought by the personal representative or collector of the decedent; and this notwithstanding the death, and although the wrongful act, neglect or default, causing the death, amounts in law to a felony. The personal representative or collector of the decedent who pursues an action under this section may pay from the assets of the estate the reasonable and necessary expenses, not including attorneys' fees, incurred in pursuing the action. At the termination of the action, any amount recovered shall be applied first to the reimbursement of the estate for the expenses incurred in pursuing the action, then to the payment of attorneys' fees, and shall then be distributed as provided in this section. The amount recovered in such action is not liable to be applied as assets, in the payment of debts or legacies, except as to burial expenses of the deceased, and reasonable hospital and medical expenses not exceeding four thousand five hundred dollars ($4,500) incident to the injury resulting in death, except that the amount applied for hospital and medical expenses shall not exceed fifty percent (50%) of the amount of damages recovered after deducting attorneys' fees, but shall be disposed of as provided in the Intestate Succession Act. The limitations on recovery for hospital and medical expenses under this subsection do not apply to subrogation rights exercised pursuant to G.S. 135-40.13A. All claims filed for such services shall be approved by the clerk of the superior court and any party adversely affected by any decision of said clerk as to said claim may appeal to the superior court in term time."

SECTION 3. This act is effective when it becomes law and applies to actions to exercise rights of recovery under G.S. 135-40.13 or G.S. 135-40.13A commenced on and after that date. Section 2 of this act applies to wrongful deaths occurring on or after the effective date.

Senate Bill 893:
State Health Plan Subrogation

BILL ANALYSIS

Committee:	Senate Judiciary I	**Date:**	April 11, 2005
Introduced by:	Sen. Rand	**Summary by:**	Walker Reagan
Version:	First Edition S893-CSRU-13		Committee Counsel

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 893 would amend the law governing the right of subrogation that the State Health Plan has in third-party payments owed to a Plan member arising from an injury caused by a liable third party by clarifying what payments subrogation rights attach to and allowing for a reduction in the State Health Plan's claim based on the Plan's proportionate share of the costs of collection and the degree to which the Plan member would be made whole by the recovery. The bill also provides that the limits for recovery by third-party medical providers in wrongful death cases do not apply to the State Health Plan.***

CURRENT LAW: Under current law, enacted in 2004, the State Health Plan has a right of subrogation to the extent the Plan has paid for medical expenses for which the Plan member is entitled to recover from a liable third party. If the Plan is precluded from exercising its right of subrogation, the Plan has a right of recovery. If the Plan recovers more than the amount of its payment, any surplus is paid to the Plan member. No provision is made to offset the Plan member's cost of collecting the payment from the third party.

BILL ANALYSIS: Section 1 of the bill amends the State Health Plan's right of subrogation. Subsection (a) of G.S. 135-40.13A is amended to clarify the State Health Plan's right of subrogation to all of the Plan member's right of recovery from the liable third for payments made under the Plan for medical expenses related to the injury caused by the liable third party. This provision also provides that the limits under the wrongful death statute for the recovery of medical expenses does not apply to the State Health Plan's right of subrogation. G.S. 135-40.13A is also amended by adding a new subsection (d) to permit the State Health Plan to reduce the amount of its lien on the Plan member's recovery by the Plan's proportionate share of the costs of collection of the recovery and the degree to which the Plan member would be made whole by the recovery.

Section 2 amends the wrongful death statute to provide that the current limit on the recovery by medical providers of a maximum of $4,500 or 50% of the wrongful death recovery after attorneys' fees, whichever is less, does not apply to the State Health Plan's subrogation rights.

BACKGROUND: Based on a ruling by the Commissioner of Insurance, health insurance companies have no right of subrogation in personal injury cases. Federal law grants a right of subrogation for Medicaid and Medicare payments, but the right of subrogation is either limited to one-third the gross recovery in the case of Medicaid and 50% of the recovery after attorneys' fees in the case of Medicare. Under G.S. 44-50 medical providers are entitled to a lien for medical services provided to a person entitled to a personal injury recovery, up to the value of the medical services, but in no case greater than 50% of the amount of damages recovered, after the exclusion of attorneys' fees.

EFFECTIVE DATE: The bill becomes effective when it becomes law and applies to actions to recover by the State Health Plan on or after that date and to wrongful deaths occurring on or after that date.

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE — 4-12-05

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

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John Carbone MD	Dorothea Dix Hospital, Forensic Unit; NCCU school of law
Mike Colombo	NC BAR Assn
Chad Bomar	Wilson and Iseman LLP, Winston-Salem, NC
Beth Scherer	NC Bar YLD - Smith Moore LLP
Montaye Sigmon McGee	Smith Moore LLP (NCBA YLD)
Alice Mazarick	State Health Plan
	" " "
Katherine Joyce ANN UNC	NCASA DVHS

Name	Firm or Agency & Address
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[illegible]	SBE/DPI
Byron Saltsman	[illegible]
[illegible]	NAHRO
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Bill Sloan	KCUA
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Joshua D. Malcolm	Fayetteville State Univ.
Rotzoff	
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[illegible]	Vann Sheridan
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Brian Lewis	Covenant w/ NC's Children
[illegible]	[illegible]
Kathleen Purcell	
Stacy Flannery	NCHCFA
Barbara Castle	BSCBC

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE — 4-12-05

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

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Jen Palancia	UNC Greensboro
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John DeAngelis	Brooks Pierce McLendon Humphrey & Leonard
Kearns Davis	Greensboro NC
Michael Haley	DJJDP
Judy Stephens	DJJDP
Vincent Stephens	CMS
Michael Houser	NCAE
Don McConquodale	SAS

Name	Firm or Agency & Address
Brad Lamb	NC Consumer Council
Barbara Holt	NCRTR

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE — 4-12-05

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

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Andrew Holton	Sen. Garwin's office
Hal Miller	DCAccT
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Henry Hitzpl	N.C.S.D.A.
Tripp Melton	Sen. Stevens Intern
Paige Foreman	NCHE
Jamie Kipke	Kipke & Rose Southport NC
Chandler Rose	Kipke & Rose Southport, NC

Principal Clerk ____
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SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Thursday	April 14, 2005	10:00 AM	1027 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 737	County Gov't. Criminal Records Checks.	Senator Rand
SB 1045	Establish NC Innocence Inquiry Commission.	Senator Clodfelter

Senator Daniel G. Clodfelter, Chair

Judiciary 1 Committee

April 14, 2005

Minutes

Senator Dan Clodfelter, Chair called the meeting to order at 10:08 a.m. with fourteen members present. He introduced Pages Murphy Fuller and Michael Wilson from Greensboro, NC, Laurel Taylor from Windsor, NC, Bria Sledge and Shaday King from Raleigh, NC.

SB-737 (County Gov't Criminal Records Checks) Committee Substitute was introduced by Senator Clodfelter. No discussion. Senator Ham Horton moved for adoption of the Committee Substitute. All members voted yes. Motion carried. No discussion. Senator Horton moved for a Favorable Report. All members voted yes. Motion carried.

SB-1045 (Establish NC Innocence Inquiry Commission) was introduced. Senator Clodfelter stated that the bill would not be voted on at this time, but would be discussed. He introduced I. Beverly Lake Jr., Chief Justice of the NC Supreme Court and asked him to speak on the bill. Ms. Chris Mumma, Executive Director of the NC Center on Actual Innocence Commission also spoke on the bill. (See attached list of Commission Members). Senator's Clark Jenkins, RC Soles, Ham Horton, Tony Rand, Charlie Albertson, and Martin Nesbitt had questions. Chief Justice Lake, Ms. Mumma and Senator Clodfelter answered the questions. Senator Clodfelter asked for questions from the audience. There were no other questions.

Being no further discussion, Senator Clodfelter thanked Chief Justice and Ms. Mumma for being such an important part of the meeting. He adjourned the meeting at 10:54 a.m.

Senator Dan Clodfelter, Chair

Wanda Joyner, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Daniel G. Clodfelter, Chair

Monday, April 18, 2005

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

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

S.B. **737** County Gov't. Criminal Records Checks.

Draft Number:	PCS85233
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 737
PROPOSED COMMITTEE SUBSTITUTE S737-PCS85233-RU-14

Short Title: County Gov't. Criminal Record Checks. (Public)

Sponsors:

Referred to:

March 22, 2005

A BILL TO BE ENTITLED

AN ACT AUTHORIZING CRIMINAL RECORD CHECKS FOR COUNTY GOVERNMENTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 114-19.14 reads as rewritten:

"**§ 114-19.14. Criminal record checks for ~~municipalities.~~municipalities and county governments.**

The Department of Justice may provide to a city or county from the State and National Repositories of Criminal Histories the criminal history of any person who applies for employment with the ~~city.~~ city or county. The city or county shall provide to the Department of Justice, along with the request, the fingerprints of the applicant, a form signed by the applicant consenting to the criminal record check and use of fingerprints and other identifying information required by the State and National Repositories, and any additional information required by the Department of Justice. The applicant's fingerprints shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The city or county 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 2. Article 5 of Chapter 153A of the General Statues is amended by adding a new section to read:

"**§ 153A-94.2. Criminal history record checks of employees permitted.**

The board of commissioners may adopt or provide for rules and regulations or ordinances concerning a requirement that any applicant for employment be subject to a criminal history record check of State and National Repositories of Criminal Histories

conducted by the Department of Justice in accordance with G.S. 114-19.14. The local or regional public employer may consider the results of these criminal history record checks in its hiring decisions."

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

SENATE BILL 737:
County Government Criminal Records Checks.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Senator Rand
Date:	April 7, 2005	**Summary by:**	O.Walker Reagan, Committee Co-Counsel, Dickie Brown Committee Staff
Version:	Proposed Committee Substitute S737-CSRU-14		

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 737 gives county governments the authority to have criminal background checks performed by the SBI and FBI on its prospective employees and to use these background checks in determining employment.***

CURRENT LAW: Current law does not give county governments the authority to perform criminal background checks on its prospective employees. City governments were given the authority requested in this bill in 2003.

BILL ANALYSIS: Section 1 of the bill authorizes the Department of Justice (SBI) to conduct criminal history background checks on persons who apply for employment with a county, as is currently permitted for a city. The county would submit the prospective employee's fingerprints along with a form signed by the individual giving consent to the background check. The SBI would search the State's criminal history file and forward the information to the FBI for a national criminal history record check. Information obtained by the county is to be kept confidential. The SBI may charge a fee for this service but not more than the actual costs accrued.

Section 2 adds a new section that would give county governments, and other county hiring authorities (sheriffs, registers of deeds, county departments of social services, and others) the authority to perform criminal records background checks of its prospective employees. This authority mirrors the authority given to cities in 2003.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 737

Short Title:	County Gov't. Criminal Records Checks.	(Public)
Sponsors:	Senators Rand; and Bingham.	
Referred to:	Judiciary I.	

March 22, 2005

A BILL TO BE ENTITLED

AN ACT AUTHORIZING CRIMINAL RECORDS CHECKS FOR COUNTY GOVERNMENTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 114-19.14 reads as rewritten:

"**§ 114-19.14. Criminal record checks for ~~municipalities.~~municipalities and county governments.**

The Department of Justice may provide to a city or county from the State and National Repositories of Criminal Histories the criminal history of any person who applies for employment with the ~~city.~~ city or county. The city or county shall provide to the Department of Justice, along with the request, the fingerprints of the applicant, a form signed by the applicant consenting to the criminal record check and use of fingerprints and other identifying information required by the State and National Repositories, and any additional information required by the Department of Justice. The applicant's fingerprints shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The city or county 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 2. This act is effective when it becomes law.

Misplaced

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 1045

Short Title:	Establish NC Innocence Inquiry Commission.	(Public)
Sponsors:	Senators Clodfelter; Allran, Hartsell, and Kinnaird.	
Referred to:	Judiciary I.	

March 24, 2005

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE NORTH CAROLINA INNOCENCE INQUIRY COMMISSION AS RECOMMENDED BY THE NORTH CAROLINA ACTUAL INNOCENCE COMMISSION.

Whereas, postconviction review of credible claims of factual innocence supported by verifiable evidence not previously presented at trial or at a hearing granted through postconviction relief should be addressed expeditiously to ensure the innocent as well as the guilty receive justice; and

Whereas, public confidence in the justice system is strengthened by thorough and timely inquiry into claims of factual innocence; and

Whereas, factual claims of innocence, which are determined to be credible, can most effectively and efficiently be evaluated through complete and independent investigation and review of the same; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 15A of the General Statutes is amended by adding a new article to read:

"Article 92.

"North Carolina Innocence Inquiry Commission.

"**§ 15A-1460. Definitions.**

The following definitions apply in this Article:

(1) "Claim of factual innocence" means a claim on behalf of a living person convicted of a felony in the General Court of Justice of the State of North Carolina, asserting the complete innocence of any criminal responsibility for the felony for which the person was convicted and for any other reduced level of criminal responsibility relating to the crime, and for which there is credible, verifiable evidence of innocence that has not previously been presented at trial or considered at a hearing granted through postconviction relief.

(2) "Commission" means the North Carolina Inquiry Commission established by this Article.
(3) "Director" means the Director of the North Carolina Inquiry Commission.
(4) "Victim" means the victim of the crime, or if the victim of the crime is deceased, the next of kin of the victim.

"**§ 15A-1461. Purpose of Article.**

This Article establishes an extraordinary procedure to investigate and determine credible claims of factual innocence that shall require an individual to voluntarily waive rights and privileges as described in this Article.

"**§ 15A-1462. Commission established.**

(a) There is established the North Carolina Innocence Inquiry Commission. The North Carolina Innocence Inquiry Commission shall be an independent commission but shall be located under the Judicial Department for administrative purposes.

(b) The Administrative Office of the Courts shall provide administrative support to the Commission as needed. The Director of the Administrative Office of the Courts shall not reduce or modify the budget of the Commission or use funds appropriated to the Commission without the approval of the Commission.

"**§ 15A-1463. Membership; chair; meetings; quorum.**

(a) The Commission shall consist of seven voting members appointed by the Chief Justice of the North Carolina Supreme Court. Of the seven members, one shall be a superior court judge, one shall be a prosecuting attorney, one shall be a victim advocate, one shall be engaged in the practice of criminal defense law, and one shall be a public member who is not an attorney and who is not an officer or employee of the Judicial Department. The vocations of the two remaining appointed voting members shall be at the discretion of the Chief Justice. The Chief Justice shall also appoint alternate Commission members to serve in the event of scheduling conflicts, conflicts of interest, disability, or other disqualification arising in a particular case. The alternate members shall have the same qualifications for appointment as the original member. In making the appointments, the Chief Justice shall make a good faith effort to appoint members with different perspectives of the justice system. The Chief Justice shall also consider geographical location, gender, and racial diversity in making the appointments.

(b) The superior court judge who is appointed as a member under subsection (a) of this section shall serve as Chair of the Commission. The Commission shall have its initial meeting no later than January 31, 2006, at the call of the Chair. The Commission shall meet a minimum of once every six months and may also meet more often at the call of the Chair. The Commission shall meet at such time and place as designated by the Chair. Notice of the meetings shall be given at such time and manner as provided by the rules of the Commission. A majority of the members shall constitute a quorum. All Commission votes shall be by majority vote unless specified otherwise by this Article.

"**§ 15A-1464. Terms of members; compensation; expenses.**

(a) The initial appointments shall be made within 30 days of the effective date of this section. Of the initial members, two appointments shall be for one-year terms, three appointments shall be for two-year terms, and two appointments shall be for three-year

terms. Thereafter, all terms shall be for three years. Members of the Commission shall serve no more than two consecutive three-year terms plus any initial term of less than three years. Unless provided otherwise by this section, all terms of members shall begin on January 1 and end on December 31.

Members serving by virtue of elective or appointive office may serve only so long as the officeholders hold those respective offices. The Chief Justice may remove members, with cause. Vacancies occurring before the expiration of a term shall be filled in the manner provided for the members first appointed.

(b) The Commission members shall receive no salary for serving. All Commission members shall receive necessary subsistence and travel expenses in accordance with the provisions of G.S. 138-5 and G.S. 138-6, as applicable.

"**§ 15A-1465. Director and other staff.**

(a) The Commission shall employ a Director. The Director shall be an attorney licensed to practice in North Carolina at the time of appointment and at all times during service as Director. The Director shall assist the Commission in developing rules and standards for cases accepted for review, coordinate investigation of cases accepted for review, maintain records for all case investigations, prepare reports outlining Commission investigations and recommendations to the trial court, and apply for and accept on behalf of the Commission any funds that may become available from government grants, private gifts, donations, or bequests from any source.

Subject to the approval of the Chair, the Director shall employ such other staff and shall contract for services as is necessary to assist the Commission in the performance of its duties, and as funds permit.

The Commission may, with the approval of the Legislative Services Commission, meet in the State Legislative Building or the Legislative Office Building, or may meet in an area provided by the Director of the Administrative Office of the Courts. The Director of the Administrative Office of the Courts shall provide office space for the Commission and the Commission staff.

"**§ 15A-1466. Duties.**

The Commission shall have the following duties and powers:

(1) To establish the criteria and screening process to be used to determine which cases shall be accepted for review.

(2) To conduct inquiries into claims of factual innocence, with priority to be given to those cases in which the convicted person is currently incarcerated solely for the crime for which he or she claims factual innocence.

(3) To coordinate the investigation of cases accepted for review.

(4) To maintain records for all case investigations.

(5) To prepare written reports outlining Commission investigations and recommendations to the trial court at the completion of each inquiry.

(6) To apply for and accept any funds that may become available for the Commission's work from government grants, private gifts, donations, or bequests from any source.

"**§ 15A-1467. Claims of innocence; waiver of defendant's procedural safeguards and privileges; formal inquiry; notification of the crime victim.**

(a) A claim of factual innocence may be referred to the Commission by any court, person, or agency. The determination of whether to grant a formal inquiry regarding a claim of factual innocence is in the discretion of the Commission. The Commission may informally screen and dismiss a case summarily at its discretion.

(b) No formal inquiry into a claim of innocence shall be made by the Commission unless the Director or the Director's designee first obtains a signed agreement from the defendant in which the defendant waives his or her procedural safeguards and privileges, agrees to cooperate with the Commission, and agrees to provide full disclosure regarding all inquiry requirements of the Commission. The defendant shall have the right to advice of counsel prior to the execution of the agreement and, if counsel represents the defendant, then the defendant's counsel must be present at the signing of the agreement. If counsel does not represent the defendant, the Commission Chair shall determine the defendant's indigency status and, if appropriate, enter an order for the appointment of counsel for the purpose of advising on the agreement.

(c) If a formal inquiry regarding a claim of factual innocence is granted, the Director shall use all due diligence to notify the victim in the case and explain the inquiry process. The Commission shall give the victim notice that the victim has the right to present his or her views and concerns throughout the Commission's investigation.

(d) The Commission may use any measure provided in Chapter 15A of the General Statutes and the Rules of Civil Procedure as set out in G.S. 1A-1 to obtain information necessary to its inquiry. The Commission may also do any of the following: issue process to compel the attendance of witnesses and the production of evidence, administer oaths, petition the Superior Court of Wake County or of the original jurisdiction for enforcement of process or for other relief, and prescribe its own rules of procedure. All challenges with regard to the Commission's authority or the Commission's access to evidence shall be heard by the Commission Chair in the Chair's judicial capacity, including any in camera review required by G.S. 15A-908.

(e) While performing duties for the Commission, the Director or the Director's designee may serve subpoenas or other process issued by the Commission throughout the State in the same manner and with the same effect as an officer authorized to serve process of the General Court of Justice.

(f) All State discovery and disclosure statutes in effect at the time of formal inquiry shall be enforceable as if the defendant were currently being tried for the charge for which the defendant is claiming innocence.

(g) If, at any point during an inquiry, the defendant refuses to comply with requests of the Commission or is otherwise deemed to be uncooperative by the Commission, the Commission shall discontinue the inquiry.

"**§ 15A-1468. Commission proceedings.**

(a) At the completion of a formal inquiry, all relevant evidence shall be presented to the full Commission. As part of its proceedings, the Commission may conduct public

hearings. The determination as to whether to conduct public hearings is solely in the discretion of the Commission. Any public hearing held in accordance with this section shall be subject to the Commission's rules of operation.

(b) The Director shall use all due diligence to notify the victim at least 30 days prior to any proceedings of the full Commission held in regard to the victim's case. The Commission shall notify the victim that the victim is permitted to attend proceedings otherwise closed to the public, subject to any limitations imposed by this Article. If the victim plans to attend proceedings otherwise closed to the public, the victim shall notify the Commission at least 10 days in advance of the proceedings of his or her intent to attend. If the Commission determines that the victim's presence may interfere with the investigation, the Commission may close any portion of the proceedings to the victim.

(c) After hearing the evidence, the full Commission shall vote to establish further case disposition as provided by this subsection. All seven voting members of the Commission shall participate in that vote.

If five or more of the seven voting members of the Commission conclude there is sufficient evidence of factual innocence to merit judicial review, the case shall be referred to the senior resident superior court judge in the district of original jurisdiction by filing with the clerk of court the opinion of the Commission, as well as the record in support of such opinion, with service on the district attorney in noncapital cases and service on both the district attorney and Attorney General in capital cases.

If less than five of the seven voting members of the Commission conclude there is sufficient evidence of factual innocence to merit judicial review, the Commission shall conclude there is insufficient evidence of factual innocence to merit judicial review. The Commission shall document that opinion, along with supporting findings of fact, and file those documents and supporting materials with the clerk of superior court in the district of original jurisdiction, with a copy to the district attorney and the senior resident superior court judge.

The Director of the Commission shall use all due diligence to notify immediately the victim of the Commission's conclusion in a case.

(d) Evidence of criminal acts, professional misconduct, or other wrongdoing disclosed through formal inquiry or Commission proceedings shall be referred to the appropriate authority. Evidence favorable to the defendant disclosed through formal inquiry or Commission proceedings shall be disclosed to the defendant and the defendant's counsel, if the defendant has counsel.

(e) All proceedings of the Commission shall be recorded and transcribed as part of the record. All Commission member votes shall be recorded in the record. All records and proceedings of the Commission are confidential and are exempt from public record and public meeting laws except that the supporting records for the Commission's conclusion that there is sufficient evidence of factual innocence to merit judicial review, including all files and materials considered by the Commission and a full transcript of the hearing before the Commission, shall become public at the time of referral to the superior court. Commission records for conclusions of insufficient evidence of factual innocence to merit judicial review shall remain confidential, except as provided in subsection (d) of this section.

"§ 15A-1469. Postcommission three-judge panel.

(a) If the Commission concludes there is sufficient evidence of factual innocence to merit judicial review, the senior resident superior court judge shall request the Chief Justice appoint a three-judge panel, not to include any trial judge that has had substantial previous involvement in the case, and issue commissions to the members of the three-judge panel to convene a special session of the superior court of the original jurisdiction to hear evidence relevant to the Commission's recommendation. The senior judge of the panel shall preside.

(b) The senior resident superior court judge shall enter an order setting the case for hearing at the special session of superior court for which the three-judge panel is commissioned and shall require the State to file a response to the Commission's opinion within 60 days of the date of the order.

(c) The district attorney of the district of conviction, or the district attorney's designee, shall represent the State at the hearing before the three-judge panel.

(d) The three-judge panel shall conduct an evidentiary hearing. At the hearing, the court may compel the testimony of any witness, including the defendant. The defendant may not assert any privilege or prevent a witness from testifying. The defendant has a right to be present at the evidentiary hearing and to be represented by counsel. A waiver of the right to be present shall be in writing.

(e) The senior resident superior court judge shall determine the defendant's indigency status and, if appropriate, enter an order for the appointment of counsel. The court may also enter an order relieving an indigent defendant of all or a portion of the costs of the proceedings.

(f) The clerk of court shall provide written notification to the victim 30 days prior to any case related hearings.

(g) Upon the motion of either party, the senior judge of the panel may direct the attorneys for the parties to appear before him or her for a conference on any matter in the case.

(h) The three-judge panel shall rule as to whether the defendant has proved by clear and convincing evidence that the defendant is innocent of the charges. Such a determination shall require a unanimous vote. If the vote is unanimous, the panel shall enter dismissal of all or any of the charges. If the vote is not unanimous, the panel shall deny relief.

"§ 15A-1470. No right to further review of decision by Commission or three-judge panel; defendant retains right to other postconviction relief.

(a) Unless otherwise authorized by this Article, the decisions of the Commission and of the three-judge panel are final and are not subject to further review by appeal, certification, writ, motion or otherwise.

(b) A claim of factual innocence asserted through the Innocence Inquiry Commission shall not adversely affect the defendant's rights to other postconviction relief."

SECTION 2. G.S. 15A-1401 reads as rewritten:

"**§ 15A-1401. Post-trial motions and appeal.**

Relief from errors committed in criminal trials and proceedings and other post-trial relief may be sought by:

(1) Motion for appropriate relief, as provided in Article 89.

(1a) Motion for innocence claim inquiry as provided in Article 92 of Chapter 15A of the General Statutes.

(2) Appeal and trial de novo in misdemeanor cases, as provided in Article 90.

(3) Appeal, as provided in Article 91."

SECTION 3. G.S. 15A-1417(a) reads as rewritten:

"(a) The following relief is available when the court grants a motion for appropriate relief:

(1) New trial on all or any of the charges.

(2) Dismissal of all or any of the charges.

(3) The relief sought by the State pursuant to G.S. 15A-1416.

(3a) For claims of factual innocence, referral to the North Carolina Innocence Inquiry Commission established by Article 92 of Chapter 15A of the General Statutes.

(4) Any other appropriate relief."

SECTION 4. G.S. 15A-1418(b) reads as rewritten:

"(b) When a motion for appropriate relief is made in the appellate division, the appellate court must decide whether the motion may be determined on the basis of the materials before it, ~~or~~ whether it is necessary to remand the case to the trial division for taking evidence or conducting other ~~proceedings.~~ proceedings, or , for claims of factual innocence, whether to refer the case for further investigation to the North Carolina Innocence Inquiry Commission established by Article 92 of Chapter 15A of the General Statutes. If the appellate court does not remand the case for proceedings on the motion, it may determine the motion in conjunction with the appeal and enter its ruling on the motion with its determination of the case."

SECTION 5. G.S. 143-318.18 is amended by adding a new subdivision to read:

"(3a) The North Carolina Innocence Inquiry Commission."

SECTION 6. This act is effective when it becomes law.

SENATE BILL 1045:
Establish NC Innocence Commission

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Sen. Clodfelter
Date:	April 14, 2005	**Summary by:**	William R. Gilkeson and Walker Reagan Committee Co-Counsels
Version:	First Edition		

SUMMARY: ***The First Edition of Senate Bill 1045 would establish the NC Innocence Inquiry Commission, a 7-member body appointed by the Chief Justice. Its duty would be to hear claims of factual innocence by persons convicted of felonies. If at least 5 members of the Commission conclude there is sufficient evidence to merit judicial review, the Chief Justice is requested to appoint a 3-judge panel of the Superior Court of the original jurisdiction to hold a hearing on the evidence. If the panel unanimously rules that it has been proven by clear and convincing evidence that the defendant is innocent, the panel shall dismiss the charges. That dismissal could not be appealed. Effective when the bill becomes law.***

CURRENT LAW: Under existing law, a person convicted of a felony may appeal to an appellate court based on errors other than evidence, or the defendant may make a motion for appropriate relief from the trial court.

In 2002 Chief Justice I. Beverly Lake Jr. established the NC Actual Innocence Commission to study issues related to people being wrongly convicted of crimes they did not commit. That Commission recommended the Commission that would be established by this bill.

BILL ANALYSIS: The bill establishes the NC Innocence Inquiry Commission. It creates a new Article 92 in Chapter 15A. *Section 1 of bill.*

Administration. The Commission would be housed administratively within the Department of Justice and supported by the Administrative Office of the Court, but it would be an independent body. The 7 members of the Commission would be appointed by the Chief Justice. Of those, there must be a Superior Court judge, a prosecutor, a victim advocate, a criminal defense attorney, and a lay person. The judge would be chair. Once the terms are fully phased in, the members would serve staggered 3-year terms. They would be limited to 2 consecutive terms. They would hire an attorney as Director and could hire other staff. *New G.S. 15A-1461 through 15A-1465.*

Claims of Factual Innocence. The Commission's chief duty would be to conduct inquiries into "claims of factual innocence," defined in the bill as a claim on behalf of a living person convicted of a felony in the NC courts, asserting that person's complete innocence of criminal responsibility for that felony and for any other reduced level of criminal responsibility related to the crime. There must be credible, verifiable evidence of innocence that has not previously been presented. *G.S. 15A-1460 and 15A-1466.*

Initiating an Inquiry. Anyone could present a claim of factual innocence to the Commission. The Commission would have discretion whether to conduct an inquiry. It could not conduct an inquiry unless it received a signed statement from the defendant waiving procedural safeguards and privileges and agreeing to cooperate with the Commission. The defendant has the right to advice of counsel before signing the agreement. *G.S. 15A-1467.*

Commission's Proceedings. In conducting the inquiry, the Commission would have the discretion whether to conduct public hearings. The victim of the crime (or if the victim is dead, the victim's next of

kin) must be notified if feasible at least 30 days prior to proceedings of the full Commission. The victim would have a limited right to attend non-public hearings. After hearing the evidence the Commission would vote, with all members present, on whether there is sufficient evidence of factual innocence to merit judicial review. If 5 members voted "yes," the Commission would forward its opinion, as well as the record in support of it, to the senior resident Superior Court judge of the district of original jurisdiction in the case. If 5 members do not vote "yes," the Commission would document its opinion and send the document to the clerk of court in the district of original jurisdiction, with copies to the DA and the senior resident Superior Court judge. Evidence of criminal acts, professional misconduct, or other wrongdoing would be referred to the appropriate authority. Evidence favorable to the defendant would be disclosed to the defendant and defendant's counsel. Due diligence would be used to notify the victim of the result. *G.S. 15A-1468.*

Open Meetings and Public Records. The Commission's proceedings and records would be confidential and exempt from the Open Meetings and Public Records laws, except that if the Commission votes that there is sufficient evidence of factual innocence, the supporting records of that finding become public when referred to Superior Court. That includes all files and materials considered by the Commission and transcripts of its hearings. If the Commission votes there is not sufficient evidence of factual innocence, the records stay closed. *G.S. 15A-1468.*

Postcommission 3-Judge Panel. If 5 judges find sufficient evidence and the Commission sends the case to Superior Court, that judge must request the Chief Justice to appoint a 3-judge panel of trial judges who have not had previous involvement in the case. The bill does not expressly say the Chief Justice must appoint the panel. The senior of those judges would preside. The 3-judge panel would hear evidence in a special session of Superior Court in the district of original jurisdiction of the case. The State would have 60 days after the hearing is set to file a response to the Commission's opinion. The DA would represent the State at the hearing. The panel could compel the testimony of any witness, including the defendant. The defendant has the right to be present at the hearing and be represented by counsel, but may not assert any privilege or prevent a witness from testifying. The victim would be notified 30 days before the hearing. The 3-judge panel would have to determine whether there is "clear and convincing evidence" (higher than "by the greater weight of the evidence" but lower than "beyond a reasonable doubt") that the defendant is innocent of the charges. If the 3 judges are unanimous in saying "yes," they are required to dismiss the charges. If they are not unanimous, they must deny relief. *G.S. 15A-1469.*

Panel's Decision is Final. The bill provides that the decisions of the Commission and the 3-judge panel are final and not subject to further review by appeal, certification, writ, or motion. But a claim of factual innocence through the Commission would not adversely affect the defendant's rights to other post-conviction relief. *G.S. 15A-1470.*

Sections 2, 3, and 4 of the bill make referring a case to the Commission an option in seeking and granting relief in existing statutes. Section 5 adds the Commission to the public bodies exempted from the Open Meetings Law.

S1045-SMRR05-1

North Carolina Actual Innocence Commission
Bill Introduction Summary: Innocence Inquiry Commission
March 2005

In November 2002, in response to concern for decreased public confidence in the justice system after several highly publicized exoneration cases, the North Carolina Actual Innocence Commission was established by Chief Justice I. Beverly Lake, Jr. The Commission was established to provide a forum for education and dialog between representatives from the different perspectives of the criminal justice system regarding causation issues in wrongful convictions. Members include prosecutors, judges, law enforcement, defense attorneys, victim advocates, and legal scholars. The primary objectives of the Commission are to identify factors which may decrease the reliability of a conviction, research and study those factors to identify ways to increase reliability, evaluate cost and implementation feasibility of potential solutions, and issue recommendations to appropriate bodies. The anticipated outcome of the Commission's work is increased reliability in convictions, thereby increasing conviction of the guilty, increased public confidence in the criminal justice system, and decreased costs of prosecution, trial and appeal processes.

The Commission's first area of study, completed in October 2003, was eyewitness identification. During its study, the Commission benefited from extensive research regarding eyewitness identification already conducted in the United States and internationally, surveys of identification procedures followed by North Carolina's law enforcement, and input from scientific experts around the country. The culmination of the Commission's work on the topic resulted in a document outlining recommended procedures for eyewitness identification, which included the recommendation that lineups be conducted through double-blind sequential display rather than simultaneously. The Commission's recommendations were reviewed and adopted by the North Carolina Training and Standards Commission for incorporation into Basic Law Enforcement Training in North Carolina.

In January 2004, the Commission began its study of the post-conviction review process for claims of innocence. The need to review the adequacy of North Carolina's Motion for Appropriate Relief process as the primary avenue for relief for claims of innocence had been a priority for judges and prosecutors on the Commission since the Commission's inception. That need was further confirmed by exoneration cases such as Darryl Hunt's, who filed eleven MARs during his incarceration and was incarcerated for over eighteen years before his exoneration.

During its year of study, Commission members consulted with representatives from the United Kingdom's Criminal Case Review Commission (CCRC). The CCRC was established in 1997 and is a non-adversarial, independent body which reviews and investigates suspected "miscarriages of justice" and refers what it considers to be valid claims back to the COA. Its mission is to operate in the "interest of justice." There is no state in the United States that has a similar process.

After several months of study and debate, members of the North Carolina Actual Innocence Commission agreed by majority vote that North Carolina's criminal justice system was in need of a review process which would ensure timely, complete, non-

List of members on Pages 2 & 3

adversarial, truth-seeking investigation and review of credible claims of factual innocence. A credible claim of factual innocence, as defined by the Commission, is:

- a claim on behalf of a living person convicted of a felony in the General Court of Justice of the State of North Carolina,
- asserting complete innocence of any criminal responsibility for the felony for which he was convicted and for any other reduced level of criminal responsibility relating to the crime,
- for which there is credible, verifiable evidence of innocence that has not previously been presented at trial or considered at a hearing granted through post-conviction relief.

Important distinctions in the definition of a credible claim of factual innocence include the fact that the defendant has to be living, incarcerated for a felony committed in North Carolina, and claiming complete innocence of criminal responsibility relating to the crime. In addition, and of great importance, the evidence supporting the claim of innocence has not been considered by a jury or judge at a previous hearing.

Throughout 2004 and into early 2005, the Commission balanced perspectives of prosecution, law enforcement, judiciary, defense and victim advocates with the acknowledged need to establish a procedure whereby strictly screened claims of factual innocence can be justly reviewed. Commission members agreed that an extraordinary procedure to investigate credible claims should require an extraordinary commitment by the defendant to fully cooperate in all investigations and to waive rights and privileges typically available to him in criminal justice proceedings.

On March 7, 2005, the North Carolina Actual Innocence Commission agreed by majority vote to submit a recommendation for the establishment of an Innocence Inquiry Commission to the North Carolina General Assembly. Commission members also agreed to continue to receive input regarding the proposed Inquiry Commission recommendations from their constituencies and to work together to address concerns. Commission members as of the March meeting included the following:

The Honorable Bryan E. Beatty, N.C. Secretary of Crime Control and Public Safety
Jennifer Thompson Cannino, crime victim
Mel Chilton, N.C. Victim Assistance Network
Professor James Coleman, Duke University Law School
The Honorable Roy Cooper, North Carolina Attorney General
The Honorable Mike Gauldin, Burlington Police Chief
The Honorable Rick Glazier, North Carolina House Representative
The Honorable Donnie Harrison, Wake County Sheriff, represented by John Maxfield and Josh Tharrington
William Hart, Special Deputy Attorney General
The Honorable Worth Hill, Durham County Sheriff
Malcolm Ray Hunter, N.C. Office of Indigent Defense Services
The Honorable Robert F. Johnson, Alamance County District Attorney
The Honorable Alan Jordan, Beaufort County Sheriff's Office
The Honorable William Kenerly, Rowan County District Attorney

The Honorable I. Beverly Lake, Jr., N.C. Supreme Court Chief Justice
Chris Mumma, Executive Director, N.C. Center on Actual Innocence
Theresa Newman, Associate Dean, Duke University Law School
Chief Pat Norris, Winston-Salem Police Department
The Honorable Robert Orr, N.C. Supreme Court Justice
Robin Pendergraft, Director, N.C. State Bureau of Investigation
Professor Richard Rosen, UNC School of Law
The Honorable Thomas Ross, Exec. Director, Z. Smith Reynolds Foundation, Inc.
Larry Smith, N.C. State Bureau of Investigation
Chief Darrel Stephens, Charlotte-Mecklenburg Police Department
The Honorable Donald Stephens, Wake County Senior Resident Judge
Dick Taylor, Academy of Trial Lawyers
Melanie Thomas, N.C. State Bureau of Investigation
Thomas Walker, N.C. Attorney General's Office
James Williams, Jr., Orange County Public Defender's Office
The Honorable Colon C. Willoughby, Jr., Wake County District Attorney
Nina Wright, Deputy Chief, Charlotte-Mecklenburg Police Department

The North Carolina Actual Innocence Commission Chairman is Supreme Court Chief Justice I. Beverly Lake, Jr. and the Executive Director is Chris Mumma.

A draft of the bill entitled "An Act to Establish the North Carolina Innocence Inquiry Commission as Recommended by the North Carolina Actual Innocence Commission" is attached. For questions or comments regarding the contents of the bill or the work of the North Carolina Actual Innocence Commission, please contact Chief Justice I. Beverly Lake, lkj@sc.state.nc.us, (919)733-3711, or Chris Mumma, c_mumma@hotmail.com, (919)489-1184.

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE — 4-14-05

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
Patricia Roach	NCACC
Christine Mumma	NC Actual Innocence Commission
Karen Wood	NC Conf. of D.A.'s
Clark Everett	District Attorney, District 3-A (Pitt)
Peg Dorer	Conf. of D.A.s
[illegible]	N&O
Lisa Lauch	N+O
Mel Chilton	NCVAN
Doug Heeron	NC BAR ASSOC
Colleen Kochanek	NCLEOA / NCACP
Eddie Caldwell	NC Sheriffs' Assn.

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE — 4-14-05

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
TYE HUNTER	INDIGENT DEFENSE SERVICES
Lu Hodge	KUH
DAVID BARNES	Poyner Spruill
[signature]	PNG
[signature]	PNG
[signature]	AOC
[signature]	NCSSC
BILL SLOGGIN	ICCIH
[signature]	CJPC
PRESTON HOWARD	MCIC
[signature]	NCNN

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE — 4-14-05

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
Paul Pulley	NCATA

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Tuesday	April 19, 2005	10:00 AM	1027 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 226	Early Prep for Absentee Count.	Senator Allran
SB 227	Public Employee Poll Workers.	Senator Kinnaird
SB 321	Permanent Jury Exemptions/65 and Older.	Senator Clodfelter
SB 701	Clarification of Legis. Oversight of Fees.	Senator Nesbitt, Jr.
SB 911	Class Actions and Unpaid Residuals.	Senator Hagan
SB 1118	Torts by State Law Enforcement/Employees.	Senator Rand

Senator Daniel G. Clodfelter, Chair

2005

SENATE
JUDICIARY I

COMMITTEE
MINUTES

Judiciary 1 Committee

April 19, 2005

Minutes

Senator Dan Clodfelter, Chair called the meeting to order at 10:08 a.m. with fifteen members present. He introduced Pages Jakay Pierce from New Bern, NC, Sydney Reed from Raleigh, NC, and Will Potter from Chapel Hill, NC.

SB-226 (Early Prep for Absentee Count Committee Substitute was introduced by Senator Clodfelter. Senator Julia Boseman moved for adoption of the Committee Substitute. All members voted yes. Motion carried. Bill sponsor, Senator Austin Allran explained that the bill would allow county boards of elections to begin the process of counting mailed absentee ballots before Election Day. If the county board uses an optical scan voting system to count the ballots it could open the absentee envelopes at the pre-election meetings at which it approves the absentee applications, and at that time it could run the approved ballots through the scanner, without printing the totals readout. (See attached Bill Summary for further information). Senator Boseman discussed the J-1 Subcommittee report on the bill, saying that they had studied it, and asked for support of the bill. Mr. Gary Bartlett, NC Voters Association spoke on the bill. Senator's Tony Rand, RC Soles, David Hoyle and Charlie Albertson had questions. Mr. Bartlett answered the questions. Senator Richard Stevens moved for a Favorable Report. All members voted yes. Motion carried.

SB-701 (Clarification of Legis. Oversight of Fees) Committee Substitute was introduced by Senator Clodfelter. Bill sponsor, Senator Martin Nesbitt moved for adoption of the Committee Substitute. All members voted yes. Motion carried. He explained that the bill would allow agencies to implement fee increases within the range of their statutory authorization without prior consultation with the Joint Legislative Committee on Governmental Operations if GovOps does not meet within 90 days after the text of the rule increasing the fee is published. (See attached Bill Summary for further information). Senator's Richard Stevens, RC Soles, Tony Rand, Harry Brown and Phillip Berger had questions. Senator Nesbitt and staff attorney, Walker Reagan answered the questions. Senator Nesbitt offered an Amendment to the bill. (See attached Amendment) and asked for a vote on the

Amendment. All members voted yes. Motion carried. Senator Rand moved for a Favorable Report. All members voted yes. Motion carried.

SB-1118 (Torts by State Law Enforcement/Employees) Committee Substitute was introduced by Senator Clodfelter. He stated that the bill would be discussed, but not voted on at this time. Bill sponsor, Senator Tony Rand explained that the bill would require the State to pay judgments against members of the Highway Patrol and other State employees for injuries or damage if the court determines that negligent acts occurred within the course and scope of the person's office or employment, regardless of whether the Attorney General defended the person. Senator's David Hoyle, RC Soles, Jerry Tillman, Vernon Malone and Martin Nesbitt had questions. Staff attorney Walker Reagan and Senator Rand answered the questions. Senator Clodfelter said the bill would be displaced and scheduled for a future meeting.

SB-321 (Permanent Jury Exemptions/65 and Older) Committee Substitute was introduced by Vice Chair, Senator RC Soles. Senator Clark Jenkins moved for adoption of the Committee Substitute. All members voted yes. Motion carried. Bill sponsor, Senator Dan Clodfelter explained that the bill would allow people 70 and older to request in writing a permanent exemption from jury duty. It would raise from 65 to 70 the age at which a person has a statutory right to make an exemption request in writing rather than in person. (See attached Bill Summary for further information). Judge Ralph Walker, Director Administrator, Office of the Courts, NC Superior Court spoke on the bill. Senator's Tony Rand, Martin Nesbitt and Phillip Berger had questions. Senator Clodfelter answered the questions. Senator Jerry Tillman moved for a Favorable Report. All members voted yes. Motion carried.

Being no further business the meeting adjourned at 10:57 a.m.

Senator Dan Clodfelter, Chair **Wanda Joyner, Committee Assistant**

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Daniel G. Clodfelter, Chair

Wednesday, April 20, 2005

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

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

S.B. **321** Permanent Jury Exemptions/65 and Older.

Draft Number:	PCS75290
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

S.B. **701** Clarification of Legis. Oversight of Fees.

Draft Number:	PCS75292
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 2

Committee Clerk Comments:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Daniel G. Clodfelter, Chair

Thursday, April 21, 2005

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

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

S.B. **226** Early Prep for Absentee Count.

Draft Number:	PCS55214
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comments:

SENATE
COMMITTEE SUBSTITUTE

APR 21 2005

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

ADOPTED

S

SENATE BILL 226*
PROPOSED COMMITTEE SUBSTITUTE S226-PCS55214-ST-17

Short Title: Early Prep for Absentee Count. (Public)

Sponsors:

Referred to:

February 28, 2005

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE COUNTY BOARDS OF ELECTIONS TO TAKE STEPS EARLIER TO COUNT MAILED ABSENTEE VOTES, AS RECOMMENDED BY THE JOINT SELECT COMMITTEE ON ELECTRONIC VOTING SYSTEMS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 163-234 reads as rewritten:

"**§ 163-234. Counting absentee ballots by county board of elections.**

All absentee ballots returned to the county board of elections in the container-return envelopes shall be retained by the board to be counted by the county board of elections as herein provided.

(1) Only those absentee ballots returned to the county board of elections no later than 5:00 p.m. on the day before election day in a properly executed container-return envelope shall be counted, except to the extent federal law requires otherwise.

(2) The county board of elections shall meet at 5:00 p.m. on election day in the board office or other public location in the county courthouse for the purpose of counting all absentee ballots except those which have been challenged before 5:00 p.m. on election day. Any elector of the county shall be permitted to attend the meeting and allowed to observe the counting process, provided the elector shall not in any manner interfere with the election officials in the discharge of their duties.

Provided, that the county board of elections is authorized to begin counting absentee ballots between the hours of 2:00 p.m. and 5:00 p.m. upon the adoption of a resolution at least two weeks prior to the election wherein the hour and place of counting absentee ballots shall be stated. A copy of the resolutions shall be published once a week for two weeks prior to the election, in a newspaper having general circulation in the county. Notice may additionally be made on a radio

or television station or both, but such notice shall be in addition to the newspaper and other required notice. The count shall be continuous until completed and the members shall not separate or leave the counting place except for unavoidable necessity, except that if the count has been completed prior to the time the polls close, it shall be suspended until that time pending receipt of any additional ballots, and except that one-stop ballots under G.S. 163-227.2 counted electronically shall not be counted until the polls close; provided, however, that if there are outstack ballots in the counting device, they may be counted at the same time as other ballots are counted under this subdivision. The county board of elections may begin putting them in the tabulator at the same time as other ballots are counted under this subdivision if the system for counting one-stop ballots requires them to be put in a tabulator but the process has the voter place them in a ballot box. The board shall not announce the result of the count before 7:30 p.m.

(2a) Notwithstanding the provisions of subdivision (2) of this section, a county board of elections may, at each meeting at which it approves absentee ballot applications pursuant to G.S. 163-230.1(c) and (c1), remove those ballots from their envelopes and have them read by an optical scanning machine, without printing the totals on the scanner. The board shall complete the counting of these ballots at the times provided in subdivision (2) of this section and shall announce the results only as provided in subdivision (2) of this section. The State Board of Elections shall provide instructions to county boards of elections for executing this procedure, and the instructions shall be designed to ensure the accuracy of the count, the participation of board members of both parties, and the secrecy of the results before election day. This subdivision applies only in counties that use optical scan devices to count absentee ballots.

(3) The counting of absentee ballots shall not commence until a majority and at least one board member of each political party represented on the board is present and that fact is publicly declared and entered in the official minutes of the county board.

(4) The county board of elections may employ such assistants as deemed necessary to count the absentee ballots, but each board member present shall be responsible for and observe and supervise the opening and tallying of the ballots.

(5) As each ballot envelope is opened, the board shall cause to be entered into a pollbook designated "Pollbook of Absentee Voters" the name of the absentee voter, or if the pollbook is computer-generated, the board shall check off the name. Preserving secrecy, the ballots shall be placed in the appropriate ballot boxes, at least one of which shall be provided for each type of ballot. The "Pollbook of Absentee Voters"

shall also contain the names of all persons who voted under G.S. 163-227.2, but those names may be printed by computer for inclusion in the pollbook.

After all ballots have been placed in the boxes, the counting process shall begin.

If one-stop ballots under G.S. 163-227.2 are counted electronically, that count shall commence at the time the polls close. If one-stop ballots are paper ballots counted manually, that count shall commence at the same time as other absentee ballots are counted.

If a challenge transmitted to the board on canvass day by a chief judge is sustained, the ballots challenged and sustained shall be withdrawn from the appropriate boxes, as provided in G.S. 163-89(e).

As soon as the absentee ballots have been counted and the names of the absentee voters entered in the pollbook as required herein, the board members and assistants employed to count the absentee ballots shall each sign the pollbook immediately beneath the last absentee voter's name entered therein. The county board of elections shall be responsible for the safekeeping of the pollbook of absentee voters.

(6) Upon completion of the counting process the board members shall cause the results of the tally to be entered on the absentee abstract prescribed by the State Board of Elections. The abstract shall be signed by the members of the board in attendance and the original mailed immediately to the State Board of Elections. The county board of elections may have a separate count on the abstract for one-stop absentee ballots under G.S. 163-227.2.

(7) One copy of the absentee abstract shall be retained by the county board of elections and the totals appearing thereon shall be added to the final totals of all votes cast in the county for each office as determined on the official canvass.

(8) In the event a political party does not have a member of the county board of elections present at the meeting to count absentee ballots due to illness or other cause of the member, the counting shall not commence until the county party chairman of said absent member, or a member of the party's county executive committee, is in attendance. Such person shall act as an official witness to the counting and shall sign the absentee ballot abstract as an "observer."

(9) The county board of elections shall retain all container-return envelopes and absentee ballots, in a safe place, for at least four months, and longer if any contest is pending concerning the validity of any ballot."

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

SENATE BILL 226:
Early Prep for Absentee Count

BILL ANALYSIS

Committee:	Senate Judiciary I - Elections	**Introduced by:**	Sens. Allran and Kinnaird
Date:	April 19, 2005	**Summary by:**	William R. Gilkeson
Version:	S226-CSST-17 [v.1]		Committee Co-Counsel

SUMMARY: This Proposed Committee Substitute for Senate Bill 226 would allow county boards of elections to begin the process of counting mailed absentee ballots before election day. If the county board uses an optical scan voting system to count the ballots, it could open the absentee envelopes at the pre-election meetings at which it approves the absentee applications. It could at that time run the approved ballots through the scanner, without printing the totals readout. The bill would be effective when it becomes law. The bill was recommended by the Joint Select Committee on Electronic Voting Systems.

CURRENT LAW: Under current law, the county board of elections is directed to begin counting mail absentee ballots at 5 p.m. on election day. But the board may, if it gives notice 2 weeks ahead of time, begin counting at 2 p.m. on election day.

The county board is required to meet several times before election day to decide whether to approve the applications for absentee ballots. The applications are on the outside of the envelopes that contain the voted ballots themselves. After approving the applications at each meeting, the board is required by current law to leave the ballots sealed inside the application-envelopes to be counted on election day.

Since all mailed absentee ballots are paper, most counties use some kind of optical scan equipment to count them.

BILL ANALYSIS: The bill would permit a county board of elections to begin the process of counting mail absentee ballots at the pre-election meetings for counting absentee ballots. If it uses a tabulator to count the ballots, the board could remove the approved absentee voters' ballots from the envelopes and run them through the tabulator. But the board would not print the totals on the tabulator until 2 p.m. or 5 p.m., the current time for counting on election day. The State Board of Elections would provide instructions to counties for executing the procedure, designed to ensure the accuracy of the count, bipartisan participation by board members, and the secrecy of results before election day.

BACKGROUND: In 2001, the excuse requirement was removed from absentee voting. Since then, absentee voting has increased and county boards have had more absentee ballots to count. During the 2004 election, some boards of elections reportedly stayed up all night counting absentee ballots. As a result of those experiences, Gary Bartlett, Executive Director of the State Board of Elections, recommended the idea contained in the bill to the Joint Select Committee on Electronic Voting Systems, which recommended it to the 2005 General Assembly. A companion bill, HB 128, passed the House last month. This Senate PCS adds a provision saying the results shall not be announced until 7:30 p.m.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 226*

Short Title:	Early Prep for Absentee Count.	(Public)
Sponsors:	Senators Allran, Kinnaird; Apodaca, Atwater, Bingham, Blake, Boseman, Brock, Brown, Dalton, Dorsett, East, Forrester, Garwood, Goodall, Graham, Hagan, Holloman, Hoyle, Hunt, Jacumin, Jenkins, Lucas, Malone, Nesbitt, Pittenger, Presnell, Purcell, Rand, Shaw, Snow, Soles, Stevens, Swindell, Thomas, Tillman, and Weinstein.	
Referred to:	Judiciary I.	

February 28, 2005

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE COUNTY BOARDS OF ELECTIONS TO TAKE STEPS EARLIER TO COUNT MAILED ABSENTEE VOTES, AS RECOMMENDED BY THE JOINT SELECT COMMITTEE ON ELECTRONIC VOTING SYSTEMS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 163-234 reads as rewritten:

"**§ 163-234. Counting absentee ballots by county board of elections.**

All absentee ballots returned to the county board of elections in the container-return envelopes shall be retained by the board to be counted by the county board of elections as herein provided.

(1) Only those absentee ballots returned to the county board of elections no later than 5:00 p.m. on the day before election day in a properly executed container-return envelope shall be counted, except to the extent federal law requires otherwise.

(2) The county board of elections shall meet at 5:00 p.m. on election day in the board office or other public location in the county courthouse for the purpose of counting all absentee ballots except those which have been challenged before 5:00 p.m. on election day. Any elector of the county shall be permitted to attend the meeting and allowed to observe the counting process, provided the elector shall not in any manner interfere with the election officials in the discharge of their duties.

Provided, that the county board of elections is authorized to begin counting absentee ballots between the hours of 2:00 p.m. and 5:00 p.m. upon the adoption of a resolution at least two weeks prior to the election wherein the hour and place of counting absentee ballots shall

be stated. A copy of the resolutions shall be published once a week for two weeks prior to the election, in a newspaper having general circulation in the county. Notice may additionally be made on a radio or television station or both, but such notice shall be in addition to the newspaper and other required notice. The count shall be continuous until completed and the members shall not separate or leave the counting place except for unavoidable necessity, except that if the count has been completed prior to the time the polls close, it shall be suspended until that time pending receipt of any additional ballots, and except that one-stop ballots under G.S. 163-227.2 counted electronically shall not be counted until the polls close; provided, however, that if there are outstack ballots in the counting device, they may be counted at the same time as other ballots are counted under this subdivision. The county board of elections may begin putting them in the tabulator at the same time as other ballots are counted under this subdivision if the system for counting one-stop ballots requires them to be put in a tabulator but the process has the voter place them in a ballot box. The board shall not announce the result of the count before 7:30 p.m.

(2a) Notwithstanding the provisions of subdivision (2) of this section, a county board of elections may, at each meeting at which it approves absentee ballot applications pursuant to G.S. 163-230.1(c) and (c1), remove those ballots from their envelopes and have them read by an optical scanning machine, without printing the totals on the scanner. The board shall complete the counting of these ballots at the times provided in subdivision (2) of this section. The State Board of Elections shall provide instructions to county boards of elections for executing this procedure, and the instructions shall be designed to ensure the accuracy of the count, the participation of board members of both parties, and the secrecy of the results before election day. This subdivision applies only in counties that use optical scan devices to count absentee ballots.

(3) The counting of absentee ballots shall not commence until a majority and at least one board member of each political party represented on the board is present and that fact is publicly declared and entered in the official minutes of the county board.

(4) The county board of elections may employ such assistants as deemed necessary to count the absentee ballots, but each board member present shall be responsible for and observe and supervise the opening and tallying of the ballots.

(5) As each ballot envelope is opened, the board shall cause to be entered into a pollbook designated "Pollbook of Absentee Voters" the name of the absentee voter, or if the pollbook is computer-generated, the board shall check off the name. Preserving secrecy, the ballots shall be

placed in the appropriate ballot boxes, at least one of which shall be provided for each type of ballot. The "Pollbook of Absentee Voters" shall also contain the names of all persons who voted under G.S. 163-227.2, but those names may be printed by computer for inclusion in the pollbook.

After all ballots have been placed in the boxes, the counting process shall begin.

If one-stop ballots under G.S. 163-227.2 are counted electronically, that count shall commence at the time the polls close. If one-stop ballots are paper ballots counted manually, that count shall commence at the same time as other absentee ballots are counted.

If a challenge transmitted to the board on canvass day by a chief judge is sustained, the ballots challenged and sustained shall be withdrawn from the appropriate boxes, as provided in G.S. 163-89(e).

As soon as the absentee ballots have been counted and the names of the absentee voters entered in the pollbook as required herein, the board members and assistants employed to count the absentee ballots shall each sign the pollbook immediately beneath the last absentee voter's name entered therein. The county board of elections shall be responsible for the safekeeping of the pollbook of absentee voters.

(6) Upon completion of the counting process the board members shall cause the results of the tally to be entered on the absentee abstract prescribed by the State Board of Elections. The abstract shall be signed by the members of the board in attendance and the original mailed immediately to the State Board of Elections. The county board of elections may have a separate count on the abstract for one-stop absentee ballots under G.S. 163-227.2.

(7) One copy of the absentee abstract shall be retained by the county board of elections and the totals appearing thereon shall be added to the final totals of all votes cast in the county for each office as determined on the official canvass.

(8) In the event a political party does not have a member of the county board of elections present at the meeting to count absentee ballots due to illness or other cause of the member, the counting shall not commence until the county party chairman of said absent member, or a member of the party's county executive committee, is in attendance. Such person shall act as an official witness to the counting and shall sign the absentee ballot abstract as an "observer."

(9) The county board of elections shall retain all container-return envelopes and absentee ballots, in a safe place, for at least four months, and longer if any contest is pending concerning the validity of any ballot."

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

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GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 701
PROPOSED COMMITTEE SUBSTITUTE S701-PCS75292-RU-15

Short Title: Clarification of Legis. Oversight of Fees. (Public)

Sponsors:

Referred to:

March 21, 2005

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT A RECOMMENDATION OF THE JOINT LEGISLATIVE ADMINISTRATIVE PROCEDURE OVERSIGHT COMMITTEE TO CLARIFY THE LAW PROVIDING LEGISLATIVE OVERSIGHT OF AGENCY FEES AND CHARGES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 12-3.1 reads as rewritten:

"**§ 12-3.1. Fees and charges by agencies.**

(a) Authority. – Only the General Assembly has the power to authorize an agency to establish or increase a fee or charge for the rendering of any service or fulfilling of any duty to the public. In the construction of a statute, unless that construction would be inconsistent with the manifest intent of the General Assembly or repugnant to the context of the statute, the legislative grant of authority to an agency to ~~make and promulgate~~ adopt rules shall not be construed as a grant of authority to the agency to establish by rule a fee or a charge for the rendering of any service or fulfilling of any duty to the public, unless the statute expressly provides for the grant of authority to establish a fee or charge for that specific service. Notwithstanding any other law, ~~an agency's establishment or increase of a fee or charge shall not go into effect until one of the following conditions has been met:~~

~~(1) The General Assembly has enacted express authorization of the amount of the fee or charge to be established or increased and the purpose of that fee or charge.~~

~~(2) The General Assembly has enacted general authorization for the agency to establish or increase the fee or charge, and the agency has consulted with~~ a rule adopted by an agency to establish or increase a fee or charge shall not go into effect until the agency has consulted with the Joint Legislative Commission on Governmental Operations

on the amount and purpose of the fee or charge to be established or increased.

(a1) If an agency is unable to conduct the consultation required by subsection (a) of this section within 90 days after publishing the notice of text of the rule due to the failure of the Commission to meet, the consultation requirement shall be met by submitting a written report stating the statutory authority and a detailed explanation of the need for the establishment or increase of the fee or charge to the Joint Legislative Commission on Governmental Operations.

(b) Definitions. – The following definitions apply in this section:

(1) Agency. – Every agency, institution, board, commission, bureau, department, division, council, member of the Council of State, or officer of the legislative, executive or judicial branches of State government. The term does not include counties, cities, towns, villages, other municipal corporations or political subdivisions of the State or any agencies of these subdivisions, the University of North Carolina, community colleges, hospitals, county or city boards of education, other local public districts, units, or bodies of any kind, or private corporations created by act of the General Assembly.

(2) Rule. – Every rule, regulation, ordinance, standard, and amendment thereto adopted by any agency, including rules and regulations regarding substantive matters, standards for products, procedural rules for complying with statutory or regulatory authority or requirements and executive orders of the Governor.

(c) Exceptions. – This section does not apply to any of the following:

(1) Rules establishing fees or charges to State, federal or local governmental units.

(2) A reasonable fee or charge for copying, transcripts of public hearings, State publications, or mailing a document or other item.

(3) Reasonable registration fees covering the cost of a conference or workshop.

(4) Reasonable user fees covering the cost of providing data processing services.

(d) In lieu of the requirements of ~~subdivision (a)(2)~~ subdivisions (a) and (a1) of this section, the North Carolina State Ports Authority shall report the establishment or increase of any fee to the Joint Legislative Commission on Governmental Operations as provided in G.S. 143B-454(a)(11)."

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

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 4-19-05

S. B. No. 701 Amendment No. #1

(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE S701-CSRU-15

Rep.) NESBITT

(Sen.)

moves to amend the bill on page 2, line 6

( ) WHICH CHANGES THE TITLE

by INSERTING BETWEEN THE WORDS "A" AND "REPORT" THE WORD "WRITTEN".

SIGNED Martin Nesbitt

ADOPTED X FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

SENATE BILL 701:
Clarification of Legislative Oversight of Fees.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Date:**	April 19, 2005
Introduced by:	Sen. Nesbitt	**Summary by:**	Walker Reagan
Version:	Proposed Committee Substitute S701-CSRU-15		Committee Co-Counsel

*SUMMARY: **The Proposed Committee Substitute for Senate Bill 701 would allow agencies to implement fee increases within the range of their statutory authorization without prior consultation with the Joint Legislative Committee on Governmental Operations (GovOps) if GovOps does not meet within 90 days after the text of the rule increasing the fee is published. The bill is a recommendation of the Joint Legislative Administrative Procedure Oversight Committee.***

CURRENT LAW: Under current law, an agency cannot implement a new fee or charge unless the General Assembly has expressly authorized a specific fee or charge amount, or the General Assembly has given general authorization for the fee or charge and the agency has consulted with GovOps. Under current law, when an agency is increasing a fee or charge within a range of fees or charge authorized by the General Assembly, the agency must adopt a rule increasing the fee or charge and wait until GovOps holds a meeting in order to be consulted with on the proposed fee ore charge increase.

BILL ANALYSIS: The bill amends G.S. 12-3.1 to clarify that only fee or charge increases that must be established by rule are subject to consultation with GovOps. The bill provides that if the agency proposing the fee or charge increase is not able to consult with GovOps because GovOps does not meet within 90 days of the date the text of the proposed rule increasing the fee or charge is published, the agency may satisfy the consultation requirement by submitting a report to GovOps, setting out the statutory authority for the fee or charge and a detailed explanation of the need for increasing the fee or charge.

The bill also clarifies that fees and charges established by statute are not to be adopted by rule.

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

BACKGROUND: Beginning in 2001, the General Assembly required that fees established or increased within an agency's discretion statutory range be done only after consultation with GovOps. Fee or charge amounts set in statute do not need to be adopted by rule. Some agencies have not been clear about when they had expressed authority versus general authority.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 701

Short Title:	Clarification of Legis. Oversight of Fees.	(Public)
Sponsors:	Senators Nesbitt; and Hartsell.	
Referred to:	Judiciary I.	

March 21, 2005

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT A RECOMMENDATION OF THE JOINT LEGISLATIVE ADMINISTRATIVE PROCEDURE OVERSIGHT COMMITTEE TO CLARIFY THE LAW PROVIDING LEGISLATIVE OVERSIGHT OF AGENCY FEES AND CHARGES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 12-3.1 reads as rewritten:

"**§ 12-3.1. Fees and charges by agencies.**

(a) Authority. – Only the General Assembly has the power to authorize an agency to establish or increase a fee or charge for the rendering of any service or fulfilling of any duty to the public. In the construction of a statute, unless that construction would be inconsistent with the manifest intent of the General Assembly or repugnant to the context of the statute, the legislative grant of authority to an agency to ~~make and promulgate~~ adopt rules shall not be construed as a grant of authority to the agency to establish by rule a fee or a charge for the rendering of any service or fulfilling of any duty to the public, unless the statute expressly provides for the grant of authority to establish a fee or charge for that specific service. Notwithstanding any other law, ~~an agency's establishment or increase of a fee or charge shall not go into effect until one of the following conditions has been met:~~

~~(1) The General Assembly has enacted express authorization of the amount of the fee or charge to be established or increased and the purpose of that fee or charge.~~

~~(2) The General Assembly has enacted general authorization for the agency to establish or increase the fee or charge, and the agency has consulted with~~ a rule adopted by an agency to establish or increase a fee or charge shall not go into effect until the agency has consulted with the Joint Legislative Commission on Governmental Operations on the amount and purpose of the fee or charge to be established or increased.

(a1) If an agency is unable to conduct the consultation required by subsection (a) of this section within 90 days after publishing the notice of text of the rule due to the failure of the Commission to meet, the consultation requirement shall be met by submitting a report stating the statutory authority and a detailed explanation of the need for the establishment or increase of the fee or charge to the Joint Legislative Commission on Governmental Operations.

(b) Definitions. – The following definitions apply in this section:

(1) Agency. – Every agency, institution, board, commission, bureau, department, division, council, member of the Council of State, or officer of the legislative, executive or judicial branches of State government. The term does not include counties, cities, towns, villages, other municipal corporations or political subdivisions of the State or any agencies of these subdivisions, the University of North Carolina, community colleges, hospitals, county or city boards of education, other local public districts, units, or bodies of any kind, or private corporations created by act of the General Assembly.

(2) Rule. – Every rule, regulation, ordinance, standard, and amendment thereto adopted by any agency, including rules and regulations regarding substantive matters, standards for products, procedural rules for complying with statutory or regulatory authority or requirements and executive orders of the Governor.

(c) Exceptions. – This section does not apply to any of the following:

(1) Rules establishing fees or charges to State, federal or local governmental units.

(2) A reasonable fee or charge for copying, transcripts of public hearings, State publications, or mailing a document or other item.

(3) Reasonable registration fees covering the cost of a conference or workshop.

(4) Reasonable user fees covering the cost of providing data processing services.

(d) In lieu of the requirements of subdivision (a)(2) of this section, the North Carolina State Ports Authority shall report the establishment or increase of any fee to the Joint Legislative Commission on Governmental Operations as provided in G.S. 143B-454(a)(11)."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 1118
PROPOSED COMMITTEE SUBSTITUTE S1118-CSRU-16 [v.1]

4/17/2005 9:42:36 PM

Short Title: Torts by State Law Enforcement/Employees. (Public)

Sponsors:

Referred to:

March 24, 2005

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE STATE'S DUTY WHEN A CIVIL ACTION IS BROUGHT AGAINST A STATE LAW ENFORCEMENT OFFICER OR A STATE EMPLOYEE, THE ATTORNEY GENERAL REFUSES TO DEFEND THE OFFICER OR EMPLOYEE ON THE GROUNDS THAT THE OFFICER OR EMPLOYEE DID NOT ACT WITHIN THE SCOPE AND COURSE OF EMPLOYMENT, AND A COURT SUBSEQUENTLY DETERMINES THAT THE OFFICER OR EMPLOYEE DID ACT WITHIN THE SCOPE AND COURSE OF EMPLOYMENT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-194(b) reads as rewritten:

"(b) In the event that a member of the Highway Patrol or any other State law-enforcement officer is sued in a civil action as an individual for acts occurring while such member was alleged to be acting within the course and scope of his office, employment, service, agency or authority, which was alleged to be a proximate cause of the injury or damage complained of, the Attorney General is hereby authorized to defend such employee through the use of a member of his staff or, in his discretion, employ private counsel, subject to the provisions of Article 31A of Chapter 143 and G.S. 147-17. Any judgment rendered as a result of said civil action against such member of the Highway Patrol or other State law-enforcement officer, for acts ~~alleged to be~~ the court determined were committed within the course and scope of his office, employment, service, agency or authority shall be ~~paid~~ paid, whether or not the Attorney General defended the employee, as an expense of administration up to the limit provided in the Tort Claims Act."

SECTION 2. G.S. 143-300.6 is amended by adding a new subsection to read:

"(d) As used in subsection (a) of this section, "in an action to which this Article applies" means an action against a State employee for which the State agreed to provide

defense under G.S. 143-300.3 and also means an action against a State employee when the State refused to provide defense for the reason that the State determined that the act or omission of the employee was not within the scope and course of the employee's employment and the court subsequently determined that the act or omission of the employee was within the scope and course of employment."

SECTION 3. Where a judgment was entered in a civil action in federal court prior to the effective date of this act against a member of the Highway Patrol for an injury to a person and where the court that rendered the judgment concluded that the person's injury was the result of an act of a member of the Highway Patrol committed while the person was acting within the course and scope of the person's employment, the person who brought the action has 180 days from the effective date of this act to file an action in State court to enforce the earlier judgment. It shall not be a defense to enforcing the earlier judgment that the member of the Highway Patrol is no longer a State employee or that any time limit for seeking to enforce the judgment or any other time limit of civil procedure has tolled.

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

SENATE BILL 1118:
Torts by State Law Enforcement/Employees

BILL ANALYSIS

Committee:	Senate Judiciary I	**Date:**	April 19, 2005
Introduced by:	Sen. Rand	**Summary by:**	Walker Reagan
Version:	Proposed Committee Substitute S1118-CSRU-16		Committee Co-Counsel

SUMMARY: The Proposed Committee Substitute for Senate Bill 1118 would require the State to pay judgments against members of the Highway Patrol and other State employees for injuries or damage if the court determines that negligent acts occurred within the course and scope of the person's office or employment, regardless of whether the Attorney General defended the person.

CURRENT LAW: Current law requires the State to defend and pay judgments against members of the Highway Patrol and other State employees for negligent acts committed while acting within the course and scope of their office or employment, up to the limits of the State Tort Claim Act (currently $500,000), if the Attorney General defends the employee.

G.S. 143-300.4 gives the Attorney General the discretion to determine whether or not the employee should be defended by the State. In making the decision, the Attorney General must consider whether the employee acted within the course and scope of the person's employment as a State employee, the employee acted or failed to act because of actual fraud, corruption, or actual malice on the person's part, the defense of the action by the State would create a conflict of interest between the State and the employee, or the defense of the action would not be in the best interest of the State.

If the Attorney General decides not to defend the employee, the State will not pay the judgment even if the court determines that the employee was acting within the course and scope of the person's employment when the negligent act occurred.

A copy of G.S. 143-300.4 is attached.

BILL ANALYSIS: Section 1 of the bill amends a portion of the Highway Patrol statute to require the State to pay the judgments against members of the Patrol, regardless of whether the Attorney General defended the person, if the court finds that the person acted within the course and scope of the person's employment.

Section 2 amends that law that determines when the State will pay judgments against its employees by clarifying that this law applies in both actions when the State defends the employee as well as actions when the State refuses to defend when the court finds that the employee was acting within the course and scope of the person's employment when the act occurred.

Section 3 of the bill authorizes any person who obtained a judgment against a member of the Highway Patrol in federal court where the court determined that the member of the Patrol was acting within the course and scope of the person's employment when the injury occurred, to file an action within 180 days of the effective date of the act in State court to enforce the judgment against the State. This right applies whether or not the defendant is still a State employee or member of the Highway Patrol or any time period for bringing such an action has tolled.

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

S1118e1-SMRU-CSRU-16

§ 143-300.4. Grounds for refusal of defense.

(a) The State shall refuse to provide for the defense of a civil or criminal action or proceeding brought against an employee or former employee if the State determines that:

(1) The act or omission was not within the scope and course of his employment as a State employee; or

(2) The employee or former employee acted or failed to act because of actual fraud, corruption, or actual malice on his part; or

(3) Defense of the action or proceeding by the State would create a conflict of interest between the State and the employee or former employee; or

(4) Defense of the action or proceeding would not be in the best interests of the State.

(b) The determinations required by subsection (a) of this section shall be made by the Attorney General. The Attorney General may delegate his authority to make these determinations to the chief administrative authority of any agency, institution, board, or commission whose employees are to be defended as provided by subdivision (3) or (4) of G.S. 143-300.5. Approval of the request by an employee or former employee for provision of defense shall raise a presumption that the determination required by this section had been made and that no grounds for refusal to defend were discovered. (1967, c. 1092, s. 1.)

Last Ed

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

S D

SENATE BILL 321
PROPOSED COMMITTEE SUBSTITUTE S321-PCS75290-RR-21

Short Title: Permanent Jury Exemptions/70 and Older. (Public)

Sponsors:

Referred to:

March 3, 2005

A BILL TO BE ENTITLED

AN ACT TO ALLOW PERSONS SEVENTY AND OLDER REQUESTING TO BE EXCUSED FROM JURY DUTY TO REQUEST A PERMANENT EXEMPTION FROM THAT JURY SERVICE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 9-6.1 reads as rewritten:

"**§ 9-6.1. ~~Excuses on account of age.~~Requests to be excused.**

Any person summoned as a juror who is ~~65~~70 years or older ~~may establish his exemption~~ and who wishes to be excused, deferred, or exempted may make the request without appearing in person by filing a signed statement of the ground of ~~his~~ the ~~exemption~~ request with the chief district court judge of that district, or the district court judge or trial court administrator designated by ~~him~~ the chief district court judge pursuant to G.S. ~~9-6(b)~~ 9-6(b), at anytime five days before the date upon which ~~he~~ the person is summoned to appear. A person may request either a temporary or permanent exemption under this section, and the judge or trial court administrator may accept or reject either in the exercise of discretion conferred by G.S. 9-6(b), including the substitution of a temporary exemption for a requested permanent exemption. In the case of supplemental jurors summoned under G.S. 9-11, ~~such~~ notice may be given when summoned. In case the chief district court judge, or the judge or trial court administrator designated by ~~him~~ the chief district court judge pursuant to G.S. 9-6(b), ~~shall reject~~ rejects the request for exemption, the prospective juror shall be immediately notified by the trial court administrator or the clerk of court by telephone, letter, or personally."

SECTION 2. This act is effective when it becomes law and applies to persons summoned for jury service on or after that date.

SENATE BILL 321:
Permanent Jury Exemptions/70 and Older

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Senator Clodfelter
Date:	April 19, 2005	**Summary by:**	William R. Gilkeson
Version:	S321-CSRR-21 [v.2]		Committee Co-Counsel

SUMMARY: This Proposed Committee Substitute for Senate Bill 321 would allow people 70 and older to request in writing a permanent exemption from jury duty. It would raise from 65 to 70 the age at which a person has a statutory right to make an exemption request in writing rather than in person. Effective when the bill becomes law.

CURRENT LAW: Currently, the statute on juries states the public policy that "jury service is a solemn obligation of all qualified citizens, and that excuses from the discharge of this responsibility should be granted only for reasons of compelling personal hardship or because requiring service would be contrary to the public welfare, health, or safety." *G.S. 9-6.* The chief District Court judge is directed to promulgate procedures for hearing and deciding requests to be excused from jury service.

The current statute says a person 65 and older may "establish his exemption" by filing a signed statement with the chief District Court judge at least 5 days before that person was summoned to appear. *G.S. 9-6.1.* The statute gives those 65+ the right to make their request in writing rather than in person. (Apparently courts sometimes allow others to make their requests by letters as well, but that is because courts allow it rather than because of a statutory right.)

The age-excuse was upheld by the State Supreme Court in 2002 against a challenge that it was a violation of the Equal Protection Clause of the 14th Amendment and of the Impartial Jury Requirement of the 6th Amendment. Justice Robert Edmunds emphasized, however, that trial courts have the discretion to allow or deny the requests of seniors to be excused, and he admonished trial courts to use genuine discretion in deciding upon those requests because older citizens are valuable members of juries.

The Mecklenburg court system has found that people over 65 who were excused one jury summons become upset when they receive a subsequent summons years later, feeling that the court should know they have grown older since the last summons, not younger.

BILL ANALYSIS: The bill would change the threshold age to which G.S. 9-6.1 would apply from 65 to 70. That means that anyone over 70 has the statutory right to ask to be excuse by a signed, written request rather than in person.

In addition, the statute allows that request to be for either a temporary excuse or a permanent excuse. The court may allow or reject that request.

The bill is effective when it becomes law, and applies to persons summoned for jury service on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 321

Short Title:	Permanent Jury Exemptions/65 and Older.	(Public)
Sponsors:	Senators Clodfelter; Atwater and Weinstein.	
Referred to:	Judiciary I.	

March 3, 2005

A BILL TO BE ENTITLED

AN ACT TO ALLOW PERSONS REQUESTING TO BE EXCUSED FROM JURY DUTY ON ACCOUNT OF AGE TO REQUEST A PERMANENT EXEMPTION FROM THAT JURY SERVICE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 9-6.1 reads as rewritten:

"**§ 9-6.1. Excuses on account of age.**

Any person summoned as a juror who is 65 years or older may establish ~~his~~ an exemption without appearing in person by filing a signed statement of the ground of ~~his~~ the exemption with the chief district court judge of that district, or the district court judge or trial court administrator designated by ~~him~~ the chief district court judge pursuant to G.S. ~~9-6(b)~~ 9-6(b), at anytime five days before the date upon which ~~he~~ the person is summoned to appear. A person may request either a temporary or permanent exemption under this section, and the judge or trial court administrator may accept or reject either in the exercise of discretion conferred by G.S. 9-6(b), including the substitution of a temporary exemption for a requested permanent exemption. In the case of supplemental jurors summoned under G.S. 9-11, ~~such~~ notice may be given when summoned. In case the chief district court judge, or the judge or trial court administrator designated by ~~him~~ the chief district court judge pursuant to G.S. 9-6(b), ~~shall reject~~ rejects the request for exemption, the prospective juror shall be immediately notified by the trial court administrator or the clerk of court by telephone, letter, or personally."

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

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE
Name of Committee

4-19-05
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
Paul Meyer	NCACC
Dawn Johnson	Atty
Lidia Lewis	Counsel
Bill Hall	Democracy NC Coalition
Kevin Mills	Senator Purcell's Office
Marla Dorrel	Child Fatality Task Force
Andy Ellen	NRMA
	NCSC

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE — 4-19-05

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
Nancy Thompson	UMCIC
Henry Hatcher	N.C.S.D.A.
Leanne Winner	NCSBA
Molly Ryan	NCSBA
Tripp McRae	Intern Sen. Stevens office
Kary Isenhour	Sen. P. Berger's office
Mary Klenz	League of Women Voters of NC
Bill Rowe	NC Justice Center
Brad Lovin	NC Manufactured Housing
Lisa Martin	NC Home Builders Assoc.

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE
Name of Committee

4-19-05
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
Jim Blackburn	NC Association of County Commissioners
Hal Miller	NCAECT
THOM ILES	JOHN DEERE
Don McCorquodale	SAS
Michael Houser	NCAE
Andy Romanet	NCLM
Gary O. Bartlett	SBE
Cam Cavey	BPMHL
Kim Eshleman	BPMHL
Ralph Campbell	AOC
R. Phil Wilson	NCMBA

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Thursday	April 21, 2005	10:00 AM	1027 LB

REVISED NOTICE

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 8	Defense of Marriage.	Senator Forrester
SB 763	Notary Public Public Official Recommendation.	Senator Cowell
SB 883	Dispose of Firearm/Modify Notice Requirement.	Senator Goodall
SB 951	Public-Private Solid Waste Collection.	Senator Hoyle

Senator Daniel G. Clodfelter, Chair

10-31-05

NOTE:

Bonnie McNeil took minutes for this J-1 meeting. (Bonnie was Assistant to Joyce Hodge, Senate Director of Legislative Assistants) Bonnie is now LA to Sen. Vernon Malone, if information is needed. As of this date the minutes are not available.

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Daniel G. Clodfelter, Chair

Wednesday, April 27, 2005

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

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

S.B. **763** Notary Public Public Official Recommendation.

Draft Number:	PCS15230
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

S.B. **972** Break Into Place of Worship.

Draft Number:	PCS75297
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 2

Committee Clerk Comments:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Daniel G. Clodfelter, Chair

Monday, April 25, 2005

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

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

S.B. **883** Dispose of Firearm/Modify Notice Requirement.

Draft Number:	PCS55215
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 763
PROPOSED COMMITTEE SUBSTITUTE S763-PCS15230-RR-18

Short Title: Notary Public Public Official Recommendation. (Public)

Sponsors:

Referred to:

March 22, 2005

A BILL TO BE ENTITLED

AN ACT TO ELIMINATE THE REQUIREMENT OF AN ELECTED OFFICIAL RECOMMENDATION FOR NOTARY PUBLIC APPLICANTS IN COUNTIES WITH MORE THAN FIFTEEN THOUSAND NOTARIES PUBLIC.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 10A-4(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.

(2) Reside or work in this State.

(3) Satisfactorily complete a course of study that is approved by the Secretary and consists of not less than three hours nor more than six hours of classroom instruction provided by community colleges throughout the State, unless the person is a licensed member of the Bar of this State.

(4) Purchase and keep as a reference a manual approved by the Secretary that describes the duties, authority, and ethical responsibilities of notaries public.

(5) 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 bear 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. ~~The~~ Except for 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.

(6) Pay a nonrefundable fee of fifty dollars ($50.00)."

SECTION 2. This act becomes effective January 1, 2006, and applies to notary public applications filed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 763

Short Title:	Notary Public Public Official Recommendation.	(Public)
Sponsors:	Senators Cowell; Dannelly, Garrou, Graham, Hunt, Kinnaird, Lucas, Malone, and Stevens.	
Referred to:	Judiciary I.	

March 22, 2005

A BILL TO BE ENTITLED

AN ACT TO ELIMINATE THE REQUIREMENT OF AN ELECTED OFFICIAL RECOMMENDATION FOR NOTARY PUBLIC APPLICANTS IN CERTAIN LARGE COUNTIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 10A-4(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.

(2) Reside or work in this State.

(3) Satisfactorily complete a course of study that is approved by the Secretary and consists of not less than three hours nor more than six hours of classroom instruction provided by community colleges throughout the State, unless the person is a licensed member of the Bar of this State.

(4) Purchase and keep as a reference a manual approved by the Secretary that describes the duties, authority, and ethical responsibilities of notaries public.

(5) 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 bear 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. ~~The~~ Except in counties with a population of 250,000 or more, the applicant shall also obtain the recommendation of one publicly elected official in North Carolina whose recommendation shall be contained on the application.

(6) Pay a nonrefundable fee of fifty dollars ($50.00)."

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

last edition

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 972
PROPOSED COMMITTEE SUBSTITUTE S972-PCS75297-RK-13

Short Title: Break Into Place of Worship. (Public)

Sponsors:

Referred to:

March 24, 2005

A BILL TO BE ENTITLED

AN ACT TO CREATE THE CRIMINAL OFFENSE OF BREAKING OR ENTERING A BUILDING THAT IS A PLACE OF RELIGIOUS WORSHIP.

The General Assembly of North Carolina enacts:

SECTION 1. Article 14 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-54.1. Breaking or entering a building that is a place of religious worship.**

(a) Any person who wrongfully breaks or enters any building that is a place of religious worship with intent to commit any felony or larceny therein is guilty of a Class G felony, except as provided by subsection (b) of this section.

(b) A person is guilty of a Class F felony if:

(1) The person breaks or enters two or more buildings that are places of religious worship; or

(2) The person is convicted of a second or subsequent violation of subsection (a) of this section.

(c) As used in this section, a "building that is a place of religious worship" shall be construed to include any church, chapel, meetinghouse, synagogue, temple, or mosque, or other building that is regularly used, and clearly identifiable, as a place for religious worship."

SECTION 2. 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 1

SENATE BILL 792

Short Title:	Clarify Public Records Laws.	(Public)
Sponsors:	Senators Berger of Rockingham; and Bingham.	
Referred to:	Judiciary I.	

March 23, 2005

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE PUBLIC RECORDS LAWS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-318.10(e) reads as rewritten:

"(e) Every public body shall keep full and accurate minutes of all official meetings, including any closed sessions held pursuant to G.S. 143-318.11. Such minutes may be in written form or, at the option of the public body, may be in the form of sound or video and sound recordings. When a public body meets in closed session, it shall keep a general account of the closed session so that a person not in attendance would have a reasonable understanding of what transpired. Such accounts may be a written narrative, or video or audio recordings. Such minutes and accounts shall be public records within the meaning of the Public Records Law, G.S. 132-1 et seq.; provided, however, that minutes or an account of a closed session conducted in compliance with G.S. 143-318.11 may be withheld from public inspection so long as public inspection would frustrate the purpose of a closed session. Notes taken during a closed session, including handwritten notes or other forms of notation including notes made in an electronic format, from which minutes or accounts of a closed session are produced shall be public records within the meaning of G.S. 132-1, et seq., and may be withheld from public inspection so long as public inspection would frustrate the purpose of a closed session."

SECTION 2. G.S. 132-1.4 is amended by adding a new subsection to read:

"(m) Cellular telephone numbers and pager telephone numbers for cellular telephones and pagers provided by law enforcement agencies to sworn law enforcement officers for use in the scope and course of their employment as law enforcement officers are not public records as defined by G.S. 132-1."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 883
PROPOSED COMMITTEE SUBSTITUTE S883-PCS55215-LH-9

Short Title: Mecklenburg County/Dispose of Seized Firearm. (Local)

Sponsors:

Referred to:

March 23, 2005

A BILL TO BE ENTITLED

AN ACT TO AMEND THE NOTIFICATION REQUIREMENT FOR MECKLENBURG COUNTY REGARDING THE DISPOSITION OF A SEIZED FIREARM AND TO PROVIDE THAT IN MECKLENBURG COUNTY EITHER THE SHERIFF OR THE CHIEF LAW ENFORCEMENT OFFICER OF THE AGENCY WITH JURISDICTION TO ENFORCE THE LAW WHERE THE FIREARM WAS SEIZED MAY DESTROY THE FIREARM IN ACCORDANCE WITH A COURT ORDER.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15-11.1 reads as rewritten:

"**§ 15-11.1. Seizure, custody and disposition of articles; exceptions.**

(a) If a law-enforcement officer seizes property pursuant to lawful authority, he shall safely keep the property under the direction of the court or magistrate as long as necessary to assure that the property will be produced at and may be used as evidence in any trial. Upon application by the lawful owner or a person, firm or corporation entitled to possession or upon his own determination, the district attorney may release any property seized pursuant to his lawful authority if he determines that such property is no longer useful or necessary as evidence in a criminal trial and he is presented with satisfactory evidence of ownership. If the district attorney refuses to release such property, the lawful owner or a person, firm or corporation entitled to possession may make application to the court for return of the property. The court, after notice to all parties, including the defendant, and after hearing, may in its discretion order any or all of the property returned to the lawful owner or a person, firm or corporation entitled to possession. The court may enter such order as may be necessary to assure that the evidence will be available for use as evidence at the time of trial, and will otherwise protect the rights of all parties. Notwithstanding any other provision of law, photographs or other identification or analyses made of the property may be introduced at the time of the trial provided that the court determines that the introduction of such substitute

evidence is not likely to substantially prejudice the rights of the defendant in the criminal trial.

(b) In the case of unknown or unapprehended defendants or of defendants willfully absent from the jurisdiction, the court shall determine whether an attorney should be appointed as guardian ad litem to represent and protect the interest of such unknown or absent defendants. Appointment shall be in accordance with rules adopted by the Office of Indigent Defense Services. The judicial findings concerning identification or value that are made at such hearing whereby property is returned to the lawful owner or a person, firm, or corporation entitled to possession, may be admissible into evidence at the trial. After final judgment all property lawfully seized by or otherwise coming into the possession of law-enforcement authorities shall be disposed of as the court or magistrate in its discretion orders, and may be forfeited and either sold or destroyed in accordance with due process of law.

(b1) Notwithstanding subsections (a) and (b) of this section or any other provision of law, if the property seized is a firearm and the district attorney determines the firearm is no longer necessary or useful as evidence in a criminal trial, the district ~~attorney,~~ attorney or the legal representative for the agency storing the firearm, after notice to all parties known or believed by the district attorney or the agency's legal representative to have an ownership or a possessory interest in the firearm, including the defendant, shall apply to the court for an order of disposition of the firearm.

If the owner is not known, then notice may be provided by publishing a notice in a newspaper of Mecklenburg County. The published notice shall include the following: (i) a statement that a firearm being stored by the agency is to be disposed of, and (ii) a reference to either an electronic Web site available to the general public or a list posted in a public place that provides a specific description of the firearm to be disposed of, sufficient in detail to identify the firearm. The firearm shall not be disposed of earlier than 30 days after the notice appears in the newspaper.

The judge, after hearing, may order the disposition of the firearm in one of the following ways:

(1) By ordering the firearm returned to its rightful owner, when the rightful owner is someone other than the defendant and upon findings by the court (i) that the person, firm, or corporation determined by the court to be the rightful owner is entitled to possession of the firearm and (ii) that the person, firm, or corporation determined by the court to be the rightful owner of the firearm was unlawfully deprived of the same or had no knowledge or reasonable belief of the defendant's intention to use the firearm unlawfully.

(2) By ordering the firearm returned to the defendant, but only if the defendant is not convicted of any criminal offense in connection with the possession or use of the firearm, the defendant is the rightful owner of the firearm, and the defendant is not otherwise ineligible to possess such firearm.

(3) By ordering the firearm turned over to be destroyed by the sheriff of ~~the county in which the firearm was seized~~ Mecklenburg County or the

chief law enforcement officer storing the firearm, or by ~~his~~ the duly authorized ~~agent.~~ agent of either the sheriff or the chief law enforcement officer as appropriate. The sheriff or the chief law enforcement officer, as appropriate, shall maintain a record of the destruction of the firearm.

This subsection (b1) is not applicable to seizures pursuant to G.S. 113-137 of firearms used only in connection with a violation of Article 22 of Chapter 113 of the General Statutes or any local wildlife hunting ordinance.

(c) Any property, the forfeiture and disposition of which is specified in any general or special law, shall be disposed of in accordance therewith."

SECTION 2. This act applies only to Mecklenburg County.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 883

Short Title:	Dispose of Firearm/Modify Notice Requirement.	(Public)
Sponsors:	Senators Goodall and Clodfelter.	
Referred to:	Judiciary I.	

March 23, 2005

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT NOTIFICATION OF THE DISPOSITION OF CERTAIN UNCLAIMED FIREARMS MAY BE DONE BY POSTING NOTICE AT THE HEADQUARTERS OR ON THE WEB SITE OF THE APPROPRIATE LAW ENFORCEMENT AGENCY RATHER THAN BY PUBLICATION IN A NEWSPAPER.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15-12 is amended by adding a new subsection to read:

"(c) Notwithstanding subsection (a) of this section, if the unclaimed property is a firearm that is in the possession of any sheriff or police department as provided for in this Article, then the notice required under subsection (a) of this section regarding the disposal of the firearm may be done in any of the following manners: (i) by publishing the notice in a newspaper published in the county in which the sheriff or police department is located, (ii) by posting the notice in an appropriate location at the headquarters of the sheriff or police department, or (iii) by posting the notice on the Web site of the sheriff or police department. The notice shall contain the information required under subsection (a) of this section."

SECTION 2. This act becomes effective July 1, 2005.

Wanda Joyner (Sen. Clodfelter)

From: Bonnie McNeil (Senate Legislative Assistant)
Sent: Friday, April 22, 2005 2:28 PM
To: Wanda Joyner (Sen. Clodfelter)

Principal Clerk _____
Reading Clerk _____

Revised Notice: Removed SB319 and SB917

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Tuesday	April 26, 2005	10:00 AM	1027 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 734	Satisfaction of Mortgages and Deeds of Trust.	Senator Boseman
SB 748	Drug Enforcement Improvement Act.	Senator Rand
SB 893	State Health Plan Subrogation.	Senator Rand
SB 911	Class Actions and Unpaid Residuals.	Senator Hagan
SB 972	Break Into Place of Worship.	Senator Smith
SB 1044	Undertaking to Stay Money Judgment.	Senator Clodfelter
SB 1118	Torts by State Law Enforcement/Employees.	Senator Rand

Senator Daniel G. Clodfelter, Chair

Judiciary-1 Committee

April 26, 2005

Minutes

Senator Dan Clodfelter, Chair called the meeting to order at 10:05 a.m. with fourteen members present. He introduced Pages Robbie Ethridge from Castle Haynes, NC and Clayton Thomas from Cary, NC

SB-734 (Satisfaction of Mortgages and Deeds of Trust) Committee Substitute was introduced by Vice Chair, Senator RC Soles. Senator Julia Boseman moved for adoption of the Committee Substitute. All members voted yes. Motion carried. Senator Boseman, bill sponsor explained that the bill would amend the law governing the satisfaction and cancellation of mortgages and deeds of trust on the public record by adopting the Uniform Residential Mortgage Satisfaction Act. (See attached Bill Summary). Ms. Nancy Ferguson, Real Property Section NC Bar Association spoke on the bill. Mr., Jim Creekman, attorney with NC Bankers Association spoke on the bill. Senator's Phillip Berger, Ham Horton, Charlie Albertson and Jerry Tillman had questions. Ms. Ferguson and Mr. Creekman answered the questions. Senator Albertson moved for a Favorable Report. All members voted yes. Motion carried.

SB-972 (Break Into Place of Worship) Committee Substitute was introduced by Vice Chair, Senator RC Soles. Senator Ham Horton moved for adoption of Committee Substitute. All members voted yes. Motion carried. Senator Fred Smith, bill sponsor explained that the bill would create a new criminal offense. Breaking or entering a building that is a place for religious worship with intent to commit a felony or larceny therein would be a Class G felony. A second conviction, or if the person breaks or enters two or more places of religious worship would be a Class F felony. (See attached Bill Summary). Senator's Phillip Berger, Charlie Albertson, Andrew Brock, Richard Stevens and RC Soles had questions. Sheriff Jimmy Thornton from Sampson County spoke on the bill and answered questions. Senator Charlie Albertson moved for a Favorable Report. All members voted yes. Motion carried.

SB-911 (Class Actions and Unpaid Residuals) Committee Substitute was introduced by Vice Chair, Senator RC Soles. Senator Clark Jenkins moved for adoption of the

Committee Substitute. All members voted yes. Motion carried. Judge Ben Tennille, NC Business Court spoke on the bill in the absence of bill sponsor, Senator Kay Hagan, spoke on the bill. Senator Phillip Berger had a question. Judge Tennille answered the question. Staff attorney, Walker Reagan explained that the bill would provide that all undistributed money collected in class actions suits is to be paid to the NC State Bar for civil legal services for indigents. (See attached Bill Summary). Senator Clark Jenkins moved for a Favorable Report. Senator Richard Stevens had a question. Senator Soles stated that the bill would be displaced at this time, and re-scheduled at a future date.

Being no further business the meeting adjourned at 10:59

Senator Dan Clodfelter, Chair **Wanda Joyner, Committee Assistant**

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Daniel G. Clodfelter, Chair

Monday, May 02, 2005

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

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

S.B. **734** Satisfaction of Mortgages and Deeds of Trust.

Draft Number:	PCS55217
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comments:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Daniel G. Clodfelter, Chair

Wednesday, April 27, 2005

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

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

S.B. **763** Notary Public Public Official Recommendation.

Draft Number:	PCS15230
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

S.B. **972** Break Into Place of Worship.

Draft Number:	PCS75297
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 2

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 734
PROPOSED COMMITTEE SUBSTITUTE S734-PCS55217-RU-19

Short Title: Satisfaction of Mortgages and Deeds of Trust. (Public)

Sponsors:

Referred to:

March 22, 2005

A BILL TO BE ENTITLED

AN ACT TO AMEND ARTICLE 4 OF CHAPTER 45 RELATING TO THE SATISFACTION OF MORTGAGES AND DEEDS OF TRUST AS RECOMMENDED BY THE NORTH CAROLINA BAR ASSOCIATION.

The General Assembly of North Carolina enacts:

SECTION 1. Article 4 of Chapter 45 of the General Statutes reads as rewritten:

"Article 4.

"~~Discharge and Release.~~ Satisfaction.

"**§ 45-36.2. ~~Register of deeds includes assistants and deputies.~~Obligation of good faith.**

~~The words "register of deeds" appearing in this Article shall be interpreted to mean "register of deeds, assistant register of deeds, or deputy register of deeds.~~Every action or duty within this Article imposes an obligation of good faith in its performance or enforcement.

"**§ 45-36.3. Notification by mortgagee of satisfaction of provisions of deed of trust or mortgage, or other instrument; civil penalty.**

(a) After the satisfaction of the provisions of any deed of trust or mortgage, or other instrument intended to secure with real property the payment of money or the performance of any other obligation and registered as required by law, the holder of the evidence of the indebtedness, if it is a single instrument, or a duly authorized agent or attorney of such holder shall within 60 days:

(1) Discharge and release of record such documents and forward the cancelled documents to the grantor, trustor or mortgagor; or,

(2) Alternatively, the holder of the evidence of the indebtedness or a duly authorized agent or attorney of such holder, at the request of the grantor, trustor or mortgagor, shall forward said instrument and the deed of trust or mortgage instrument, with payment and satisfaction

acknowledged in accordance with the requirements of G.S. 45-37, to the grantor, trustor or mortgagor.

(b) Any person, institution or agent who fails to comply with this section may be required to pay a civil penalty of not more than one thousand dollars ($1,000) in addition to reasonable attorneys' fees and any other damages awarded by the court to the grantor, trustor or mortgagor, or to a subsequent purchaser of the property from the grantor, trustor or mortgagor. A five hundred dollar ($500.00) civil penalty may be recovered by the grantor, trustor or mortgagor, and a five hundred dollar ($500.00) penalty may be recovered by the purchaser of the property from the grantor, trustor or mortgagor. If that purchaser of the property consists of more than a single grantee, then the civil penalty will be divided equally among all of the grantees. A petitioner may recover damages under this section only if he has given the mortgagee, obligee, beneficiary or other responsible party written notice of his intention to bring an action pursuant to this section. Upon receipt of this notice, the mortgagee, obligee, beneficiary or other responsible party shall have 30 days, in addition to the initial 60-day period, to fulfill the requirements of this section.

(c) Should any person, institution or agent who is not the present holder of the evidence of indebtedness be required to pay a civil penalty, attorneys' fees, or other damages under this section, they will have an action against the holder of the evidence of indebtedness for all sums they were required to pay."

(d) This section applies only if the provisions of the deed of trust, mortgage, or other instrument are satisfied before October 1, 2005.

"**§ 45-36.4. Definitions.**

As used in this Article, the following terms mean:

(1) Address for giving a notification. – For the purpose of a particular type of notification, the most recent address provided in a document by the intended recipient of the notification to the person giving the notification, unless the person giving the notification knows of a more accurate address, in which case the term means that address.

(2) Day. – Calendar day.

(3) Document. – Information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(4) Electronic. – Relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(5) Entitled person. – A person liable for payment or performance of the obligation secured by the real property described in a security instrument, or the landowner.

(6) Good faith. – Honesty in fact and the observance of reasonable commercial standards of fair dealing.

(7) Landowner. – A person that, before foreclosure, has the right of redemption in the real property described in a security instrument. The term does not include a person that holds only a lien on the real property.

(8) Notification. – A document containing information required under this Article and signed by the person required to provide the information.

(9) Original parties. – With respect to a security instrument, each person named as a party to the security instrument on the face thereof as originally recorded. In identifying the original parties to a deed of trust for purposes of this Article, it is not necessary to include the original trustee or trustees named therein.

(10) Payoff amount. – The sum necessary to satisfy a secured obligation.

(11) Payoff statement. – A document containing the information specified in G.S. 45-36.7(d).

(12) Person. – An individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government, or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(13) Recording data. – The book and page number or document number that indicate where a document is recorded in the office of the register of deeds.

(14) Register of deeds. – Includes the register of deeds, assistant register of deeds, or deputy register of deeds.

(15) Satisfy. – With respect to a security instrument, to terminate the effectiveness of the security instrument.

(16) Secured creditor. – A person that holds or is the beneficiary of a security interest or that is authorized both to receive payments on behalf of a person that holds a security interest and to record a satisfaction of the security instrument upon receiving full performance of the secured obligation. The term does not include a trustee under a security instrument.

(17) Secured obligation. – An obligation the payment or performance of which is secured by a security interest.

(18) Security instrument. – An agreement, however denominated, that creates or provides for an interest in real property to secure payment or performance of an obligation, whether or not it also creates or provides for a lien on personal property. The term includes a deed of trust and a mortgage.

(19) Security interest. – An interest in real property created by a security instrument.

(20) Sign. – With present intent to authenticate or adopt a document:

a. To execute or adopt a tangible symbol; or

b. To attach to or logically associate with the document an electronic sound, symbol, or process.

(21) State. – 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.

(22) Submit for recording. – To deliver, with required fees and taxes, a document sufficient to be recorded under this Article to the register of deeds in the county in which the real property described in the related security instrument is located.

"**§ 45-36.5. Notification: manner of giving and effective date.**

(a) A person gives a notification by any of the following:

(1) Depositing it with the United States Postal Service with first-class postage paid or with a commercially reasonable delivery service with cost of delivery provided, properly addressed to the recipient's address for giving a notification.

(2) Sending it by facsimile transmission, electronic mail, or other electronic transmission to the recipient's address for giving a notification, but only if the recipient agreed to receive notification in that manner.

(3) Causing it to be received at the address for giving a notification within the time that it would have been received if given pursuant to subdivision (1) of this subsection.

(b) A notification is effective on any of the following:

(1) The day after it is deposited with a commercially reasonable delivery service for overnight delivery.

(2) Three days after it is deposited with the United States Postal Service, first-class mail with postage prepaid, or with a commercially reasonable delivery service for delivery other than by overnight delivery.

(3) The day it is given, if given pursuant to subdivision (a)(2) of this section.

(4) The day it is received, if given by a method other than as provided in subdivision (a)(1) or (2) of this section.

(c) If this Article or a notification given pursuant to this Article requires performance on or by a certain day and that day is a Saturday, Sunday, or legal holiday under the laws of this State or the United States, the performance is sufficient if performed on the next day that is not a Saturday, Sunday, or legal holiday.

"**§ 45-36.6. Document of rescission: effect; liability for wrongful recording.**

(a) In this section, "document of rescission" means a document stating that an identified satisfaction or affidavit of satisfaction of a security instrument was recorded erroneously or that a security instrument was satisfied of record erroneously, the secured obligation remains unsatisfied, and the security instrument remains in force.

(b) If a person records a satisfaction or affidavit of satisfaction of a security instrument in error or if a security instrument is satisfied of record erroneously by any other means, the person or the secured creditor may execute and record a document of rescission. Upon recording, the document rescinds an erroneously recorded satisfaction or affidavit and the erroneous satisfaction of record of the security instrument, and reinstates the security instrument.

(c) A recorded document of rescission has no effect on the rights of a person that:

(1) Records an interest in the real property described in a security instrument after the recording of the satisfaction or affidavit of satisfaction of the security instrument or the erroneous satisfaction of record of the security instrument by other means and before the recording of the document of rescission; and

(2) Would otherwise have priority over or take free of the lien created by the security instrument as reinstated under Chapter 47 of the General Statutes.

(d) A person that erroneously or wrongfully records a document of rescission is liable to any person injured thereby for the actual loss caused by the recording and reasonable attorneys' fees and costs.

"**§ 45-36.7. Payoff statement: request and content.**

(a) An entitled person, or an agent authorized by an entitled person to request a payoff statement, may give to the secured creditor a notification requesting a payoff statement for a specified payoff date not more than 30 days after the notification is given. The notification must contain all of the following:

(1) The entitled person's name.

(2) If given by a person other than an entitled person, the name of the person giving the notification and a statement that the person is an authorized agent of the entitled person.

(3) A direction whether the statement is to be sent to the entitled person or that person's authorized agent.

(4) The address to which the creditor must send the statement.

(5) Sufficient information to enable the creditor to identify the secured obligation and the real property encumbered by the security interest.

(b) If a notification under subsection (a) of this section directs the secured creditor to send the payoff statement to a person identified as an authorized agent of the entitled person, the secured creditor must send the statement to the agent, unless the secured creditor knows that the entitled person has not authorized the request.

(c) A person who gives to a secured creditor a notification requesting a payoff statement thereby represents that the person is an entitled person or the authorized agent of an entitled person. A secured creditor may rely on that representation in providing a payoff statement unless the secured creditor knows that the requesting person is neither an entitled person nor the authorized agent of an entitled person. A secured creditor has no duty to make inquiry as to whether, or to verify that, the person requesting a payoff statement is an entitled person or the authorized agent of an entitled person.

(d) Within 10 days after the effective date of a notification that complies with subsection (a) of this section, the secured creditor shall issue a payoff statement and send it as directed pursuant to subdivision (a)(3) of this section in the manner prescribed in G.S. 45-36.5 for giving a notification. A secured creditor that sends a payoff statement to the entitled person or the authorized agent may not claim that the notification did not satisfy subsection (a) of this section. If the person to whom the notification is given once held an interest in the secured obligation but has since assigned that interest, the person need not send a payoff statement but shall give (i) a

notification of the assignment to the person to whom the payoff statement otherwise would have been sent, providing the name and address of the assignee, or (ii) a notification to the person to whom the payoff statement otherwise would have been sent, stating that the recipient claims no interest in the security instrument or the secured obligation, that the secured obligation was assigned, but that the identity and address of the assignee is not known.

(e) A payoff statement must contain:

(1) The date on which it was prepared and the payoff amount as of that date, including the amount by type of each fee, charge, or other sum included within the payoff amount;

(2) The information reasonably necessary to calculate the payoff amount as of the requested payoff date, including the per diem interest amount; and

(3) The payment cutoff time, if any, the address or place where payment must be made, and any limitation as to the authorized method of payment.

(f) A payoff statement may contain the amount of any fees authorized under this section not included in the payoff amount. A secured creditor may require the payment in full of any fees authorized under this section before issuing a payoff statement.

(g) A secured creditor may not qualify a payoff amount or state that it is subject to change before the payoff date unless the payoff statement provides information sufficient to permit the entitled person or the person's authorized agent to request an updated payoff amount at no charge and to obtain that updated payoff amount during the secured creditor's normal business hours on the payoff date or the immediately preceding business day.

(h) A secured creditor must provide upon request one payoff statement without charge during any six-month period. A secured creditor may charge a fee of twenty-five dollars ($25.00) for each additional payoff statement requested during that six-month period. However, a secured creditor may not charge a fee for providing an updated payoff amount under subsection (f) of this section or a corrected payoff statement under G.S. 45-36.8(a).

(i) Unless the security instrument provides otherwise, a secured creditor is not required to send a payoff statement by means other than first-class mail. If the creditor agrees to send a statement by another means, it may charge a reasonable fee for complying with the requested manner of delivery.

(j) Except as otherwise provided in G.S. 45-36.12, if a secured creditor to which a notification has been given pursuant to subsection (a) of this section does not send a timely payoff statement that substantially complies with subsection (d) of this section, the creditor is liable to the entitled person for any actual damages caused by the failure, but not punitive damages. A creditor that does not pay the damages provided in this subsection within 30 days after receipt of a notification demanding payment shall also be liable for reasonable attorneys' fees and costs.

(k) This section does not apply unless the notification requesting a payoff statement is given on or after October 1, 2005.

"**§ 45-36.8. Understated payoff statement: correction; effect.**

(a) If a secured creditor determines that the payoff amount it provided in a payoff statement was understated, the creditor may send a corrected payoff statement. If the entitled person or the person's authorized agent receives and has a reasonable opportunity to act upon a corrected payoff statement before making payment, the corrected statement supersedes an earlier statement.

(b) A secured creditor that sends a payoff statement containing an understated payoff amount may not deny the accuracy of the payoff amount as against any person that reasonably and detrimentally relies upon the understated payoff amount.

(c) This Article does not:

(1) Affect the right of a secured creditor to recover any sum that it did not include in a payoff amount from any person liable for payment of the secured obligation; or

(2) Limit any claim or defense that a person liable for payment of a secured obligation may have under law other than this Article.

"**§ 45-36.9. Secured creditor to submit satisfaction for recording; liability for failure.**

(a) A secured creditor shall submit for recording a satisfaction of a security instrument within 30 days after the creditor receives full payment or performance of the secured obligation. If a security instrument secures a line of credit or future advances, the secured obligation is fully performed only if, in addition to full payment, the secured creditor has received a notification requesting the creditor to terminate the line of credit or containing a statement sufficient to terminate the effectiveness of the provision for future advances in the security instrument.

(b) Except as otherwise provided in G.S. 45-36.12, a secured creditor that is required to submit a satisfaction of a security instrument for recording and does not do so by the end of the period specified in subsection (a) of this section is liable to the landowner for any actual damages caused by the failure, but not punitive damages.

(c) Except as otherwise provided in subsection (d) of this section and in G.S. 45-36.12, a secured creditor that is required to submit a satisfaction of a security instrument for recording and does not do so by the end of the period specified in subsection (a) of this section, is also liable to the landowner for one thousand dollars ($1,000) and any reasonable attorneys' fees and court costs incurred if, after the expiration of the period specified in subsection (a) of this section, all of the following occur:

(1) The landowner gives the secured creditor a notification, by any method authorized by G.S. 45-36.5 that provides proof of receipt, demanding that the secured creditor submit a satisfaction for recording.

(2) The secured creditor does not submit a satisfaction for recording within 30 days after the secured creditor's receipt of the notification.

(3) The security instrument is not satisfied of record by any of the methods provided in G.S. 45-37(a) within 30 days after the secured creditor's receipt of the notification.

The right to receive the additional one thousand dollars ($1,000) is personal to the landowner who gives the secured creditor notification under this subsection, and may not be assigned.

(d) Subsection (c) of this section does not apply if the secured creditor received full payment or performance of the secured obligation before October 1, 2005.

(e) This section does not apply if the security instrument is satisfied of record by any of the methods provided in G.S. 45-37(a) within 30 days after the secured creditor receives full payment or performance of the secured obligation.

"**§ 45-36.10. Content and effect of satisfaction.**

(a) A document is a satisfaction of a security instrument if it does all of the following:

(1) Identifies the type of security instrument, the original parties to the security instrument, the recording data for the security instrument, and the office in which the security instrument is recorded.

(2) States that the person signing the satisfaction is the secured creditor.

(3) [Reserved]

(4) Contains language terminating the effectiveness of the security instrument.

(5) Is signed by the secured creditor and acknowledged as required by law for a conveyance of an interest in real property.

(b) The register of deeds shall accept for recording a satisfaction of a security instrument, unless one of the following applies:

(1) The document is submitted by a method or in a medium not authorized for registration by the register of deeds under applicable law.

(2) The document is not signed by the secured creditor and acknowledged as required by law for a conveyance of an interest in real property. The register of deeds shall not be required to verify or make inquiry concerning (i) the truth of the matters stated in any satisfaction document, or (ii) the authority of the person executing any satisfaction document to do so.

(c) The recording of a satisfaction of a security instrument does not by itself extinguish any liability of a person for payment or performance of the secured obligation.

"**§ 45-36.11. Satisfaction: form.**

No particular phrasing is required for a satisfaction of a security instrument. The following form, when properly completed, is sufficient to satisfy the requirements of G.S. 45-36.10(a):

"SATISFACTION OF SECURITY INSTRUMENT
(G.S. 45-36.10; G.S. 45-37(a)(7))

The undersigned is now the secured creditor in the security instrument identified as follows:

Type of Security Instrument: (identify type of security instrument, such as deed of trust or mortgage)

Original Grantor(s): (Identify original grantor(s), trustor(s), or mortgagor(s))

Original Secured Party(ies): (Identify the original beneficiary(ies), mortgagee(s), or secured party(ies) in the security instrument)

Recording Data: The security instrument is recorded in Book _____ at Page _____ or as document number _____ in the office of the Register of Deeds for _____ County, North Carolina.

This satisfaction terminates the effectiveness of the security instrument.

Date: _____ _____

(Signature of secured creditor)

[Acknowledgment before officer authorized to take acknowledgments]"

"**§ 45-36.12. Limitation of secured creditor's liability.**

A secured creditor is not liable under this Article if it:

(1) Established a reasonable procedure to achieve compliance with its obligations under this Article;

(2) Complied with that procedure in good faith; and

(3) Was unable to comply with its obligations because of circumstances beyond its control.

"**§ 45-36.13. Eligibility to serve as satisfaction agent.**

No person other than an attorney licensed to practice law in the State of North Carolina may serve as a satisfaction agent under this Article.

"**§ 45-36.14. Affidavit of satisfaction: notification to secured creditor.**

(a) If a secured creditor has not submitted for recording a satisfaction of a security instrument and the security instrument has not been satisfied of record by any of the methods provided by G.S. 45-37(a) within the period specified in G.S. 45-36.9(a), a satisfaction agent acting for and with authority from the landowner may give the secured creditor a notification that the satisfaction agent intends to submit for recording an affidavit of satisfaction of the security instrument. The notification must include all of the following:

(1) The identity and mailing address of the satisfaction agent.

(2) Identification of the security instrument for which a recorded satisfaction is sought, including the names of the original parties to, and the recording data for, the security instrument.

(3) A statement that the satisfaction agent has reasonable grounds to believe that:

a. The person to which the notification is being given is the secured creditor; and

b. The secured creditor has received full payment or performance of the secured obligation.

(4) A statement that the security instrument has not been satisfied of record.

(5) A statement that the satisfaction agent, acting with the authorization of the owner of the real property described in the security instrument, intends to sign and submit for recording an affidavit of satisfaction of

the security instrument unless, within 30 days after the effective date of the notification:

a. The secured creditor submits a satisfaction of the security instrument for recording;

b. The satisfaction agent receives from the secured creditor a notification stating that the secured obligation remains unsatisfied;

c. The satisfaction agent receives from the secured creditor a notification stating that the secured creditor has assigned the security instrument and identifying the name and address of the assignee; or

d. The security instrument is satisfied of record by any of the methods provided in G.S. 45-37(a).

(b) A notification under subsection (a) of this section must be sent by a method authorized by G.S. 45-36.5 that provides proof of receipt to the secured creditor's address for giving a notification for the purpose of requesting a payoff statement or, if the satisfaction agent cannot ascertain that address, to the secured creditor's address for notification for any other purpose.

(c) This Article does not require a person to agree to serve as a satisfaction agent.

"**§ 45-36.15. Affidavit of satisfaction: authorization to submit for recording.**

(a) Subject to subsections (b) and (c) of this section, a satisfaction agent may sign and submit for recording an affidavit of satisfaction of a security instrument complying with G.S. 45-36.16 if:

(1) The secured creditor has not, to the knowledge of the satisfaction agent, submitted for recording a satisfaction of a security instrument or otherwise caused the security instrument to be satisfied of record pursuant to any of the methods provided in G.S. 45-37(a) within 30 days after the effective date of a notification complying with G.S. 45-36.14(a); or

(2) The secured creditor authorizes the satisfaction agent to do so.

(b) A satisfaction agent may not sign and submit for recording an affidavit of satisfaction of a security instrument if it has received a notification under G.S. 45-36.14(a)(5)b. stating that the secured obligation remains unsatisfied.

(c) If a satisfaction agent receives a notification under G.S. 45-36.14(a)(5)c. stating that the security instrument has been assigned, the satisfaction agent may not submit for recording an affidavit of satisfaction of the security instrument without:

(1) Giving a notification of intent to submit for recording an affidavit of satisfaction to the identified assignee at the identified address; and

(2) Complying with G.S. 45-36.14 with respect to the identified assignee.

"**§ 45-36.16. Affidavit of satisfaction: content.**

An affidavit of satisfaction of a security instrument must comply with all of the following:

(1) Identify the type of security instrument, the original parties to the security instrument, the secured creditor, the recording data for the

security instrument, and the office in which the security instrument is recorded.

(2) State the basis upon which the person signing the affidavit is a satisfaction agent.

(3) [Reserved]

(4) State that the person signing the affidavit has reasonable grounds to believe that the secured creditor has received full payment or performance of the secured obligation.

(5) State that the person signing the affidavit, acting with the authority of the owner of the real property described in the security instrument, gave notification to the secured creditor of its intention to sign and submit for recording an affidavit of satisfaction.

(6) Describe the method by which the person signing the affidavit gave notification in compliance with this Article.

(7) State that:

a. More than 30 days have elapsed since the effective date of that notification, and the person signing the affidavit has no knowledge that the secured creditor has submitted a satisfaction for recording and has not received a notification that the secured obligation remains unsatisfied; or

b. The secured creditor authorized the person signing the affidavit to sign and record an affidavit of satisfaction.

(8) Be signed and acknowledged as required by law for a conveyance of an interest in real property.

"**§ 45-36.17. Affidavit of satisfaction: form.**

No particular phrasing of an affidavit of satisfaction is required. The following form of affidavit, when properly completed, is sufficient to satisfy the requirements of G.S. 45-36.16:

"AFFIDAVIT OF SATISFACTION

_____

(Date of Affidavit)

The undersigned hereby states as follows:

1. I am an attorney licensed to practice law in the State of North Carolina.

2. I am signing this Affidavit of Satisfaction to evidence full payment or performance of the obligations secured by real property covered by the following security instrument (the "security instrument") currently held by _____ (the "secured creditor"):

Type of security instrument:

Original parties to security instrument:

County and state of recording:

Recording data for security instrument:

3. I have reasonable grounds to believe that the secured creditor has received full payment or performance of the balance of the obligations secured by the security instrument.

4. With the authorization of the owner of the real property described in the security instrument, I gave notification to the secured creditor by method authorized by G.S. 45-36.5 that provides proof of receipt that I would sign and record an affidavit of satisfaction of the security instrument if, within 30 days after the effective date of the notification, the secured creditor did not submit a satisfaction of the security interest for recording or give notification that the secured obligation remains unsatisfied.

5. [Check appropriate box]

[ ] The 30-day period identified in paragraph 4 has elapsed, I have no knowledge that the secured creditor has submitted a satisfaction for recording, and I have not received notification that the secured obligation remains unsatisfied.

[ ] The secured creditor responded to the notification in paragraph 4 by authorizing me to execute and record this affidavit of satisfaction.

_____

(Signature of Satisfaction Agent)

[Acknowledgment before officer authorized to take acknowledgments]"

"**§ 45-36.18. Affidavit of satisfaction: effect.**

(a) Upon recording, an affidavit substantially complying with the requirements of G.S. 45-36.16 constitutes a satisfaction of the security instrument described in the affidavit.

(b) The recording of an affidavit of satisfaction of a security instrument does not by itself extinguish any liability of a person for payment or performance of the secured obligation.

(c) The register of deeds may not refuse to accept for recording an affidavit of satisfaction of a security instrument unless:

(1) The affidavit is submitted by a method or in a medium not authorized for registration by the register of deeds under applicable law; or

(2) The affidavit is not signed by the satisfaction agent and acknowledged as required by law for a conveyance of an interest in real property. The register of deeds shall not be required to verify or make inquiry concerning (i) the truth of the matters stated in any affidavit of

satisfaction, or (ii) the authority of the person executing any affidavit of satisfaction to do so.

"**§ 45-36.19. Liability of satisfaction agent.**

(a) Except as otherwise provided in subsection (b) of this section, a satisfaction agent or any person purporting to be a satisfaction agent that records or submits for recording an affidavit of satisfaction of a security instrument erroneously or with knowledge that the statements contained in the affidavit are false is liable to the secured creditor for any actual damages caused by the recording and reasonable attorneys' fees and costs.

(b) A satisfaction agent that records or submits for recording an affidavit of satisfaction of a security instrument erroneously is not liable if the agent properly complied with this Article and the secured creditor did not respond in a timely manner to the notification pursuant to G.S. 45-36.14(a)(5).

(c) If a satisfaction agent or any person purporting to be a satisfaction agent records or submits for recording an affidavit of satisfaction of a security instrument with knowledge that the statements contained in the affidavit are false, this section does not preclude any of the following:

(1) A court from awarding punitive damages on account of the conduct.

(2) The secured creditor from proceeding against the satisfaction agent or person purporting to be a satisfaction agent under law of this State other than this Article.

(3) The enforcement of any criminal statute prohibiting the conduct.

"**§ 45-36.20. Trustee's satisfaction of deed of trust: content and effect.**

(a) Upon recording, a trustee's satisfaction substantially complying with the requirements of this section constitutes a satisfaction of the deed of trust described in the trustee's satisfaction.

(b) The recording of a trustee's satisfaction does not by itself extinguish any liability of a person for payment or performance of the secured obligation.

(c) This section applies only if the security instrument is a deed of trust. This section is not exclusive. Deeds of trust may also be satisfied of record by methods other than the filing of a trustee's satisfaction.

(d) Document is a trustee's satisfaction of a deed of trust if it complies with all of the following:

(1) Identifies the original parties to the deed of trust, the recording data for the deed of trust, and the office in which the deed of trust is recorded.

(2) States that the person signing the trustee's satisfaction is then serving as trustee or substitute trustee under the terms of the deed of trust.

(3) Contains language terminating the effectiveness of the deed of trust.

(4) Is signed by the trustee or substitute trustee then serving under the terms of the deed of trust and acknowledged as required by law for a conveyance of an interest in real property.

(e) The register of deeds shall accept for recording a trustee's satisfaction of a deed of trust, unless:

(1) The trustee's satisfaction is submitted by a method or in a medium not authorized for registration by the register of deeds under applicable law; or

(2) The trustee's satisfaction is not signed by the trustee or substitute trustee and acknowledged as required by law for a conveyance of an interest in real property. The register of deeds shall not be required to verify or make inquiry concerning (i) the truth of the matters stated in any trustee's satisfaction, or (ii) the authority of the person executing any trustee's satisfaction to do so.

"**§ 45-36.21. Trustee's satisfaction of deed of trust: form.**

No particular phrasing is required for a trustee's satisfaction of a deed of trust. The following form, when properly completed, is sufficient to satisfy the requirements of G.S. 45-36.20:

"TRUSTEE'S SATISFACTION OF DEED OF TRUST
(G.S. 45-36.20; G.S. 45-37(a)(7))

The undersigned is now serving as the trustee or substitute trustee under the terms of the deed of trust identified as follows:

Original Grantor(s): (Identify original grantor(s) or trustor(s))

Original Secured Party(ies): (Identify the original beneficiary(ies) or secured party(ies) in the deed of trust)

Recording Data: The deed of trust is recorded in Book _____ at Page _____ or as document number _____ in the office of the Register of Deeds for _____ County, North Carolina.

This satisfaction terminates the effectiveness of the deed of trust.

Date: _____ _____
(Signature of trustee or substitute trustee)

[Acknowledgment before officer authorized to take acknowledgments]"

"§ 45-37. ~~Discharge of record of mortgages, deeds of trust and other instruments.~~**Satisfaction of record of security instruments.**

(a) Subject to the provisions of G.S. 45-36.9(a) and G.S. 45-73 relating to ~~secured~~ security instruments which secure future advances, ~~any deed of trust or mortgage or other~~ 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) ~~By acknowledgment of the satisfaction of the provisions of such deed of trust, mortgage or other instrument in the presence of the register of deeds by:~~

~~a. The trustee,~~

~~b. The mortgagee,~~

~~c. The legal representative of a trustee or mortgagee, or~~

~~d. A duly authorized agent or attorney of any of the above.~~

~~The register of deeds is not required to verify or make inquiry concerning the authority of the person acknowledging the satisfaction to do so. Upon acknowledgment of satisfaction, the register of deeds shall record a record of satisfaction as described in G.S. 45-37.2, and may forthwith make upon the margin of the record of such deed of trust, mortgage or other instrument an entry of such acknowledgment of satisfaction which shall be signed by the trustee, mortgagee, legal representative, agent or attorney and witnessed by the register of deeds, who shall also affix his name thereto.~~

Security instruments satisfied of record pursuant to this subdivision as it was in effect prior to October 1, 2005, shall be deemed satisfied of record, discharged, and released.

(2) By ~~exhibition of any deed of trust, mortgage or other~~ presentation of any original security instrument accompanied with the original bond, note, or other instrument thereby secured to the register of deeds, with the endorsement of payment and satisfaction appearing thereon and made by:

a. The ~~obligee,~~secured creditor,

b. The ~~mortgagee,~~trustee or substitute trustee, if the security instrument is a deed of trust,

~~c. The trustee,~~

~~d.~~c. An assignee of the ~~obligee, mortgagee, or trustee, or~~secured creditor, or

~~e.~~d. ~~Any chartered banking institution, or~~ Any bank, savings and loan association, ~~national or state, or credit union, qualified to do business in and having an office~~ savings bank, or credit union chartered under the laws of this or any other state or the United States having an office or branch in the State of North Carolina, when so endorsed in the name of the institution by an officer thereof.

The register of deeds is not required to verify or make inquiry concerning the authority of the person making the endorsement of payment and satisfaction to do so. ~~Upon exhibition of the instruments,~~Only upon presentation of the original instruments with endorsement of payment and satisfaction appearing thereon shall the register of deeds ~~shall cancel the mortgage, deed of trust or other instrument by recording~~ record a record of satisfaction as described in

~~G.S. 45-37.2, and may make an entry of satisfaction on the margin of the record.~~ G.S. 45-37.2(b). The person so claiming satisfaction, performance or discharge of the debt or other obligation may retain possession of all of the instruments ~~exhibited.~~presented. ~~The exhibition of the mortgage, deed of trust or other~~The presentation of the security instrument alone to the register of deeds, with endorsement of payment, satisfaction, performance or discharge, shall be sufficient if the ~~mortgage, deed of trust or other~~ security instrument itself sets forth the obligation secured or the performance of any other obligation and does not call for or recite any note, bond or other instrument secured by it.

(3) By ~~exhibiting~~ presentation to the register of deeds by:

a. The grantor,

b. The mortgagor, or

c. An agent, attorney or successor in title of the grantor or mortgagor

of any ~~mortgage, deed of trust or other~~ original security instrument intended to secure the payment of money or the performance of any other obligation, together with the original bond, note or other instrument secured thereby, or by ~~exhibition of the mortgage, deed of trust or other~~ presentation of the original security instrument alone if such instrument itself sets forth the obligation secured or other obligation to be performed and does not call for or recite any note, bond or other instrument secured by it, if at the time of ~~exhibition,~~presentation, all such instruments are more than 10 years old counting from the maturity date of the last obligation secured. If the instrument or instruments so ~~exhibited~~ presented have an endorsement of partial payment, satisfaction, performance or discharge within the said period of 10 years, the period of 10 years shall be counted from the date of the most recent endorsement.

~~The register of deeds shall cancel the mortgage, deed of trust, or other instrument by recording~~ Only upon presentation of the original instruments shall the register of deeds record a record of satisfaction as described in ~~G.S. 45-37.2, and may make proper entry of cancellation and satisfaction of said instrument on the margin of the record where the same is recorded, whether there be any such entries on the original papers or not.~~G.S. 45-37.2(b).

(4) By ~~exhibition~~ presentation to the register of deeds of any ~~deed of trust~~ original security instrument given to secure the bearer or holder of any negotiable instruments transferable by delivery, together with all the evidences of indebtedness secured thereby, marked paid and satisfied in full and signed by the bearer or holder thereof.

~~Upon exhibition of the deed of trust,~~ Only upon presentation of the original security instruments, and the originals of evidences of

indebtedness properly ~~marked,~~marked shall the register of deeds ~~shall cancel such deed of trust by recording~~ record a record of satisfaction as described in ~~G.S. 45-37.2, and may make an entry of satisfaction upon the margin of the record, which record, or entry if made,~~ G.S. 45-37.2(b), which record of satisfaction shall be valid and binding upon all persons, if no person rightfully entitled to the ~~deed of trust~~ security instrument or evidences of indebtedness has previously notified the register of deeds ~~in writing~~by means of a written affidavit of the loss or theft of the security instrument or evidences of indebtedness and has caused the register of deeds to record the ~~notice or~~affidavit of loss or theft ~~in~~ as a separate document, as required by G.S. 161-14.1.

Upon receipt of ~~written notice~~an affidavit of loss or theft of the ~~deed of trust~~ security instrument or evidences of indebtedness that identifies the security instrument, the original parties to the security instrument, and the recording data for the security instrument, the register of deeds shall record a record of satisfaction, as described in ~~G.S. 45-37.2, which in this case shall consist of a rerecording of the record of the deed of trust containing the marginal entry and may make on the record of the deed of trust concerned a marginal entry in writing thereof, with the date of receipt of the notice.~~G.S. 45-37.2(b). The ~~deed of trust~~ security instrument shall not be ~~canceled~~ presented for satisfaction after such recording of a record of satisfaction or marginal entry until the ownership of said instrument shall have been lawfully determined. Nothing in this subdivision (4) shall be construed to impair the negotiability of any instrument otherwise properly negotiable, nor to impair the rights of any innocent purchaser for value thereof.

~~Every entry of acknowledgment of satisfaction or of satisfaction made or witnessed by the register of deeds as provided in subdivision (a)(1) shall operate and have the same effect to release and discharge all the interest of such trustee, mortgagee or representative in such deed or mortgage as if a deed of release or reconveyance thereof had been duly executed and recorded.~~

(5) ~~By exhibition to the register of deeds of a notice of satisfaction of a deed of trust, mortgage, or other instrument which has been acknowledged by the trustee or the mortgagee before an officer authorized to take acknowledgments. The notice of satisfaction shall be substantially in the form set out in G.S. 47-46.1. The notice of satisfaction shall recite the names of all parties to the original instrument, the amount of the obligation secured, the date of satisfaction of the obligation, and a reference by book and page number to the record of the instrument satisfied. The notice of satisfaction shall be accompanied by the deed of trust, mortgage, or~~

~~other instrument, or a copy of the instrument, for verification and indexing purposes, which shall not be recorded with the notice.~~

~~Upon exhibition of the notice of satisfaction, the register of deeds shall record the notice of satisfaction and cancel the deed of trust, mortgage, or other instrument as required by G.S. 45-37.2. No fee shall be charged for recording any documents or certifying any acknowledgments pursuant to this subdivision. The register of deeds shall not be required to verify or make inquiry concerning the authority of the person executing the notice of satisfaction to do so.~~

Security instruments satisfied of record pursuant to this subdivision as it was in effect prior to October 1, 2005, shall be deemed satisfied of record, discharged, and released.

(6) ~~By exhibition to the register of deeds of a certificate of satisfaction of a deed of trust, mortgage, or other instrument that has been acknowledged before an officer authorized to take acknowledgments by the owner of the note, bond, or other evidence of indebtedness secured by the deed of trust or mortgage. The certificate of satisfaction shall be accompanied by the note, bond, or other evidence of indebtedness, if available, with an endorsement of payment and satisfaction by the owner of the note, bond, or other evidence of indebtedness. If such evidence of indebtedness cannot be produced, an affidavit, hereafter referred to as an "affidavit of lost note", signed by the owner of the note, bond, or other evidence of indebtedness, shall be delivered to the register of deeds in lieu of the evidence of indebtedness certifying that the debt has been satisfied and stating: (i) the date of satisfaction; (ii) that the note, bond, or other evidence of indebtedness cannot be found; and (iii) that the person signing the affidavit is the current owner of the note, bond, or other evidence of indebtedness. The certificate of satisfaction shall be substantially in the form set out in G.S. 47-46.2 and shall recite the names of all parties to the original instrument, the amount of the obligation secured, the date of satisfaction of the obligation, and a reference by book and page number to the record of the instrument satisfied. The affidavit of lost note, if necessary, shall be substantially in the form set out in G.S. 47-46.3. The certificate of satisfaction shall be accompanied by the deed of trust, mortgage, or other instrument, or a copy of the instrument, for verification and indexing purposes, which shall not be recorded with the certificate.~~

~~Upon exhibition of the certificate of satisfaction and accompanying evidence of indebtedness endorsed paid and satisfied, or upon exhibition of an affidavit of lost note, the register of deeds shall record the certificate of satisfaction and either the accompanying evidence of indebtedness or the affidavit of lost note, and shall cancel the deed of trust, mortgage, or other instrument as required by G.S. 45-37.2. No~~

~~fee shall be charged for recording any documents or certifying any acknowledgments pursuant to this subdivision. The register of deeds shall not be required to verify or make inquiry concerning the authority of the person executing the certificate of satisfaction to do so.~~

Security instruments satisfied of record pursuant to this subdivision as it was in effect prior to October 1, 2005, shall be deemed satisfied of record, discharged, and released.

(7) By recording:

a. A satisfaction document that satisfies the requirements of G.S. 45-36.10,

b. An affidavit of satisfaction that satisfies the requirements of G.S. 45-36.16, or

c. A trustee's satisfaction that satisfies the requirements of G.S. 45-36.20, but only if the security instrument is a deed of trust.

The register of deeds shall not be required to verify or make inquiry concerning (i) the truth of the matters stated in any satisfaction document, affidavit of satisfaction, or trustee's satisfaction, or (ii) the authority of the person executing any satisfaction document, affidavit, or trustee's satisfaction to do so.

(b) It shall be conclusively presumed that the conditions of any ~~deed of trust, mortgage or other~~ security instrument securing the payment of money or securing the performance of any other obligation or obligations have been complied with or the debts secured thereby paid or obligations performed, as against creditors or purchasers for valuable consideration from the mortgagor or grantor, from and after the expiration of 15 years from whichever of the following occurs last:

(1) The date when the conditions of ~~such~~ the security instrument were required by its terms to have been performed, or

(2) The date of maturity of the last installment of debt or interest secured thereby;

provided that the holder of the indebtedness secured by ~~such~~ the security instrument or party secured by any provision thereof may file an affidavit with the register of deeds which affidavit shall specifically state:

(1) The amount of debt unpaid, which is secured by ~~said~~ the security instrument; or

(2) In what respect any other condition thereof shall not have been complied with; or

may record a separate instrument signed by the ~~holder or party~~ secured creditor and witnessed by the register of deeds stating:

(1) Any payments that have been made on the indebtedness or other obligation secured by ~~such~~ the security instrument including the date and amount of payments and

(2) The amount still due or obligations not performed under the security instrument.

~~Whenever practical, the register of deeds may also enter the information contained in the separate instrument on the margin of the record of the instrument.~~ The effect of the filing of the affidavit or ~~of the instrument recorded~~the recording of a separate instrument made as herein provided shall be to postpone the effective date of the conclusive presumption of satisfaction to a date 15 years from the filing of the affidavit or from the recording of the ~~instrument or the making of the notation.~~separate instrument. There shall be only one postponement of the effective date of the conclusive presumption provided for herein. The register of deeds shall record and index the affidavit provided for herein ~~and shall record a~~or the separate ~~instrument, as required by G.S. 161-14.1, making reference to the filing of such affidavit and to the book and page where the affidavit is recorded. Whenever practical, the register of deeds may also make such a reference on the margin of the record of the deed of trust, mortgage, or other instrument referred to.~~instrument made as herein provided as a subsequent instrument in accordance with G.S. 161-14.1. This subsection shall not apply to any ~~deed, mortgage, deed of trust or other~~ security instrument made or given by any railroad company, or to any agreement of conditional sale, equipment trust agreement, lease, chattel mortgage or other instrument relating to the sale, purchase or lease of railroad equipment or rolling stock, or of other personal property.

(c) Repealed by Session Laws 1991, c. 114, s. 4.

~~(d) For the purposes of this section "register of deeds" means the register of deeds, his deputies or assistants of the county in which the mortgage, deed of trust, or other instrument intended to secure the payment of money or performance of other obligation is registered.~~

(e) Any transaction subject to the provisions of the Uniform Commercial Code, Chapter 25 of the General Statutes, is controlled by the provisions of that act and not by this section.

(f) Whenever this section requires a signature or endorsement, that signature or endorsement shall be followed by the name of the person signing or endorsing the document printed, stamped, or typed so as to be clearly legible. ~~The register of deeds may refuse to accept any document when the provisions of this subsection have not been met.~~

(g) The satisfaction of record of a security instrument pursuant to this section shall operate and have the same effect as a duly executed and recorded deed of release or reconveyance of the property described in the security instrument and shall release and discharge (i) all the interest of the secured creditor in the real property arising from the security instrument and, (ii) if the security instrument is a deed of trust, all the interest of the trustee or substitute trustee in the real property arising from the deed of trust.

"§ 45-37.1. Validation of certain entries of cancellation made by beneficiary or assignee instead of trustee.

In all cases where, prior to January 1, 1930, it appears from the margin or face of the record in the office of the register of deeds of any county in this State that the original beneficiary named in any deed of trust, trust indenture, or other instrument intended to secure the payment of money and constituting a lien on real estate, or his assignee of

record, shall have made an entry purporting to fully satisfy and discharge the lien of such instrument, and such entry has been signed by the original payee and beneficiary in said deed of trust, or other security instrument, or by his assignee of record, or by his or their properly constituted officer, agent, attorney, or legal representatives, and has been duly witnessed by the register of deeds or his deputy, all such entries of cancellation and satisfaction are hereby validated and made full, sufficient and complete to release, satisfy and discharge the lien of such instrument, and shall have the same effect as if such entry had been made and signed by the trustee named in said deed of trust, or other security instrument, or by his duly appointed successor or substitute.

"**§ 45-37.2. Recording satisfactions of ~~deeds of trust and mortgages.~~security instruments.**

(a) When a ~~notice of~~ satisfaction document, affidavit of satisfaction, or trustee's satisfaction is recorded pursuant to ~~G.S. 45-37(a)(5) or a certificate of satisfaction is recorded pursuant to G.S. 45-37(a)(6),~~ G.S. 45-37(a)(7), the register of deeds shall ~~make an entry of satisfaction on the notice or certificate and~~ record and index the ~~instrument.~~instrument in accordance with G.S. 161-14.1. No fee shall be charged by the register of deeds for recording a satisfaction document, affidavit of satisfaction, or a trustee's satisfaction.

(b) When a ~~deed of trust, mortgage, or other~~ security instrument is satisfied of record by a method other than by means of ~~a notice of satisfaction or certificate of satisfaction,~~ recording a satisfaction document, satisfaction affidavit, or trustee's satisfaction pursuant to G.S. 45-37(a)(7), the register of deeds shall record and index in accordance with G.S. 161.14.1 a record of satisfaction ~~consisting of either a separate instrument or all or a portion of the original deed of trust or mortgage rerecorded, and shall make the appropriate entry of satisfaction as provided in G.S. 45-37 on each~~ as provided for in this subsection. ~~record of satisfaction. A separate instrument or original deed of trust or mortgage rerecorded pursuant to this subsection shall contain (i) names of all parties to the original instrument, (ii) the amount of the obligation secured, (iii) the date of satisfaction of the obligation, (iv) a reference by book and page number to the record of the instrument satisfied, and (v) the date of recording the notice of satisfaction.~~If the security instrument is being satisfied of record pursuant to G.S. 45-37(a)(2), the record of satisfaction may consist of either (i) all or a portion of the original security instrument rerecorded as described in subdivision (1) of this subsection or (ii) a separate instrument as described in subdivision (2) of the subsection. In all other cases, the record of satisfaction shall consist of a separate instrument as described in subdivision (2) of this subsection. No fee shall be charged by the register of deeds for recording a record of satisfaction.

(1) If the security instrument is being satisfied of record pursuant to G.S. 45-37(a)(2), all or a portion of the security instrument rerecorded is a sufficient record of satisfaction if it identifies the security instrument, the original parties to the security instrument, and the recording data for the security instrument as originally recorded. In addition, the rerecorded security instrument must contain either (i) an endorsement of payment and satisfaction made by a person authorized

under G.S. 45-37(a)(2) to make such an endorsement, or (ii) an endorsement signed by the register of deeds that states substantially the following: "This security instrument is satisfied of record pursuant to G.S. 45-37(a)(2), the original security instrument and secured obligations having been presented to me with appropriate endorsement of payment and satisfaction appearing thereon as required by law."

(2) A separate instrument is a sufficient record of satisfaction if it complies with all of the following:

a. Identifies the security instrument, the original parties to the security instrument, the recording data for the security instrument, and the office in which the security instrument is recorded.

b. States the statutory authority pursuant to which the security instrument is being satisfied of record.

c. Contains language terminating the effectiveness of the security instrument.

d. Is signed by the register of deeds.

No particular phrasing is required for a record of satisfaction. The following form, when properly completed, is sufficient to satisfy the requirements of this subdivision:

"RECORD OF SATISFACTION
(G.S. 45-37.2)

This Record of Satisfaction applies to the following security instrument:

Type of security instrument: (identify type of security instrument, such as deed of trust or mortgage)

Original Grantor(s): (Identify original grantor(s), trustor(s), or mortgagor(s))

Original Secured Party(ies): (Identify the original beneficiary(ies), mortgagee(s), or secured party(ies) in the security instrument)

Recording Data: The security instrument is recorded in Book _____ at Page _____ or as document number _____ in the office of the Register of Deeds for _____ County, North Carolina.

This Record of Satisfaction terminates the effectiveness of the security instrument pursuant to the following statutory authority: (check applicable box)

[ ] G.S. 45-37(a)(2), the original security instrument and secured obligations having been presented to me with appropriate endorsement of payment and satisfaction appearing thereon as required by law.

[ ] G.S. 45-37(a)(3), the original security instrument and secured obligations having been presented to me, each such instrument being more than 10 years old as provided by law.

[ ] G.S. 45-37(a)(4), the original security instrument and all negotiable instruments transferable by delivery secured thereby having been presented to me, each having been marked paid and satisfied in full by the bearer or holder thereof.

Other: (specify)

Date: _____ _____

(Signature of register of deeds)".

~~(c) Whenever it is practical to do so, the register of deeds may make a marginal notation of satisfaction in addition to making the recordation required by this section.~~

"**§ 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 ~~and, whenever it is practical to do so, may also enter upon the margin of the record of the deed of trust or mortgage of the fact that such foreclosure and~~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 and which was not sold, and may make an additional notation indicating the same, whenever practical.~~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 ~~all~~ the original parties to the original ~~instrument,~~instrument foreclosed, ~~the amount of the obligation secured, a reference by book and page number to the record of~~ and the recording data for the instrument ~~foreclosed, and the date of recording the notice of foreclosure.~~foreclosed. A notice of forfeiture shall be indexed by the register of deeds in accordance with G.S. 161.14.1.

"**§ 45-39:** Repealed by Session Laws 1949, c. 720, s. 5.

~~"§ 45-40. Register to enter satisfaction on index.~~

~~When satisfaction of the provisions of any deed of trust or mortgage is acknowledged and entry of such acknowledgment of satisfaction is made upon the margin of the record of said deed of trust or mortgage, or when the register of deeds or his deputy shall cancel the mortgage or other instrument by entry of satisfaction, then~~

~~the register of deeds or his deputy shall enter upon the alphabetical grantor index kept by him, as required by law, and opposite the names of the grantor and grantee and on a line with the names of said grantor and grantee, the words "satisfied mortgage," if the instrument of which satisfaction has been acknowledged or entered is a mortgage, and the words "satisfied deed of trust," if the instrument of which satisfaction has been acknowledged or entered is a deed of trust, or, in lieu of the entries herein provided, the register of deeds or his deputy may denote satisfaction in the grantor index by using a capital "C" or the word "Cancelled," or the word "Satisfied." This statute shall not apply to counties using computerized indexing or to counties in which a parcel identifier index is established pursuant to G.S. 161-22.2.~~

"§ 45-41. Recorded deed of release of mortgagee's representative.

The personal representative of any mortgagee or trustee in any mortgage or deed of trust which has heretofore or which may hereafter be registered in the manner required by the laws of this State may satisfy of record, discharge and release the same and all property thereby conveyed by deed of quitclaim, release or conveyance executed, acknowledged and recorded as is now prescribed by law for the execution, acknowledgment and registration of deeds and mortgages in this State.

"§ 45-42. Satisfaction of corporate mortgages by corporate officers.

All ~~mortgages and deeds in trust~~ security instruments executed to a corporation may be satisfied and so marked of record as by law provided for the satisfaction of ~~mortgages and deeds in trust,~~ security instruments, by any officer of the corporation indicating the office held. For the purposes of recordation and ~~cancellation,~~ satisfaction, such signature shall be deemed to be a certification by the signer that he is an officer and is authorized to execute the satisfaction on behalf of such corporation. Where ~~mortgages or deeds in trust~~ security instruments were marked "satisfied" on the records before the twenty-third day of February, 1909, by any president, secretary, treasurer or cashier of any corporation by such officer writing his own name and affixing thereto the title of his office in such corporation, such satisfaction is validated, and is as effective to all intents and purposes as if a deed of release duly executed by such corporation had been made, acknowledged and recorded.

"§ 45-42.1. Corporate cancellation of lost mortgages by register of deeds.

Upon affidavit of the secretary and treasurer of a corporation showing that the records of such corporation show that such corporation has fully paid and satisfied all of the notes secured by a ~~mortgage or deed of trust~~ security instrument executed by such corporation and such payment and satisfaction was made more than 25 years ago, and that such ~~mortgage or deed of trust~~ security instrument was made to a corporation which ceased to exist more than 25 years ago, and such affidavit shall further state that the records of such corporation show that no payments have been made on such ~~mortgage~~ secured obligation by the corporation executing such ~~mortgage or deed of trust~~ security instrument for 25 years, the register of deeds of the county in which such ~~mortgage or deed of trust~~ security instrument is recorded is authorized ~~and empowered to file such affidavit and record the same in his office and to record a separate instrument making reference to the filing of such affidavit and to the book and page where the affidavit is recorded.~~to record the affidavit. ~~The register of deeds may also make reference thereto~~

~~on the margin of the record in which the said mortgage or deed of trust is recorded, and, upon recording such instrument or making such entry, the said mortgage or deed of trust shall be deemed to be cancelled and satisfied and the said register of deeds is hereby authorized to cancel the same of record:~~The register of deeds shall index the affidavit according to G.S. 161-22 using the names of parties stated in the affidavit and shall make reference to the recording data of the original security instrument as stated in the affidavit opposite the name of each party so indexed. Upon recording such affidavit, the said security instrument shall be deemed to be cancelled and satisfied of record: Provided, that this section shall not apply to any mortgagor corporation except those in which the State of North Carolina owns more than a majority of the capital stock and shall not apply to any ~~mortgage or deed of trust~~ security instrument in which the principal amount secured thereby exceeds the sum of fifteen thousand dollars ($15,000): Provided, such cancellation shall not bar any action to foreclose such ~~mortgage or deed of trust~~ security instrument instituted within 90 days after the same is cancelled."

SECTION 2. G.S. 47-14 reads as rewritten:

"**§ 47-14. Register of deeds to ~~pass on certificate~~ verify the presence of proof or acknowledgement and register instruments; order by judge; instruments to which register of deeds is a party.**

(a) ~~When the proof or acknowledgment of the execution of any instrument, required or permitted by law to be registered, is had before any other official than the register of deeds of the county in which the instrument is offered for registration, the register of deeds shall examine the certificate or certificates of proof or acknowledgment appearing upon the instrument, and if it appears on the face of the instrument that the execution thereof by one or more of the signers has been duly proved or acknowledged and the certificate or certificates to that effect are in due form, he shall so certify, and shall register the instrument, together with the certificates. No certification is required when the proof or acknowledgment is before the register of deeds of the county in which the instrument is offered for registration.~~ 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 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, or (iii) the legal sufficiency of any document presented for registration.

(b) If a register of deeds denies registration pursuant to subsection (a), the person offering the instrument for registration may present the instrument to a judge, as provided in subsection (c), and ~~he shall examine the certificate or certificates of proof or~~

~~acknowledgment appearing upon the instrument, and if it appears on the face of the instrument that the execution thereof by one or more of the signers has been duly proved or acknowledged and the certificates to that effect are in due form, he~~the judge shall determine that if the instrument requires proof or acknowledgement and if the signature of one or more signers has been proved or acknowledged before an officer authorized to take proofs and acknowledgements, and if said proof or acknowledgement includes the officer's signature and commission expiration date and official seal, if required, the judge shall so adjudge, and shall order the instrument to be registered, together with the certificates, and the register of deeds shall register them accordingly.

(c) ~~When a district court has been established in the district including the county in which the instrument is to be registered, application~~Application for an order for registration pursuant to subsection (b) of this section shall be made to any judge of the district court in the district including the county in which the instrument is to be registered. ~~Until a district court has been established, application for an order for registration pursuant to subsection (b) may be made to a resident judge of superior court residing in the district including the county in which the instrument is to be registered, a judge regularly holding the superior courts of the district including the county in which the instrument is to be registered, any judge holding a session of superior court, either civil or criminal, in the district including the county in which the instrument is to be registered, or a special judge of superior court residing in the district including the county in which the instrument is to be registered.~~

..."

SECTION 3. G.S. 47-37 is repealed.

SECTION 4. G.S. 47-46 is repealed.

SECTION 5. G.S. 47-46.1 reads as rewritten:

"**§ 47-46.1. Notice of satisfaction of deed of trust, mortgage, or other instrument.**

No particular phrasing is required for a notice of satisfaction pursuant to G.S. 45-37(a)(5) as it was prior to October 1, 2005, a satisfaction of a security instrument under G.S. 45-36.10, or a trustee's satisfaction under G.S. 45-36.20. The following form, when properly completed, is sufficient to satisfy the requirements (i) for a notice of satisfaction under G.S. 45-37(a)(5) as it was in effect prior to October 1, 2005, (ii) for a satisfaction under G.S. 45-36.10 if the form is signed and acknowledged by the secured creditor, and (iii) for a trustee's satisfaction under G.S. 45-36.20 if the security instrument is a deed of trust and the form is signed and acknowledged by the trustee:

~~The form of a notice of satisfaction of a deed of trust, mortgage, or other instrument pursuant to G.S. 45-37(a)(5) shall be substantially as follows:~~

North Carolina, _____ County.

I, _____ (name of trustee or mortgagee), certify that the debt or other obligation in the amount of _____ secured by the (deed of trust) (mortgage) (other instrument) executed by _____ (grantor) (mortgagor), _____ (trustee) (leave blank if mortgage), and _____ (beneficiary) (mortgagee), and recorded in _____ County at _____ (book and page) was satisfied on _____ (date of satisfaction).

_____

(Signature of trustee or mortgagee)

~~I, _____ (name of officer taking acknowledgment), _____ (official title of person taking acknowledgment) certify that _____ (name of trustee or mortgagee) personally came before me this day and acknowledged the satisfaction of the provisions of the above referenced (deed of trust) (mortgage) (other instrument).~~

~~Witness my hand and official seal this the _____ day of _____ (month), _____ (year).~~

_____

~~(Signature of officer taking acknowledgment)~~

(Acknowledgment before officer authorized to take acknowledgments)

My commission expires _____ (Date of expiration of official's commission).

~~North Carolina, _____ County.~~

~~The foregoing acknowledgment of _____ (name of officer that took acknowledgment), _____ (official title of person that took acknowledgment), is certified to be correct.~~

~~This _____ (day) of _____ (month), _____ (year).~~

_____

~~(Signature of Register of Deeds).~~

"§ 47-46.2. Certificate of satisfaction of deed of trust, mortgage, or other instrument.

No particular phrasing is required for a certification of satisfaction pursuant to G.S. 45-37(a)(6) as it was in effect prior to October 1, 2005, or for a satisfaction of a security instrument under G.S. 45-36.10. The following form, when properly completed, is sufficient to satisfy the requirements (i) for a certificate of satisfaction under G.S. 45-37(a)(6) as it was in effect prior to October 1, 2005, and (ii) for a satisfaction of a security instrument under G.S. 45-36.10 when signed and acknowledged by the secured creditor:

~~The form of a certificate of satisfaction of a deed of trust, mortgage, or other instrument pursuant to G.S. 45-37(a)(6) shall be substantially as follows:~~

CERTIFICATE OF SATISFACTION

North Carolina, _____ County.

I, _____ (name of owner of the note or other indebtedness secured by the deed of trust or mortgage), certify that I am the owner of the indebtedness secured by the hereafter described deed of trust or mortgage and that the debt or other obligation in the amount of _____ secured by the (deed of trust) (mortgage) (other instrument) executed by

_____ (grantor) (mortgagor), _____ (trustee) (leave blank if mortgage), and _____ (beneficiary) (mortgagee), and recorded in _____ County at _____ (book and page) was satisfied on _____ (date of satisfaction). I request that this certificate of satisfaction be recorded and the above-referenced security instrument be canceled of record.

_____

(Signature of owner of note)

[Acknowledgment before officer authorized to take acknowledgments]."

SECTION 6. G.S. 47-46.3 reads as rewritten:

"**§ 47-46.3. Affidavit of lost note.**

No particular phrasing is required for an affidavit of lost note pursuant to G.S. 45-36(a)(6) as it was in effect prior to October 1, 2005. The following form, when properly completed, is sufficient to satisfy the requirements for an affidavit of lost note under G.S. 45-37(a)(6) as it was in effect prior to October 1, 2005.

~~The form of an affidavit of lost note, if required pursuant to G.S. 45-37(a)(6), shall be substantially as follows:~~

AFFIDAVIT OF LOST NOTE

[Name of affiant] personally appeared before me in _____ County, State of _____, and having been duly sworn (or affirmed) made the following affidavit:

1. The affiant is the owner of the note or other indebtedness secured by the deed of trust, mortgage, or other instrument executed by _____ (grantor, mortgagor), _____ (trustee), and _____ (beneficiary, mortgagee), and recorded in _____ County at _____ (book and page); and
2. The note or other indebtedness has been lost and after the exercise of due diligence cannot be located.
3. The affiant certifies that all indebtedness secured by the deed of trust, mortgage, or other instrument was satisfied on _____, _____ (date of satisfaction), and the affiant is responsible for cancellation of the same.

_____

(Signature of affiant)

Sworn to (or affirmed) and subscribed before me this _____ day of _____, _____.

[Signature and seal of notary public or other official authorized to administer oaths]."

SECTION 7. G.S. 161-10(a)(16) reads as rewritten:

"(16) Probate. – For ~~certification of instruments for registration~~ verification of proofs and acknowledgements as provided in G.S. 47-14 two dollars ($2.00)."

SECTION 8. G.S. 161-14.1 reads as rewritten:

"§ 161-14.1. Recording subsequent entries as separate instruments.

~~In all cases in which the register of deeds is authorized or directed by law to make a subsequent entry upon the margin of the record of a deed of trust, mortgage, or other instrument, the register of deeds shall, except as provided in G.S. 45-37.2 and 45-38, record all subsequent entries as separate instruments. Such instruments shall contain the information and notations required by law for the appropriate marginal entry, a reference by book and page number to the record of the instrument modified, and the date of recording the subsequent modifying instrument. There shall also be entered in the alphabetical indexes kept by the register of deeds, opposite the name of each indexed party to the original instrument, a reference by book and page to the record of the subsequent modifying instrument. In the recording of satisfactions or foreclosures of deeds of trust and mortgages, the register of deeds shall comply with the provisions of G.S. 45-37.2 and 45-38. Whenever it is practical to do so, the register of deeds may continue making marginal notations in addition to making the recordation required by this section.~~

(a) As used in this section, the following terms mean:

(1) Original instrument. – The previously recorded instrument that is modified, amended, supplemented, revoked or cancelled by a subsequent instrument.

(2) Recording data. – The book and page number or document number that indicates where an instrument is recorded in the office of the register of deeds.

(3) Subsequent instrument. – Any instrument presented for registration that purports to modify, amend, supplement, assign, satisfy, terminate, revoke or cancel a previously registered instrument. Examples of subsequent instruments include the appointment or designation of a substitute trustee in a deed of trust; an affidavit extending the life of a deed of trust; the cancellation of a Notice of Inactive Hazardous Substance or Waste Disposal Site registered pursuant to G.S. 130A-310.8(f); a record of satisfaction or other instrument purporting to satisfy a security instrument registered pursuant to G.S. 45-37 or G.S. 45-37.2; a notice of foreclosure registered pursuant to G.S. 45-38; an assignment of a security instrument or lease; a modification agreement; a release or partial release of property from the lien of a security instrument; an assumption agreement; a subordination agreement; an instrument terminating future optional advances registered pursuant to G.S. 45-72; the revocation of a power of attorney; any instrument authorized or directed by law to be indexed under the provisions of this section; and any instrument for which the register of deeds is authorized or directed by law to make a subsequent entry upon the margin of the record of an original instrument.

(b) The register of deeds shall register each subsequent instrument as a separate instrument and do all of the following:

(1) Index the parties to the subsequent instrument.

(2) If the subsequent instrument names one or more of the original parties to the original instrument, index the original parties to the original instrument as they are named in the subsequent instrument.

(3) If the subsequent instrument states the recording data for the original instrument, reference the recording data of the original instrument as that recording data is stated in the subsequent instrument to each name so indexed.

(c) The register of deeds shall not be required to verify or make inquiry concerning the accuracy, sufficiency, or completeness of information about an original instrument contained in any subsequent instrument. The register of deeds is expressly authorized to rely solely on the information contained in the subsequent instrument, including, but not limited to, the names of the original parties to the original instrument and the recording data for the original instrument."

SECTION 9. G.S. 161-22(d) reads as rewritten:

"(d) Deeds of trust may be indexed in the names of the grantor and ~~trustee~~ beneficiary only."

SECTION 10. This act becomes effective October 1, 2005.

SENATE BILL 734:
Satisfaction of Mortgages and Deeds of Trust

BILL ANALYSIS

Committee:	Senate Judiciary I	**Date:**	April 26, 2005
Introduced by:	Sen. Boseman	**Summary by:**	Walker Reagan
Version:	First Edition S734-CSRU-19		Committee Co-Counsel

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 734 would amend the law governing the satisfaction and cancellation of mortgages and deeds of trust on the public record by adopting the Uniform Residential Mortgage Satisfaction Act.***

CURRENT LAW: Article 4 of Chapter 45 of the General Statutes sets out the current law governing the discharge and release of mortgages and deeds of trust. The law requires the beneficiary of a deed of trust to discharge or release a deed of trust within 60 days of the date the debt is paid off or face potential civil fines of up to $1000.

BILL ANALYSIS: Senate Bill 734 adopts the Uniform Residential Mortgage Satisfaction Act that provides the following benefits:

- Adopts a uniform time of 30 days within which a lender must record evidence of the satisfaction of an obligation after the obligation is paid off.
- Adopts a uniform method of giving notice requesting a loan payoff amount and clarifies the right of the party receiving the payoff amount to rely on that payoff amount in order to get the property released as collateral for the loan.
- Adopts a uniform method of notifying the lender when satisfaction of the loan is not timely filed by the lender. It also provides for uniform incentives for satisfactions to be recorded in a timely manner.
- Provides for several different uniform ways satisfaction of a loan can be recorded, including a satisfaction of security agreement, an affidavit of satisfaction signed by an authorized satisfaction agent, a trustee's satisfaction of deed of trust, and satisfaction of record by the presentation of the original note and deed of trust marked paid and satisfied in full.
- Limits the satisfaction agent to a licensed attorney.
- Eliminates the necessity for the register of deeds to make marginal notations on the original record of a document as originally recorded upon satisfaction of the document.
- Eliminates the necessity for the register of deeds to verify and certify the notary acknowledgements of the signatures of the parties to the documents.
- Eliminates the necessity for the register of deeds to verify the recording information of the original documents when indexing a satisfaction document, allowing the register of deeds to rely solely on the information contained on the satisfaction document.
- Eliminates the requirement that deeds of trust be indexed by trustee. Only indexing by grantor and beneficiary will be required.

EFFECTIVE DATE: The bill becomes effective October 1, 2005.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 734

Short Title:	Satisfaction of Mortgages and Deeds of Trust.	(Public)
Sponsors:	Senator Boseman.	
Referred to:	Judiciary I.	

March 22, 2005

A BILL TO BE ENTITLED

AN ACT TO AMEND ARTICLE 4 OF CHAPTER 45 RELATING TO THE SATISFACTION OF MORTGAGES AND DEEDS OF TRUST AS RECOMMENDED BY THE NORTH CAROLINA BAR ASSOCIATION.

The General Assembly of North Carolina enacts:

SECTION 1. Article 4 of Chapter 45 of the General Statutes reads as rewritten:

"Article 4.

"~~Discharge and Release.~~ Satisfaction.

"**§ 45-36.2. ~~Register of deeds includes assistants and deputies.~~Obligation of good faith.**

~~The words "register of deeds" appearing in this Article shall be interpreted to mean "register of deeds, assistant register of deeds, or deputy register of deeds.~~Every action or duty within this Article imposes an obligation of good faith in its performance or enforcement.

"**§ 45-36.3. Notification by mortgagee of satisfaction of provisions of deed of trust or mortgage, or other instrument; civil penalty.**

(a) After the satisfaction of the provisions of any deed of trust or mortgage, or other instrument intended to secure with real property the payment of money or the performance of any other obligation and registered as required by law, the holder of the evidence of the indebtedness, if it is a single instrument, or a duly authorized agent or attorney of such holder shall within 60 days:

(1) Discharge and release of record such documents and forward the cancelled documents to the grantor, trustor or mortgagor; or,

(2) Alternatively, the holder of the evidence of the indebtedness or a duly authorized agent or attorney of such holder, at the request of the grantor, trustor or mortgagor, shall forward said instrument and the deed of trust or mortgage instrument, with payment and satisfaction

acknowledged in accordance with the requirements of G.S. 45-37, to the grantor, trustor or mortgagor.

(b) Any person, institution or agent who fails to comply with this section may be required to pay a civil penalty of not more than one thousand dollars ($1,000) in addition to reasonable attorneys' fees and any other damages awarded by the court to the grantor, trustor or mortgagor, or to a subsequent purchaser of the property from the grantor, trustor or mortgagor. A five hundred dollar ($500.00) civil penalty may be recovered by the grantor, trustor or mortgagor, and a five hundred dollar ($500.00) penalty may be recovered by the purchaser of the property from the grantor, trustor or mortgagor. If that purchaser of the property consists of more than a single grantee, then the civil penalty will be divided equally among all of the grantees. A petitioner may recover damages under this section only if he has given the mortgagee, obligee, beneficiary or other responsible party written notice of his intention to bring an action pursuant to this section. Upon receipt of this notice, the mortgagee, obligee, beneficiary or other responsible party shall have 30 days, in addition to the initial 60-day period, to fulfill the requirements of this section.

(c) Should any person, institution or agent who is not the present holder of the evidence of indebtedness be required to pay a civil penalty, attorneys' fees, or other damages under this section, they will have an action against the holder of the evidence of indebtedness for all sums they were required to pay."

(d) This section applies only if the provisions of the deed of trust, mortgage, or other instrument are satisfied before October 1, 2005.

"**§ 45-36.4. Definitions.**

In this Article:

(1) "Address for giving a notification" means, for the purpose of a particular type of notification, the most recent address provided in a document by the intended recipient of the notification to the person giving the notification, unless the person giving the notification knows of a more accurate address, in which case the term means that address.

(2) "Day" means calendar day.

(3) "Document" 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.

(4) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(5) "Entitled person" means a person liable for payment or performance of the obligation secured by the real property described in a security instrument, or the landowner.

(6) "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(7) "Landowner" means a person that, before foreclosure, has the right of redemption in the real property described in a security instrument. The term does not include a person that holds only a lien on the real property.

(8) "Notification" means a document containing information required under this Article and signed by the person required to provide the information.

(9) "Original parties" means, with respect to a security instrument, each person named as a party to the security instrument on the face thereof as originally recorded. In identifying the original parties to a deed of trust for purposes of this Article, it is not necessary to include the original trustee or trustees named therein.

(10) "Payoff amount" means the sum necessary to satisfy a secured obligation.

(11) "Payoff statement" means a document containing the information specified in G.S. 45-36.7(d).

(12) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government, or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(13) "Recording data" means the book and page number or document number that indicate where a document is recorded in the office of the register of deeds.

(14) "Register of deeds" shall be interpreted to mean "register of deeds, assistant register of deeds, or deputy register of deeds."

(15) "Satisfy" means, with respect to a security instrument, to terminate the effectiveness of the security instrument.

(16) "Secured creditor" means a person that holds or is the beneficiary of a security interest or that is authorized both to receive payments on behalf of a person that holds a security interest and to record a satisfaction of the security instrument upon receiving full performance of the secured obligation. The term does not include a trustee under a security instrument.

(17) "Secured obligation" means an obligation the payment or performance of which is secured by a security interest.

(18) "Security instrument" means an agreement, however denominated, that creates or provides for an interest in real property to secure payment or performance of an obligation, whether or not it also creates or provides for a lien on personal property. The term includes, without limitation, a deed of trust and a mortgage.

(19) "Security interest" means an interest in real property created by a security instrument.

(20) "Sign" means, with present intent to authenticate or adopt a document:

a. To execute or adopt a tangible symbol; or

b. To attach to or logically associate with the document an electronic sound, symbol, or process.

(21) "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.

(22) "Submit for recording" means to deliver, with required fees and taxes, a document sufficient to be recorded under this Article to the register of deeds in the county in which the real property described in the related security instrument is located.

"**§ 45-36.5. Notification: manner of giving and effective date.**

(a) A person gives a notification by:

(1) Depositing it with the United States Postal Service with first-class postage paid or with a commercially reasonable delivery service with cost of delivery provided, properly addressed to the recipient's address for giving a notification;

(2) Sending it by facsimile transmission, electronic mail, or other electronic transmission to the recipient's address for giving a notification, but only if the recipient agreed to receive notification in that manner; or

(3) Causing it to be received at the address for giving a notification within the time that it would have been received if given pursuant to subdivision (1) of this subsection.

(b) A notification is effective:

(1) The day after it is deposited with a commercially reasonable delivery service for overnight delivery;

(2) Three days after it is deposited with the United States Postal Service, first-class mail with postage prepaid, or with a commercially reasonable delivery service for delivery other than by overnight delivery;

(3) The day it is given, if given pursuant to subdivision (a)(2) of this section; or

(4) The day it is received, if given by a method other than as provided in subdivision (a)(1) or (2) of this section.

(c) If this Article or a notification given pursuant to this Article requires performance on or by a certain day and that day is a Saturday, Sunday, or legal holiday under the laws of this State or the United States, the performance is sufficient if performed on the next day that is not a Saturday, Sunday, or legal holiday.

"**§ 45-36.6. Document of Rescission: effect; liability for wrongful recording.**

(a) In this section, "document of rescission" means a document stating that an identified satisfaction or affidavit of satisfaction of a security instrument was recorded erroneously or that a security instrument was satisfied of record erroneously, the secured obligation remains unsatisfied, and the security instrument remains in force.

(b) If a person records a satisfaction or affidavit of satisfaction of a security instrument in error or if a security instrument is satisfied of record erroneously by any other means, the person or the secured creditor may execute and record a document of rescission. Upon recording, the document rescinds an erroneously recorded satisfaction

or affidavit and the erroneous satisfaction of record of the security instrument, and reinstates the security instrument.

(c) A recorded document of rescission has no effect on the rights of a person that:

(1) Records an interest in the real property described in a security instrument after the recording of the satisfaction or affidavit of satisfaction of the security instrument or the erroneous satisfaction of record of the security instrument by other means and before the recording of the document of rescission; and

(2) Would otherwise have priority over or take free of the lien created by the security instrument as reinstated under Chapter 47 of the General Statutes.

(d) A person that erroneously or wrongfully records a document of rescission is liable to any person injured thereby for the actual loss caused by the recording and reasonable attorneys' fees and costs.

"**§ 45-36.7. Payoff statement: request and content.**

(a) An entitled person, or an agent authorized by an entitled person to request a payoff statement, may give to the secured creditor a notification requesting a payoff statement for a specified payoff date not more than 30 days after the notification is given. The notification must contain:

(1) The entitled person's name;

(2) If given by a person other than an entitled person, the name of the person giving the notification and a statement that the person is an authorized agent of the entitled person;

(3) A direction whether the statement is to be sent to the entitled person or that person's authorized agent;

(4) The address to which the creditor must send the statement; and

(5) Sufficient information to enable the creditor to identify the secured obligation and the real property encumbered by the security interest.

(b) If a notification under subsection (a) of this section directs the secured creditor to send the payoff statement to a person identified as an authorized agent of the entitled person, the secured creditor must send the statement to the agent, unless the secured creditor knows that the entitled person has not authorized the request.

(b1) A person who gives to a secured creditor a notification requesting a payoff statement thereby represents that the person is an entitled person or the authorized agent of an entitled person. A secured creditor may rely on that representation in providing a payoff statement unless the secured creditor knows that the requesting person is neither an entitled person nor the authorized agent of an entitled person. A secured creditor has no duty to make inquiry as to whether, or to verify that, the person requesting a payoff statement is an entitled person or the authorized agent of an entitled person.

(c) Within 10 days after the effective date of a notification that complies with subsection (a) of this section, the secured creditor shall issue a payoff statement and send it as directed pursuant to subdivision (a)(3) of this section in the manner prescribed in G.S. 45-36.5 for giving a notification. A secured creditor that sends a payoff statement to the entitled person or the authorized agent may not claim that the

notification did not satisfy subsection (a). If the person to whom the notification is given once held an interest in the secured obligation but has since assigned that interest, the person need not send a payoff statement but shall give (i) a notification of the assignment to the person to whom the payoff statement otherwise would have been sent, providing the name and address of the assignee, or (ii) a notification to the person to whom the payoff statement otherwise would have been sent, stating that the recipient claims no interest in the security instrument or the secured obligation, that the secured obligation was assigned, but that the identity and address of the assignee is not known.

(d) A payoff statement must contain:

(1) The date on which it was prepared and the payoff amount as of that date, including the amount by type of each fee, charge, or other sum included within the payoff amount;

(2) The information reasonably necessary to calculate the payoff amount as of the requested payoff date, including the per diem interest amount; and

(3) The payment cutoff time, if any, the address or place where payment must be made, and any limitation as to the authorized method of payment.

(e) A payoff statement may contain the amount of any fees authorized under this section not included in the payoff amount. A secured creditor may require the payment in full of any fees authorized under this section before issuing a payoff statement.

(f) A secured creditor may not qualify a payoff amount or state that it is subject to change before the payoff date unless the payoff statement provides information sufficient to permit the entitled person or the person's authorized agent to request an updated payoff amount at no charge and to obtain that updated payoff amount during the secured creditor's normal business hours on the payoff date or the immediately preceding business day.

(g) A secured creditor must provide upon request one payoff statement without charge during any six-month period. A secured creditor may charge a fee of twenty-five dollars ($25.00) for each additional payoff statement requested during that six-month period. However, a secured creditor may not charge a fee for providing an updated payoff amount under subsection (f) or a corrected payoff statement under G.S. 45-36.8(a).

(h) Unless the security instrument provides otherwise, a secured creditor is not required to send a payoff statement by means other than first-class mail. If the creditor agrees to send a statement by another means, it may charge a reasonable fee for complying with the requested manner of delivery.

(i) Except as otherwise provided in G.S. 45-36.12, if a secured creditor to which a notification has been given pursuant to subsection (a) does not send a timely payoff statement that substantially complies with subsection (d), the creditor is liable to the entitled person for any actual damages caused by the failure, but not punitive damages. A creditor that does not pay the damages provided in this subsection within 30 days after receipt of a notification demanding payment shall also be liable for reasonable attorney's fees and costs.

(j) This section does not apply unless the notification requesting a payoff statement is given on or after October 1, 2005.

"**§ 45-36.8. Understated Payoff Statement: correction; effect.**

(a) If a secured creditor determines that the payoff amount it provided in a payoff statement was understated, the creditor may send a corrected payoff statement. If the entitled person or the person's authorized agent receives and has a reasonable opportunity to act upon a corrected payoff statement before making payment, the corrected statement supersedes an earlier statement.

(b) A secured creditor that sends a payoff statement containing an understated payoff amount may not deny the accuracy of the payoff amount as against any person that reasonably and detrimentally relies upon the understated payoff amount.

(c) This Article does not:

(1) Affect the right of a secured creditor to recover any sum that it did not include in a payoff amount from any person liable for payment of the secured obligation; or

(2) Limit any claim or defense that a person liable for payment of a secured obligation may have under law other than this Article.

"**§ 45-36.9. Secured creditor to submit satisfaction for recording; liability for failure.**

(a) A secured creditor shall submit for recording a satisfaction of a security instrument within 30 days after the creditor receives full payment or performance of the secured obligation. If a security instrument secures a line of credit or future advances, the secured obligation is fully performed only if, in addition to full payment, the secured creditor has received a notification requesting the creditor to terminate the line of credit or containing a statement sufficient to terminate the effectiveness of the provision for future advances in the security instrument.

(b) Except as otherwise provided in G.S. 45-36.12, a secured creditor that is required to submit a satisfaction of a security instrument for recording and does not do so by the end of the period specified in subsection (a) of this section is liable to the landowner for any actual damages caused by the failure, but not punitive damages.

(c) Except as otherwise provided in subsection (d) of this section and in G.S. 45-36.12, a secured creditor that is required to submit a satisfaction of a security instrument for recording and does not do so by the end of the period specified in subsection (a) of this section is also liable to the landowner for one thousand dollars ($1,000) and any reasonable attorneys' fees and court costs incurred if, after the expiration of the period specified in subsection (a):

(1) The landowner gives the secured creditor a notification, by any method authorized by G.S. 45-36.5 that provides proof of receipt, demanding that the secured creditor submit a satisfaction for recording;

(2) The secured creditor does not submit a satisfaction for recording within 30 days after the secured creditor's receipt of the notification, and

(3) The security instrument is not satisfied of record by any of the methods provided in G.S. 45-37(a) within 30 days after the secured creditor's receipt of the notification.

The right to receive the additional one thousand dollars ($1,000) is personal to the landowner who gives the secured creditor notification under this subsection, and may not be assigned.

(d) Subsection (c) of this section does not apply if the secured creditor received full payment or performance of the secured obligation before October 1, 2005.

(e) This section does not apply if the security instrument is satisfied of record by any of the methods provided in G.S. 45-37(a) within 30 days after the secured creditor receives full payment or performance of the secured obligation.

"**§ 45-36.10. Content and effect of satisfaction.**

(a) A document is a satisfaction of a security instrument if it:

(1) Identifies the security instrument, the original parties to the security instrument, the recording data for the security instrument, and the office in which the security instrument is recorded;

(2) States that the person signing the satisfaction is the secured creditor;

(3) [Reserved]

(4) Contains language terminating the effectiveness of the security instrument; and

(5) Is signed by the secured creditor and acknowledged as required by law for a conveyance of an interest in real property.

(b) The register of deeds shall accept for recording a satisfaction of a security instrument, unless:

(1) the document is submitted by a method or in a medium not authorized for registration by the register of deeds under applicable law; or

(2) the document is not signed by the secured creditor identified therein and acknowledged as required by law for a conveyance of an interest in real property. The register of deeds shall not be required to verify or make inquiry concerning (i) the truth of the matters stated in any satisfaction document, or (ii) the authority of the person executing any satisfaction document to do so.

(c) The recording of a satisfaction of a security instrument does not by itself extinguish any liability of a person for payment or performance of the secured obligation.

"**§ 45-36.11. Satisfaction: form.**

No particular phrasing is required for a satisfaction of a security instrument. The following form, when properly completed, is sufficient to satisfy the requirements of G.S. 45-36.10(a):

"SATISFACTION OF SECURITY INSTRUMENT
(G.S. 45-36.10; G.S. 45-37(a)(7))

The undersigned is now the secured creditor in the security instrument identified as follows:

Type of Security Instrument: (identify type of security instrument, such as deed of trust or mortgage)

Original Grantor(s): (Identify original grantor(s), trustor(s), or mortgagor(s))

Original Secured Party(ies): (Identify the original beneficiary(ies), mortgagee(s), or secured party(ies) in the security instrument)

Recording Data: The security instrument is recorded in Book _____ at Page _____ or as document number _____ in the office of the Register of Deeds for _____ County, North Carolina.

This satisfaction terminates the effectiveness of the security instrument.

Date: _____ _____

(Signature of secured creditor)

[Acknowledgment before officer authorized to take acknowledgments]"

"**§ 45-36.12 Limitation of secured creditor's liability.**

A secured creditor is not liable under this Article if it:

(1) Established a reasonable procedure to achieve compliance with its obligations under this Article;

(2) Complied with that procedure in good faith; and

(3) Was unable to comply with its obligations because of circumstances beyond its control.

"**§ 45-36.13. Definition; eligibility to serve as satisfaction agent.**

(a) In this Article, "title insurance company" means an organization authorized to conduct the business of insuring titles to real property in this State.

(b) The following may serve as a satisfaction agent under this Article:

(1) A title insurance company, acting directly or through a duly licensed title agent authorized to sign and submit for recording an affidavit of satisfaction; or

(2) An attorney licensed to practice law in this State.

"**§ 45-36.14. Affidavit of satisfaction: notification to secured creditor.**

(a) If a secured creditor has not submitted for recording a satisfaction of a security instrument and the security instrument has not been satisfied of record by any of the methods provided by G.S. 45-37(a) within the period specified in G.S. 45-36.9(a), a satisfaction agent acting for and with authority from the landowner may give the secured creditor a notification that the satisfaction agent intends to submit for recording an affidavit of satisfaction of the security instrument. The notification must include:

(1) The identity and mailing address of the satisfaction agent;

(2) Identification of the security instrument for which a recorded satisfaction is sought, including the names of the original parties to, and the recording data for, the security instrument;

(3) A statement that the satisfaction agent has reasonable grounds to believe that:

a. The person to which the notification is being given is the secured creditor; and

b. The secured creditor has received full payment or performance of the secured obligation.

(4) A statement that the security instrument has not been satisfied of record;

(5) A statement that the satisfaction agent, acting with the authorization of the owner of the real property described in the security instrument, intends to sign and submit for recording an affidavit of satisfaction of the security instrument unless, within 30 days after the effective date of the notification:

a. The secured creditor submits a satisfaction of the security instrument for recording;

b. The satisfaction agent receives from the secured creditor a notification stating that the secured obligation remains unsatisfied;

c. The satisfaction agent receives from the secured creditor a notification stating that the secured creditor has assigned the security instrument and identifying the name and address of the assignee; or

d. The security instrument is satisfied of record by any of the methods provided in G.S. 45-37(a).

(b) A notification under subsection (a) of this section must be sent by a method authorized by G.S. 45-36.5 that provides proof of receipt to the secured creditor's address for giving a notification for the purpose of requesting a payoff statement or, if the satisfaction agent cannot ascertain that address, to the secured creditor's address for notification for any other purpose.

(c) This Article does not require a person to agree to serve as a satisfaction agent.

"**§ 45-36.15. Affidavit of satisfaction: authorization to submit for recording.**

(a) Subject to subsections (b) and (c) of this section, a satisfaction agent may sign and submit for recording an affidavit of satisfaction of a security instrument complying with G.S. 45-36.16 if:

(1) The secured creditor has not, to the knowledge of the satisfaction agent, submitted for recording a satisfaction of a security instrument or otherwise caused the security instrument to be satisfied of record pursuant to any of the methods provided in G.S. 45-37(a) within 30 days after the effective date of a notification complying with G.S. 45-36.14(a); or

(2) The secured creditor authorizes the satisfaction agent to do so.

(b) A satisfaction agent may not sign and submit for recording an affidavit of satisfaction of a security instrument if it has received a notification under G.S. 45-36.14(a)(5)b. stating that the secured obligation remains unsatisfied.

(c) If a satisfaction agent receives a notification under G.S. 45-36.14(a)(5)c. stating that the security instrument has been assigned, the satisfaction agent may not submit for recording an affidavit of satisfaction of the security instrument without:

(1) Giving a notification of intent to submit for recording an affidavit of satisfaction to the identified assignee at the identified address; and

(2) Complying with G.S. 45-36.14 with respect to the identified assignee.

"**§ 45-36.16. Affidavit of satisfaction: content.**

An affidavit of satisfaction of a security instrument must:

(1) Identify the original parties to the security instrument, the secured creditor, and the recording data for the security instrument;

(2) State the basis upon which the person signing the affidavit is a satisfaction agent;

(3) [Reserved]

(4) State that the person signing the affidavit has reasonable grounds to believe that the secured creditor has received full payment or performance of the secured obligation;

(5) State that the person signing the affidavit, acting with the authority of the owner of the real property described in the security instrument, gave notification to the secured creditor of its intention to sign and submit for recording an affidavit of satisfaction;

(6) Describe the method by which the person signing the affidavit gave notification in compliance with this Article;

(7) State that:

a. More than 30 days have elapsed since the effective date of that notification, and the person signing the affidavit has no knowledge that the secured creditor has submitted a satisfaction for recording and has not received a notification that the secured obligation remains unsatisfied; or

b. The secured creditor authorized the person signing the affidavit to sign and record an affidavit of satisfaction; and

(8) Be signed and acknowledged as required by law for a conveyance of an interest in real property.

"**§ 45-36.17. Affidavit of satisfaction: form.**

No particular phrasing of an affidavit of satisfaction is required. The following form of affidavit, when properly completed, is sufficient to satisfy the requirements of G.S. 45-36.16:

"AFFIDAVIT OF SATISFACTION

_____

(Date of Affidavit)

The undersigned hereby states as follows:

1. I am: [check appropriate box]

[ ] An officer or a duly appointed agent of Name of title insurance company (the "Company"), which is authorized to transact the business of insuring titles to interests in real property in this State, and I have been authorized by the Company to sign and submit for recording an affidavit of satisfaction.

[ ] An attorney licensed to practice law in this State.

2. I am signing this Affidavit of Satisfaction to evidence full payment or performance of the obligations secured by real property covered by the following security instrument (the "security instrument") currently held by _____ (the "secured creditor"):

Title of security instrument:

Original parties to security instrument:

County and state of recording:

Recording data for security instrument:

3. I have reasonable grounds to believe that the secured creditor has received full payment or performance of the balance of the obligations secured by the security instrument.

4. With the authorization of the owner of the real property described in the security instrument, I gave notification to the secured creditor by method authorized by G.S. 45-36.5 that provides proof of receipt that I would sign and record an affidavit of satisfaction of the security instrument if, within 30 days after the effective date of the notification, the secured creditor did not submit a satisfaction of the security interest for recording or give notification that the secured obligation remains unsatisfied.

5. [Check appropriate box]

[ ] The 30-day period identified in paragraph 4 has elapsed, I have no knowledge that the secured creditor has submitted a satisfaction for recording, and I have not received notification that the secured obligation remains unsatisfied.

[ ] The secured creditor responded to the notification in paragraph 4 by authorizing me to execute and record this affidavit of satisfaction.

_____

(Signature of Satisfaction Agent)

[Acknowledgment before officer authorized to take acknowledgments]"

"**§ 45-36.18. Affidavit of satisfaction: effect.**

(a) Upon recording, an affidavit substantially complying with the requirements of G.S. 45-36.16 constitutes a satisfaction of the security instrument described in the affidavit.

(b) The recording of an affidavit of satisfaction of a security instrument does not by itself extinguish any liability of a person for payment or performance of the secured obligation.

(c) The register of deeds may not refuse to accept for recording an affidavit of satisfaction of a security instrument unless:

(1) The affidavit is submitted by a method or in a medium not authorized for registration by the register of deeds under applicable law; or

(2) The affidavit is not signed by the satisfaction agent identified therein and acknowledged as required by law for a conveyance of an interest in real property. The register of deeds shall not be required to verify or make inquiry concerning (i) the truth of the matters stated in any affidavit of satisfaction, or (ii) the authority of the person executing any affidavit of satisfaction to do so.

"**§ 45-36.19. Liability of satisfaction agent.**

(a) Except as otherwise provided in subsection (b), a satisfaction agent or any person purporting to be a satisfaction agent that records or submits for recording an affidavit of satisfaction of a security instrument erroneously or with knowledge that the statements contained in the affidavit are false is liable to the secured creditor for any actual damages caused by the recording and reasonable attorneys' fees and costs.

(b) A satisfaction agent that records or submits for recording an affidavit of satisfaction of a security instrument erroneously is not liable if the agent properly complied with this Article and the secured creditor did not respond in a timely manner to the notification pursuant to G.S. 45-36.14(a)(5).

(c) If a satisfaction agent or any person purporting to be a satisfaction agent records or submits for recording an affidavit of satisfaction of a security instrument with knowledge that the statements contained in the affidavit are false, this section does not preclude:

(1) A court from awarding punitive damages on account of the conduct;

(2) The secured creditor from proceeding against the satisfaction agent or person purporting to be a satisfaction agent under law of this State other than this Article; or

(3) The enforcement of any criminal statute prohibiting the conduct.

"**§ 45-36.20. Trustee's satisfaction of deed of trust: content and effect.**

(a) Upon recording, a trustee's satisfaction substantially complying with the requirements of this section constitutes a satisfaction of the deed of trust described in the trustee's satisfaction.

(b) The recording of a trustee's satisfaction does not by itself extinguish any liability of a person for payment or performance of the secured obligation.

(c) This section applies only if the security instrument is a deed of trust. This section is not exclusive. Deeds of trust may also be satisfied of record by methods other than the filing of a trustee's satisfaction.

(d) Document is a trustee's satisfaction of a deed of trust if it:

(1) Identifies the deed of trust, the original parties to the deed of trust, the recording data for the deed of trust, and the office in which the deed of trust is recorded;

(2) States that the person signing the trustee's satisfaction is then serving as trustee or substitute trustee under the terms of the deed of trust;

(3) Contains language terminating the effectiveness of the deed of trust; and

(4) Is signed by the trustee or substitute trustee then serving under the terms of the deed of trust and acknowledged as required by law for a conveyance of an interest in real property.

(e) The register of deeds shall accept for recording a trustee's satisfaction of a deed of trust, unless:

(1) The trustee's satisfaction is submitted by a method or in a medium not authorized for registration by the register of deeds under applicable law; or

(2) The trustee's satisfaction is not signed by the trustee or substitute trustee identified therein and acknowledged as required by law for a conveyance of an interest in real property. The register of deeds shall not be required to verify or make inquiry concerning (i) the truth of the matters stated in any trustee's satisfaction, or (ii) the authority of the person executing any trustee's satisfaction to do so.

"**§ 45-36.21. Trustee's satisfaction of deed of trust: form.**

No particular phrasing is required for a trustee's satisfaction of a deed of trust. The following form, when properly completed, is sufficient to satisfy the requirements of G.S. 45-36.20:

"TRUSTEE'S SATISFACTION OF DEED OF TRUST
(G.S. 45-36.20; G.S. 45-37(a)(7))

The undersigned is now serving as the trustee or substitute trustee under the terms of the deed of trust identified as follows:

Original Grantor(s): (Identify original grantor(s) or trustor(s))

Original Secured Party(ies): (Identify the original beneficiary(ies) or secured party(ies) in the deed of trust)

Recording Data: The deed of trust is recorded in Book _____ at Page _____ or as document number _____ in the office of the Register of Deeds for _____ County, North Carolina.

This satisfaction terminates the effectiveness of the deed of trust.

Date: _____ _____

(Signature of trustee or substitute trustee)

[Acknowledgment before officer authorized to take acknowledgments]"

"§ 45-37. ~~Discharge of record of mortgages, deeds of trust and other instruments.~~Satisfaction of record of security instruments.

(a) Subject to the provisions of G.S. 45-36.9(a) and G.S. 45-73 relating to ~~secured~~ security instruments which secure future advances, ~~any deed of trust or mortgage or other~~ 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) Repealed effective October 1, 2005. ~~By acknowledgment of the satisfaction of the provisions of such deed of trust, mortgage or other instrument in the presence of the register of deeds by:~~

~~a. The trustee,~~

~~b. The mortgagee,~~

~~c. The legal representative of a trustee or mortgagee, or~~

~~d. A duly authorized agent or attorney of any of the above.~~

~~The register of deeds is not required to verify or make inquiry concerning the authority of the person acknowledging the satisfaction to do so. Upon acknowledgment of satisfaction, the register of deeds shall record a record of satisfaction as described in G.S. 45-37.2, and may forthwith make upon the margin of the record of such deed of trust, mortgage or other instrument an entry of such acknowledgment of satisfaction which shall be signed by the trustee, mortgagee, legal representative, agent or attorney and witnessed by the register of deeds, who shall also affix his name thereto.~~

Security instruments satisfied of record pursuant to this subdivision as it was in effect prior to October 1, 2005, shall be deemed satisfied of record, discharged, and released.

(2) By exhibition of ~~any deed of trust, mortgage or other~~ security instrument accompanied with the bond, note, or other instrument thereby secured to the register of deeds, with the endorsement of payment and satisfaction appearing thereon and made by:

a. The ~~obligee,~~secured creditor,

b. The ~~mortgagee,~~trustee or substitute trustee, if the security instrument is a deed of trust,

~~c. The trustee,~~

~~d.~~c. An assignee of the ~~obligee, mortgagee, or trustee, or~~secured creditor, or

~~e.~~d. ~~Any chartered banking institution, or~~ Any bank, savings and loan association, ~~national or state, or credit union, qualified to do business in and having an office~~ savings bank, or credit union chartered under the laws of this or any other state or the

United States having an office or branch in the State of North Carolina, when so endorsed in the name of the institution by an officer thereof.

The register of deeds is not required to verify or make inquiry concerning the authority of the person making the endorsement of payment and satisfaction to do so. Upon exhibition of the instruments, the register of deeds shall ~~cancel the mortgage, deed of trust or other~~ satisfy the security instrument of record by recording a record of satisfaction as described in ~~G.S. 45-37.2, and may make an entry of satisfaction on the margin of the record.~~ G.S. 45-37.2. The person so claiming satisfaction, performance or discharge of the debt or other obligation may retain possession of all of the instruments exhibited. The exhibition of the ~~mortgage, deed of trust or other~~ security instrument alone to the register of deeds, with endorsement of payment, satisfaction, performance or discharge, shall be sufficient if the ~~mortgage, deed of trust or other~~ security instrument itself sets forth the obligation secured or the performance of any other obligation and does not call for or recite any note, bond or other instrument secured by it.

(3) By exhibiting to the register of deeds by:

a. The grantor,

b. The mortgagor, or

c. An agent, attorney or successor in title of the grantor or mortgagor

of any ~~mortgage, deed of trust or other~~ security instrument intended to secure the payment of money or the performance of any other obligation, together with the bond, note or other instrument secured thereby, or by exhibition of the ~~mortgage, deed of trust or other~~ security instrument alone if such instrument itself sets forth the obligation secured or other obligation to be performed and does not call for or recite any note, bond or other instrument secured by it, if at the time of exhibition, all such instruments are more than 10 years old counting from the maturity date of the last obligation secured. If the instrument or instruments so exhibited have an endorsement of partial payment, satisfaction, performance or discharge within the said period of 10 years, the period of 10 years shall be counted from the date of the most recent endorsement.

The register of deeds shall ~~cancel the mortgage, deed of trust, or other~~ satisfy the security instrument of record by recording a record of satisfaction as described in ~~G.S. 45-37.2, and may make proper entry of cancellation and satisfaction of said instrument on the margin of the record where the same is recorded, whether there be any such entries on the original papers or not.~~ G.S. 45-37.2.

(4) By exhibition to the register of deeds of any ~~deed of trust~~ security instrument given to secure the bearer or holder of any negotiable instruments transferable by delivery, together with all the evidences of indebtedness secured thereby, marked paid and satisfied in full and signed by the bearer or holder thereof.

Upon exhibition of the ~~deed of trust,~~ security instruments, and the evidences of indebtedness properly marked, the register of deeds shall ~~cancel such deed of trust~~ satisfy the security instrument of record by recording a record of satisfaction as described in G.S. 45-37.2, ~~and may make an entry of satisfaction upon the margin of the record, which record, or entry if made,~~ which record shall be valid and binding upon all persons, if no person rightfully entitled to the ~~deed of trust~~ security instrument or evidences of indebtedness has previously notified the register of deeds in writing of the loss or theft of the security instrument or evidences of indebtedness and has caused the register of deeds to record the notice or loss or theft in a separate document, as required by G.S. 161-14.1.

Upon receipt of written notice of loss or theft of the ~~deed of trust~~ security instrument or evidences of indebtedness the register of deeds shall record a record of satisfaction, as described in G.S. 45-37.2, which in this case shall consist of a rerecording of the record of the ~~deed of trust~~ security instrument containing the marginal entry and may make on the record of the ~~deed of trust~~ security instrument concerned a marginal entry in writing thereof, with the date of receipt of the notice. The ~~deed of trust~~ security instrument shall not be canceled after such recording of a record of satisfaction or marginal entry until the ownership of said instrument shall have been lawfully determined. Nothing in this subdivision (4) shall be construed to impair the negotiability of any instrument otherwise properly negotiable, nor to impair the rights of any innocent purchaser for value thereof.

~~Every entry of acknowledgment of satisfaction or of satisfaction made or witnessed by the register of deeds as provided in subdivision (a)(1) shall operate and have the same effect to release and discharge all the interest of such trustee, mortgagee or representative in such deed or mortgage as if a deed of release or reconveyance thereof had been duly executed and recorded.~~

(5) Repealed as of October 1, 2005.~~By exhibition to the register of deeds of a notice of satisfaction of a deed of trust, mortgage, or other instrument which has been acknowledged by the trustee or the mortgagee before an officer authorized to take acknowledgments. The notice of satisfaction shall be substantially in the form set out in G.S. 47-46.1. The notice of satisfaction shall recite the names of all parties to the original instrument, the amount of the obligation secured,~~

~~the date of satisfaction of the obligation, and a reference by book and page number to the record of the instrument satisfied. The notice of satisfaction shall be accompanied by the deed of trust, mortgage, or other instrument, or a copy of the instrument, for verification and indexing purposes, which shall not be recorded with the notice.~~

~~Upon exhibition of the notice of satisfaction, the register of deeds shall record the notice of satisfaction and cancel the deed of trust, mortgage, or other instrument as required by G.S. 45-37.2. No fee shall be charged for recording any documents or certifying any acknowledgments pursuant to this subdivision. The register of deeds shall not be required to verify or make inquiry concerning the authority of the person executing the notice of satisfaction to do so.~~

Security instruments satisfied of record pursuant to this subdivision as it was in effect prior to October 1, 2005, shall be deemed satisfied of record, discharged, and released.

(6) Repealed as of October 1, 2005. ~~By exhibition to the register of deeds of a certificate of satisfaction of a deed of trust, mortgage, or other instrument that has been acknowledged before an officer authorized to take acknowledgments by the owner of the note, bond, or other evidence of indebtedness secured by the deed of trust or mortgage. The certificate of satisfaction shall be accompanied by the note, bond, or other evidence of indebtedness, if available, with an endorsement of payment and satisfaction by the owner of the note, bond, or other evidence of indebtedness. If such evidence of indebtedness cannot be produced, an affidavit, hereafter referred to as an "affidavit of lost note", signed by the owner of the note, bond, or other evidence of indebtedness, shall be delivered to the register of deeds in lieu of the evidence of indebtedness certifying that the debt has been satisfied and stating: (i) the date of satisfaction; (ii) that the note, bond, or other evidence of indebtedness cannot be found; and (iii) that the person signing the affidavit is the current owner of the note, bond, or other evidence of indebtedness. The certificate of satisfaction shall be substantially in the form set out in G.S. 47-46.2 and shall recite the names of all parties to the original instrument, the amount of the obligation secured, the date of satisfaction of the obligation, and a reference by book and page number to the record of the instrument satisfied. The affidavit of lost note, if necessary, shall be substantially in the form set out in G.S. 47-46.3. The certificate of satisfaction shall be accompanied by the deed of trust, mortgage, or other instrument, or a copy of the instrument, for verification and indexing purposes, which shall not be recorded with the certificate.~~

~~Upon exhibition of the certificate of satisfaction and accompanying evidence of indebtedness endorsed paid and satisfied, or upon exhibition of an affidavit of lost note, the register of deeds shall record~~

~~the certificate of satisfaction and either the accompanying evidence of indebtedness or the affidavit of lost note, and shall cancel the deed of trust, mortgage, or other instrument as required by G.S. 45-37.2. No fee shall be charged for recording any documents or certifying any acknowledgments pursuant to this subdivision. The register of deeds shall not be required to verify or make inquiry concerning the authority of the person executing the certificate of satisfaction to do so.~~

Security instruments satisfied of record pursuant to this subdivision as it was in effect prior to October 1, 2005, shall be deemed satisfied of record, discharged, and released.

(7) By recording:

a. A satisfaction document that satisfies the requirements of G.S. 45-36.10,

b. An affidavit of satisfaction that satisfies the requirements of G.S. 45-36.16, or

c. A trustee's satisfaction that satisfies the requirements of G.S. 45-36.20, but only if the security instrument is a deed of trust.

The register of deeds shall not be required to verify or make inquiry concerning (i) the truth of the matters stated in any satisfaction document, affidavit of satisfaction, or trustee's satisfaction, or (ii) the authority of the person executing any satisfaction document, affidavit, or trustee's satisfaction to do so.

(b) It shall be conclusively presumed that the conditions of any ~~deed of trust, mortgage or other~~ security instrument securing the payment of money or securing the performance of any other obligation or obligations have been complied with or the debts secured thereby paid or obligations performed, as against creditors or purchasers for valuable consideration from the mortgagor or grantor, from and after the expiration of 15 years from whichever of the following occurs last:

(1) The date when the conditions of ~~such~~ the security instrument were required by its terms to have been performed, or

(2) The date of maturity of the last installment of debt or interest secured thereby;

provided that the holder of the indebtedness secured by ~~such~~ the security instrument or party secured by any provision thereof may file an affidavit with the register of deeds which affidavit shall specifically state:

(1) The amount of debt unpaid, which is secured by ~~said~~ the security instrument; or

(2) In what respect any other condition thereof shall not have been complied with; or

may record a separate instrument signed by the ~~holder or party~~ secured creditor and witnessed by the register of deeds stating:

(1) Any payments that have been made on the indebtedness or other obligation secured by ~~such~~ the security instrument including the date and amount of payments and

(2) The amount still due or obligations not performed under the security instrument.

Whenever practical, the register of deeds may also enter the information contained in the separate instrument on the margin of the record of the security instrument. The effect of the filing of the affidavit or of the instrument recorded made as herein provided shall be to postpone the effective date of the conclusive presumption of satisfaction to a date 15 years from the filing of the affidavit or from the recording of the instrument or the making of the notation. There shall be only one postponement of the effective date of the conclusive presumption provided for herein. The register of deeds shall record the affidavit provided for herein and shall record a separate instrument, as required by G.S. 161-14.1, making reference to the filing of such affidavit and to the book and page or document number where the affidavit is recorded. Whenever practical, the register of deeds may also make such a reference on the margin of the record of the ~~deed of trust, mortgage, or other~~ security instrument referred to. This subsection shall not apply to any ~~deed, mortgage, deed of trust or other~~ security instrument made or given by any railroad company, or to any agreement of conditional sale, equipment trust agreement, lease, chattel mortgage or other instrument relating to the sale, purchase or lease of railroad equipment or rolling stock, or of other personal property.

(c) Repealed by Session Laws 1991, c. 114, s. 4.

(d) For the purposes of this section "register of deeds" means the register of deeds, his deputies or assistants of the county in which the mortgage, deed of trust, or other instrument intended to secure the payment of money or performance of other obligation is registered.

(e) Any transaction subject to the provisions of the Uniform Commercial Code, Chapter 25 of the General Statutes, is controlled by the provisions of that act and not by this section.

(f) Whenever this section requires a signature or endorsement, that signature or endorsement shall be followed by the name of the person signing or endorsing the document printed, stamped, or typed so as to be clearly legible. The register of deeds may refuse to accept any document when the provisions of this subsection have not been met.

(g) The satisfaction of record of a security instrument pursuant to this section shall operate and have the same effect as a duly executed and recorded deed of release or reconveyance of the property described in the security instrument and shall release and discharge (i) all the interest of the secured creditor in the real property arising from the security instrument and, (ii) if the security instrument is a deed of trust, all the interest of the trustee or substitute trustee in the real property arising from the deed of trust."

"**§ 45-37.1. Validation of certain entries of cancellation made by beneficiary or assignee instead of trustee.**

In all cases where, prior to January 1, 1930, it appears from the margin or face of the record in the office of the register of deeds of any county in this State that the original beneficiary named in any deed of trust, trust indenture, or other instrument intended to secure the payment of money and constituting a lien on real estate, or his assignee of record, shall have made an entry purporting to fully satisfy and discharge the lien of such instrument, and such entry has been signed by the original payee and beneficiary in said deed of trust, or other security instrument, or by his assignee of record, or by his or their properly constituted officer, agent, attorney, or legal representatives, and has been duly witnessed by the register of deeds or his deputy, all such entries of cancellation and satisfaction are hereby validated and made full, sufficient and complete to release, satisfy and discharge the lien of such instrument, and shall have the same effect as if such entry had been made and signed by the trustee named in said deed of trust, or other security instrument, or by his duly appointed successor or substitute.

"**§ 45-37.2. Recording satisfactions of ~~deeds of trust and mortgages.~~security instruments.**

(a) When a ~~notice of~~ satisfaction document, affidavit of satisfaction, or trustee's satisfaction is recorded pursuant to ~~G.S. 45-37(a)(5) or a certificate of satisfaction is recorded pursuant to G.S. 45-37(a)(6),~~ G.S. 45-37(a)(7), the register of deeds shall make an entry of satisfaction on the notice or certificate and record and index the instrument. No fee shall be charged by the register of deeds for (i) recording a satisfaction document, affidavit of satisfaction, or a trustee's satisfaction, or (ii) certifying any acknowledgments relating thereto.

(b) When a ~~deed of trust, mortgage, or other~~ security instrument is satisfied of record by a method other than by means of ~~a notice of satisfaction or certificate of satisfaction,~~ recording a satisfaction document, satisfaction affidavit, or trustee's satisfaction pursuant to G.S. 45-37(a)(7),the register of deeds shall record and index a record of satisfaction consisting of either a separate instrument or all or a portion of the original ~~deed of trust or mortgage rerecorded, and shall make the appropriate entry of satisfaction as provided in G.S. 45-37 on each~~ security instrument rerecorded. No fee shall be charged by the register of deeds for recording a record of satisfaction. ~~A separate instrument or original deed of trust or mortgage rerecorded pursuant to this subsection shall contain (i) names of all parties to the original instrument, (ii) the amount of the obligation secured, (iii) the date of satisfaction of the obligation, (iv) a reference by book and page number to the record of the instrument satisfied, and (v) the date of recording the notice of satisfaction.~~

(1) All or a portion of a security instrument rerecorded is a sufficient record of satisfaction if it identifies the security instrument, the original parties to the security instrument, and the recording data for the security instrument as originally recorded. In addition, the rerecorded security instrument must contain the following:

a. If the security instrument is being satisfied of record pursuant to G.S. 45-37(a)(2), the rerecorded security instrument must also contain either (i) an endorsement of payment and satisfaction made by a person authorized under G.S. 45-37(a)(2) to make

such an endorsement, or (ii) an endorsement signed by the register of deeds that states substantially the following: "This security instrument is satisfied of record pursuant to G.S. 45-37(a)(2), the original security instrument and secured obligations having been exhibited to me with appropriate endorsement of payment and satisfaction appearing thereon as required by law."

b. If the security instrument is being satisfied of record pursuant to G.S. 45-37(a)(3), the rerecorded security instrument must also contain an endorsement signed by the register of deeds that states substantially the following: "This security instrument is satisfied of record pursuant to G.S. 45-37(a)(3), the original security instrument and secured obligations having been exhibited to me, and each such instrument being more than 10 years old as provided by law."

c. If the security instrument is being satisfied of record pursuant to G.S. 45-37(a)(4), the rerecorded security instrument must also contain an endorsement signed by the register of deeds that states substantially the following: "This security instrument is satisfied of record pursuant to G.S. 45-37(a)(4), the original security instrument and all negotiable instruments transferable by delivery secured thereby having been exhibited to me, and each having been marked paid and satisfied in full by the bearer or holder thereof."

(2) A separate instrument is a sufficient record of satisfaction if it:

a. Identifies the security instrument, the original parties to the security instrument, the recording data for the security instrument, and the office in which the security instrument is recorded;

b. States the statutory authority pursuant to which the security instrument is being satisfied of record;

c. Contains language terminating the effectiveness of the security instrument; and

d. Is signed by the register of deeds.

No particular phrasing is required for a record of satisfaction. The following form, when properly completed, is sufficient to satisfy the requirements of this subsection (b)(2):

"RECORD OF SATISFACTION
(G.S. 45-37.2)

This Record of Satisfaction applies to the following security instrument:

Type of security instrument: (identify type of security instrument, such as deed of trust or mortgage)

Original Grantor(s): (Identify original grantor(s), trustor(s), or mortgagor(s))

Original Secured Party(ies): (Identify the original beneficiary(ies), mortgagee(s), or secured party(ies) in the security instrument)

Recording Data: The security instrument is recorded in Book _____ at Page _____ or as document number _____ in the office of the Register of Deeds for _____ County, North Carolina.

This Record of Satisfaction terminates the effectiveness of the security instrument pursuant to the following statutory authority: (check applicable box)

[ ] G.S. 45-37(a)(2), the original security instrument and secured obligations having been exhibited to me with appropriate endorsement of payment and satisfaction appearing thereon as required by law.

[ ] G.S. 45-37(a)(3), the original security instrument and secured obligations having been exhibited to me, each such instrument being more than 10 years old as provided by law.

[ ] G.S. 45-37(a)(4), the original security instrument and all negotiable instruments transferable by delivery secured thereby having been exhibited to me, each having been marked paid and satisfied in full by the bearer or holder thereof.

Other: (specify)

Date: _____ _____

(Signature of register of deeds)"

(c) Whenever it is practical to do so, the register of deeds may make a marginal notation of satisfaction ~~in addition to making the recordation~~ the original record of the security instrument in addition to recording the documents required by this section.

"**§ 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 and, whenever it is practical to do so, may also enter upon the margin of the record of the deed of trust or mortgage of the fact that such foreclosure and 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 and which was not sold, and may make an additional notation indicating the same, whenever practical.

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 ~~all~~ the original parties to the original instrument, the amount of the obligation secured, a reference by book and page number or document number to the record of the instrument foreclosed, and the date of recording the notice of foreclosure.

"**§ 45-39:** Repealed by Session Laws 1949, c. 720, s. 5.

"**§ 45-40. Register to enter satisfaction on index.**

When satisfaction of the provisions of any ~~deed of trust or mortgage~~ security instrument is acknowledged and entry of such acknowledgment of satisfaction is made upon the margin of the record of said ~~deed of trust or mortgage,~~ security instrument or when the register of deeds or his or her deputy shall cancel the ~~mortgage or other~~ security instrument by entry of satisfaction, then the register of deeds or his or her deputy shall enter upon the alphabetical grantor index kept by ~~him,~~ the register of deeds, as required by law, and opposite the names of the grantor and grantee and on a line with the names of said grantor and grantee, the words "satisfied mortgage," if the security instrument of which satisfaction has been acknowledged or entered is a mortgage, and the words "satisfied deed of trust," if the security instrument of which satisfaction has been acknowledged or entered is a deed of trust, or, in lieu of the entries herein provided, the register of deeds or his deputy may denote satisfaction in the grantor index by using a capital "C" or the word "Cancelled," or the word "Satisfied." This statute shall not apply to counties using computerized indexing or to counties in which a parcel identifier index is established pursuant to G.S. 161-22.2.

"**§ 45-41. Recorded deed of release of mortgagee's representative.**

The personal representative of any mortgagee or trustee in any mortgage or deed of trust which has heretofore or which may hereafter be registered in the manner required by the laws of this State may satisfy of record, discharge and release the same and all property thereby conveyed by deed of quitclaim, release or conveyance executed, acknowledged and recorded as is now prescribed by law for the execution, acknowledgment and registration of deeds and mortgages in this State.

"**§ 45-42. Satisfaction of corporate mortgages by corporate officers.**

All ~~mortgages and deeds in trust~~ security instruments executed to a corporation may be satisfied and so marked of record as by law provided for the satisfaction of ~~mortgages and deeds in trust,~~ security instruments, by any officer of the corporation indicating the office held. For the purposes of recordation and ~~cancellation,~~ satisfaction, such signature shall be deemed to be a certification by the signer that he is an officer and is authorized to execute the satisfaction on behalf of such corporation. Where ~~mortgages or deeds in trust~~ security instruments were marked "satisfied" on the records before the twenty-third day of February, 1909, by any president, secretary, treasurer or

cashier of any corporation by such officer writing his own name and affixing thereto the title of his office in such corporation, such satisfaction is validated, and is as effective to all intents and purposes as if a deed of release duly executed by such corporation had been made, acknowledged and recorded.

"**§ 45-42.1. Corporate cancellation of lost mortgages by register of deeds.**

Upon affidavit of the secretary and treasurer of a corporation showing that the records of such corporation show that such corporation has fully paid and satisfied all of the notes secured by a ~~mortgage or deed of trust~~ security instrument executed by such corporation and such payment and satisfaction was made more than 25 years ago, and that such ~~mortgage or deed of trust~~ security instrument was made to a corporation which ceased to exist more than 25 years ago, and such affidavit shall further state that the records of such corporation show that no payments have been made on such ~~mortgage~~ secured obligation by the corporation executing such ~~mortgage or deed of trust~~ security instrument for 25 years, the register of deeds of the county in which such ~~mortgage or deed of trust~~ security instrument is recorded is authorized and empowered to file such affidavit and record the same in his or her office and to record a separate instrument making reference to the filing of such affidavit and to the book and page or document number where the affidavit is recorded. The register of deeds may also make reference thereto on the margin of the record in which the said ~~mortgage or deed of trust~~ security instrument is recorded, and, upon recording such instrument or making such entry, the said ~~mortgage or deed of trust~~ security instrument shall be deemed to be cancelled and satisfied of record and the said register of deeds is hereby authorized to ~~cancel~~ satisfy the same of record: Provided, that this section shall not apply to any mortgagor corporation except those in which the State of North Carolina owns more than a majority of the capital stock and shall not apply to any ~~mortgage or deed of trust~~ security instrument in which the principal amount secured thereby exceeds the sum of fifteen thousand dollars ($15,000): Provided, such cancellation shall not bar any action to foreclose such ~~mortgage or deed of trust~~ security instrument instituted within 90 days after the same is cancelled."

SECTION 2. G.S. 47-46.1 reads as rewritten:

"**§ 47-46.1. Notice of satisfaction of deed of trust, mortgage, or other instrument.**

No particular phrasing is required for a notice of satisfaction pursuant to G.S. 45-37(a)(5) as it was prior to October 1, 2005, a satisfaction of a security instrument under G.S. 45-36.10, or a trustee's satisfaction under G.S. 45-36.20. The following form, when properly completed, is sufficient to satisfy the requirements (i) for a notice of satisfaction under G.S. 45-37(a)(5) as it was in effect prior to October 1, 2005, (ii) for a satisfaction under G.S. 45-36.10 if the form is signed and acknowledged by the secured creditor, and (iii) for a trustee's satisfaction under G.S. 45-36.20 if the security instrument is a deed of trust and the form is signed and acknowledged by the trustee:

~~The form of a notice of satisfaction of a deed of trust, mortgage, or other instrument pursuant to G.S. 45-37(a)(5) shall be substantially as follows:~~

North Carolina, _____ County.

I, _____ (name of trustee or mortgagee), certify that the debt or other obligation in the amount of _____ secured by the (deed of trust) (mortgage) (other instrument) executed by _____ (grantor) (mortgagor), _____ (trustee) (leave blank if mortgage), and _____ (beneficiary) (mortgagee), and recorded in _____ County at _____ (book and page) was satisfied on _____ (date of satisfaction).

_____
(Signature of trustee or mortgagee)

~~I, _____ (name of officer taking acknowledgment), _____ (official title of person taking acknowledgment) certify that _____ (name of trustee or mortgagee) personally came before me this day and acknowledged the satisfaction of the provisions of the above-referenced (deed of trust) (mortgage) (other instrument).~~

~~Witness my hand and official seal this the _____ day of _____ (month), _____ (year).~~

_____
~~(Signature of officer taking acknowledgment)~~

(Acknowledgment before officer authorized to take acknowledgments)

My commission expires _____ (Date of expiration of official's commission).

North Carolina, _____ County.

The foregoing acknowledgment of _____ (name of officer that took acknowledgment), _____ (official title of person that took acknowledgment), is certified to be correct.

This _____ (day) of _____ (month), _____ (year).

_____
(Signature of Register of Deeds).

SECTION 3. G.S. 47-46.2 reads as rewritten:

"**§ 47-46.2. Certificate of satisfaction of deed of trust, mortgage, or other instrument.**

No particular phrasing is required for a certification of satisfaction pursuant to G.S. 45-37(a)(6) as it was in effect prior to October 1, 2005, or for a satisfaction of a security instrument under G.S. 45-36.10. The following form, when properly completed, is sufficient to satisfy the requirements (i) for a certificate of satisfaction under G.S. 45-37(a)(6) as it was in effect prior to October 1, 2005, and (ii) for a satisfaction of a security instrument under G.S. 45-36.10 when signed and acknowledged by the secured creditor:

~~The form of a certificate of satisfaction of a deed of trust, mortgage, or other instrument pursuant to G.S. 45-37(a)(6) shall be substantially as follows:~~

CERTIFICATE OF SATISFACTION

North Carolina, _____ County.

I, _____ (name of owner of the note or other indebtedness secured by the deed of trust or mortgage), certify that I am the owner of the indebtedness secured by the hereafter described deed of trust or mortgage and that the debt or other obligation in the amount of _____ secured by the (deed of trust) (mortgage) (other instrument) executed by _____ (grantor) (mortgagor), _____ (trustee) (leave blank if mortgage), and _____ (beneficiary) (mortgagee), and recorded in _____ County at _____ (book and page) was satisfied on _____ (date of satisfaction). I request that this certificate of satisfaction be recorded and the above-referenced security instrument be canceled of record.

_____

(Signature of owner of note)

[Acknowledgment before officer authorized to take acknowledgments]."

SECTION 4. G.S. 47-46.3 reads as rewritten:

"**§ 47-46.3. Affidavit of lost note.**

No particular phrasing is required for an affidavit of lost note pursuant to G.S. 45-36(a)(6) as it was in effect prior to October 1, 2005. The following form, when properly completed, is sufficient to satisfy the requirements for an affidavit of lost note under G.S. 45-37(a)(6) as it was in effect prior to October 1, 2005.

~~The form of an affidavit of lost note, if required pursuant to G.S. 45-37(a)(6), shall be substantially as follows:~~

AFFIDAVIT OF LOST NOTE

[Name of affiant] personally appeared before me in _____ County, State of _____, and having been duly sworn (or affirmed) made the following affidavit:

1. The affiant is the owner of the note or other indebtedness secured by the deed of trust, mortgage, or other instrument executed by _____ (grantor, mortgagor), _____ (trustee), and _____ (beneficiary, mortgagee), and recorded in _____ County at _____ (book and page); and
2. The note or other indebtedness has been lost and after the exercise of due diligence cannot be located.
3. The affiant certifies that all indebtedness secured by the deed of trust, mortgage, or other instrument was satisfied on _____, _____ (date of satisfaction), and the affiant is responsible for cancellation of the same.

_____

(Signature of affiant)

Sworn to (or affirmed) and subscribed before me this _____ day of _____, _____.

[Signature and seal of notary public or other official authorized to administer oaths]."

SECTION 5. This act becomes effective October 1, 2005.

SENATE
COMMITTE SUBSTITUTE

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

APR 27 2005

S D

SENATE BILL 972

ADOPTED

PROPOSED COMMITTEE SUBSTITUTE S972-PCS75297-RK-13

Short Title: Break Into Place of Worship. (Public)

Sponsors:

Referred to:

March 24, 2005

A BILL TO BE ENTITLED

AN ACT TO CREATE THE CRIMINAL OFFENSE OF BREAKING OR ENTERING A BUILDING THAT IS A PLACE OF RELIGIOUS WORSHIP.

The General Assembly of North Carolina enacts:

SECTION 1. Article 14 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-54.1. Breaking or entering a building that is a place of religious worship.**

(a) Any person who wrongfully breaks or enters any building that is a place of religious worship with intent to commit any felony or larceny therein is guilty of a Class G felony, except as provided by subsection (b) of this section.

(b) A person is guilty of a Class F felony if:

(1) The person breaks or enters two or more buildings that are places of religious worship; or

(2) The person is convicted of a second or subsequent violation of subsection (a) of this section.

(c) As used in this section, a "building that is a place of religious worship" shall be construed to include any church, chapel, meetinghouse, synagogue, temple, or mosque, or other building that is regularly used, and clearly identifiable, as a place for religious worship."

SECTION 2. This act becomes effective December 1, 2005, and applies to offenses committed on or after that date.

SENATE BILL 972:
Break Into Place of Worship

BILL ANALYSIS

Committee:	Senate Judiciary I	**Date:**	April 26, 2005
Introduced by:	Sen. Smith and Sen. Albertson	**Summary by:**	Hal Pell
Version:	First Edition		Committee Co-Counsel
	S972-CSRK-13		

SUMMARY: ***This act would create a new criminal offense. Breaking or entering a building that is a place for religious worship with intent to commit a felony or larceny therein would be a Class G felony. A second conviction, or if the person breaks or enters two or more places of religious worship, would be a Class F felony. This act becomes effective December 1, 2005, and applies to offenses committed on or after that date.***

CURRENT LAW: Breaking or entering a building with the intent to commit any larceny or felony is a Class H felony.

BILL ANALYSIS:

The bill adds a new statute to the section of the criminal laws on breaking or entering. A person that breaks or enters a building that is used for religious worship, on a regular basis, would be guilty of a Class G felony. The person must have the intent to commit a felony or larceny at the time of the breaking or entering. The building must be clearly identifiable as a place of religious worship.

The bill provides for escalated penalties if the offender breaks or enters two or more described buildings, or has a prior conviction under the statute. In such cases, the offense would be a Class F felony.

EFFECTIVE DATE: This act becomes effective December 1, 2005, and applies to offenses committed on or after that date.

S0972e1-SMRK-CSRK-13

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 972

Short Title:	Break Into Place of Worship.	(Public)
Sponsors:	Senators Smith, Albertson; Apodaca, Blake, Brock, Brown, Forrester, Holloman, Hunt, Jacumin, Presnell, Stevens, and Tillman.	
Referred to:	Judiciary I.	

March 24, 2005

A BILL TO BE ENTITLED

AN ACT TO CREATE THE CRIMINAL OFFENSE OF BREAKING OR ENTERING A BUILDING THAT IS A PLACE OF WORSHIP.

The General Assembly of North Carolina enacts:

SECTION 1. Article 14 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-56.4. Breaking or entering a building that is a place of worship.**

(a) Any person who wrongfully breaks or enters any building that is a place of worship is guilty of a Class G felony except as provided by subsection (b) of this section.

(b) A person is guilty of a Class F felony, if:

(1) The person breaks or enters two or more buildings that are places of worship; or

(2) The person is convicted of a second or subsequent violation of subsection (a) of this section.

(c) As used in this section, a "building that is a place of worship" shall be construed to include any church, chapel, meetinghouse, synagogue, temple, or mosque."

SECTION 2. 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 911
PROPOSED COMMITTEE SUBSTITUTE S911-CSRU-20 [v.1]

4/25/2005 7:27:38 PM

Short Title: Class Actions and Unpaid Residuals. (Public)

Sponsors:

Referred to:

March 24, 2005

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE DISTRIBUTION OF UNPAID RESIDUALS IN CLASS ACTION LITIGATION.

The General Assembly of North Carolina enacts:

SECTION 1. Subchapter VIII of Chapter 1 of the General Statutes is amended by adding a new Article to read:

"Article 26B.

"Distribution of Unpaid Residuals in Class Action Litigation.

"**§ 1-267.10. Distribution of unpaid residuals in class action litigation.**

(a) It is the intent of the General Assembly to ensure that the unpaid residuals in class action litigation are distributed, to the extent possible, in a manner designed either to further the purposes of the underlying causes of action or to promote justice for all citizens of this State. The General Assembly finds that the use of funds collected by the State courts pursuant to this section for these purposes is in the public interest, is a proper use of the funds, and is consistent with essential public and governmental purposes.

(b) Prior to the entry of any judgment or order approving settlement in a class action established pursuant to Rule 23 of the Rules of Civil Procedure, the court shall determine the total amount that will be payable to all class members, if all class members are paid the amount to which they are entitled pursuant to the judgment or settlement. The court shall also set a date when the parties shall report to the court the total amount that was actually paid to the class members. After the report is received, the court shall direct the defendant to pay the sum of the unpaid residue to the North Carolina State Bar for the provision of civil legal services for indigents."

SECTION 2. This act becomes effective October 1, 2005, and applies to causes of action that arise on or after that date.

SENATE BILL 911:
Class Actions and Unpaid Residuals

BILL ANALYSIS

Committee:	Senate Judiciary I	**Date:**	April 26, 2005
Introduced by:	Sen. Hagan	**Summary by:**	Walker Reagan
Version:	First Edition		Committee Co-Counsel
	S911-CSRU-20		

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 911 would provide that all undistributed money collected in class actions suits is to be paid to the North Carolina State Bar for civil legal services for indigents.***

CURRENT LAW: Under Rule 23 of the Rules of Civil Procedure, the court has the discretion to order how money recovered in class action lawsuits is to be distributed. Payments are typically made to the members of the class, the attorneys for the class members, and the administrative costs of distributing the proceeds to the class. Any funds allocated to class members that are unable to be paid out remain with the defendant. A copy of Rule 23 is attached.

BILL ANALYSIS: The bill requires the court in class action lawsuits, prior to the entry of judgment or order approving settlement, to determine the total amount payable to all class members if all class members are paid the amount they are entitled to under the judgment or settlement. The court is also required to set a date for the parties to the lawsuit to report back to the court the total amount actually paid to class members. After receiving this report, the court shall direct that the unpaid residue be paid to the North Carolina State Bar for civil legal services for indigents.

EFFECTIVE DATE: The bill becomes effective October 1, 2005 and applies to causes of action that arise on or after that date.

BACKGROUND: The North Carolina State Bar currently allocates money collected from interest earned on lawyers' trust accounts to provide for civil legal services for indigents.

G.S. 1A-1, Rule 23. Class actions.

(a) Representation. – If persons constituting a class are so numerous as to make it impracticable to bring them all before the court, such of them, one or more, as will fairly insure the adequate representation of all may, on behalf of all, sue or be sued.

(b) Secondary action by shareholders. – In an action brought to enforce a secondary right on the part of one or more shareholders or members of a corporation or an unincorporated association because the corporation or association refuses to enforce rights which may properly be asserted by it, the complaint shall be verified by oath.

(c) Dismissal or compromise. – A class action shall not be dismissed or compromised without the approval of the judge. In an action under this rule, notice of a proposed dismissal or compromise shall be given to all members of the class in such manner as the judge directs. (1967, c. 954, s. 1.)

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE — 4-26-05

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
John Madler	NC Sentencing Commission
Joe Johnson	Ruggles Hayes &
[illegible]	Bone & Assoc
[illegible]	NFOS
[illegible]	NCAJ
Patrice Rancier	NCACC
Jim Blackburn	NCACC
JOHN CLINE / HENRY HUNTAFF	NC SDA
Michelle Jones, MD	Doctor of the Day
[illegible]	NCACDL
R. Cal Wilms	NCMPA

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE
Name of Committee

4-26-05
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
John Watters	NCSBI 3320 Garner Rd Rad.
Gary McLeod	NCAGO
Brn Tennille	North Carolina Business Court
Ted Brown	
Sheriff Jimmy Thornton	Sampson Co. Sheriff's Office
JC Creekman	First Citizens Bank
[signature]	" " "
Lee Hodge	KCCH
Ann Shaw	NC Assn of Regs of Deeds
[signature]	NMRS
Tripp Melton	Sen. Stevens Office

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE — 4-26-05

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
Rick Zechini	NC Assoc. of Realtors
Doug Heeon	NC Bar Assoc
Shaila Talton-DeWitt	JWP Civitas Institute
George Hausen	LANC
John McAlister	Duke Energy
Gary Salamido	GSK
Wayne Covert	CFSF
Jim Anderson	CBA
Peter Lawhe	CCCS of NC
Molly Diggins	Sierra Club

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Thursday	April 28, 2005	10:00 AM	1027 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 748	Drug Enforcement Improvement Act.	Senator Rand
SB 893	State Health Plan Subrogation.	Senator Rand
SB 929	Prison Escape/Juvenile Detention Facility.	Senator Clodfelter
SB 1070	Balance Fair Sentencing/Structured Sentencing.	Senator Rand
SB 1081	Procedures for Advertising Tax Liens.	Senator Berger
SB 1118	Torts by State Law Enforcement/Employees.	Senator Rand

Senator Daniel G. Clodfelter, Chair

Judiciary 1 Committee

April 28, 2005

Minutes

Senator Dan Clodfelter, Chair called the meeting to order at 10:03 a.m. with seventeen members present. He introduced Pages Irvinia Basile and Kristen Royal, both from Salemburg, NC, Brittany Gibson from Murphy, NC, and Clayton Thomas from Cary, NC.

SB-748 (Drug Enforcement Improvement Act) Committee Substitute was introduced by Senator Clodfelter. Bill sponsor, Senator Tony Rand moved for adoption of the Committee Substitute. All members voted yes. Motion carried. Senator Rand explained that the bill amends the State laws providing the procedures for the interception of wire, oral, or electronic communications by law enforcement agencies. The amendments conform State law to federal law provisions. (See attached Bill Summary). Senator Clodfelter asked for explanations of changes to the bill. Staff attorney, Hal Pell and Mr. John Waters, NC State Bureau of Investigation (SBI) explained the changes. Senator Charlie Albertson had a question. Mr. Waters answered the question. Senator David Hoyle moved for a Favorable Report. All members voted yes. Motion carried.

SB-893 (State Health Plan Subrogation) Committee Substitute was introduced by Senator Clodfelter. Bill sponsor, Senator Rand moved for adoption of the Committee Substitute. All members voted yes. Motion carried. Senator Rand explained the bill would amend the law governing the right of subrogation that the State Health Plan has in third-party payments owed to a Plan member arising from an injury caused by a liable third party by clarifying what payments subrogation rights attach to and allowing for a recovery by the State Health Plan of it's claim up to fifty per cent of the total damages recovered exclusive of the costs of collection. It also provides that the limits for recovery by third-party medical providers in wrongful death cases do not apply to the State Health Plan. No discussion. Senator Richard Stevens moved for a Favorable Report. All members voted yes. Motion carried.

SB-1070 (Balance Fair Sentencing/Structured) Committee Substitute was introduced by Senator Clodfelter. Bill sponsor, Senator Rand moved for adoption

of the Committee Substitute. All members voted yes. Motion carried. Senator Rand explained that the bill would provide that prisoners who were sentenced prior to the Structured Sentencing Act, and who have served more time in prison than they would have served if sentenced under Structured Sentencing are to be paroled, unless they fail to meet the criteria for parole set forth in the act. Ms. Susan Katzen-Nelson, Executive Director NC Sentencing Commission spoke on the bill. Senator's Jeanne Lucas, Phillip Berger, David Hoyle and Vernon Malone had questions. Ms. Katsen-Nelson and Senator Rand answered the questions regarding language in the bill. Senator Rand offered an Amendment to the bill. See attached Amendment). Ms. Aleta Grooms, Administrator with NC Parole Commission spoke briefly on the bill. Ms. Chloe Gossage, NCGA Fiscal Research Department spoke on the bill. Senator Clodfelter called for a vote on the Amendment. All members voted yes. Amendment adopted. Senator David Hoyle moved for a Favorable Report. All members voted yes. Motion carried.

SB-1118 (Torts by State Law Enforcement/Employees) Committee Substitute was introduced by Senator Clodfelter. Bill sponsor, Senator Rand moved for adoption of the Committee Substitute. All members voted yes. Motion carried. Senator Rand explained that the bill would permit a person who obtained a judgment in federal court against a member of the Highway Patrol for injuries and the court determined that the member of the Patrol acted within the course and scope of the person's office or employment even though the Attorney General refused to defend the member of the Highway Patrol, to file a claim under the Tort Claims Act even if the statute of limitation has expired. Senator Martin Nesbitt had a question about language. Senator Rand offered a Technical Amendment on page 1, line 19. (See attached Amendment). All members voted in favor of the Amendment. Senator Jerry Tillman moved for a Favorable Report. All members voted yes. Motion carried.

Being no further business the meeting adjourned at 10:50 a.m.

Senator Dan Clodfelter, Chair

Wanda Joyner, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Daniel G. Clodfelter, Chair

Tuesday, May 3, 2005

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

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

S.B. **748** Drug Enforcement Improvement Act.

Draft Number:	PCS75303
Sequential Referral:	None
Recommended Referral:	No
Long Title Amended:	No

S.B. **893** State Health Plan Subrogation.

Draft Number:	PCS15238
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

S.B. **1070** Balance Fair Sentencing/Structured Sentencing.

Draft Number:	PCS55219
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

S.B. **1118** Torts by State Law Enforcement/Employees.

Draft Number:	PCS55222
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 4

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 748
PROPOSED COMMITTEE SUBSTITUTE S748-PCS75303-RK-12

Short Title: Drug Enforcement Improvement Act. (Public)

Sponsors:

Referred to:

March 22, 2005

A BILL TO BE ENTITLED

AN ACT TO AMEND THE PROCEDURE FOR IMPLEMENTING AN ORDER FOR ELECTRONIC SURVEILLANCE, TO PROVIDE THAT IN CERTAIN CIRCUMSTANCES IT IS NOT NECESSARY TO IDENTIFY THE PLACE WHERE THE COMMUNICATION WILL BE INTERCEPTED BY ELECTRONIC SURVEILLANCE, AND ALSO TO PROVIDE THE TIME FRAME WITHIN WHICH THE ELECTRONIC SURVEILLANCE IN AN UNDISCLOSED LOCATION MAY BEGIN.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-291(d) reads as rewritten:

"(d) Each application for an order authorizing or approving the interception of a wire, oral, or electronic communication must be made in writing upon oath or affirmation to the judicial review panel. Each application must include the following information:

(1) The identity of the office requesting the application;

(2) A full and complete statement of the facts and circumstances relied upon by the applicant, to justify his belief that an order should be issued, including:

a. Details as to the particular offense that has been, or is being committed;

b. Except as provided in G.S. 15A-294(i), a ~~A~~ particular description of the nature and location of the facilities from which or the place where the communication is to be intercepted;

c. A particular description of the type of communications sought to be intercepted; and

d. The identity of the person, if known, committing the offense and whose communications are to be intercepted;

(3) A full and complete statement as to whether or not other investigative procedures have been tried and failed or why they reasonably appear to be unlikely to succeed if tried or to be too dangerous;

(4) A statement of the period of time for which the interception is required to be maintained. If the nature of the investigation is such that the authorization for interception should not automatically terminate when the described type of communication has been obtained, a particular description of facts establishing probable cause to believe that additional communications of the same type will occur thereafter must be added;

(5) A full and complete statement of the facts concerning all previous applications known to the individual authorizing and making adjudication, made to a judicial review panel for authorization to intercept, or for approval of interceptions of wire, oral, or electronic communications involving any of the same persons, facilities, or places specified in the application, and the action taken by that judicial review panel on each such application; and

(6) Where the application is for the extension of an order, a statement setting forth the results thus far obtained from the interception, or a reasonable explanation of the failure to obtain such results."

SECTION 2. G.S. 15A-293(a) reads as rewritten:

"(a) Upon application by the Attorney General pursuant to the procedures in G.S. 15A-291, a judicial review panel may enter an ex parte order, as requested or as modified, authorizing the interception of wire, oral, or electronic communications, if the panel determines on the basis of the facts submitted by the applicant that:

(1) There is probable cause for belief that an individual is committing, has committed, or is about to commit an offense set out in G.S. 15A-290;

(2) There is probable cause for belief that particular communications concerning that offense will be obtained through such interception;

(3) Normal investigative procedures have been tried and have failed or reasonably appear to be unlikely to succeed if tried or to be too dangerous; and

(4) Except as provided in G.S. 15A-294(i), there ~~There~~ is probable cause for belief that the facilities from which, or the place where, the wire, oral, or electronic communications are to be intercepted are being used, or are about to be used, in connection with the commission of such offense, or are leased to, listed in the name of, or commonly used by the individual described in subdivision (1) of this subsection."

SECTION 3. G.S. 15A-293(c) reads as rewritten:

"(c) No order entered under this Article may authorize the interception of any wire, oral, or electronic communication for any period longer than is necessary to achieve the objective of the authorization, nor in any event longer than 30 days. Such 30-day period begins on the earlier of the day on which the investigative or law enforcement officer first begins to conduct an interception under the order or 10 days

after the order is entered. Extensions of an order may be granted, but only upon application for an extension made in accordance with G.S. 15A-291 and the panel making the findings required by subsection (a) of this section. The period of extension ~~may~~ shall be no longer than the panel determines to be necessary to achieve the purpose for which it was granted and in no event for longer than ~~15~~30 days. Every order and extension thereof must contain a provision that the authorization to intercept be executed as soon as practicable, be conducted in such a way as to minimize the interception of communications not otherwise subject to interception under this Article, and terminate upon attainment of the authorized objective, or in any event in 30 days, ~~days or 15 days,~~ as is appropriate. In the event the intercepted communication is in a code or foreign language, and an expert in that foreign language or code is not reasonably available during the interception period, minimization may be accomplished as soon as practicable after the interception. An interception under this Article may be conducted in whole or in part by State or federal government personnel, or by an individual operating under a contract with the State or federal government, acting under the supervision of an investigative or law enforcement officer authorized to conduct the interception."

SECTION 4. G.S. 15A-294 is amended by adding the following new subsections to read:

"(i) The requirements of G.S. 15A-293(b)(2) and G.S. 15A-293(a)(4) relating to the specification of the facilities from which, or the place where, the communication is to be intercepted do not apply if:

(1) In the case of an application with respect to the interception of an oral communication:
   a. The application is by a State investigative or law enforcement officer and is approved by the Attorney General or his designee;
   b. The application contains a full and complete statement as to why the specification is not practical and identifies the person committing the offense and whose communications are to be intercepted; and
   c. The judicial review panel finds that the specification is not practical.

(2) In the case of an application with respect to a wire or electronic communication:
   a. The application is by a State investigative or law enforcement officer and is approved by the Attorney General or his designee;
   b. The application identifies the person believed to be committing the offense and whose communications are to be intercepted, and the applicant makes a showing that there is probable cause to believe that the person's actions could have the effect of thwarting interception from a specified facility;
   c. The judicial review panel finds that the showing has been adequately made; and

d. The order authorizing or approving the interception is limited to interception only for such time as it is reasonable to presume that the person identified in the application is or was reasonably proximate to the instrument through which the communication will be or was transmitted.

(j) An interception of a communication under an order with respect to which the requirements of G.S. 15A-293(b)(2) and G.S. 15A-293(a)(4) do not apply by reason of subdivision (i)(1) of this section shall not begin until the place where the communication is to be intercepted is ascertained by the person implementing the interception order. A provider of wire or electronic communications service that has received an order as provided for in subdivision (i)(2) of this section may move the court to modify or quash the order on the grounds that its assistance with respect to the interception cannot be performed in a timely or reasonable fashion. The court, upon notice to the government, shall decide such a motion expeditiously."

SECTION 5. This act becomes effective December 1, 2005.

SENATE BILL 748:
Drug Enforcement Improvement Act

BILL ANALYSIS

Committee:	Senate Judiciary I	**Date:**	April 28, 2005
Introduced by:	Sen. Rand	**Summary by:**	Hal Pell
Version:	PCS		Committee Co-Counsel
	S748-CSRK-12		

SUMMARY: ***This act amends the State laws providing the procedures for the interception of wire, oral, or electronic communications by law enforcement agencies. The amendments conform State law to federal law provisions. This act becomes effective December 1, 2005.***

BILL ANALYSIS:

Section 1:

Generally, an applicant for an order to intercept communications must describe the nature and location of the facilities from which, or the place where, the communication is to be intercepted. The amendment provides notice of a statutory exception to the requirement.

Section 2:

The judicial review panel that issues an order authorizing the interception of communications must find that there is probable cause that designated facilities are being used by the person committing the offense. The amendment notes that there is a statutory exception to this required finding.

Section 3:

Currently, an order authorizing the interception of communications expires 30 days from the date of the order. The panel may extend the period for 15 days. The bill would amend the law to provide that the 30-day period begins on the earlier of the day the interception begins, or 10 days after the order is entered. The bill would also authorize an extension of 30 days.

The law would also be amended to provide that if the intercepted communication is in code or foreign language, and an expert is not available during the interception period, minimization may be accomplished as soon as practicable. Minimization is the deletion of any communications that are not relevant or pertinent to the basis for the interception. Minimization is normally accomplished by suspending intercept operations during the periods when irrelevant communications are occurring.

The statute would allow the interception to be conducted by State or government personnel, or contracted personnel under law enforcement supervision.

Section 4:

This section adds two new subsections to G.S. 15A-294. Both conform State law to federal law provisions.

In subsection (i), the statute would provide an exception to the requirement for the specification of the facilities from which, or the place where, the communication is to be intercepted.

(over)

In the case of an application for the interception of an oral communication, the requirement does not apply if:

- The Attorney General or designee approves the application.
- The application contains a full and complete statement why the specification is not practical.
- The judicial review panel finds that the specification is not practical.

In the case of an application for the interception of a wire or electronic communication, the requirement does not apply if:

- The Attorney General or designee approves the application.
- The application identifies the person believed to be committing the offense, and whose communications are to be intercepted, and the applicant makes a showing that the person's actions could have the effect of thwarting interception from a specified facility.
- The judicial review panel finds that the showing has been adequately made.
- The order is limited to the interception only for a reasonable time to presume that the person identified was proximate to the transmission instrument.

In G.S. 15A-294(j), the bill provides that

- In the case of an oral interception where the specific facility has not been designated, the interception cannot begin until the person authorized to intercept the communication has ascertained the place where the interception is to occur.
- In the case of an order authorizing the interception of a wire or electronic communication, the provider of the wire or electronic communication may move for a modification or to quash the order, on the grounds that it cannot assist the interception in a timely or reasonable fashion.

EFFECTIVE DATE: This act becomes effective December 1, 2005.

S0748e1-SMRK-CSRK-12

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 748

Short Title: Drug Enforcement Improvement Act. (Public)

Sponsors: Senator Rand.

Referred to: Judiciary I.

March 22, 2005

A BILL TO BE ENTITLED

AN ACT TO AMEND THE PROCEDURE FOR IMPLEMENTING AN ORDER FOR ELECTRONIC SURVEILLANCE, TO PROVIDE THAT IN CERTAIN CIRCUMSTANCES IT IS NOT NECESSARY TO IDENTIFY THE PLACE WHERE THE COMMUNICATION WILL BE INTERCEPTED BY ELECTRONIC SURVEILLANCE, AND ALSO TO PROVIDE THE TIME FRAME WITHIN WHICH THE ELECTRONIC SURVEILLANCE IN AN UNDISCLOSED LOCATION MAY BEGIN.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-293(c) reads as rewritten:

"(c) No order entered under this Article may authorize the interception of any wire, oral, or electronic communication for any period longer than is necessary to achieve the objective of the authorization, nor in any event longer than 30 days. Such 30-day period begins on the earlier of the day on which the investigative or law enforcement officer first begins to conduct an interception under the order or 10 days after the order is entered. Extensions of an order may be granted, but only upon application for an extension made in accordance with G.S. 15A-291 and the panel making the findings required by subsection (a) of this section. The period of extension ~~may~~ shall be no longer than the ~~panel determines to be~~ authorizing judge deems necessary to achieve the purpose for which it was granted and in no event for longer than ~~15~~30 days. Every order and extension thereof must contain a provision that the authorization to intercept be executed as soon as practicable, be conducted in such a way as to minimize the interception of communications not otherwise subject to interception under this Article, and terminate upon attainment of the authorized objective, or in any event in 30 days, ~~days or 15 days,~~ as is appropriate. In the event the intercepted communication is in a code or foreign language, and an expert in that foreign language or code is not reasonably available during the interception period, minimization may be accomplished as soon as practicable after the interception. An interception under this Article may be conducted in whole or in part by government

personnel, or by an individual operating under a contract with the government, acting under the supervision of an investigative or law enforcement officer authorized to conduct the interception."

SECTION 2. G.S. 15A-294 is amended by adding the following new subsections to read:

"(i) The requirements of G.S. 15A-293(b)(2) and G.S. 15A-293(a)(4) relating to the specification of the facilities from which, or the place where, the communication is to be intercepted do not apply if:

(1) In the case of an application with respect to the interception of an oral communication:

a. The application is by a State investigative or law enforcement officer and is approved by the Attorney General or his designee;

b. The application contains a full and complete statement as to why the specification is not practical and identifies the person committing the offense and whose communications are to be intercepted; and

c. The three-judge panel finds that the specification is not practical.

(2) In the case of an application with respect to a wire or electronic communication:

a. The application is by a State investigative or law enforcement officer and is approved by the Attorney General or his designee;

b. The application identifies the person believed to be committing the offense and whose communications are to be intercepted, and the applicant makes a showing that there is probable cause to believe that the person's actions could have the effect of thwarting interception from a specified facility;

c. The three-judge panel finds that the showing has been adequately made; and

d. The order authorizing or approving the interception is limited to interception only for such time as it is reasonable to presume that the person identified in the application is or was reasonably proximate to the instrument through which the communication will be or was transmitted.

(j) An interception of a communication under an order with respect to which the requirements of G.S. 15A-293(b)(2) and G.S. 15A-293(a)(4) do not apply by reason of subsection (i) of this section shall not begin until the place where the communication is to be intercepted is ascertained by the person implementing the interception order. A provider of wire or electronic communications service that has received an order as provided for in subsection (i) of this section may move the court to modify or quash the order on the grounds that its assistance with respect to the interception cannot be performed in a timely or reasonable fashion. The court, upon notice to the government, shall decide such a motion expeditiously."

SECTION 3. This act becomes effective December 1, 2005.

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GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

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SENATE BILL 893
PROPOSED COMMITTEE SUBSTITUTE S893-PCS15238-RU-13

Short Title: State Health Plan Subrogation. (Public)

Sponsors:

Referred to:

March 23, 2005

A BILL TO BE ENTITLED

AN ACT PERTAINING TO SUBROGATION RIGHTS OF THE TEACHERS' AND STATE EMPLOYEES' COMPREHENSIVE MAJOR MEDICAL PLAN.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 135-40.13A reads as rewritten:

"**§ 135-40.13A. Liability of third person; right of subrogation; right of first recovery.**

(a) ~~Whenever the Plan pays benefits for hospital, surgical, medical, or prescription drug expenses, with respect to any Plan member, the Plan shall be subrogated, to the extent of any payments under the Plan, to all of the Plan member's rights of recovery against liable third parties, regardless of the entity or individual from whom recovery may be due.~~The Plan shall have the right of subrogation upon all of the Plan member's right to recover from a liable third party for payment made under the Plan, for all medical expenses, including provider, hospital, surgical, or prescription drug expenses, to the extent those payments are related to an injury caused by a liable third party. The Plan member shall do nothing to prejudice these rights. The Plan has the right to first recovery on any amounts so recovered, whether by the Plan or the Plan member, and whether recovered by litigation, arbitration, mediation, settlement, or otherwise. Notwithstanding any other provision of law to the contrary, the recovery limitation set forth in G.S. 28A-18-2 shall not apply to the Plan's right of subrogation of Plan members.

(b) If the Plan is precluded from exercising its right of subrogation, it may exercise its rights of recovery pursuant to G.S. 135-40.13(g) ~~to the extent allowed by law~~. If the Plan recovers damages from a liable third party in excess of the claims paid, any excess will be paid to the member, less a proportionate share of the costs of collection.

(c) In the event a Plan member recovers any amounts from a liable third party to which the Plan is entitled under this section, the Plan may recover the amounts directly

from the Plan member. The Plan has a lien, for not more than the value of claims paid related to the liability of the third party, on any damages subsequently recovered against the liable third party. If the Plan member fails to pursue the remedy against a liable third party, the Plan is subrogated to the rights of the Plan member and is entitled to enforce liability in the Plan's own name or in the name of the Plan member for the amount paid by the Plan.

(d) In no event shall the Plan's lien exceed fifty percent (50%) of the total damages recovered by the Plan member, exclusive of the Plan member's reasonable costs of collection as determined by the Plan in the Plan's sole discretion. The decision by the Plan as to the reasonable cost of collection is conclusive and is not a "final agency decision" for purposes of a contested case under Chapter 150B of the General Statutes. Notice of the Plan's lien or right to recovery shall be presumed when a Plan member is represented by an attorney, and the attorney shall disburse proceeds pursuant to this section."

SECTION 2. G.S. 28A-18-2(a) reads as rewritten:

"**§ 28A-18-2. Death by wrongful act of another; recovery not assets.**

(a) When the death of a person is caused by a wrongful act, neglect or default of another, such as would, if the injured person had lived, have entitled him to an action for damages therefor, the person or corporation that would have been so liable, and his or their personal representatives or collectors, shall be liable to an action for damages, to be brought by the personal representative or collector of the decedent; and this notwithstanding the death, and although the wrongful act, neglect or default, causing the death, amounts in law to a felony. The personal representative or collector of the decedent who pursues an action under this section may pay from the assets of the estate the reasonable and necessary expenses, not including attorneys' fees, incurred in pursuing the action. At the termination of the action, any amount recovered shall be applied first to the reimbursement of the estate for the expenses incurred in pursuing the action, then to the payment of attorneys' fees, and shall then be distributed as provided in this section. The amount recovered in such action is not liable to be applied as assets, in the payment of debts or legacies, except as to burial expenses of the deceased, and reasonable hospital and medical expenses not exceeding four thousand five hundred dollars ($4,500) incident to the injury resulting in death, except that the amount applied for hospital and medical expenses shall not exceed fifty percent (50%) of the amount of damages recovered after deducting attorneys' fees, but shall be disposed of as provided in the Intestate Succession Act. The limitations on recovery for hospital and medical expenses under this subsection do not apply to subrogation rights exercised pursuant to G.S. 135-40.13A. All claims filed for such services shall be approved by the clerk of the superior court and any party adversely affected by any decision of said clerk as to said claim may appeal to the superior court in term time."

SECTION 3. This act is effective when it becomes law and applies to actions to exercise rights of recovery under G.S. 135-40.13 or G.S. 135-40.13A commenced on or after that date. Section 2 of this act applies to wrongful deaths occurring on or after the effective date.

Senate Bill 893:
State Health Plan Subrogation

BILL ANALYSIS

Committee:	Senate Judiciary I	**Date:**	April 26, 2005
Introduced by:	Sen. Rand	**Summary by:**	Walker Reagan
Version:	First Edition		Committee Counsel
	S893-CSRU-13 [v.5]		

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 893 would amend the law governing the right of subrogation that the State Health Plan has in third-party payments owed to a Plan member arising from an injury caused by a liable third party by clarifying what payments subrogation rights attach to and allowing for a recovery by the State Health Plan of it's claim up to 50% of the total damages recovered exclusive of the of the costs of collection. The bill also provides that the limits for recovery by third-party medical providers in wrongful death cases do not apply to the State Health Plan.***

CURRENT LAW: Under current law, enacted in 2004, the State Health Plan has a right of subrogation to the extent the Plan has paid for medical expenses for which the Plan member is entitled to recover from a liable third party. If the Plan is precluded from exercising its right of subrogation, the Plan has a right of recovery. If the Plan recovers more than the amount of its payment, any surplus is paid to the Plan member. No provision is made to offset the Plan member's cost of collecting the payment from the third party.

BILL ANALYSIS: Section 1 of the bill amends the State Health Plan's right of subrogation. Subsection (a) of G.S. 135-40.13A is amended to clarify the State Health Plan's right of subrogation to all of the Plan member's right of recovery from the liable third for payments made under the Plan for medical expenses related to the injury caused by the liable third party. This provision also provides that the limits under the wrongful death statute for the recovery of medical expenses does not apply to the State Health Plan's right of subrogation. G.S. 135-40.13A is also amended by adding a new subsection (d) to limit the State Health Plan's right to recovery to no more than 50% of the total damages recovered by the Plan member, exclusive of reasonable costs of collection. The Plan determines what constitutes the reasonable cost of collection.

Section 2 amends the wrongful death statute to provide that the current limit on the recovery by medical providers of a maximum of $4,500 or 50% of the wrongful death recovery after attorneys' fees, whichever is less, does not apply to the State Health Plan's subrogation rights but that the provisions set forth in Section 1 of the bill apply.

BACKGROUND: Based on a ruling by the Commissioner of Insurance, health insurance companies have no right of subrogation in personal injury cases. Federal law grants a right of subrogation for Medicaid and Medicare payments, but the right of subrogation is either limited to one-third the gross recovery in the case of Medicaid and 50% of the recovery after attorneys' fees in the case of Medicare. Under G.S. 44-50 medical providers are entitled to a lien for medical services provided to a person entitled to a personal injury recovery, up to the value of the medical services, but in no case greater than 50% of the amount of damages recovered, after the exclusion of attorneys' fees.

EFFECTIVE DATE: The bill becomes effective when it becomes law and applies to actions to recover by the State Health Plan on or after that date and to wrongful deaths occurring on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 893

Short Title:	State Health Plan Subrogation.	(Public)
Sponsors:	Senator Rand.	
Referred to:	Judiciary I.	

March 23, 2005

A BILL TO BE ENTITLED

AN ACT PERTAINING TO SUBROGATION RIGHTS OF THE TEACHERS' AND STATE EMPLOYEES' COMPREHENSIVE MAJOR MEDICAL PLAN.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 135-40.13A reads as rewritten:

"**§ 135-40.13A. Liability of third person; right of subrogation; right of first recovery.**

(a) ~~Whenever the Plan pays benefits for hospital, surgical, medical, or prescription drug expenses, with respect to any Plan member, the Plan shall be subrogated, to the extent of any payments under the Plan, to all of the Plan member's rights of recovery against liable third parties, regardless of the entity or individual from whom recovery may be due.~~The Plan shall have the right of subrogation upon all of the Plan member's right to recover from a liable third party for payment made under the Plan, for all medical expenses, including provider, hospital, surgical, or prescription drug expenses, to the extent those payments are related to an injury caused by a liable third party. The Plan member shall do nothing to prejudice these rights. The Plan has the right to first recovery on any amounts so recovered, whether by the Plan or the Plan member, and whether recovered by litigation, arbitration, mediation, settlement, or otherwise. Notwithstanding any other provision of law to the contrary, the recovery limitation set forth in G.S. 28A-18-2 shall not apply to the Plan's right of subrogation of Plan members.

(b) If the Plan is precluded from exercising its right of subrogation, it may exercise its rights of recovery pursuant to G.S. 135-40.13(g) ~~to the extent allowed by law~~. If the Plan recovers damages from a liable third party in excess of the claims paid, any excess will be paid to the member, less a proportionate share of the costs of collection.

(c) In the event a Plan member recovers any amounts from a liable third party to which the Plan is entitled under this section, the Plan may recover the amounts directly from the Plan member. The Plan has a lien, for not more than the value of claims paid

related to the liability of the third party, on any damages subsequently recovered against the liable third party. If the Plan member fails to pursue the remedy against a liable third party, the Plan is subrogated to the rights of the Plan member and is entitled to enforce liability in the Plan's own name or in the name of the Plan member for the amount paid by the Plan.

(d) After considering relevant equities including the degree to which the Plan member would be made whole by the recovery, the Plan may reduce the amount of its lien for expenses paid by the Plan, including the Plan's proportionate share of the costs of collection."

SECTION 2. G.S. 28A-18-2(a) reads as rewritten:

"**§ 28A-18-2. Death by wrongful act of another; recovery not assets.**

(a) When the death of a person is caused by a wrongful act, neglect or default of another, such as would, if the injured person had lived, have entitled him to an action for damages therefor, the person or corporation that would have been so liable, and his or their personal representatives or collectors, shall be liable to an action for damages, to be brought by the personal representative or collector of the decedent; and this notwithstanding the death, and although the wrongful act, neglect or default, causing the death, amounts in law to a felony. The personal representative or collector of the decedent who pursues an action under this section may pay from the assets of the estate the reasonable and necessary expenses, not including attorneys' fees, incurred in pursuing the action. At the termination of the action, any amount recovered shall be applied first to the reimbursement of the estate for the expenses incurred in pursuing the action, then to the payment of attorneys' fees, and shall then be distributed as provided in this section. The amount recovered in such action is not liable to be applied as assets, in the payment of debts or legacies, except as to burial expenses of the deceased, and reasonable hospital and medical expenses not exceeding four thousand five hundred dollars ($4,500) incident to the injury resulting in death, except that the amount applied for hospital and medical expenses shall not exceed fifty percent (50%) of the amount of damages recovered after deducting attorneys' fees, but shall be disposed of as provided in the Intestate Succession Act. The limitations on recovery for hospital and medical expenses under this subsection do not apply to subrogation rights exercised pursuant to G.S 135-40.13A. All claims filed for such services shall be approved by the clerk of the superior court and any party adversely affected by any decision of said clerk as to said claim may appeal to the superior court in term time."

SECTION 3. This act is effective when it becomes law and applies to actions to exercise rights of recovery under G.S. 135-40.13 or G.S. 135-40.13A commenced on and after that date.

LAST Ed

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 1070
PROPOSED COMMITTEE SUBSTITUTE S1070-PCS55219-RK-10

Short Title: Balance Fair Sentencing/Structured Sentencing. (Public)

Sponsors:

Referred to:

March 24, 2005

A BILL TO BE ENTITLED

AN ACT TO BALANCE FAIR SENTENCING AND STRUCTURED SENTENCING AND TO KEEP INMATES WHO POSE GREAT RISKS TO SOCIETY IN THE PRISONS.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 143B of the General Statutes is amended by adding a new section to read:

"**§ 143B-268. Recalculation of sentence for parole.**

(a) Notwithstanding any other provision of law, any person in the custody of the Department of Correction who was convicted for an offense that occurred prior to the effective date of Article 81B of Chapter 15A of the General Statutes, shall be paroled by the Commission if all of the following conditions are met:

(1) The Commission determines that the person has served more time in custody than the person would have served if sentenced to the maximum sentence under the provisions of Article 81B of Chapter 15A of the General Statutes. The "maximum sentence", for the purposes of this section, shall be calculated as set forth in subsection (b) of this section.

(2) The Commission determines that the person does not pose a substantial risk of violence or recidivism.

(3) The Commission determines that the person's crime was not so heinous that the Commission cannot in good conscience release the person.

This section shall not apply to persons sentenced to life imprisonment for first degree murder.

(b) For the purposes of this section, the following rules apply for the calculation of the maximum sentence:

(1) The offense upon which the person was convicted shall be classified as the same felony class as the offense would have been classified if committed after the effective date of Article 81B of Chapter 15A of the General Statutes.

(2) The minimum sentence shall be the maximum number of months in the presumptive range of minimum durations in Prior Record Level VI of G.S. 15A-1340.17(c) for the felony class determined under subdivision (1) of this subsection. The maximum sentence shall be calculated using G.S. 15A-1340.17(d), (e), or (e1).

(3) If a person is serving sentences for two or more offenses that are concurrent in any respect, then the offense with the greater classification shall be used to determine a single maximum sentence for the concurrent offenses. The fact that the person has been convicted of multiple offenses may be considered by the Commission in making its determinations under subsection (a) of this section.

(c) The Commission's findings and determinations under this section are final and are not reviewable by any court."

SECTION 2. The Commission shall give priority in its determinations under subsection (a) of G.S. 143B-268 to those prisoners who have served the greatest amount of time in excess of what each prisoner would have served if sentenced under the provisions of Article 81B of Chapter 15A of the General Statutes, and who have not previously been considered for parole. The Commission shall report the results of the implementation of this act to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Committee on or before June 1, 2006.

SECTION 3. This act becomes effective December 1, 2005.

SENATE BILL 1070:
Balance Fair Sentencing/Structured Sentencing

BILL ANALYSIS

Committee:	Senate Judiciary I	**Date:**	April 28, 2005
Introduced by:	Sen. Rand	**Summary by:**	Hal Pell
Version:	First Edition		Committee Co-Counsel
	S1070-CSRK-10		

SUMMARY: ***This act would provide that prisoners who were sentenced prior to the Structured Sentencing Act, and who have served more time in prison than they would have served if sentenced under Structured Sentencing are to be paroled—unless they fail to meet the criteria for parole set forth in the act. This act becomes effective December 1, 2005.***

BILL ANALYSIS:

The act provides that prisoners who were sentenced prior to the enactment of the Structured Sentencing Act (SSA) would have their sentences compared a sentence under the SSA that is calculated at the maximum level of the same felony class. If the prisoner has served more time than the maximum sentence under the SSA, the prisoner would be paroled unless certain criteria are not met.

The Commission must find that the prisoner does not pose an unreasonable risk of violence or recidivism, or that the person's crime was so heinous that it cannot, in good conscience, release the prisoner. The bill does not apply to person sentenced to life imprisonment for first-degree murder.

The maximum sentence for determining whether the prisoner is eligible is calculated as follows:

- The prisoner's offense would be classified as the same felony class if convicted under the SSA.
- The minimum sentence is the maximum number of months in the presumptive range for Level VI under the SSA sentencing grid. The maximum sentence is then calculated by reference to the SSA maximum sentence grid.
- If the prisoner is serving concurrent sentences, the offense with the greater classification would be used to determine the sentence.

The Commission is directed to first consider prisoners who have served the most time over what they would have served if sentenced under the SSA. The Commission is also directed to report to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Committee on or before June 1, 2006.

EFFECTIVE DATE: This act becomes effective December 1, 2005.

S1070e1-SMRK-CSRK-10

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 4-28-05

S. B. No. 1070 Amendment No. 1

(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE ✓

Rep.)
) Rand
Sen.)

moves to amend the bill on page 1, line 19

( ) WHICH CHANGES THE TITLE

by ~~deleting~~ the word "unreasonable" and substituting the word "substantial".

SIGNED Tim Rand

ADOPTED X FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

SB 1070: Balance Fair Sentencing/Structured Sentencing
Inmates Sentenced under Old Law
All Sentences (N=3,382)

Number of Inmates to be Released Based on Maximum Presumptive Sentence by Offense Class and Parole Eligibility

Release by End of	Number of Inmates to be Released		Number of Inmates Eligible for Parole as of January 1, 2005 (n=1,934)
	Number	Cumulative Number	
2005	697	697	560
2006	84	781	52
2007	122	903	73
2008	139	1,042	87
2009	190	1,232	101
2010	118	1,350	55
2011	122	1,472	51
2012	66	1,538	38
2013	40	1,578	26
2014	39	1,617	30
2015	25	1,642	23
2016 & after	1,740	3,382	838

ASSUMPTIONS:

1. This analysis excludes 831 inmates under old law who were convicted of First Degree Murder.

2. The calculation of Structured Sentencing sentence lengths for inmates under old law who have both consecutive and concurrent sentences is based on the sum total of their consecutive sentences only.

INTERPRETATION EXAMPLES: Of the 697 inmates to be released by the end of 2005, 560 were eligible for parole as of January 1, 2005. Of the 84 inmates to be released in 2006, 52 were eligible for parole as of January 1, 2005.

SOURCE: Department of Correction, Offender Population Unified System Data, April 2005

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 1070

Short Title:	Balance Fair Sentencing/Structured Sentencing.	(Public)
Sponsors:	Senator Rand.	
Referred to:	Judiciary I.	

March 24, 2005

A BILL TO BE ENTITLED

AN ACT TO BALANCE FAIR SENTENCING AND STRUCTURED SENTENCING AND TO KEEP INMATES WHO POSE GREAT RISKS TO SOCIETY IN THE PRISONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143B-266(a) reads as rewritten:

"(a) There is hereby created a Post-Release Supervision and Parole Commission of the Department of Correction with the authority to grant paroles, including both regular and temporary paroles, to persons held by virtue of any final order or judgment of any court of this State as provided in Chapter 148 of the General Statutes and laws of the State of North Carolina, except that persons sentenced under Article 81B of Chapter 15A of the General Statutes are not eligible for parole. The Commission shall also have authority to revoke, terminate, and suspend paroles of such persons (including persons placed on parole on or before the effective date of the Executive Organization Act of 1973) and to assist the Governor in exercising his authority in granting reprieves, commutations, and pardons, and shall perform such other services as may be required by the Governor in exercising his powers of executive clemency. The Commission shall also have authority to revoke and terminate persons on post-release supervision, as provided in Article 84A of Chapter 15A of the General Statutes. Notwithstanding any other provision of law, any person in the custody of the Department of Correction who was convicted under Article 81A of Chapter 15A of the General Statutes and who has completed at least the presumptive maximum sentence under G.S. 15A-1340.17(c) for the crime for which the person was convicted shall be presumed to be paroled unless the Commission finds that the person still poses an unreasonable risk of violence or recidivism or that the person's crime was so heinous that the Commission cannot in good conscience release the person."

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

last Ed.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

S D

SENATE BILL 1118
PROPOSED COMMITTEE SUBSTITUTE S1118-PCS55222-RU-16

Short Title: Torts by State Law Enforcement. (Public)

Sponsors:

Referred to:

March 24, 2005

A BILL TO BE ENTITLED

AN ACT TO PERMIT CERTAIN CLAIMS UNDER THE TORT CLAIMS ACT WHEN THE STATE REFUSED TO DEFEND A CIVIL ACTION BROUGHT AGAINST A STATE LAW ENFORCEMENT OFFICER ON THE GROUNDS THAT THE OFFICER DID NOT ACT WITHIN THE SCOPE AND COURSE OF EMPLOYMENT, AND A COURT SUBSEQUENTLY DETERMINED THAT THE OFFICER DID ACT WITHIN THE SCOPE AND COURSE OF EMPLOYMENT.

The General Assembly of North Carolina enacts:

SECTION 1. Notwithstanding G.S. 143-299, where a judgment was entered in a civil action in federal court prior to the effective date of this act against a member of the Highway Patrol for an injury to a person and where the court that rendered the judgment concluded that the person's injury was the result of an act of a member of the Highway Patrol committed while the person was acting within the course and scope of the person's employment, the person who brought the action has 180 days from the effective date of this act to file an action to recover damages under Article 31 of Chapter 143 of the General Statutes. It shall not be a defense that the member of the Highway Patrol is no longer a State employee, or that any time limit for seeking the recovery of damages or any other time limit of civil procedure has expired. The limitation on the amount that may be recovered under this section shall be the limit of liability under Article 31 of Chapter 143 of the General Statutes applicable at the time the tort occurred. No interest on the amount recoverable shall accrue until an amount of damages is awarded under this section.

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

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 4-28-05

S. B. No. 1118 Amendment No. 1
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE PCS

Rep.) RAND
Sen.)

1 moves to amend the bill on page 1, line 19
2 ( ) WHICH CHANGES THE TITLE
3 by DELETING THE WORD "TOLLED." AND SUBSTITUTING
4 THE WORD "EXPIRED."
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SIGNED Tony Rand

ADOPTED X FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

SENATE BILL 1118:
Torts by State Law Enforcement

BILL ANALYSIS

Committee:	Senate Judiciary I	**Date:**	April 26, 2005
Introduced by:	Sen. Rand	**Summary by:**	Walker Reagan
Version:	First Edition		Committee Co-Counsel
	S1118-CSRU-16 [v.3]		

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 1118 would permit a person who obtained a judgment in federal court against a member of the Highway Patrol for injuries and the court determined that the member of the Patrol acted within the course and scope of the person's office or employment even though the Attorney General refused to defended the member of the Highway Patrol, to file a claim under the Tort Claims Act even if the statute of limitation has expired.***

CURRENT LAW: Current law requires the State to defend and pay judgments against members of the Highway Patrol and other State employees for negligent acts committed while acting within the course and scope of their office or employment, up to the limits of the State Tort Claim Act (currently $500,000), if the Attorney General defends the employee.

G.S. 143-300.4 gives the Attorney General the discretion to determine whether or not the employee should be defended by the State. In making the decision, the Attorney General must consider whether the employee acted within the course and scope of the person's employment as a State employee, the employee acted or failed to act because of actual fraud, corruption, or actual malice on the person's part, the defense of the action by the State would create a conflict of interest between the State and the employee, or the defense of the action would not be in the best interest of the State.

If the Attorney General decides not to defend the employee, the State will not pay the judgment even if the court determines that the employee was acting within the course and scope of the person's employment when the negligent act occurred.

A copy of G.S. 143-300.4 is attached.

BILL ANALYSIS: Section 1 of the bill authorizes any person who obtained a judgment against a member of the Highway Patrol in federal court where the court determined that the member of the Patrol was acting within the course and scope of the person's employment when the injury occurred, to file an action within 180 days of the effective date of the act under the Tort Claim Act, despite the fact that the statute of limitations has run. This right applies whether or not the defendant is still a State employee or member of the Highway Patrol or any time period for bringing such an action has tolled. The maximum amount that may be recovered is the applicable tort claim limit at the time the tort occurred. The limit under the Tort Claim Act was $100,000 up until 1995, increased to $150,000 in 1995 until 2000 when the limit was raised to its current limit of $500,000.

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

§ 143-300.4. Grounds for refusal of defense.

(a) The State shall refuse to provide for the defense of a civil or criminal action or proceeding brought against an employee or former employee if the State determines that:

(1) The act or omission was not within the scope and course of his employment as a State employee; or

(2) The employee or former employee acted or failed to act because of actual fraud, corruption, or actual malice on his part; or

(3) Defense of the action or proceeding by the State would create a conflict of interest between the State and the employee or former employee; or

(4) Defense of the action or proceeding would not be in the best interests of the State.

(b) The determinations required by subsection (a) of this section shall be made by the Attorney General. The Attorney General may delegate his authority to make these determinations to the chief administrative authority of any agency, institution, board, or commission whose employees are to be defended as provided by subdivision (3) or (4) of G.S. 143-300.5. Approval of the request by an employee or former employee for provision of defense shall raise a presumption that the determination required by this section had been made and that no grounds for refusal to defend were discovered. (1967, c. 1092, s. 1.)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 1118

Short Title: Torts by State Law Enforcement/Employees. (Public)

Sponsors: Senator Rand.

Referred to: Judiciary I.

March 24, 2005

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE STATE'S DUTY WHEN A CIVIL ACTION IS BROUGHT AGAINST A STATE LAW ENFORCEMENT OFFICER OR A STATE EMPLOYEE, THE ATTORNEY GENERAL REFUSES TO DEFEND THE OFFICER OR EMPLOYEE ON THE GROUNDS THAT THE OFFICER OR EMPLOYEE DID NOT ACT WITHIN THE SCOPE AND COURSE OF EMPLOYMENT, AND A COURT SUBSEQUENTLY DETERMINES THAT THE OFFICER OR EMPLOYEE DID ACT WITHIN THE SCOPE AND COURSE OF EMPLOYMENT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-194(b) reads as rewritten:

"(b) In the event that a member of the Highway Patrol or any other State law-enforcement officer is sued in a civil action as an individual for acts occurring while such member was alleged to be acting within the course and scope of his office, employment, service, agency or authority, which was alleged to be a proximate cause of the injury or damage complained of, the Attorney General is hereby authorized to defend such employee through the use of a member of his staff or, in his discretion, employ private counsel, subject to the provisions of Article 31A of Chapter 143 and G.S. 147-17. Any judgment rendered as a result of said civil action against such member of the Highway Patrol or other State law-enforcement officer, for acts ~~alleged to be~~ the court determined were committed within the course and scope of his office, employment, service, agency or authority shall be ~~paid~~ paid, whether or not the Attorney General defended the employee, as an expense of administration up to the limit provided in the Tort Claims Act."

SECTION 2. G.S. 143-300.6 is amended by adding a new subsection to read:

"(d) As used in subsection (a) of this section, "in an action to which this Article applies" means an action against a State employee for which the State agreed to provide defense under G.S. 143-300.3 and also means an action against a State employee when

the State refused to provide defense for the reason that the State determined that the act or omission of the employee was not within the scope and course of the employee's employment and the court subsequently determined that the act or omission of the employee was within the scope and course of employment."

SECTION 3. Where a judgment was entered in a civil action in federal court against a member of the Highway Patrol for an injury of a person and where the court that rendered the judgment concluded that the person's injury was the result of an act of the member of the Highway Patrol committed while he was acting within the course and scope of his employment, the person who brought that action has 180 days from the enactment of this act to file an action in State court to enforce the earlier judgment. It shall not be a defense to enforcing the earlier judgment that the member of the Highway Patrol is no longer a State employee or that anytime limit for seeking to enforce the judgment or any other time limit of civil procedure has tolled.

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

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE — 4-28-05

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
ANN LORE	DOJ
Trish Hagan	SBE/DPI
BRIAN LEWIS	Covenant w NC's Children
DAVID BARNES	Poyner + Spruill
[illegible]	Carolina Journal
Sheila Taylor DeWitt	JLP Civitas Institute
Kary Seahorn	NCGA Intern
Jim Blackburn	NC Association of County Commissioners
David Baker	NCDOR
Suzanne Buckley	Gov. Office
[illegible]	[illegible]

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE — 4-28-05

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
Justin Wilson	Youth Advocacy
Mildred Spearman	NCDOC
John Madler	NC Sentencing Commission
S. Katzenelson	" "
Ginny Hevener	" "
Becky Ebron	" "
Travis Porter	Marvin Taylor
Lee Ann Coe	AOC
Al Ripley	NC Justice Ctr.
Michael Hassan	NCAE
Marcus Davis	NCAE

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE — 4-28-05

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
Dick Taylor	NCAOC
Paul Pulley	NCATL

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Thursday	May 26, 2005	10:00 AM	1027 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 428	No Lasers Pointed at Planes.	Senator Rand
SB 814	Modernize City/County Planning.	Senator Clodfelter
SB 832	Tow Trucks and Recovery Vehicles.	Senator Hagan
SB 951	Public-Private Solid Waste Collection.	Senator Hoyle
SB 970	Land-Use Permit Appeals.	Senator Kinnaird
SB 1029	Clarify/Enhance Domestic Vio. & Tenancy Laws.	Senator Cowell
SB 1044	Undertaking to Stay Money Judgment.	Senator Clodfelter
SB 1069	DWI Task Force Recommendations.	Senator Rand
SB 1080	Criminal Changes.	Senator Berger
SB 1081	Procedures for Advertising Tax Liens.	Senator Berger

Senator Daniel G. Clodfelter, Chair

Judiciary 1 Committee

May 26, 2005 a.m.

Minutes

Senator Dan Clodfelter, Chair called the meeting to order at 10:03 a.m. with seventeen members present. He introduced Pages Kathie Guffey and Andrew Simpson both from Cherryville, NC, Jackie and Dena Peindl both from Gastonia, NC.

SB-814 (Modernize City/County Planning Committee Substitute was introduced by Vice Char, Senator RC Soles. No motion was made for adoption since the Committee Substitute had been already been adopted at the May 24, 2005 meeting. Senator Clodfelter, bill sponsor stated since the bill had been already been discussed he would not ask for more discussion except to take questions. Senator Martin Nesbitt offered and Amendment to page 20, line 44 of the bill. All members voted yes. Motion carried. Senator Ham Horton had a question regarding the language on page 1, lines 16 through 21. All members voted yes. Motion carried. Senator Clodfelter offered a second Amendment on page 2, lines 13 through 18, and moved for adoption of the Amendment. All members voted yes. Motion carried. (See attached Amendments). Senator's David Hoyle, Tony Rand, Martin Nesbitt, and Jeanne Lucas had questions. Senator Martin Nesbitt moved for a Favorable Report as amended. Mr. Paul Wilms, Director Governmental Affairs NC Homebuilders Association spoke on the bill and answered questions. Senator Soles asked for a vote on the motion made by Senator Nesbitt for a Favorable Report. All members voted yes. Motion carried.

SB-832 (Tow Trucks and Recovery Vehicles) was introduced by Senator Clodfelter. Bill sponsor, Senator Kay Hagen explained that the bill provides that cargo being hauled by a truck with a gross weight of over 10,001 lbs. is subject to statutory lien. The bill would also exempt wreckers from highway weight and size limitations in order to tow disabled vehicles up to fifty miles from the place of disablement. (See Bill Summary for further information. Mr. Bobby Disher, President of Official Towing in NC, owner of Bobby's Towing in Greensboro, NC spoke on the bill. Senator Tony Rand had a question. Staff attorney, Hal Pell answered the question. Senator Clodfelter stated that the bill would be displaced to be heard at a future meeting.

SB-1029 (Clarify/Enhance DomesticVio. & Tenancy Laws) Committee Substitute was introduced by Senator Clodfelter. Senator Julia Boseman moved for adoption of the Committee Substitute. All members voted yes. Motion carried. Bill sponsor, Senator Janet Cowell explained that the bill amends the laws relating to domestic violence to permit domestic violence court orders to be entered y consent of the partied, 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 that thirty percent of the area medium income. It 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. (See Bill Summary for further information). Senator's Ham Horton, Davis Hoyle, Tony Rand, Phillip Berger and Richard Stevens had questions. Senator Cowell and Senator Clodfelter answered questions. Ms. Colleen Kochane, NC Apartment Association and Mr. Rick Zechini, NC Realtor's Association and Anne Winner, Representative for NC Coalition Against Domestic Violence, spoke on the bill and answered questions. Senator Ham Horton offered an Amendment to the bill and moved for adoption of the Amendment. (See attached Amendment). Senator Martin Nesbitt had a question. Senator Cowell answered the question. Senator Clodfelter stated that he would appoint a Subcommittee to study the bill, which would be displaced and heard at the next meeting. Senator Cowell would serve as Chair, and members would be Senator's Richard Stevens and Ham Horton.

SB-1069 (DWI Task Force Recommendations) Committee Substitute was introduced by Senator Clodfelter. Bill sponsor, Senator Tony Rand moved for adoption of the Committee Substitute. All members voted yes. Motion carried. Senator Rand explained that bill, based upon the findings of the Governor's Task Force on Driving While Impaired, provides measures relating to DWI arrest, enforcement, education, and training. (See attached Bill Summary for further information). Senator's Ham Horton, Dan Clodfelter and Richard Stevens had questions. Staff attorney, Hal Pell answered the questions. Senator Clodfelter stated that the bill would be displaced, to be heard at a later meeting.

Being no further business the meeting adjourned at 11:00 a.m.

Senator Dan Clodfelter, Chair

Wanda Joyner, Committee Assistant

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Thursday	May 5, 2005	10:00 AM	1027 LB

REVISED NOTICE

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 783	Report Hacker/Fraudulent Access to ID Data.	Senator Forrester
SB 793	Government Agencies Limit Release of SSNs.	Senator Berger
SB 921	Consumer Credit Protection Act.	Senator Jacumin
SB 935	No SS# on Health ID Cards.	Senator Garrou
SB 1048	Identity Theft Protection Act of 2005.	Senator Clodfelter
SB 1098	No Third Party Release of SSN.	Senator Boseman

Senator Daniel G. Clodfelter, Chair

Judiciary 1 Committee

May 5, 2005

Minutes

Senator Dan Clodfelter, Chair called the meeting to order at 11:08 a.m. with seventeen members present. He introduced Pages, Sean Reeves from Raleigh, NC, Greshaun Worrell from Matthews, NC, Matthew Stevens from Mt. Olive, NC, and Hannah Jessup from King, NC.

SB-783 (Report Hacker/Fraudulent Access to ID Data) Committee Substitute was introduced by Senator Clodfelter. He stated that the bill would be discussed, but not voted on at this time. Attorney General, Roy Cooper spoke extensively on the bill, and Police Chief, Darrell Stevens from Charlotte, NC spoke in favor of the bill. Staff attorney, Walker Reagan explained changes to the bill. (See attached Bill Summary and handouts). Senator Clodfelter stated that the bill would be displaced and rescheduled for a future meeting.

The following bills were introduced by Senator Clodfelter, and he stated that they would not be voted on at this time, but staff attorney, Walker Reagan would explain the changes to each bill, and the members of the committee would have time to study the bills before they are brought back to committee.

SB-793 (Government Agencies Limit Release of SSNs). Walker Reagan explained that the bill would amend the State Privacy Act to restrict the use and disclosure of social security numbers by government agencies. (See attached Bill Summary).

SB 921 (Consumer Credit Protection Act,) Walker Reagan explained that the bill would permit an individual to require a credit reporting agency to freeze access to that person's credit report, except as authorized by the person. (See attached Bill Summary).

SB-935 (No SS# on Health ID Cards) Walker Reagan explained that the bill would prohibit insurers from printing an individual's social security number on membership cards or health care policies or certificates or from otherwise making an individual's social security number public. (See attached bill Summary)

SB-1098 (No Third Party Release of SSN.) Walker explained that the bill would prohibit the release of an individual's social security number without the individual's consent. (See attached Bill Summary).

SB-1048 (Identity Theft Protection Act of 2005) Walker Reagan explained that the bill 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 y requiring State and local agencies to protect social security numbers and other personal identifying information. (See attached Bill Summary)

Senator Clodfelter said members would have time to study the bills, and be better prepared to vote on them. Senator's Andrew Brock, Jeanne Lucas, RC Soles, Keith Presnell, Richard Stevens had questions. Mr. Harry Caplin, NC Health Plan Support and Ms. Elizabeth Eutes, NC PIRG Public Interest Group answered the questions, and spoke in support of the bill. Mr. Paul Stock, NC Bankers Association spoke in support of the bill. Mr. Josh Stein, NC Attorney General' office a phone number for consumers to call to stop annoying preapproved credit card solicitations from being mailed to their homes. The number was 800-500-8008.

Being no further business the meeting adjourned at 11:55 a.m.

Senator Dan Clodfelter, Chair

Wanda Joyner, Committee Assistant

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

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SENATE BILL 783
PROPOSED COMMITTEE SUBSTITUTE S783-CSRU-26 [v.1]

5/4/2005 5:40:58 PM

Short Title: Report Hacker/Fraudulent Access to ID Data. (Public)

Sponsors:

Referred to:

March 23, 2005

A BILL TO BE ENTITLED

AN ACT REQUIRING THAT DATA AGGREGATORS AND OTHER BUSINESSES IMMEDIATELY NOTIFY INDIVIDUALS OF UNAUTHORIZED OR FRAUDULENT ACCESS TO PERSONAL INFORMATION FOLLOWING INFORMATION SECURITY BREACHES.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 66 of the General Statutes is amended by adding a new Article to read:

"Article 41.

"Personal Information Security Breach Notification Act.

"**§ 66-335. 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, including a financial institution organized, chartered, or holding a license or authorization certificate under the law of this State, any other state, the United States, or of any other country, or the parent or the subsidiary of a financial institution.

(2) Breach of the security system. – Unauthorized or fraudulent acquisition of computerized data that (i) compromises the security, confidentiality, or integrity of personal information maintained by a business or (ii) could result in identity theft. Good faith acquisition of personal information by an employee or agent of a business for the purposes of the business is not a breach of the security of the system, provided that the personal information is not used or subject to unauthorized disclosure.

(3) Customer. – An individual who provides personal information to a business for the purpose of purchasing or leasing a product or obtaining a service from the business.

(4) Data aggregator. – A type of business that compiles personal information on individuals for sale to other businesses and entities, whether or not the individuals have given permission to obtain the personal information.

(5) Individual. – A natural person.

(6) Owns or licenses. – The phrase includes personal information that a business retains as part of the business' internal customer account or for the purpose of using that information in transactions with the person to whom the information relates.

(7) Personal information. – Any information that identifies, relates to, describes, or is capable of being associated with a particular individual, including his or her name, signature, social security number, physical characteristics or description, address, telephone number, passport number, drivers license or state identification card number, insurance policy number, education, employment, employment history, bank account number, credit card number, debit card number, or any other financial information. Personal information does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records.

(8) Records. – Any material, regardless of the physical form, on which information is recorded or preserved by any means, including in written or spoken words, graphically depicted, printed, or electromagnetically transmitted. The term does not include publicly available directories containing information an individual has voluntarily consented to have publicly disseminated or listed, such as name, address, or telephone number.

"**§ 66-336. Legislative intent; purposes.**

It is the intent of the General Assembly to protect the personal information of North Carolina residents. The purposes of this Article are (i) to encourage data aggregators, and businesses that own or license personal information about North Carolina customers, to provide reasonable security for personal information and (ii) to provide our citizens with notice of breaches of personal information security so the citizens can better protect themselves from fraud and identity theft.

"**§ 66-337. Protection of personal information required.**

(a) A data aggregator or other business that conducts business in North Carolina and compiles, owns, or licenses personal information about a North Carolina resident shall implement and maintain reasonable security procedures and practices appropriate to the nature of the information in order to protect the personal information from unauthorized access, destruction, use, modification, or disclosure.

(b) A business that conducts business in North Carolina and discloses personal information about a North Carolina resident pursuant to a contract with a nonaffiliated third party shall require by contract that the third party implement and maintain reasonable security procedures and practices appropriate to the nature of the information in order to protect the personal information from unauthorized or fraudulent access, destruction, use, modification, or disclosure.

"**§ 66-338. Notice of personal information security breach required; forms of notice; substantial compliance.**

(a) Any data aggregator or other business that conducts business in North Carolina, and that compiles or owns or licenses computerized data that includes personal information, shall disclose any breach of the security of the system following discovery or notification of the breach in the security of the data to any resident of North Carolina whose unencrypted personal information was or is reasonably believed to have been either acquired by an unauthorized person or by fraudulent means. Except as provided by subsection (b) of this section, the disclosure required shall be made in the most expedient time possible and without unreasonable delay. Any business or data aggregator that maintains computerized data that includes personal information that the business does not own shall notify the owner or licensee of the information of any breach of the security of the data immediately following discovery, if the personal information was or is reasonably believed to have been acquired by an unauthorized person or by fraudulent means.

(b) The notification required by this section may be delayed only if:

(1) A law enforcement agency determines that the notification will impede a criminal investigation or the delay. In this case, the notification required by this section shall be made after the law enforcement agency determines that it will not compromise the investigation.

(2) The delay is consistent with any measures necessary to determine the scope of the breach and restore the reasonable integrity of the data system.

(c) For purposes of this section, notice may be provided by one of the following methods:

(1) Written notice to each affected individual by U.S. Mail.

(2) Electronic notice to each affected individual, if the notice provided is consistent with the provisions of Article 40 of this Chapter, the Uniform Electronic Transactions Act.

(3) Substitute notice, if (i) the business demonstrates that the cost of providing notice would exceed one hundred twenty-five thousand dollars ($125,000), (ii) the affected class of subject persons to be notified exceeds 250,000, or (iii) the business does not have sufficient contact information. Substitute notice shall be given when all of the following occur:

a. Electronic mail notice is given when the business has valid e-mail addresses for the subject persons.

b. Conspicuous posting of the notice is placed on the Web site page of the business, if the business maintains one.

c. Notification is provided through major Statewide media.

(d) Notwithstanding the provisions of subsection (c) of this section, a business that is not a data aggregator and that maintains its own customer notification procedures as part of an information security policy for the treatment of personal information that is otherwise consistent with the scope and timing requirements of this section shall be deemed to be in substantial compliance with the notification requirements of this section if the business notifies customers in accordance with its policies in the event of a breach of security of the system.

(e) In addition to, and contemporaneous with, the notice to individuals required by this section, a business shall notify the Consumer Protection Division of the Office of the Attorney General of North Carolina whenever there is a breach of the security system.

"**§ 66-339. Penalties.**

(a) An individual may bring a civil action against a business that fails to provide the notice required by this Article and may recover actual damages resulting from the failure to notify.

(b) The Attorney General may impose civil penalties as set forth in this subsection for willful violations of this Article. Any business that violates this Article may be liable for civil penalties as follows:

(1) Up to the amount of one hundred thousand dollars ($100,000) for the first offense.

(2) Up to the amount of one hundred fifty thousand dollars ($150,000) for the second offense.

(3) Up to the amount of three hundred thousand dollars ($300,000) for the third and subsequent offenses.

(c) Penalties imposed by the Attorney General under this section are subject to the provisions of Chapter 150B of the General Statutes.

(d) Penalties collected under this section shall be paid to the Civil Penalties and Forfeiture Fund in accordance with Article 31A of Chapter 115C of the General Statutes.

"**§ 66-340. Exceptions.**

(a) The provisions of this Article do not apply to any of the following:

(1) A covered entity governed by the medical privacy and security rules issued by the federal Department of Health and Human Services, Parts 160 and 164 of Title 45 of the Code of Federal Regulations, established pursuant to the Health Insurance Portability and Availability Act of 1996 (HIPAA).

(2) A business that is regulated by any State or federal law providing greater protection to personal information than that provided by this Article in regard to the subjects addressed by this Article. Compliance with that State or federal law shall be deemed compliance with this section with regard to those subjects.

(3) 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.

(b) This section does not relieve a business from a duty to comply with any other requirements of other State and federal law regarding the protection and privacy of personal information."

SECTION 2. This act becomes effective January 1, 2006.

SB 783

MORE THAN 500,000 CUSTOMERS AFFECTED

7 upper level employees bribed for bank records

BofA, Wachovia among banks that had account information leaked

BY TODD ZERANSKI
Bloomberg News

Employees of Commerce Bancorp Inc., PNC Financial Services Group Inc., Bank of America Corp. and Wachovia Corp. were bribed to provide account information on more than 500,000 customers to a New Jerman who sold the information to law firms and collection agencies, police in Hackensack, N.J., said Friday.

The seven "upper level" bank employees were paid tens of thousands of dollars to supply the customer information, including account numbers and balances, over the past four years, Deputy Police Chief Ed Koeser said.

Orazio Lembo, 35, was charged with racketeering, disclosing data from a database, theft and other crimes, and was being held at the Bergen County Jail in lieu of $250,000 bond, Koeser said.

The bank employees were charged with commercial bribery, conspiracy and disclosing data from a database, police said in a statement. Four worked for Commerce Bank and later for PNC Bank; one worked for Bank of America, one for Wachovia and one for First Union, which became part of Wachovia, police said.

Also charged was a manager in the New Jersey Department of Labor with access to employment information, who was accused of official misconduct, conspiracy and disclosing data, police said.

Koeser identified Lembo's lawyer as Raymond Flood. Flood's office said he was traveling and could not be reached for comment.

Bank of America spokeswoman Alex Liftman said the company has notified 75 customers, mostly in New Jersey, who were affected. The Charlotte bank has monitored their accounts and found no unusual activity, she said. The employee involved no longer works for the bank, and the company continues to cooperate with local authorities, she added.

Wachovia spokeswoman Christy Phillips said the Charlotte company is working with law enforcement to identify affected customers. The two employees are no longer with the company, she said.

Brian Goerke, a spokesman for Pittsburgh-based PNC Financial, said fewer than 15 customers might have been affected by illegal disclosures. "When we were notified, we took immediate action," he said. "None of these individuals had been working at PNC for more than six months."

A call to David Flaherty, a spokesman for Commerce Bancorp, based in Cherry Hill, N.J., was not immediately returned.

The case grew out of an investigation into the theft of checks made out to Lembo's business, DRL Associates, which advertised as a skip tracing and collection agency, police said. Detectives examining Lembo's computers "came across this much larger case," Koeser said.

Lembo kept "very detailed records," Koeser said. Thirteen computers as well as cocaine, marijuana, ecstasy and steroids were confiscated during a search of Lembo's home, police said.

Hackensack, with a population of 43,000, is the seat of Bergen County and is seven miles west of New York City. — STAFF WRITER RICK ROTHACKER CONTRIBUTED TO THIS ARTICLE.

SENATOR JIM FORRESTER
REPUBLICAN JOINT CAUCUS LEADER
NORTH CAROLINA SENATE

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SENATE BILL 783:
Report Hacker/Fraudulent Access to ID Data

BILL ANALYSIS

Committee:	Senate Judiciary I	**Date:**	May 5, 2005
Introduced by:	Sen. Forrester	**Summary by:**	Walker Reagan
Version:	PCS to First Edition S783-CSRU-26		Committee Co-Counsel

SUMMARY: The Proposed Committee Substitute for Senate Bill 783 would require companies that maintain electronic databases with personal information of customers to immediately notify persons whose personal information is accessed without authorization or fraudulently following a security breach.

BILL ANALYSIS: The Proposed Committee Substitute for Senate Bill 783 would create a new Article 41 in Chapter 66 entitled "Personal Information Security Breach Notification Act".

The new **G.S. 66-335** defines terms used in this Article. Business is defined as any company doing business in anywhere in the US or another country. Breach of security system is defined as an unauthorized or fraudulent acquisition of computerized data that compromises the security, confidentiality or integrity of personal information maintained by a business that could result in identity theft. Personal information is defined as any information that identifies, relates to, describes, or is capable of being associated with a particular individual including identification numbers, personal numbers and account numbers.

G.S. 66-337 requires businesses that conduct business in NC and compile, own or license personal information about NC residents to implement and maintain reasonable security procedures and practices in order to protect the personal information from unauthorized or fraudulent access or disclosure. It also requires a business with this information that contracts with an unaffiliated third party to require by contract that the third party meet the same security requirements.

G.S. 66-338 requires a business to disclose immediately after discovery any breach in security of unencrypted personal information acquired by unauthorized or fraudulent means, to the person whose personal information was acquired. This disclosure is to be made in the most expedient time possible and without unreasonable delay. Notices can be sent by US mail, electronic mail, and in the case where the cost of notice exceeds $125,000 or the number of persons to be notified exceeds 250,000, by posting on a business Website and notification through major Statewide media. Notice is also to be given to the Consumer Protection Division of the Attorney General's Office.

G.S. 66-339 sets out the penalties for a violation of this Article. An individual may sue a business that fails to give the notice required by this law for the actual damages resulting from the failure to notify. A business that violates this Act (which includes the failure to properly protect the personal information or give notice as required) may be subjected to civil penalties imposed by the Attorney General of up to $100,000 for a first offense, $150,000 for a second offense and $300,000 for a third or subsequent offense.

G.S. 66-340 exemptions from the provisions of the act a covered entity governed by the medical privacy and security rules of the federal Department of Health and Human Services, a business that is regulated by any State or federal law that provides greater protection of personal information, and a financial institution subject to and incompliance with the Federal Interagency Guidance Response Programs for Unauthorized Access to Consumer Information and Customer Notice. This law does not relieve the business of duty to comply with other laws regarding protection and privacy of personal information.

EFFECTIVE DATE: The bill is effective January 1, 2006.

S0783e1-SMRU-CSRU-26

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 783

Short Title:	Report Hacker/Fraudulent Access to ID Data.	(Public)
Sponsors:	Senators Forrester; Allran, Bingham, Brock, Garwood, Goodall, Hunt, Presnell, and Tillman.	
Referred to:	Commerce.	

March 23, 2005

A BILL TO BE ENTITLED

AN ACT REQUIRING THAT DATA AGGREGATORS AND OTHER BUSINESSES IMMEDIATELY NOTIFY INDIVIDUALS OF UNAUTHORIZED OR FRAUDULENT ACCESS TO PERSONAL INFORMATION FOLLOWING INFORMATION SECURITY BREACHES.

The General Assembly of North Carolina enacts:

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The following definitions apply in this Article:

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(2) Breach of the security system. – Unauthorized or fraudulent acquisition of computerized data that (i) compromises the security, confidentiality, or integrity of personal information maintained by a business or (ii) could result in identity theft. Good faith acquisition of personal information by an employee or agent of a business for the purposes of the business is not a breach of the security of the system, provided that the personal information is not used or subject to unauthorized disclosure.

(3) Customer. – An individual who provides personal information to a business for the purpose of purchasing or leasing a product or obtaining a service from the business.

(4) Data aggregator. – A type of business that compiles personal information on individuals for sale to other businesses and entities, whether or not the individuals have given permission to obtain the personal information.

(5) Individual. – A natural person.

(6) Owns or licenses. – The phrase includes personal information that a business retains as part of the business' internal customer account or for the purpose of using that information in transactions with the person to whom the information relates.

(7) Personal information. – Any information that identifies, relates to, describes, or is capable of being associated with a particular individual, including his or her name, signature, social security number, physical characteristics or description, address, telephone number, passport number, drivers license or state identification card number, insurance policy number, education, employment, employment history, bank account number, credit card number, debit card number, or any other financial information. Personal information does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records.

(8) Records. – Any material, regardless of the physical form, on which information is recorded or preserved by any means, including in written or spoken words, graphically depicted, printed, or electromagnetically transmitted. The term does not include publicly available directories containing information an individual has voluntarily consented to have publicly disseminated or listed, such as name, address, or telephone number.

"**§ 66-336. Legislative intent; purposes.**

It is the intent of the General Assembly to protect the personal information of North Carolina residents. The purposes of this Article are (i) to encourage data aggregators, and businesses that own or license personal information about North Carolina customers, to provide reasonable security for personal information and (ii) to provide our citizens with notice of breaches of personal information security so the citizens can better protect themselves from fraud and identity theft.

"**§ 66-337. Protection of personal information required.**

(a) A data aggregator or other business that conducts business in North Carolina and compiles, owns, or licenses personal information about a North Carolina resident shall implement and maintain reasonable security procedures and practices appropriate to the nature of the information in order to protect the personal information from unauthorized access, destruction, use, modification, or disclosure.

(b) A business that conducts business in North Carolina and discloses personal information about a North Carolina resident pursuant to a contract with a nonaffiliated third party shall require by contract that the third party implement and maintain reasonable security procedures and practices appropriate to the nature of the information in order to protect the personal information from unauthorized or fraudulent access, destruction, use, modification, or disclosure.

"**§ 66-338. Notice of personal information security breach required; forms of notice; substantial compliance.**

(a) Any data aggregator or other business that conducts business in North Carolina, and that compiles or owns or licenses computerized data that includes personal information, shall disclose any breach of the security of the system following discovery or notification of the breach in the security of the data to any resident of North Carolina whose unencrypted personal information was or is reasonably believed to have been either acquired by an unauthorized person or by fraudulent means. Except as provided by subsection (b) of this section, the disclosure required shall be made in the most expedient time possible and without unreasonable delay. Any business or data aggregator that maintains computerized data that includes personal information that the business does not own shall notify the owner or licensee of the information of any breach of the security of the data immediately following discovery, if the personal information was or is reasonably believed to have been acquired by an unauthorized person or by fraudulent means.

(b) The notification required by this section may be delayed only if:

(1) A law enforcement agency determines that the notification will impede a criminal investigation or the delay. In this case, the notification required by this section shall be made after the law enforcement agency determines that it will not compromise the investigation.

(2) The delay is consistent with any measures necessary to determine the scope of the breach and restore the reasonable integrity of the data system.

(c) For purposes of this section, notice may be provided by one of the following methods:

(1) Written notice to each affected individual by U.S. Mail.

(2) Electronic notice to each affected individual, if the notice provided is consistent with the provisions of Article 40 of this Chapter, the Uniform Electronic Transactions Act.

(3) Substitute notice, if (i) the business demonstrates that the cost of providing notice would exceed one hundred twenty-five thousand dollars ($125,000), (ii) the affected class of subject persons to be notified exceeds 250,000, or (iii) the business does not have sufficient contact information. Substitute notice shall be given when all of the following occur:

a. Electronic mail notice is given when the business has valid e-mail addresses for the subject persons.

b. Conspicuous posting of the notice is placed on the Web site page of the business, if the business maintains one.

c. Notification is provided through major Statewide media.

(d) Notwithstanding the provisions of subsection (c) of this section, a business that is not a data aggregator and that maintains its own customer notification procedures as part of an information security policy for the treatment of personal information that is otherwise consistent with the scope and timing requirements of this section shall be deemed to be in substantial compliance with the notification requirements of this section if the business notifies customers in accordance with its policies in the event of a breach of security of the system.

(e) In addition to, and contemporaneous with, the notice to individuals required by this section, a business shall notify the Consumer Protection Division of the Office of the Attorney General of North Carolina whenever there is a breach of the security system.

"**§ 66-339. Penalties.**

(a) An individual may bring a civil action against a business that fails to provide the notice required by this Article and may recover actual damages resulting from the failure to notify.

(b) Any business that violates this Article shall be liable for civil penalties as follows:

(1) In the amount of one hundred thousand dollars ($100,000) for the first offense.

(2) In the amount of one hundred fifty thousand dollars ($150,000) for the second offense.

(3) In the amount of three hundred thousand dollars ($300,000) for the third and subsequent offenses.

"**§ 66-340. Exceptions.**

(a) The provisions of this Article do not apply to any of the following:

(1) A covered entity governed by the medical privacy and security rules issued by the federal Department of Health and Human Services, Parts 160 and 164 of Title 45 of the Code of Federal Regulations, established pursuant to the Health Insurance Portability and Availability Act of 1996 (HIPAA).

(2) A business that is regulated by any State or federal law providing greater protection to personal information than that provided by this Article in regard to the subjects addressed by this Article. Compliance with that State or federal law shall be deemed compliance with this section with regard to those subjects.

(b) This section does not relieve a business from a duty to comply with any other requirements of other State and federal law regarding the protection and privacy of personal information."

SECTION 2. This act becomes effective January 1, 2006.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 793

Short Title:	Government Agencies Limit Release of SSNs.	(Public)
Sponsors:	Senators Berger of Rockingham; Apodaca, Bingham, Brown, Forrester, Goodall, Jacumin, Kinnaird, Stevens, Thomas, Tillman, and Webster.	
Referred to:	Judiciary I.	

March 23, 2005

A BILL TO BE ENTITLED

AN ACT AMENDING THE STATE PRIVACY ACT TO PROVIDE THAT SOCIAL SECURITY NUMBERS SHALL NOT APPEAR ON CITATIONS AND OTHERWISE LIMITING THE DISCLOSURE OF SOCIAL SECURITY NUMBERS BY GOVERNMENT AGENCIES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 3F of Chapter 143 of the General Statutes is amended by adding a new section to read:

"**§ 143-64.61. Limitations on release of social security numbers by government agencies; citations.**

(a) Prohibition. – Except as specifically provided by subsection (b) of this section, no State or local government agency may (i) intentionally communicate, display, or disclose to the general public or to a third party an individual's social security number or (ii) cause an individual's social security number to be printed on any citation.

(b) Exceptions. – Notwithstanding subsection (a) of this section, social security numbers may be:

(1) Used by State and local agencies in confidential applications, forms, and other documents in connection with official business concerning an individual.

(2) Sent by mail in connection with official business, but may not be sent on a postcard or other mailer not requiring an envelope or in any manner where the social security number is visible.

(3) Released pursuant to a State or federal law that specifically requires the disclosure.

(4) Released pursuant to an unexpired, valid contract executed under G.S. 7A-109, or any related law, before July 1, 2005.

(c) Citations. – Citations, including electronic tickets, issued for violations of motor vehicle laws shall not display all or part of an individual's social security number.

(d) Limited Access. – State and local government agencies shall take action to prevent unnecessary access to social security numbers by their employees. The Division of Motor Vehicles and the Administrative Office of the Courts shall not unnecessarily release or display social security numbers, in whole or in part, in the processing of citations or in the course of other official business."

SECTION 2. G.S. 7A-109 reads as rewritten:

"**§ 7A-109. Record-keeping procedures.**

(a) Each clerk shall maintain such records, files, dockets and indexes as are prescribed by rules of the Director of the Administrative Office of the Courts. Except as prohibited by the State Privacy Act, Article 3F of Chapter 143 of the General Statutes, or any other provision of law, these records shall be open to the inspection of the public during regular office hours, and shall include civil actions, special proceedings, estates, criminal actions, juvenile actions, minutes of the court, judgments, liens, lis pendens, and all other records required by law to be maintained. The rules prescribed by the Director shall be designed to accomplish the following purposes:

(1) To provide an accurate record of every determinative legal action, proceeding, or event which may affect the person or property of any individual, firm, corporation, or association;

(2) To provide a record during the pendency of a case that allows for the efficient handling of the matter by the court from its initiation to conclusion and also affords information as to the progress of the case;

(3) To provide security against the loss or destruction of original documents during their useful life and a permanent record for historical uses;

(4) To provide a system of indexing that will afford adequate access to all records maintained by the clerk;

(5) To provide, to the extent possible, for the maintenance of records affecting the same action or proceeding in one rather than several units; and

(6) To provide a reservoir of information useful to those interested in measuring the effectiveness of the laws and the efficiency of the courts in administering them.

(b) The rules shall provide for the protection of the social security numbers of individuals and for indexing according to the minimum criteria set out below:

(1) Civil actions. – the names of all parties;

(2) Special proceedings. – the names of all parties;

(3) Administration of estates. – the name of the estate and in the case of testacy the name of each devisee;

(4) Criminal actions. – the names of all defendants;

(5) Juvenile actions. – the names of all juveniles;

(6) Judgments, liens, lis pendens, etc. – the names of all parties against whom a lien has been created by the docketing of a judgment, notice

of lien, transcript, certificate, or similar document and the names of all parties in those cases in which a notice of lis pendens has been filed with the clerk and abstracted on the judgment docket.

(c) The rules shall require that all documents received for docketing shall be immediately indexed either on a permanent or temporary index. The rules may prescribe any technological process deemed appropriate for the economical and efficient indexing, storage and retrieval of information.

(c1) The rules shall provide for compliance with the State Privacy Act and shall address identity theft and the privacy of social security numbers and other personal information.

(d) In order to facilitate public access to court records, except where public access is prohibited by the State Privacy Act or any other provision of law, the Director may enter into one or more nonexclusive contracts under reasonable cost recovery terms with third parties to provide remote electronic access to the records by the public. Costs recovered pursuant to this subsection shall be remitted to the State Treasurer to be held in the Court Information Technology Fund established in G.S. 7A-343.2.

(e) If any contracts entered into under ~~G.S. 7A-109(d)~~ subsection (d) of this section are in effect during any calendar year, the Director of the Administrative Office of the Courts shall submit to the Joint Legislative Commission on Governmental Operations not later than February 1 of the following year a report on all those contracts."

SECTION 3. Nothing in this act shall be construed to interfere with any pending, valid contract between a State or local agency and any third party that was executed before July 1, 2005.

SECTION 4. This act becomes effective July 1, 2005.

SENATE BILL 793:
Government Agencies Limit Release of SSNs

BILL ANALYSIS

Committee:	Senate Judiciary I	**Date:**	May 5, 2005
Introduced by:	Sen. Berger°of°Rockingham	**Summary by:**	Walker Reagan Committee Co-Counsel
Version:	First Edition		

SUMMARY: Senate Bill 793 would amend the State Privacy Act to restrict the use and disclosure of social security numbers by government agencies.

BILL ANALYSIS:

Section 1 of the bill adds a new section to the State Privacy Act to prohibit State or local government agencies from intentionally disclosing to the general public or a third party an individual's social security number or to put a person's social security number on a citation, except for specified purposes. Specified purposes include confidential use in connection with official business concerning the individual, in mail connected with official business provided the social security number is not visible, release pursuant to the requirements of State or federal law, or released pursuant to an unexpired contract with a clerk of court for the maintenance of court records.

Section 2 amends G.S. 7A-109 which governs the record keeping requirements for clerks of court to protect social security numbers as required under Section 1 of the bill.

EFFECTIVE DATE: This act becomes effective July 1, 2005.

S0793e1-SMRU

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 921*

Short Title:	Consumer Credit Protection Act.	(Public)
Sponsors:	Senators Jacumin; Allran, Berger of Rockingham, Bingham, Brown, Forrester, Garwood, and Tillman.	
Referred to:	Commerce.	

March 24, 2005

A BILL TO BE ENTITLED

AN ACT TO REQUIRE ANY CONSUMER CREDIT REPORTING AGENCY TO, UPON THE WRITTEN REQUEST OF A CONSUMER, PLACE A SECURITY FREEZE THAT PROHIBITS THE AGENCY FROM PROVIDING A CONSUMER'S CREDIT REPORT TO A THIRD PARTY.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 25B of the General Statutes is amended by adding a new Article to read:

"Article 2.

"Security Freeze on Consumers' Credit Reports.

"**§ 25B-10. Definitions.**

As used in this Article, the following definitions apply:

(1) 'Consumer credit file' means all of the information about a consumer that is recorded and retained by a consumer credit reporting agency regardless of how the information is stored.

(2) 'Consumer credit report' means a communication or other information by a consumer credit reporting agency relating to the creditworthiness, credit standing, credit capacity, debts, character, general reputation, personal characteristics, or mode of living of a consumer that is used or expected to be used or collected, wholly or partly, as a factor in establishing the consumer's eligibility for credit or insurance for personal, family, or household purposes, employment purposes, or other purpose authorized under sections 603 and 604 of the Fair Credit Reporting Act, 15 U.S.C. § 1681a and § 1681b, as amended. The term does not include any of the following:

a. A report containing information solely on a transaction between the consumer and the person making the report.

b. An authorization or approval of a specific extension of credit directly or indirectly by the issuer of a credit card or similar device.

c. A report in which a person who has been requested by a third party to make a specific extension of credit directly or indirectly to a consumer makes a decision with respect to the request, if the third party advises the consumer of the name and address of the person to whom the request was made and the person makes the disclosures that must be made under section 615 of the Fair Credit Reporting Act, 15 U.S.C. § 1681m, as amended, to the consumer in the event of adverse action against the consumer.

d. Any communication of information described in this subdivision among persons related by common ownership or affiliated by corporate control.

(3) 'Consumer credit reporting agency' means a person that regularly engages wholly or partly in the practice of assembling or evaluating consumer credit information or other information on consumers in order to provide consumer credit reports to third parties for monetary fees, for dues, or on a cooperative nonprofit basis. Consumer credit reporting agency does not include a business entity that provides only check verification or check guarantee services.

(4) 'Proper identification' means information generally sufficient to identify a person.

"**§ 25B-20. Request and placement of security freeze.**

(a) A consumer may elect to place a security freeze on his or her consumer credit file by submitting to a consumer credit reporting agency a request in writing that is sent by certified mail and that includes proper identification of the consumer. Subject to G.S. 25B-50, upon receiving the consumer's request for a security freeze under this section, a consumer credit reporting agency shall place a notice in a consumer's credit file that indicates the file is subject to a security freeze. When a consumer credit file is subject to a security freeze, a consumer credit reporting agency shall not release information from that consumer's credit file and shall not provide a consumer credit report for that consumer to a third party, unless the agency receives prior express authorization under G.S. 25B-40 from the consumer. This section does not prevent a consumer credit reporting agency from advising a third party that a security freeze is in effect with respect to the consumer's credit file.

(b) A consumer credit reporting agency shall place a security freeze for a consumer no later than five business days after receiving the written request from the consumer. The consumer credit reporting agency shall, no later than 10 business days after receiving the written request from the consumer, also do all of the following:

(1) Send a written confirmation of the security freeze to the consumer.

(2) Disclose in writing to the consumer the process of placing and removing the security freeze and the process for allowing access to information from the consumer's credit file or for providing a

consumer credit report for a specific requester or a specific period of time while the security freeze is in effect by temporarily lifting the security freeze under G.S. 25B-40(b).

(3) Provide the consumer with a unique personal identification number or password to be used by the consumer to authorize a removal or temporary lifting of the security freeze under G.S. 25B-40.

(c) Any consumer credit reporting agency shall honor a security freeze placed by any other consumer credit reporting agency.

(d) A consumer may request in writing a replacement personal identification number or password. The request must comply with the requirements for requesting a security freeze under subsection (a) of this section. The consumer reporting agency shall no later than the third business day after the date the agency receives the request for a replacement personal identification number or password provide the consumer with a new unique personal identification number or password to be used by the consumer instead of the number or password that was provided under subsection (b) of this section.

"**§ 25B-30. Notification of change.**

If a security freeze is in place, a consumer credit reporting agency shall notify the consumer in writing of a change in the consumer credit file to the consumer's name, date of birth, social security number, or address no later than 30 calendar days after the date the change is made. The agency shall send notification of a change of address to the new address and former address. This section does not require notice of an immaterial change, including a street abbreviation change or correction of a transposition of letters or misspelling of a word.

"**§ 25B-40. Removal or temporary lifting of security freeze.**

(a) On a request in writing and with proper identification provided by a consumer, including the consumer's personal identification number or password provided under G.S. 25B-20, a consumer credit reporting agency shall remove a security freeze no later than the third business day after the date the agency receives the request.

(b) On a request in writing and with proper identification provided by a consumer, including the consumer's personal identification number or password provided under G.S. 25B-20, a consumer credit reporting agency, shall, no later than the third business day after the date the agency receives the request, temporarily lift the security freeze for either or both of the following:

(1) A certain properly designated period of time.

(2) A certain properly identified third party.

(c) A consumer credit reporting agency may develop procedures involving the use of a telephone, a facsimile machine, the Internet, or another electronic medium to receive and process a request from a consumer under this section.

(d) A consumer credit reporting agency shall remove a security freeze when the security freeze was placed due to a material misrepresentation of fact by the consumer. The consumer credit reporting agency shall notify the consumer in writing before removing the security freeze under this subsection.

(e) A consumer credit reporting agency shall not charge a fee for a request under subsection (a) or (b) of this section.

"**§ 25B-50. Exemptions from security freeze.**

A consumer credit reporting agency may provide a consumer credit report to all of the following for any consumer credit file that is currently subject to a freeze under G.S. 25B-20:

(1) A State or local governmental entity, including a law enforcement agency or court or private collection agency, if the entity, agency, or court is acting under a court order, warrant, subpoena, or administrative subpoena.

(2) A child support agency acting to investigate or collect child support payments or acting under title IV-D of the Social Security Act, 42 U.S.C. § 651, et seq., as amended.

(3) The Department of Health and Human Services acting to investigate fraud.

(4) The Department of Revenue acting to investigate or collect delinquent sales or franchise taxes.

(5) A tax assessor-collector acting to investigate or collect delinquent ad valorem taxes.

(6) A person for the purposes of prescreening as provided by the Fair Credit Reporting Act, 15 U.S.C. § 1681, et seq., as amended.

(7) A person with whom the consumer has an account or contract or to whom the consumer has issued a negotiable instrument, or the person's subsidiary, affiliate, agent, assignee, prospective assignee, or private collection agency, for purposes related to that account, contract, or instrument.

(8) A subsidiary, affiliate, agent, assignee, or prospective assignee of a person to whom access has been granted under G.S. 25B-40(b).

(9) A person who administers a credit file monitoring subscription service to which the consumer has subscribed.

(10) A check service or fraud prevention service company that issues consumer credit reports:

a. To prevent or investigate fraud; or

b. For purposes of approving or processing negotiable instruments, electronic funds transfers, or similar methods of payment.

(11) A deposit account information service company that issues consumer reports related to account closures caused by fraud, substantial overdrafts, automated teller machine abuses, or similar negative information regarding a consumer to an inquiring financial institution for use by the financial institution only in reviewing a consumer request for a deposit account with that institution.

(12) A consumer credit reporting agency that:

a. Acts only to resell credit information by assembling and merging information contained in a database of another consumer credit reporting agency or multiple consumer credit reporting agencies; and

b. Does not maintain a permanent database of credit information from which new consumer credit reports are produced.

"**§ 25B-60. Charges for placing security freeze.**

A consumer credit reporting agency may impose a reasonable charge on a consumer for each placement of a security freeze. The amount of the charge shall not exceed ten dollars ($10.00). A consumer credit reporting agency shall charge no such fee to any victim of identity fraud under Article 20 of Chapter 14 of the General Statutes who submits a valid police report.

"**§ 25B-70. Injunctive relief; civil penalty.**

(a) The Attorney General may file a suit against a person for either or both of the following:

(1) Injunctive relief to prevent or restrain a violation of this Article.

(2) A civil penalty in an amount not to exceed two thousand five hundred dollars ($2,500) for each violation of this Article.

(b) If the Attorney General brings an action against a person under subsection (a) of this section and an injunction is granted against the person or the person is found liable for a civil penalty, the Attorney General may recover reasonable expenses, court costs, investigative costs, and attorneys' fees.

(c) Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty under this section.

"**§ 25B-80. Exemptions from Article.**

The provisions of this Article do not apply to any of the following entities:

(1) A check service or fraud prevention service company that issues consumer credit reports:

a. To prevent or investigate fraud, or

b. For purposes of approving or processing negotiable instruments, electronic funds transfers, or similar methods of payment.

(2) A deposit account information service company that issues consumer credit reports related to account closures caused by fraud, substantial overdrafts, automated teller machine abuses, or similar negative information regarding a consumer to an inquiring financial institution for use by only the financial institution in reviewing a consumer request for a deposit account with that institution."

SECTION 2. This act becomes effective October 1, 2005.

SENATE BILL 921:
Consumer Credit Protection Act

BILL ANALYSIS

Committee:	Senate Judiciary I	**Date:**	May 5, 2005
Introduced by:	Sen. Jacumin	**Summary by:**	Walker Reagan
Version:	First Edition		Committee Co-Counsel

SUMMARY: ***Senate Bill 921 would permit an individual to require a credit reporting agency to freeze access to that person's credit report, except as authorized by the person.***

BILL ANALYSIS: Senate Bill 921 enacts a new Article in Chapter 25B to set out a procedure by which an individual's credit report can be frozen from access by third parties except with the individual's consent.

G.S. 25B-20 allows a person to elect to place a freeze on the person's credit file by submitting a written request by certified mail to a consumer credit reporting agency. Within 5 days of when the request is received a person's credit report is not to be released with the prior express consent of the person. The credit reporting agency is to confirm the freeze and give the person a unique identification number that the person can use to remove or temporarily lift the freeze.

G.S. 25B-40 allows a person whose credit report is frozen to remove or temporarily lift a freeze by submitting a request in writing with the proper identification number. The freeze is to be lifted within 3 days of the request. The request to lift the freeze can be for a specified period of time, or limited for a specified third party.

G.S. 25B-50 provides that the freeze does not apply to government agencies or collection agencies acting under court order or subpoena, child support agencies, State fraud investigations, tax collection efforts, prescreening under the Fair Credit Reporting Act, a person with whom an individual has an account or contract, a check service or fraud prevention service company, or between consumer credit reporting agencies.

G.S. 25B-60 allows a consumer credit reporting agency to charge a reasonable fee of up to $10 to place a freeze on a credit report, except no charge shall be allowed for a victim of identity fraud.

G.S. 25B-70 authorizes the Attorney General to bring an action against a person who violates this act for either injunctive relief and for a civil penalty of up to $2,500 for each violation.

EFFECTIVE DATE: This act becomes effective October 1, 2005.

BACKGROUND: California and Texas have adopted similar credit report freeze statutes.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 935

Short Title: No SS# on Health ID Cards. (Public)

Sponsors: Senator Garrou.

Referred to: Judiciary I.

March 24, 2005

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT INSURERS PROVIDING HEALTH CARE POLICIES OR CERTIFICATES FROM PRINTING AN INDIVIDUAL'S SOCIAL SECURITY NUMBER ON MEMBER IDENTIFICATION CARDS OR FROM OTHERWISE MAKING PUBLIC THE INDIVIDUAL'S SOCIAL SECURITY NUMBER.

The General Assembly of North Carolina enacts:

SECTION 1. Article 3 of Chapter 58 of the General Statutes is amended by adding the following new section to read:

"**§ 58-3-216. Dissemination of social security numbers.**

(a) No insurer shall:

(1) Print an individual's social security number on any card required for the individual to access benefits under the individual's health care policy or certificate.

(2) Transmit or require the transmission of an individual's social security number over the Internet unless the social security number is encrypted.

(3) Require the use of an 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 site.

(4) Intentionally communicate or otherwise make available an individual's social security number to the general public.

(5) Print a number that the insurer knows to be 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. This subdivision does not prohibit the mailing of documents that include social security numbers sent as part of an application or enrollment process or to establish, amend, or

terminate an account, contract, or policy, or to confirm the accuracy of the social security number.

(b) For health care policies or certificates issued or renewed on and after the effective date of this section, the insurer shall provide to each insured written disclosure of the insured's right to stop the use of the insured's social security number in a manner prohibited by this section.

(c) This section does not prohibit the collection, use, or release of a social security number as required by the laws of this State or the United States or for internal verification or administrative purposes.

(d) As used in this section, the term "insurer" means an entity that writes coverage for health care and that is an insurance company subject to this Chapter, a service corporation under Article 65 of this Chapter, a health maintenance organization under Article 67 of this Chapter, or a multiple employer welfare arrangement under Article 49 of this Chapter."

SECTION 2. Section 1 of this act becomes effective January 1, 2006, and applies to policies or certificates issued or renewed on or after that date. The remainder of this act is effective when it becomes law.

SENATE BILL 935:
No SS# on Health ID Cards

BILL ANALYSIS

Committee:	Senate Judiciary I	**Date:**	May 5, 2005
Introduced by:	Sen. Garrou	**Summary by:**	Walker Reagan Committee Co-Counsel
Version:	First Edition		

SUMMARY: ***Senate Bill 935 would prohibit insurers from printing an individual's social security number on membership cards or health care policies or certificates, or from otherwise making an individual's social security number public.***

BILL ANALYSIS: Senate Bill 935 prohibits a health care insurer, a health maintenance organization, or a multiple employer welfare arrangement from:

- Printing an individual's social security number on any card required to receive benefits.
- Transmit an unencrypted social security number over the Internet or require the use of a social security number to access an Internet website unless a unique password is also required.
- Intentionally making a person's social security number available to the general public.
- Printing the person's social security number on materials mailed to the individual unless required by law or as part of an application for benefits

The insurer is also required to give the insured notice that they can change their identification number to a number other than the social security number.

EFFECTIVE DATE: This act becomes effective January 1, 2006 and applies to policies or certificates issued on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 1048

Short Title:	Identity Theft Protection Act of 2005.	(Public)
Sponsors:	Senators Clodfelter; Albertson, Allran, Dalton, Dannelly, Garrou, Graham, Hagan, Hoyle, Kinnaird, Purcell, Rand, Soles, Swindell, Thomas, and Weinstein.	
Referred to:	Judiciary I.	

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 which, 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:

a. Credit to be used primarily for personal, family, or household purposes;

b. Employment purposes; or

c. Any other purpose authorized under 15 U.S.C. § 168lb.

(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) "Credit header information". – Written, oral, or other communication of any information by a consumer reporting agency regarding the social security number of the consumer, or any derivative thereof, and any other personally identifiable information of the consumer that is derived using any nonpublic personal information, except the name, address, and telephone number of the consumer if all are listed in a residential telephone directory available in the locality of the consumer.

(7) "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.

(8) "Disposal" includes:

a. The discarding or abandonment of records containing personal information, and

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.

(9) "Person". – Any individual, partnership, corporation, trust, estate, cooperative, association, government, or governmental subdivision or agency, or other entity.

(10) "Personal information". – An individual's first name or first initial and last name in combination with identifying information as defined in G.S. 14-113.20(b) or any identifying information, when not in connection with the individual's first name or first initial and last name, that if compromised would be sufficient to perform or attempt to perform identity theft against the person whose information was compromised.

(11) "Records". – Any material on which written, drawn, spoken, visual, or electromagnetic information is recorded or preserved, regardless of

physical form or characteristics. "Records" does not include publicly available directories containing information an individual has voluntarily consented to have publicly disseminated or listed, such as name, address, or telephone number.

(12) "Security breach". – Unauthorized acquisition of records or data that compromises the security, or confidentiality of personal information. 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 unrelated to the business or subject to further unauthorized disclosure.

(13) "Security freeze". – Notice, 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) Print 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 disclose an individual's social security number to a third party for any purpose without written consent to the disclosure from the individual.

(b) Subsection (a) of this section shall not apply in the following instances:

(1) Subsection (a)(5) of this section shall not apply 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. 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) Subsection (a)(6) of this section shall not apply:

a. To the collection, use, or release of a social security number for internal verification or administrative purposes provided that no consideration is exchanged between the person and the third party for the collection, use, or release of the social security number.

b. To the collection, use, or release of a social security number to investigate or prevent fraud or to conduct background checks.

c. To a business acting pursuant to a court order, warrant, subpoena, or when otherwise required by law.

d. To a business providing the social security number to a federal, State, or local government entity, including a law enforcement agency, or court, or their agents or assigns.

(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. An individual may bring a civil action against a business that violates this section and may recover pursuant to G.S. 75-16 or may recover statutory damages of one thousand dollars ($1,000), whichever is greater, plus reasonable court costs and attorneys' fees.

(e) This section becomes effective July 1, 2006.

"**§ 75-63. Security freeze.**

(a) If a consumer elects to place a security freeze on his or her credit report, a credit 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 may elect to place a "security freeze" on his or her credit report by making a request directly to a consumer reporting agency by any of the following methods:

(1) By certified mail.

(2) By telephone by providing certain personal identification.

(3) Through a secure electronic mail connection if such connection is made available by the agency.

(c) 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 or telephone request from the consumer or three business days after receiving a secure electronic mail request.

(d) The consumer reporting agency shall send a written confirmation of the security freeze to the consumer within five business days of placing the freeze and at the same time shall provide the consumer with a unique personal identification number or password to be used by the consumer when providing authorization for the release of his or her credit for a specific party or period of time.

(e) If the consumer wishes to allow his or her credit report to be accessed for a specific party or period of time while a freeze is in place, he or she shall contact the consumer reporting agency via telephone, certified mail, or secure electronic mail, 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 (d) of this section.

(3) The proper information regarding the third party who is to receive the credit report or the time period for which the report shall be available to users of the credit report.

(f) A consumer reporting agency that receives a request from a consumer to temporarily lift a freeze on a credit report pursuant to subsection (e) of this section shall comply with the request no later than three business days after receiving the request.

(g) A consumer reporting agency may develop procedures involving the use of telephone, fax, or, upon the consent of the consumer in the manner required by the Electronic Signatures in Global and National Commerce Act (e-Sign) for legally required notices, by the Internet, e-mail, 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 (e) of this section in an expedited manner.

(h) 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 subsection (e) 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 subsection, the consumer reporting agency shall notify the consumer in writing five business days prior to removing the freeze on the consumer's credit report.

(i) 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 his or her credit report to be accessed for that specific party or period of time, the third party may treat the application as incomplete.

(j) If a third party requests access to a consumer credit report on which a security freeze is in effect for the purpose of receiving, extending, or otherwise utilizing the credit therein, and not for the sole purpose of account review, the consumer credit reporting agency must notify the consumer that an attempt has been made to access the credit report and by whom.

(k) 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 both of the following:

(1) Proper identification, and

(2) The unique personal identification number or password provided by the consumer reporting agency pursuant to subsection (d) of this section.

(l) A consumer reporting agency shall require proper identification of the person making a request to place or remove a security freeze.

(m) A consumer reporting agency may not suggest or otherwise state or imply to a third party that the consumer's security freeze reflects a negative credit score, history, report, or rating.

(n) A consumer may not be charged for any security freeze services, including, but not limited to, the placement or lifting of a security freeze. A consumer, however, can be charged no more than five dollars ($5.00) only in the following discrete circumstances:

(1) If the consumer fails to retain the original personal identification number provided by the agency, the consumer may not be charged for a one-time reissue of the charge no more than five dollars ($5.00) for subsequent instances of loss of the personal identification number.

(2) The consumer may be charged no more than five dollars ($5.00) for the third and each subsequent time the consumer requests a security freeze on his or her credit report be temporarily lifted pursuant to subsection (e) of this section within a calendar year.

(3) For consumers that remove a security freeze pursuant to subsection (k) of this section, the consumer may be charged no more than five dollars ($5.00) for the third and each subsequent time the consumer requests a security freeze be placed on his or her credit report be placed pursuant to subsection (b) within a calendar year.

(o) 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 may obtain a security freeze on your credit report at no charge to protect your privacy and ensure that credit is not granted in your name without your knowledge. 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 or approval.

The security freeze is designed to prevent credit, loans, and services from being approved in your name without your consent. When you place a security freeze on your credit report, within five business days you will be provided a personal identification number or password to use if you choose to remove the freeze on your credit report or to temporarily authorize the release of your credit report for a specific party, parties, or period of time after the freeze is in place. To provide that authorization, you must contact the consumer reporting agency and provide all of the following:

(1) The unique personal identification number or password provided by the consumer reporting agency.

(2) Proper identification to verify your identity.

(3) Proper information regarding the third party or parties who are to receive the credit report or the period of time for which the report shall be available to users of the credit report.

A consumer reporting agency that receives a request from a consumer to lift temporarily a freeze on a credit report shall comply with the request no later than three business days after receiving the request. A security freeze does not apply to circumstances where 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.

If you are actively seeking credit, you should understand that the procedures involved in lifting a security freeze may slow your own applications for credit. You should plan ahead and lift a freeze – either for a period of time if you are shopping around or specifically for a certain creditor – a few days before actually applying for new credit.

If you lift your freeze more than two times in a calendar year, you may be charged no more than five dollars ($5.00) for each subsequent time you wish to impose a security freeze on your credit report. 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."

(p) 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, or assignee with which the consumer has or, prior to assignment, had an account, contract, or debtor-creditor relationship for the purposes of reviewing the 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 (e) 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 which administers a program for establishing and enforcing child support obligations.

(5) The State or its agents or assigns acting to investigate fraud or acting to investigate or collect delinquent taxes or unpaid court orders or to fulfill any of its other statutory responsibilities.

(6) A person for the purposes of prescreening as defined by the federal Fair Credit Reporting Act.

(7) Any person or entity administering a credit file monitoring subscription service to which the consumer has subscribed.

(8) Any person or entity for the purpose of providing a consumer with a copy of his or her credit report upon the consumer's request.

(q) If a consumer reporting agency erroneously, whether by accident or design, violates the security freeze by releasing credit information that has been placed under a

security freeze or violates any other provision in this section, the affected consumer is entitled to:

(1) Notification within five business days of the release of the information, including specificity as to the information released and the third-party recipient of the information.

(2) File a civil action pursuant to G.S. 75-16. In addition to the remedies therein, a consumer may recover statutory damages of one thousand dollars ($1,000) per violation and seek injunctive relief to prevent or restrain further.

"**§ 75-64. Protection for credit header information.**

(a) A consumer reporting agency may furnish a consumer's credit header information only to those who have a permissible purpose to obtain the consumer's consumer report under section 604 of the federal Fair Credit Reporting Act, as codified in 15 U.S.C.§ 1681(b), or in the following circumstances:

(1) When acting pursuant to a court order, warrant, or subpoena or when otherwise required by law.

(2) To a federal, State, or local government entity, including a law enforcement agency, or court, or their agents or assigns.

(3) To investigate or prevent fraud or to conduct background checks.

(4) To financial institutions for compliance with Section 326 of the USA PATRIOT Act.

(b) A violation of this section is a violation of G.S. 75-1.1. An individual may bring a civil action against a business that violates this section and may recover pursuant to G.S. 75-16 or may recover statutory damages of one thousand dollars ($1,000), which ever is greater, plus reasonable court costs and attorneys' fees.

"**§ 75-65. 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, but may not be limited to:

(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 non-paper media containing personal information so that the information cannot practicably be read or reconstructed;

(3) Implementing and monitoring compliance with policies and procedures that require reasonable steps to be taken to ensure that no unauthorized person will have access to the personal information for the period between the discarding of the record and the record's destruction.

(4) Comprehensively describing and classifying procedures relating to the adequate destruction or proper disposal of personal records as official policy in the writings of the business entity, including corporate and employee handbooks and similar corporate documents.

(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, but may not be limited to, 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 bank or financial institution that is subject to the privacy and security provision of the Gramm-Leach-Bliley Act, 15 U.S.C. Section 6801 et seq., as amended, or any health insurer that is subject to 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.

(f) A violation of this section is a violation of G.S. 75-1.1. An individual may bring a civil action against a business that violates this section and may recover pursuant to G.S. 75-16 or may recover statutory damages of one thousand dollars ($1,000), whichever is greater, plus reasonable court costs and attorneys' fees.

"**§ 75-66. Protection from security breaches.**

(a) Except as provided in subsection (b) of this section, any business that maintains or otherwise possesses personal information of residents of North Carolina or any business that conducts business in North Carolina that maintains or otherwise possesses personal information of consumers 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 in the most expedient time possible and 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.

(b) A business shall not be required to disclose a technical security breach that does not seem reasonably likely to subject consumers to a risk of criminal activity.

(c) The notice required by this section may be delayed if a law enforcement agency determines that notification may impede a criminal investigation. The notice required by this section shall be made after the law enforcement agency determines that it will not compromise the investigation.

(d) For purposes of this section, notice to affected persons may be provided by one of the following methods:

(1) Written notice.

(2) Electronic notice, 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 section 7001 of Title 15 of the United States Code.

(3) Substitute notice, if the data collector 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 the data collector does not have sufficient contact information. Substitute notice shall consist of all the following:

a. E-mail notice when the data collector has an e-mail address for the subject persons.

b. Conspicuous posting of the notice on the data collector's Web site page, if one is maintained.

c. Notification to major statewide media.

(e) Any waiver of the provisions of this Article is contrary to public policy, and is void and unenforceable.

(f) A violation of this section is a violation of G.S. 75-1.1. An individual may bring a civil action against a business that violates this section and may recover pursuant to G.S. 75-16 or may recover statutory damages of one thousand dollars ($1,000), whichever is greater, plus reasonable court costs and attorneys' fees."

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 he or she has been the victim of identity theft may contact the local law enforcement agency that has jurisdiction over his or her 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 such as compiling open case statistics."

SECTION 4. Chapter 132 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 subsection (c) of this section, any State or local government agency, or any agent, employee, or contractor of a government agency, shall not do any of the following:

(1) Collect a person's social security number 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 person's social security number, 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 person's social security number, to provide, at the time of or prior to the actual collection of the social security number by that agency, that person 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).

(6) Print an individual's social security number on any card required for the individual to access government services.

(7) Require an individual to transmit his or her social security number overt the Internet, unless the connection is secure or the social security number is encrypted.

(8) 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.

(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.

(10) Sell, lease, loan, trade, rent, or otherwise disclose an individual's social security number to a third party for any purpose without written consent to the disclosure from the individual.

(c) Subsection (b) of this section does not apply in the following circumstances:

(1) Social security numbers and identifying information may be 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) Social security number or other identifying information may be disclosed pursuant to a court order, warrant, or subpoena.

(d) No person preparing or filing a document to be recorded in the official records by the register of deeds may include any person's social security number or other identifying information in that document, unless otherwise expressly required by law. If a social security number or other identifying information is or has been included in a document presented to the register of deeds for recording in the official records of the county before, on, or after the effective date of this section, it may be made available as part of the official record available for public inspection and copying.

(e) Any person or the person's attorney or legal guardian, has the right to request that a register of deeds remove, from an image or copy of an official record placed on a register of deeds' publicly available Internet website or a publicly available Internet website used by a register of deeds to display public records or otherwise made electronically available to the general public by such register, his or her social security number or other identifying information 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. The request must specify the identification page number that contains the social security number or other identifying information to be redacted. The register of deeds shall have no duty to inquire beyond the written request to verify the identity of a person requesting redaction. No fee will be charged for the redaction of a social security number or other identifying information pursuant to such request.

(f) A register of deeds 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 or remote electronic site made available by the register of deeds and used for the ordering or display of official records or images or copies of official records a notice, stating, in substantially similar form, the following:

(1) Any person preparing or filing a document for recordation in the official records may not include a social security number or other identifying information as defined in G.S. 14-113.20(b) in such document, unless expressly required by law.

(2) Any person has a right to request a register of deeds to remove, from an image or copy of an official record placed on a register of deeds' publicly available Internet website or on a publicly available Internet website used by a register of deeds to display public records or otherwise made electronically available to the general public, any social security number or other identifying information as defined in G.S. 14-113.20(b) contained in an official record. Such request must be made in writing and delivered by mail, facsimile, or electronic transmission, or delivered in person, to the register of deeds. The request must specify the identification page number that contains the social security number or other identifying information to be redacted. No fee will be charged for the redaction of a social security number or other identifying information pursuant to such a request.

(g) Any affected person may petition the superior court for an order directing compliance with this section.

(h) This section shall take effect on October 1, 2005, except that subsections (b)(6) and (b)(9) of this section shall take effect July 1,2007."

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 of North Carolina shall evaluate and report to the General Assembly about their 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, names, or other 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. Severability. – 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. Effective Date. – This act becomes effective December 1, 2005, and shall be applicable to offenses occurring, and to actions arising, on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

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SENATE BILL 1048
PROPOSED COMMITTEE SUBSTITUTE S1048-CSRU-25 [v.2]

5/4/2005 6:26:54 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 which, 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. § 168lb.

(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) "Person". – Any individual, partnership, corporation, trust, estate, cooperative, association, government, or governmental subdivision or agency, or other entity.

(9) "Personal information". – An individual'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.

(10) "Records". – Any material on which written, drawn, spoken, visual, or electromagnetic information is recorded or preserved, regardless of physical form or characteristics.

(11) "Security breach". – An incident of unauthorized access to and acquisition of records or data containing personal information where unauthorized or illegal use of the personal information has occurred or is reasonably likely to occur. 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 unrelated to the business or subject to further unauthorized disclosure.

(12) "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 or any portion thereof of 6 digits or more.

(2) Print or imbed an individual's social security number or any portion thereof of 6 digits or more 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 or any portion thereof of 6 digits or more 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 or any portion thereof of 6 digits or more 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 or any portion thereof of 6 digits or more 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 or any portion thereof of 6 digits or more to a third party for any purpose without written consent to the disclosure from the individual.

(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, including the opening of an account or the provision of or payment for a product or service authorized by an individual.

(3) To the collection, use, or release of a social security number to investigate or prevent fraud, conduct background checks, or conduct social or scientific research.

(4) To a business acting pursuant to a court order, warrant, subpoena, or when otherwise required by law.

(5) To a business providing the social security number to a federal, State, or local government entity, including a law enforcement agency, or court, or their agents or assigns.

(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 credit 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 ten 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 lift temporarily 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 five business days 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 which the consumer has or, prior to assignment, had an account, contract, or debtor-creditor relationship for the purposes of reviewing the 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 person for the purposes of prescreening as defined by the federal Fair Credit Reporting Act, 15 U.S.C. §1681 et. seq.

(7) Any person for the sole purpose of providing for a credit file monitoring subscription service to which the consumer has subscribed.

(8) 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.

(9) 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 with 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 number 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.

(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 margining 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 credit 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 credit reporting agency may not charge any fee to a victim of identity theft who has submitted a valid local law enforcement, Division of Motor Vehicles, state Department of Justice, Federal Trade Commission, or other appropriate State of federal agency incident report or affidavit for a period of seven years following the date of the incident report.

(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 or approval. It is designed to prevent credit, loans, and services from being approved in your name without your knowledge and consent. A security freeze must be requested in writing by certified mail.

The freeze will be placed within five business days. Within ten 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. Service providers that may require access to your credit report could include: mobile phone companies, rental agencies, utility companies, lenders, insurers, Internet credit card transactions, or other services, including an extension of credit at point of sale.

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.

A consumer reporting agency must suspend a freeze within 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 temporary lift the freeze for a period of time, except a consumer reporting agency may not charge any amount to a victim of identify theft for a period of seven years following the issuance by the government of a valid incident report or affidavit.

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) If a consumer reporting agency erroneously, whether by accident or design, violates the security freeze by releasing credit information that has been placed under a security freeze or violates any other provision in this section, the affected consumer is entitled to:

(1) Notification within five business days of the release of the information, including specificity as to the information released and the third-party recipient of the information.

(2) File a civil action pursuant to G.S. 75-16.

"**§ 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 non-paper 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 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.

"**§ 75-65. Protection from security breaches.**

(a) Any business that maintains or otherwise possesses personal information of residents of North Carolina or any business that conducts business in North Carolina that maintains or otherwise possesses personal information of consumers 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 (b) 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 names, including electronic mail addresses, parent's legal surname prior to marriage, or a password unless the password would permit access to a person's financial account or resources.

(b) The notice required by this section may be delayed if a law enforcement agency determines in writing that notification may impede a criminal investigation. The notice required by this section shall be provided immediately after the law enforcement agency determines that notice will no longer compromise the investigation.

(c) 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 consumer's personal information that was subject to the unauthorized access or use.

(3) The acts of the business to protect the personal information from further unauthorized access.

(4) A telephone number that the consumer may call for further information and assistance.

(5) Advice that directs the consumer to remain vigilant over the next 12-24 months by reviewing account statements and monitoring free credit reports.

(d) 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 customers 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 the business does not have sufficient contact information. 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.

(e) In the event a business provides notice to more than 1,000 consumers 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.

(f) Any waiver of the provisions of this Article is contrary to public policy, and is void and unenforceable.

(g) 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.

(h) 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 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, any State or local government agency, or any agent, employee, or contractor of a government agency, shall not do any of the following:

(1) Collect a social security number or any portion thereof of six digits or more 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 or any portion thereof of six digits or more 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 or any portion thereof of six digits or more 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 or any portion thereof of six digits or more 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 any portion thereof of six digits or more 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) Print or imbed an individual's social security number or any portion thereof of six digits or more on any card required for the individual to access government services.

(7) Require an individual to transmit the individual's social security number or any portion thereof of six digits or more 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 or any portion thereof of six digits or more 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 or any portion thereof of six digits or more 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.

(10) Sell, lease, loan, trade, rent, or otherwise disclose an individual's social security number or any portion thereof of six digits or more to a third party for any purpose without written consent to the disclosure from the individual.

(c) Subsection (b) of this section does not apply in the following circumstances:

(1) Social security numbers and identifying information may be 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) Social security number or other identifying information may be disclosed pursuant to a court order, warrant, or subpoena.

(3) 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.

(4) To any recorded document in the official records of the county.

(5) 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 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 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, debit card numbers, or personal identification (PIN) code or passwords in that document, unless otherwise expressly required by law or court order or adopted by the State Registrar on records of vital events. 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) 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 courts publicly available Internet website or a publicly available Internet website used by a register of deeds or court to display

public records by the register, or clerk of court the person's social security, driver's license, state identification, passport, checking account, savings account, credit card, debit card numbers, 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 identification page number that contains the social security, driver's license, state identification, passport, checking account, savings account, credit card, debit card numbers, or personal identification (PIN) code or passwords to be redacted. 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. No fee will be charged for the redaction pursuant to such request.

(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 website or remote electronic site made available by the register of deeds or clerk of court and used for the ordering or display of official records or images or copies of official records 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, debit card numbers, or personal identification (PIN) code or passwords in the document, unless expressly required by law.

(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 publicly available Internet website or on a publicly available Internet website 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, debit card numbers, 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 identification page number that contains the social security, driver's license, state identification, passport, checking account, savings account, credit card, debit card numbers, or personal identification (PIN) code or passwords to be redacted. No fee will be charged for the redaction pursuant to such a request.

(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 their agent for any claims or damages that might result from a social security number or other identifying information on the public record."

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 mail address, name, profile, identification ~~numbers.~~numbers, or other 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. This G.S. 75-62, as enacted by Section 1 of this act, becomes effective October 1, 2006. G.S. 132-1.8(b)(6) and G.S. 132-1.8(b)(9), as enacted in Section 4 of this act, become effective July 1, 2007. The remainder of G.S. 132-1.8, as

enacted in Section 4 of this act, and Section 11 of this act, become effective October 1, 2005. The remainder of this act becomes effective December 1, 2005, and applies to offenses committed, and to actions arising, on or after that date.

SENATE BILL 1048:
Identity Theft Protection Act of 2005

BILL ANALYSIS

Committee:	Senate Judiciary I	**Date:**	May 4, 2005
Introduced by:	Sen. Clodfelter	**Summary by:**	Walker Reagan
Version:	PCS to First Edition S1048-CSRU-25		Committee Co-Counsel

SUMMARY: ***The Proposed Senate 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.***

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 6) 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. 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 13) 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 an appropriate federal, State or local 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 – Consumer Protection Act – Sen. Jacumin]**

G.S. 75-64. – Destruction of personal information records. (Page 8, line 12) 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 9, line 17) 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 10, line 37) 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 11, line 1) 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 11, line 15) 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 – Government Agencies Limit Release of SSN's – Sen. Phil Berger 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. 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 15, line 1) requires State agencies to report annually to the General Assembly on steps taken to protect personal information.

Section 6 (Page 15, line 16) amends the definition of identifying information for identity theft purposes to include State identification cards, passport numbers, email addresses, names and identification numbers.

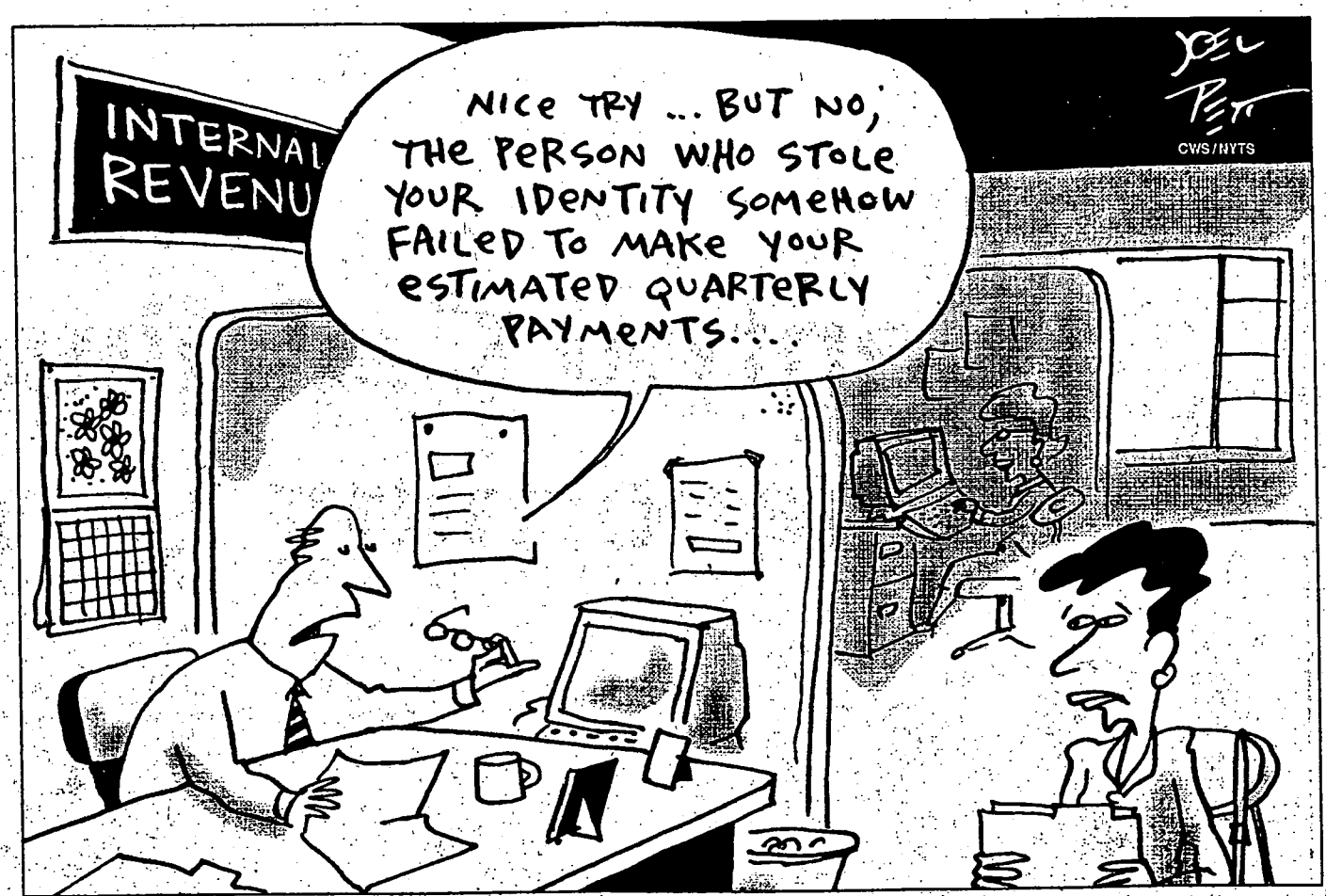
Section 8 (Page 16, line 15) clarifies that a person who is a victim of identity theft can get their criminal record expunged even if their stolen identity was not used to commit a crime.

Section 9 (Page 16, line 29) provides for minimum civil damages of $500 for a person who is injured by identity theft.

EFFECTIVE DATE: Section 4 of the bill becomes effective October 1, 2005. G.S. 75-62 becomes effective October 1, 2006. Most of the remainder of the bill becomes effective December 1, 2005.

SB49

THE NEWS & OBSERVER
MONDAY, APRIL 25, 2005



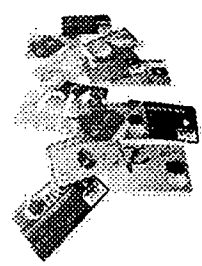
SB-1048

ID Theft Protection Act 2005

Darrel W. Stephens
Charlotte-Mecklenburg PD

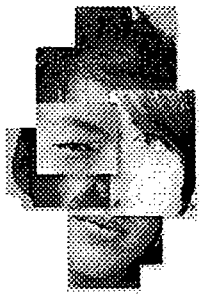
Identity Theft*

- National – 2004
  - **246,570** ID Thefts – 14.6% Increase
- Reporting
  - 61% did not report to police
  - 30 % - report taken
  - 8% - no report taken



*Federal Trade Commission - 2004

North Carolina*



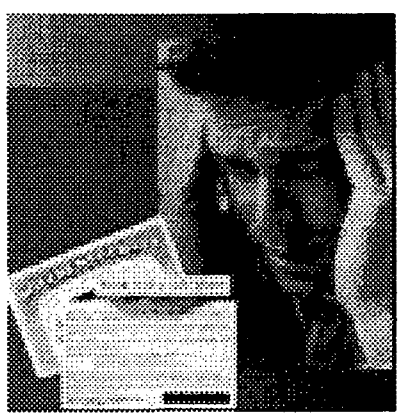
- 21st in Nation in ID Theft Complaints
  - 65.8 per 100,000 (5,623)
- Charlotte Metro Area – 21st in Nation
  - 99.4 per 100,000 (1,322)
- Top Victim Locations

– Charlotte	723	Raleigh	354
– Fayetteville	213	Greensboro	212
– Durham	206		

*Federal Trade Commission Report 2004

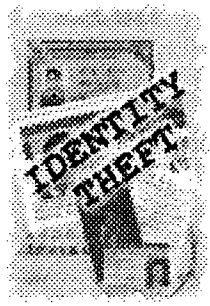
ID Theft Protection Act - 2005

- Personal Information Protection
- Offense Venue
- Offense Investigation



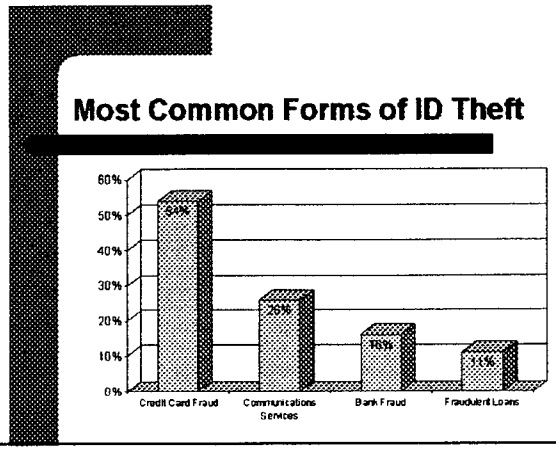
Major Cities Chiefs National Strategy

- Partnerships and Collaboration
- Reporting Procedures
- Victim Assistance
- Public Awareness
- Legislation
- Information Protection
- Training



ID Theft Protection Act - 2005

- **Important Legislation**
- **Needs Your Support**



SB-1048

STATE OF NORTH CAROLINA
Department of Justice
9001 Mail Service Center
RALEIGH, NC
27699-9001

ROY COOPER
ATTORNEY GENERAL

(919)-716-6400

VICTIM STORIES OF IDENTITY THEFT

VICTIM 1

Last November three armed officers came to a North Carolina woman's home and arrested her on a warrant from Virginia. This 50-year-old single mother and U.S. Army veteran was taken to jail on a charge of forgery of a check. The real thief had stolen her purse two years earlier and had used her stolen checks. Although the victim had immediately reported the theft to police, her credit card company and her bank, she was still arrested and her life irreparably harmed. The victim couldn't be here today but wrote the following statement:

"Being a victim is never ending, especially when you end up in jail being charged for a crime that someone committed using your name. I had to borrow money from family members to get out of jail and to pay for an attorney. When I filed my taxes this year, I had to use the refund to pay them back. I could have used that money to catch up my daughter's car payments because she used her money to help me get an attorney. We are now facing loosing her car. The inconvenience of having to carry a letter around with you identifying you as a victim and 'arrested in error' is degrading. I had to file bankruptcy because of this identity theft. I am trying to live on a small income and I have a child in their first year in college that I am trying to help. Why can't their be any financial compensation for victims of identity theft? I have spent a lot of unnecessary money to clear my name and the individual that committed the crime is probably living a better life in prison than I am."

VICTIM 2

Two months ago a 37-year-old nursing student received a letter from DMV about her suspended license due to her failure to appear in court in Asheville. She called the Clerk of Court and was told she had two warrants out for her arrest: possession of crack paraphernalia and driving with an open container. This Greensboro woman had to make numerous calls to the Clerk, the District Attorney's office and the Sheriff's office in order to clear her name. Her grades suffered while trying to straighten this mess out. Furthermore, it took time away from her two daughters.

This had occurred once before. The victim thought she had protected herself by placing a flag on her DMV record. Now she lives in fear that at any moment she will be arrested and worries what will happen if her child is with her. This nursing student has to clear her name before she can apply to work at a hospital. Even though she was able to get the criminal charges dismissed, she doesn't believe a hospital would hire her with a drug-related charge on her record. Before these incidents she had a clean record. Now she just wants her life to be her own.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 1098

Short Title:	No Third Party Release of SSN.	(Public)
Sponsors:	Senator Boseman.	
Referred to:	Judiciary I.	

March 24, 2005

A BILL TO BE ENTITLED

AN ACT PROHIBITING THE RELEASE OF AN INDIVIDUAL'S SOCIAL SECURITY NUMBER WITHOUT THE INDIVIDUAL'S CONSENT.

The General Assembly of North Carolina enacts:

SECTION 1. Article 3F of Chapter 143 of the General Statutes is amended by adding a new section to read:

"**§ 143-64.61. Consent to release social security numbers required.**

(a) Except as specifically provided by subsection (b) of this section, no State or local government agency may release an individual's social security number without the individual's express consent.

(b) An individual's social security number may be released without an individual's express consent if the release is made pursuant to a State or federal law that specifically requires the disclosure."

SECTION 2. The General Statutes are amended by adding a new Chapter to read:

"**Chapter 99F.**

"**Privacy of Social Security Numbers.**

"**§ 99F-1. Privacy of social security numbers.**

(a) Except as specifically provided by subsection (b) of this section, no person may release an individual's social security number without the individual's express consent.

(b) An individual's social security number may be released without an individual's express consent if the release is made pursuant to a State or federal law that specifically requires the disclosure.

(c) Any individual who is damaged on account of a violation of this Chapter may bring an action for actual damages against the person who unlawfully released the individual's social security number."

SECTION 3. This act becomes effective December 1, 2005.

SENATE BILL 1098:
No Third Party Release of SSN

BILL ANALYSIS

Committee:	Senate Judiciary I	**Date:**	May 5, 2005
Introduced by:	Sen. Boseman	**Summary by:**	Walker Reagan
Version:	First Edition		Committee Co-Counsel

SUMMARY: ***Senate Bill 1098 would prohibit the release of an individual's social security number without the individual's consent.***

BILL ANALYSIS:

Section 1 of the bill would add a new section to the State Privacy Act to prohibit a State or local governmental agency from releasing an individual's social security number without consent, except when the release is otherwise required by State or federal law.

Section 2 creates a new Chapter to prohibit private persons from releasing another person's social security number without the person's consent except when the release is otherwise required by State or federal law. A person damaged by a violation of this section would be entitled to recover actual damages.

EFFECTIVE DATE: This act becomes effective December 1, 2005.

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE — 5-5-05

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
Kevin Leonard	WCSR
Rick Zechini	NC Assoc. of Realtors
[illegible]	NCICU
[illegible]	BellSouth
Kathy Hawkins	Progress Energy
[illegible]	NFIB
Sheila McCarty	NC DHHS
[illegible]	Cooper & Co
Patricia Young	ACLU
Poole	Ward & Smith
[illegible]	[illegible]
[illegible]	Carolina Assoc.

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE — 5-5-05

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
M. A. DeSilva	N.C. SBI
Melissa Lovell	NCDOJ
Tripp Melton	Sen. Stevens Office
Kory Swanson	Sen Berger's office
Amy Fullbright	Hunton & Williams
Ham Johnson	Smith Anderson
Bill Haze	ACLI
Sarah Spicer	WCSR
Larry Hefner	HSBC - 102 Balzac Ct Cary, NC 27511
David Barnes	Poyner + Spruill
Brad Fox	TWC

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE — 5-5-05

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
Jui-Ann Coe	SIA
Cam Cover	BPMHL
Caroline Farmer	NCDOJ
Elizabeth Quats	NCPIRG
Paul Stock	NC Bankers Assn.
Fran Preston	NCRMA
Betty Turner	BAC
Alex McArthur	FCB
Laura Wilkinson	Wachovia
Gor Ottavio	Wachovia
Lee Hodge	Kennedy Covington

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE
Name of Committee

5-5-05
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
Cliff Laymon	AOC
P Powell	AOC
David H. Brinson	Duplin Co. Register of Deeds
Andrew Holton	Sen. Dannis office
Brad Lamb	NC Consumers Council
Michelle Frazier	NC Bar Ass'n
Lee Johnson	Ragsdale Liggett
John Phelps	NCLM
Rebecca Troutman	NCACC
Bill Wilkes	DOR
Andy Romanet	NCLM

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Tuesday	May 10, 2005	10:00 AM	1027 LB

REVISED NOTICE

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 319	Workers' Comp. Self-Insurance Security.	Senator Clodfelter
SB 929	Prison Escape/Juvenile Detention Facility.	Senator Clodfelter
SB 951	Public-Private Solid Waste Collection.	Senator Hoyle

Senator Daniel G. Clodfelter, Chair

Judiciary -1 Committee

May 10, 2005

Minutes

Senator Dan Clodfelter, Chair called the meeting to order at 10:05 a.m. with fourteen members present. He introduced Pages Paul Woods from Murphy, NC, Katie Greene from Chapel Hill, NC, Chase Patillo from Fayetteville, NC, Denk Dean from Garner and JoEllen Billotte from Apex, NC.

SB 319 (Workers' Comp. Self-Insurance Security) Committee Substitute was introduced by Senator Clodfelter for discussion only. He stated that the bill would not be voted on at this time. He explained that the bill would amend the Workers' Compensation self-insurance laws by repealing the North Carolina Self-Insurance Guaranty Fund and replacing it with the North Carolina Self-Insurance Security Fund. (See attached Bill Summary). Mr. Jim Stewart, Counsel for NC Self-Insurance Guaranty spoke on the bill. Senator's Jeanne Lucas and Jerry Tillman had questions. Mr. Stewart answered the questions. Mr. Frank Folger, NC Department of Insurance spoke on the bill. Senator Clodfelter stated that the bill would be displaced and rescheduled at a future date.

SB-929 (Prison Escape/Juvenile Detention Facility) Committee Substitute was introduced by Vice Chair, Senator RC Soles. Senator Clodfelter moved for adoption of the Committee Substitute. All members voted yes. Motion carried. Senator Clodfelter asked staff attorney, Hal Pell to explain changes. Mr. Pell explained that the penalty would be increased for a person who escapes from a county or municipal confinement facility. It also creates a new offense: For persons 18 years of age, or older, breaking from a juvenile detention facility or youth development center, or escaping from lawful custody. A person committing the offense would be guilty of a Class A-1 misdemeanor. Senator Ham Horton had a question. Mr. Stevens from NC Department of Juvenile Justice answered the question. Senator Jerry Tillman moved for a Favorable Report. All members voted yes. Motion carried.

Being no further business the meeting adjourned at 10:27 a.m.

Senator Dan Clodfelter, Chair

Wanda Joyner, Committee Assistant

SENATE BILL 319:
Workers' Comp. Self-Insurance Security

BILL ANALYSIS

Committee:	Senate Judiciary I	**Date:**	May 10, 2005
Introduced by:	Sen. Clodfelter	**Summary by:**	O. Walker Reagan
Version:	First Edition		Committee Co-Counsel

SUMMARY: ***Senate Bill 319 would amend the Workers' Compensation self-insurance laws by repealing the North Carolina Self-Insurance Guaranty Fund and replacing it with the North Carolina Self-Insurance Security Fund.***

CURRENT LAW: Current law allows an employer to be licensed as a self-insurer for workers' compensation purposes when the employer meets certain conditions, including having at least $500,000 of total fix assets and demonstrating that the employer is sufficiently financially sound to cover its workers' compensation claims. Employers who are licensed as self-insurers are not required to purchase workers' compensation insurance coverage. All self-insurers must also participate in the NC Self-Insurance Guaranty Fund. This Fund is to guarantee workers' compensation payments in the event the employer becomes insolvent and is unable to meet its workers' compensation obligations. The Fund is funded by an assessment of all self-insurers of 2% of the annual premiums the employer would have had to pay for workers' compensation insurance coverage. If the assets of the Fund are insufficient to cover all claims of insolvent employers, additional assessments may be made.

BILL ANALYSIS: Senate Bill 319 would amend the workers' compensation self-insurance laws by eliminating the statutory assessment limits and replacing it with a system where the amount of the annual assessments for a member is determined by the NC Self-Insurance Security Association based on the following;

- The total amount of assessments necessary to provide aggregate security for all participating members.
- The member's total workers' compensation liabilities under the workers' compensation law.
- The financial strength and creditworthiness of the member.
- Any other relevant factors.

The bill also gives the Association the authority to exclude from the Association Aggregate Security System those members whose debt ratings by Moody's and Standard & Poor's fall below the minimum rating established by the Association upon the approval of the Commissioner of Insurance. A self-insurer excluded from the Association Aggregate Security System would have to deposit 100% of the employer's total undiscounted outstanding claims liability, but not less than $500,000, to continue as a self-insured employer. The Commissioner may revoke the self-insurance license of any employer who fails to comply with these standards.

EFFECTIVE DATE: This act becomes effective January 1, 2006.

S0319e1-SMRU

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 929
PROPOSED COMMITTEE SUBSTITUTE S929-PCS55227-RK-14

Short Title: Prison Escape/Juvenile Detention Facility. (Public)

Sponsors:

Referred to:

March 24, 2005

A BILL TO BE ENTITLED

AN ACT TO DETER ESCAPES FROM CUSTODY OF THE DEPARTMENT OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION BY MAKING IT A CRIMINAL OFFENSE TO ESCAPE, OR ATTEMPT TO ESCAPE, IF THE PERSON IN CUSTODY IS AGE EIGHTEEN OR OVER, AND TO INCREASE THE PENALTY FOR ESCAPE FROM COUNTY OR CITY JAILS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-256 reads as rewritten:

"**§ 14-256. Prison breach and escape from county or municipal confinement facilities or ~~officers.~~officers; breach and escape from juvenile detention facility or youth development center, or from lawful custody.**

(a) If any person shall break any prison, jail or lockup maintained by any county or municipality in North Carolina, being lawfully confined therein, or shall escape from the lawful custody of any superintendent, guard or officer of such prison, jail or lockup, he shall be guilty of a ~~Class 1~~Class A1 misdemeanor, except that the person is guilty of a Class H felony if:

(1) He has been convicted of a felony and has been committed to the facility pending transfer to the State prison system; or

(2) He is serving a sentence imposed upon conviction of a felony.

(b) Any person age 18 years or older is guilty of a Class A1 misdemeanor if the person does any one of the following:

(1) Breaks any juvenile detention facility or youth development center maintained by any county or municipality in North Carolina or by the Department of Juvenile Justice and Delinquency Prevention.

(2) Escapes from the lawful custody of any superintendent, guard, officer, or employee of a facility or center described in subdivision (1) of this subsection.

(3) Escapes from the lawful custody of a law enforcement officer or employee of the Department of Juvenile Justice and Delinquency Prevention."

SECTION 2. This act becomes effective December 1, 2005, and applies to offenses committed on or after that date.

SENATE BILL 929:
Prison Escape/Juvenile Detention Facility

BILL ANALYSIS

Committee:	Senate Judiciary I	**Date:**	May 10, 2005
Introduced by:	Sen. Clodfelter	**Summary by:**	Hal Pell
Version:	First Edition		Committee Co-Counsel
	S929-CSRK-14		

SUMMARY: ***This act increases the penalty for a person who escapes from a county or municipal confinement facility. It also creates a new offense: For persons 18 years of age, or older, breaking from a juvenile detention facility or youth development center, or escaping from lawful custody. A person committing the offense would be guilty of a Class A1 misdemeanor. The act becomes effective December 1, 2005, and applies to offenses committed on or after that date.***

BILL ANALYSIS:

The act amends the law to provide that it is a Class A1 misdemeanor for any person to break from any county or municipal confinement facility, or escape from the custody of a facility superintendent, guard or officer. Currently, the offense is a Class 1 misdemeanor.

The law would also be amended to provide it is a Class A1 misdemeanor for a person 18 years of age or older to break from a juvenile detention facility or youth development center, escape from the custody of a superintendent, guard, officer, or employee of a facility or center, or escape from the lawful custody of a law enforcement officer of Department of Juvenile Justice employee.

The act becomes effective December 1, 2005, and applies to offenses committed on or after that date.

S0929e1-SMRK-CSRK-14

Re: SB-929

§ 7B-2513. Commitment of delinquent juvenile to Department.

(a) Pursuant to G.S. 7B-2506 and G.S. 7B-2508, the court may commit a delinquent juvenile who is at least 10 years of age to the Department for placement in a youth development center. Commitment shall be for an indefinite term of at least six months. In no event shall the term exceed:

(1) The twenty-first birthday of the juvenile if the juvenile has been committed to the Department for an offense that would be first-degree murder pursuant to G.S. 14-17, first-degree rape pursuant to G.S. 14-27.2, or first-degree sexual offense pursuant to G.S. 14-27.4 if committed by an adult;

(2) The nineteenth birthday of the juvenile if the juvenile has been committed to the Department for an offense that would be a Class B1, B2, C, D, or E felony if committed by an adult, other than an offense set forth in subdivision (1) of this subsection; or

(3) The eighteenth birthday of the juvenile if the juvenile has been committed to the Department for an offense other than an offense that would be a Class A, B1, B2, C, D, or E felony if committed by an adult.

No juvenile shall be committed to a youth development center beyond the minimum six-month commitment for a period of time in excess of the maximum term of imprisonment for which an adult in prior record level VI for felonies or in prior conviction level III for misdemeanors could be sentenced for the same offense, except when the Department pursuant to G.S. 7B-2515 determines that the juvenile's commitment needs to be continued for an additional period of time to continue care or treatment under the plan of care or treatment developed under subsection (f) of this section. At the time of commitment to a youth development center, the court shall determine the maximum period of time the juvenile may remain committed before a determination must be made by the Department pursuant to G.S. 7B-2515 and shall notify the juvenile of that determination.

(b) The court may commit a juvenile to a definite term of not less than six months and not more than two years if the court finds that the juvenile is 14 years of age or older, has been previously adjudicated delinquent for two or more felony offenses, and has been previously committed to a youth development center.

(c) The chief court counselor shall have the responsibility for transporting the juvenile to the youth development center designated by the Department. The juvenile shall be accompanied to the youth development center by a person of the same sex.

(d) The chief court counselor shall ensure that the records requested by the Department accompany the juvenile upon transportation for admittance to a youth development center or, if not obtainable at the time of admission, are sent to the youth development center within 15 days of the admission. If records requested by the Department for admission do not exist, to the best knowledge of the chief court counselor, the chief court counselor shall so stipulate in writing to the youth development center. If such records do exist, but the chief court counselor is unable to obtain copies of them, a district court may order that the records from public agencies

be made available to the youth development center. Records that are confidential by law shall remain confidential and the Department shall be bound by the specific laws governing the confidentiality of these records. All records shall be used in a manner consistent with the best interests of the juvenile.

(e) A commitment order accompanied by information requested by the Department shall be forwarded to the Department. The Department shall place the juvenile in the youth development center that would best provide for the juvenile's needs and shall notify the committing court. The Department may assign a juvenile committed for delinquency to any institution of the Department or licensed by the Department, which program is appropriate to the needs of the juvenile.

The Department, after assessment of the juvenile, may provide commitment services to the juvenile in a program not located in a youth development center or detention facility. If the Department recommends that commitment services for the juvenile are to be provided in a setting that is not located in a youth development center or detention facility, the Department shall file a motion, along with information about the recommended services for the juvenile, with the committing court prior to placing the juvenile in the identified commitment program. The Department shall send notice of the motion to the District Attorney, the juvenile, and the juvenile's attorney. Upon receipt of the motion filed by the Department, the court may enter an order without the appearance of witnesses and without hearing if the court determines that the identified commitment program is appropriate and a hearing is not necessary. The court must hold a hearing if the juvenile or the juvenile's attorney requests a hearing. If the court notifies the Department of its intent to hold a hearing, the date for that hearing shall be set by the court and the Department shall place the juvenile in a youth development center or detention facility until the determination of the court at that hearing.

(f) When the court commits a juvenile to the Department for placement in a youth development center, the Department shall prepare a plan for care or treatment within 30 days after assuming custody of the juvenile.

(g) Commitment of a juvenile to the Department for placement in a youth development center does not terminate the court's continuing jurisdiction over the juvenile and the juvenile's parent, guardian, or custodian. Commitment of a juvenile to the Department for placement in a youth development center transfers only physical custody of the juvenile. Legal custody remains with the parent, guardian, custodian, agency, or institution in whom it was vested.

(h) Pending placement of a juvenile with the Department, the court may house a juvenile who has been adjudicated delinquent for an offense that would be a Class A, B1, B2, C, D, or E felony if committed by an adult in a holdover facility up to 72 hours if the court, based on the information provided by the juvenile court counselor, determines that no acceptable alternative placement is available and the protection of the public requires that the juvenile be housed in a holdover facility.

(i) A juvenile who is committed to the Department for placement in a youth development center shall be tested for the use of controlled substances or alcohol. The results of this initial test shall be incorporated into the plan of care as provided in subsection (f) of this section and used for evaluation and treatment purposes only.

(j) When a juvenile is committed to the Department for placement in a youth development center for an offense that would have been a Class A or B1 felony if committed by an adult, the chief court counselor shall notify the victim and members of the victim's immediate family that the victim, or the victim's immediate family members may request in writing to be notified in advance of the juvenile's scheduled release date in accordance with G.S. 7B-2514(d). (1979, c. 815, s. 1; 1983, c. 133, s. 2; 1987, c. 100; c. 372; 1991, c. 434, ss. 2, 3; 1995 (Reg. Sess., 1996), c. 609, s. 2; 1997-443, s. 11A.118(a); 1998-202, s. 6; 1999-423, s. 1; 2000-137, s. 3; 2001-95, s. 5; 2001-490, s. 2.26; 2003-53, s. 1.)

§ 7B-2513. Commitment of delinquent juvenile to Department.

(a) Pursuant to G.S. 7B-2506 and G.S. 7B-2508, the court may commit a delinquent juvenile who is at least 10 years of age to the Department for placement in a youth development center. Commitment shall be for an indefinite term of at least six months. In no event shall the term exceed:

(1) The twenty-first birthday of the juvenile if the juvenile has been committed to the Department for an offense that would be first-degree murder pursuant to G.S. 14-17, first-degree rape pursuant to G.S. 14-27.2, or first-degree sexual offense pursuant to G.S. 14-27.4 if committed by an adult;

(2) The nineteenth birthday of the juvenile if the juvenile has been committed to the Department for an offense that would be a Class B1, B2, C, D, or E felony if committed by an adult, other than an offense set forth in subdivision (1) of this subsection; or

(3) The eighteenth birthday of the juvenile if the juvenile has been committed to the Department for an offense other than an offense that would be a Class A, B1, B2, C, D, or E felony if committed by an adult.

No juvenile shall be committed to a youth development center beyond the minimum six-month commitment for a period of time in excess of the maximum term of imprisonment for which an adult in prior record level VI for felonies or in prior conviction level III for misdemeanors could be sentenced for the same offense, except when the Department pursuant to G.S. 7B-2515 determines that the juvenile's commitment needs to be continued for an additional period of time to continue care or treatment under the plan of care or treatment developed under subsection (f) of this section. At the time of commitment to a youth development center, the court shall determine the maximum period of time the juvenile may remain committed before a determination must be made by the Department pursuant to G.S. 7B-2515 and shall notify the juvenile of that determination.

(b) The court may commit a juvenile to a definite term of not less than six months and not more than two years if the court finds that the juvenile is 14 years of age or older, has been previously adjudicated delinquent for two or more felony offenses, and has been previously committed to a youth development center.

(c) The chief court counselor shall have the responsibility for transporting the juvenile to the youth development center designated by the Department. The juvenile shall be accompanied to the youth development center by a person of the same sex.

(d) The chief court counselor shall ensure that the records requested by the Department accompany the juvenile upon transportation for admittance to a youth development center or, if not obtainable at the time of admission, are sent to the youth development center within 15 days of the admission. If records requested by the Department for admission do not exist, to the best knowledge of the chief court counselor, the chief court counselor shall so stipulate in writing to the youth development center. If such records do exist, but the chief court counselor is unable to obtain copies of them, a district court may order that the records from public agencies

be made available to the youth development center. Records that are confidential by law shall remain confidential and the Department shall be bound by the specific laws governing the confidentiality of these records. All records shall be used in a manner consistent with the best interests of the juvenile.

(e) A commitment order accompanied by information requested by the Department shall be forwarded to the Department. The Department shall place the juvenile in the youth development center that would best provide for the juvenile's needs and shall notify the committing court. The Department may assign a juvenile committed for delinquency to any institution of the Department or licensed by the Department, which program is appropriate to the needs of the juvenile.

The Department, after assessment of the juvenile, may provide commitment services to the juvenile in a program not located in a youth development center or detention facility. If the Department recommends that commitment services for the juvenile are to be provided in a setting that is not located in a youth development center or detention facility, the Department shall file a motion, along with information about the recommended services for the juvenile, with the committing court prior to placing the juvenile in the identified commitment program. The Department shall send notice of the motion to the District Attorney, the juvenile, and the juvenile's attorney. Upon receipt of the motion filed by the Department, the court may enter an order without the appearance of witnesses and without hearing if the court determines that the identified commitment program is appropriate and a hearing is not necessary. The court must hold a hearing if the juvenile or the juvenile's attorney requests a hearing. If the court notifies the Department of its intent to hold a hearing, the date for that hearing shall be set by the court and the Department shall place the juvenile in a youth development center or detention facility until the determination of the court at that hearing.

(f) When the court commits a juvenile to the Department for placement in a youth development center, the Department shall prepare a plan for care or treatment within 30 days after assuming custody of the juvenile.

(g) Commitment of a juvenile to the Department for placement in a youth development center does not terminate the court's continuing jurisdiction over the juvenile and the juvenile's parent, guardian, or custodian. Commitment of a juvenile to the Department for placement in a youth development center transfers only physical custody of the juvenile. Legal custody remains with the parent, guardian, custodian, agency, or institution in whom it was vested.

(h) Pending placement of a juvenile with the Department, the court may house a juvenile who has been adjudicated delinquent for an offense that would be a Class A, B1, B2, C, D, or E felony if committed by an adult in a holdover facility up to 72 hours if the court, based on the information provided by the juvenile court counselor, determines that no acceptable alternative placement is available and the protection of the public requires that the juvenile be housed in a holdover facility.

(i) A juvenile who is committed to the Department for placement in a youth development center shall be tested for the use of controlled substances or alcohol. The results of this initial test shall be incorporated into the plan of care as provided in subsection (f) of this section and used for evaluation and treatment purposes only.

(j) When a juvenile is committed to the Department for placement in a youth development center for an offense that would have been a Class A or B1 felony if committed by an adult, the chief court counselor shall notify the victim and members of the victim's immediate family that the victim, or the victim's immediate family members may request in writing to be notified in advance of the juvenile's scheduled release date in accordance with G.S. 7B-2514(d). (1979, c. 815, s. 1; 1983, c. 133, s. 2; 1987, c. 100; c. 372; 1991, c. 434, ss. 2, 3; 1995 (Reg. Sess., 1996), c. 609, s. 2; 1997-443, s. 11A.118(a); 1998-202, s. 6; 1999-423, s. 1; 2000-137, s. 3; 2001-95, s. 5; 2001-490, s. 2.26; 2003-53, s. 1.)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 929

Short Title:	Prison Escape/Juvenile Dentention Facility.	(Public)
Sponsors:	Senator Clodfelter.	
Referred to:	Judiciary I.	

March 24, 2005

A BILL TO BE ENTITLED

AN ACT TO MAKE IT A CRIMINAL OFFENSE TO BREAK OUT OF A JUVENILE DETENTION FACILITY OR YOUTH DEVELOPMENT CENTER.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-256 reads as rewritten:

"**§ 14-256. Prison breach and escape from county or municipal confinement facilities or ~~officers.~~officers; breach and escape from juvenile detention facility or youth development center.**

(a) If any person shall break any prison, jail or lockup maintained by any county or municipality in North Carolina, being lawfully confined therein, or shall escape from the lawful custody of any superintendent, guard or officer of such prison, jail or lockup, he shall be guilty of a ~~Class 1~~Class A1 misdemeanor, except that the person is guilty of a Class H felony if:

(1) He has been convicted of a felony and has been committed to the facility pending transfer to the State prison system; or

(2) He is serving a sentence imposed upon conviction of a felony.

(b) If any person shall break any juvenile detention facility or youth development center maintained by any county or municipality in North Carolina or by the Department of Juvenile Justice and Delinquency Prevention, or shall escape from the lawful custody of any superintendent, guard, officer, or employee of the facility or center, the person is guilty of a Class A1 misdemeanor."

SECTION 2. This act becomes effective December 1, 2005, and applies to offenses committed on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Daniel G. Clodfelter, Chair

Wednesday, May 11, 2005

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

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

S.B. **929** Prison Escape/Juvenile Dentention Facility.

Draft Number:	PCS55227
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 319

Short Title:	Workers' Comp. Self-Insurance Security.	(Public)
Sponsors:	Senators Clodfelter; Berger of Rockingham, Dalton, Garrou, Hartsell, Rand, Swindell, Thomas, and Weinstein.	
Referred to:	Judiciary I.	

March 3, 2005

A BILL TO BE ENTITLED

AN ACT ESTABLISHING THE NORTH CAROLINA SELF-INSURANCE SECURITY SYSTEM AND MAKING CONFORMING CHANGES TO THE WORKERS' COMPENSATION LAWS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 97-130 reads as rewritten:

"**§ 97-130. Definitions.**

As used in this Article:

(1) "Association" means the North Carolina Self-Insurance ~~Guaranty~~ Security Association established by G.S. 97-131.

(1a) "Association Aggregate Security System" means the security system established by the Association pursuant to G.S. 97-1333 whereby self-insurers collectively secure their aggregate self-insured workers' compensation liabilities through the North Carolina Self-Insurance Security Association.

(2) "Board" means the Board of Directors of the Association established by G.S. 97-132.

(3) "Commissioner" means the North Carolina Commissioner of Insurance.

(4) "Covered claim" means an unpaid claim against an insolvent self-insurer that relates to an injury that occurs while the self-insurer is a member of the Association and that is compensable under this Chapter.

(5) "Fund" means the North Carolina Self-Insurance ~~Guaranty~~ Security Fund established by G.S. 97-133.

(6) "Member self-insurer" or "member" means a self-insurer ~~which is authorized~~ that retains liability pursuant to G.S. 97-93 and G.S. 97-94

and is licensed by the Commissioner to self-insure pursuant to ~~G.S. 97-93 and G.S. 97-94.~~Article 5 of this Chapter.

(7) "Plan" means the Plan of Operation authorized by G.S. 97-134.

(8) "Self-insurer" means either: (i) an individual employer ~~who has demonstrated under G.S. 97-93 the financial ability to directly pay compensation in the amounts and manner and when due as provided in~~ licensed to self-insure pursuant to Article 5 of this Chapter or (ii) a group of two or more employers ~~who have agreed to pool their liabilities under this Chapter pursuant to G.S. 97-93.~~licensed to self-insure pursuant to Article 47 of Chapter 58 of the General Statues.

(9) "Servicing facility" means those persons that are delegated the authority to settle and compromise claims and expend Fund assets to pay claims pursuant to a delegation of authority from the Board."

SECTION 2. G.S. 97-131 reads as rewritten:

"**§ 97-131. Creation.**

(a) There is created a nonprofit unincorporated legal entity to be known as the North Carolina Self-Insurance ~~Guaranty~~ Security Association. The Association is to provide mechanisms for the payment of covered claims ~~under self-insurance coverage,~~ against member self-insurers, to avoid excessive delay in ~~payment,~~ payment of covered claims, to avoid financial loss to claimants because of the insolvency of a member self-insurer, ~~and to assist, when called upon to do so by the Commissioner,~~ to assist the Commissioner in the detection of self-insurer ~~insolvencies.~~insolvencies, to fund the Association Aggregate Security System, and to capitalize the Fund to insure the availability of financial resources to pay covered claims and to fund the activities of the Association.

(b) All individual and group self-insurers shall be and remain members of the Association as a condition ~~of authority~~ being licensed to self-insure in this ~~State under G.S. 97-93.~~ State. The Association shall perform its functions under a Plan of Operation established or amended, or both, by the Board and approved by the Commissioner, and shall exercise its powers through the Board.

(1) A self-insurer shall be deemed to be a member of the Association for purposes of another self-insurer's insolvency, as defined in G.S. 97-135, when:

a. The self-insurer is a member of the Association when an insolvency occurs, or

b. The self-insurer has been a member of the Association at some point in time during the 12-month period immediately preceding the insolvency in question.

(2) A self-insurer shall be deemed to be a member of the Association for purposes of its own insolvency if it is a member when the compensable injury occurs.

(3) In determining the membership of the Association ~~pursuant to~~ for the purposes of subdivisions (1) and (2) of this subsection for any date after the effective date of this Article, no employer or group of

employers claiming self-insurer status may be deemed to be a member of the Association on any date after the effective date of this Article, unless that employer ~~or~~ is on that date licensed as a self-insurer by the Commissioner pursuant to Article 5 of this Chapter or a group of employers is at that time ~~authorized~~ licensed as a group self-insurer by the Commissioner pursuant to ~~G.S. 97-93 and G.S. 97-94.~~Article 47 of Chapter 58 of the General Statutes."

SECTION 3. G.S. 97-132 reads as rewritten:

"**§ 97-132. Board of directors.**

The Board shall consist of not less than nine ~~persons~~ Directors serving terms as established in the Plan. The ~~members of the Board~~ Directors shall be selected by the ~~member self-insurers,~~ members of the Association, subject to the approval of the Commissioner, and shall serve for ~~terms which shall not exceed three years. If no members of the Board are selected within 60 days after the effective date of this Article, the Commissioner may appoint the initial members of the Board.~~ three-year terms and until a successor is elected and qualified. There is no limitation on the number of terms a Director may serve. In approving selections to the Board, the Commissioner shall consider, among other things, whether ~~all member~~ individual and group self-insurers are fairly represented. ~~Members of the Board~~ Directors may be reimbursed from the assets of the Association for expenses incurred by them as ~~members of the Board.~~Directors."

SECTION 4. G.S. 97-133 reads as rewritten:

"**§ 97-133. Powers and duties of the Association.**

(a) The Association shall:

(1) Repealed by Session Laws 1999-219, s. 7.2, effective June 25, 1999.

(1a) Administer a fund, to be known as the North Carolina Self-Insurance Security Fund, which shall receive the assessments required by subdivision (2a) of this subsection and any other sums received by the Association. In its discretion, the Board may determine that the assets of the Fund should be segregated or that a separate accounting shall be made in order to identify that portion of the Fund which represents assessments paid by individual self-insurers and that portion of the Fund which represents assessments paid by group self-insurers. If the Board determines to segregate the Fund in this manner, the Association shall thereafter pay covered claims against individual member self-insurers from that portion of the Fund which represents assessments against individual self-insurers and shall thereafter pay covered claims against group member self-insurers from that portion of the Fund which represents assessments against group self-insurers. The costs of administering the Association shall be borne by the Fund. The Association is authorized to secure insurance, primary excess insurance, reinsurance, bonds, other insurance, financial guarantees and related financial instruments to effectuate the purposes of the Association. The Board will invest the Fund assets and the earnings

from investment of Fund assets shall be placed in or credited to the Fund.

~~(2) Assess each member of the Association as follows:~~

~~a. Each individual member self-insurer shall be annually assessed an amount equal to two percent (2%) of the annual gross premiums, as determined under G.S. 105-228.5(b), (b1), and (c), that would have been paid by that member self-insurer for workers' compensation insurance during the prior calendar year; and payment to the Association shall be made no later than May 15 following the close of that calendar year. Where any such assessment is paid based in whole or in part upon estimates of annual gross premiums for the prior calendar year, there shall be made in the next year's assessment an adjustment of the assessment of such prior year based on actual audited annual gross premiums. Each group member self-insurer shall be annually assessed an amount equal to two percent (2%) of the annual gross premiums, as determined under G.S. 105-228.5(b), (b1), and (c), of the group member self-insurer during the prior calendar year; and payment to the Association shall be made no later than May 15 following the close of that calendar year. Regardless of the size of the Fund, during its first 12 months of membership, no member self-insurer may discount or reduce this two percent (2%) assessment. For the purpose of making the assessments authorized by this subsection and subsections (c) and (d) of this section, the Secretary of Revenue shall provide to the Association the self-insurer premium and payroll information as determined under G.S. 105-228.5(b), (b1) and (c), and the Commissioner shall provide to the Association the group self-insurer premium information reported to the Commissioner under G.S. 58-47-75 and G.S. 58-2-165.~~

~~b. Each member self-insurer shall be notified of the assessment no later than 30 days before it is due.~~

~~c. If a self-insurer is a member of the Association for less than a full calendar year, the annual gross premiums shall be adjusted by that portion of the year the self-insurer is not a member of the Association.~~

~~d. If application of the contribution rates referenced in sub-subdivision a. of this subdivision would produce an amount in excess of the five million dollar ($5,000,000) limits of the fund, an equitable proration may be made; provided that every self-insurer that becomes a member of the Association shall pay an initial assessment, in an amount established by the Board, regardless of the size of the fund at the time the member joins the Association.~~

(2a) Establish, operate, and maintain the Association Aggregate Security System as defined in G.S. 97-165 and G.S. 97-130 as follows:

a. The Association shall annually prepare and submit to the Commissioner a written plan to provide an Association Aggregate Security System through a combination of cash on deposit in the Fund, securities, surety bonds, irrevocable letters of credit, insurance or other financial instruments or guarantees owned or entered into by the Association and acceptable to the Commissioner. The noncash elements of the composite security may be one-year or multiple-year instruments.

b. Within 30 days following the submission of the plan pursuant to sub-subdivision a. of this subdivision, the Commissioner shall either approve or disapprove the plan and shall notify the Association in writing. If the Commissioner does not approve or disapprove the plan within 30 days following submission, then the plan shall be deemed to be approved by the Commissioner.

c. The Commissioner shall also determine the total undiscounted claims liability of each self-insurer that will participate in the Association Aggregate Security System as well as the aggregate total undiscounted outstanding claims liabilities of all the self-insurers that are to participate in the Association Aggregate Security System and shall notify the Guaranty Association of this determination.

d. Upon approval by the Commissioner of the Association's plan for the Association Aggregate Security System, the Association shall assess the member self-insurers that participate in the Association Aggregate Security System pursuant to subdivison (3a) of this subsection.

~~(3) Administer a fund, to be known as the North Carolina Self-Insurance Guaranty Fund, which shall receive the assessments required in subdivision (2) of this subsection. Once the Fund reaches five million dollars ($5,000,000), no further assessments shall be made except initial assessments of new member self-insurers that are required to be made in subdivision (2)d. of this subsection. Assessments may be subsequently made only to maintain the Fund at a level of five million dollars ($5,000,000). In its discretion, the Board may determine that the assets of the Fund should be segregated, or, that a separate accounting shall be made, in order to identify that portion of the Fund which represents assessments paid by individual self-insurers and that portion of the Fund which represents assessments paid by group self-insurers. If the Board determines to segregate the Fund in this manner, the Association shall thereafter pay covered claims against individual member self-insurers from that portion of the Fund which~~

~~represents assessments against individual self-insurers and shall thereafter pay covered claims against group member self-insurers from that portion of the Fund which represents assessments against group self-insurers. The cost of administration incurred by the Association shall be borne by the Fund and the Association is authorized to secure reinsurance and bonds and to otherwise invest the assets of the Fund to effectuate the purpose of the Association, subject to the approval of the Commissioner. All earnings from investment of Fund assets shall be placed in or credited to the Fund.~~

~~The Association may purchase primary excess insurance from an insurer licensed by the Commissioner for the appropriate lines of authority to defray its exposure to loss occasioned by the default of one of its members. The terms of any excess insurance so purchased shall be limited to providing coverage of liabilities which exceed the Fund's assets after the payment by member self-insurers of the maximum post-insolvency assessment provided in subdivision (c)(1) of this section herein and the Association shall fund any such purchase by levying a special assessment on its members for this purpose or by application of any unencumbered earnings of the Fund or any other available funds. The Association may obtain from each member any information the Association may reasonably require in order to facilitate the securing of this primary excess insurance. The Association shall establish reasonable safeguards designed to insure that information so received is used only for this purpose and is not otherwise disclosed;~~

(3a) Assess members of the Association as follows:

a. Association Aggregate Security System assessments. The Association shall assess each member participating in the Association Aggregate Security System a security system assessment. The amount of the security system assessment charged to each member participating in the Association Aggregate Security System shall be based on the Association's reasonable consideration of the following factors:

(1) The total amount of assessments necessary to provide aggregate security for all participating members;

(2) The member's total workers' compensation liabilities under the Act;

(3) The financial strength and creditworthiness of the member; and

(4) Any other relevant factors.

b. Special assessment. In the event that there are covered claims against an insolvent member or members and the assets of the Fund are not sufficient to pay the obligations of the Association then the Association may collect a special assessment from the

members in an amount sufficient to pay the aggregate value of such covered claims. Each member's special assessment shall be determined by the Board and shall be based on the proportion of the member's total obligations under the Act to the aggregate total of all members' obligations under the Act.

c. Initial assessments. A self-insurer that becomes a member and does not initially participate in the Association Aggregate Security System shall pay an initial assessment to the Association in an amount determined by the Board.

d. Each member shall be notified of assessments no later than 30 days before the assessment is due.

e. Delinquent assessments, except as otherwise provided, shall bear interest at a rate to be established by the Board.

(4) Be obligated to ~~the extent of covered claims occurring prior to the determination of the member self-insurer's insolvency, or occurring after such determination but prior to the obtaining by the self-insurer of workers' compensation insurance as otherwise required under this Chapter.~~pay covered claims.

(5) After paying any ~~claim resulting from a self-insurer's insolvency,~~ covered claim, be subrogated to the rights of the injured employee and dependents and be entitled to enforce liability against the self-insurer or any third party by any appropriate action brought in its own name or in the name of the injured employee and ~~dependents;~~dependents.

(6) ~~Assess the Fund in an amount necessary to pay only:~~Expend Fund assets in amounts necessary to pay:

a. The obligations ~~for~~ of the Association under this Article subsequent to an insolvency;

b. The expenses of handling covered claims subsequent to an insolvency;

c. The cost of examinations under G.S. 97-137; ~~and~~

d. The costs of implementing and operating the Association Aggregate Security System; and

e. Other expenses authorized by this ~~Article;~~Article.

(7) Investigate claims brought against the Association and adjust, compromise, settle, and pay covered claims to the extent of the Association's obligation; and deny all other claims. The Association may review settlements to which the insolvent self-insurer was a party to determine the extent to which such settlements may be properly ~~contested;~~contested.

(8) Notify such persons as the Commissioner directs under ~~G.S. 97-136;~~G.S. 97-136.

(9) Handle claims through its ~~employees~~ Directors, its employees, or through one or more self-insurers or other persons designated as servicing facilities. Designation of a servicing facility is subject to the

approval of the Commissioner, but designation of a member self-insurer as a servicing facility may be declined by such ~~self-insurer;~~self-insurer.

(10) Reimburse each servicing facility for obligations of the Association paid by the facility and for expenses incurred by the facility while handling claims on behalf of the ~~Association;~~Association.

(11) Pay ~~the~~ any other expenses of the Association authorized by this ~~section; and~~section.

~~(12) Establish in the Plan a mechanism to calculate the assessments required by subdivisions (2) and (3) of this subsection by a simple and equitable means to convert from policy or fund years that are different from a calendar year.~~

(b) The Association may:

(1) Employ or retain such persons as are necessary to handle claims and perform other duties of the ~~Association;~~Association.

(2) Borrow funds necessary to effect the purposes of this Article in accord with the ~~Plan;~~Plan, including but not limited to, entering into standby lines of credit.

(3) Sue or be ~~sued;~~sued.

(4) Negotiate and become a party to such contracts as are necessary to carry out the purpose of this ~~section; and~~section.

(5) Perform such other acts as are necessary or proper to effectuate the purpose of this section.

~~(c) In the event that the assets of the Fund are not sufficient to pay the obligations of the Association, then the Association shall impose an additional assessment upon its members, which shall be known as a post-insolvency assessment which shall be imposed as follows:~~

~~(1) Each individual member self-insurer shall be assessed in an amount not to exceed two percent (2%) each year of the annual gross premiums, as determined under G.S. 105-228.5(b), (b1), and (c), that would have been paid by that member self-insurer during the prior calendar year. The assessments of each individual member self-insurer shall be in the proportion that the annual gross premiums, as determined under G.S. 105-228.5(b), (b1), and (c), of the individual member self-insurer for the premium calendar year bears to the annual gross premiums of all individual member self-insurers for the preceding calendar year. For group member self-insurers, the assessment shall not exceed two percent (2%) each year the annual premium collected by that group member self-insurer during the prior calendar year. The assessments of each group member self-insurer shall be in the proportion that the annual gross premiums of the group member self-insurer for the premium calendar year bears to the annual gross premiums of all group member self-insurers for the preceding calendar year.~~

~~(2) Each member self-insurer shall be notified of the assessment no later than 30 days before it is due.~~

~~(3) The Association may exempt or defer, in whole or in part, the assessment of any member self-insurer, if the assessment would cause that member's financial statement to reflect liabilities in excess of assets.~~

~~(4) Delinquent assessments, except as provided in subdivision (3) of this subsection, shall bear interest at the rate to be established by the Board, but not to exceed the discount rate of the Federal Reserve Bank, Richmond, Virginia, on the due date of the assessment, plus four percent (4%) annually, computed from the due date of the assessment.~~

~~(5) The Association shall establish in the Plan a mechanism to calculate the assessments required by subdivision (1) of this subsection by a simple and equitable means to convert from policy or fund years that are different from a calendar year.~~

~~(d) No individual member self-insurer may be assessed in any calendar year an amount greater than two and one-half percent (2.5%) of the annual gross premiums, as determined under G.S. 105-228.5(b), (b1), and (c), that would have been paid by that individual member self-insurer during the prior calendar year. No group member self-insurer may be assessed in any calendar year an amount greater than two and one-half percent (2.5%) of the annual gross premiums of that group member self-insurer during the prior calendar year. If the maximum assessment does not provide in any one year an amount sufficient to make all necessary payments, the funds available shall be prorated and the unpaid portion shall be paid as soon thereafter as funds become available. There shall be established in the Plan a mechanism to calculate the assessments required by this section by a simple and equitable means to convert from policy or fund years that are different from a calendar year.~~"

SECTION 5. G.S. 97-134 reads as rewritten:

"**§ 97-134. Plan of Operation.**

The Plan is as follows:

(1) The Association shall submit to the Commissioner a Plan and any amendments necessary or suitable to assure the fair, reasonable, and equitable administration of the Association. The Plan and any amendments become effective upon approval in writing by the Commissioner. If the Association at any time fails to submit a Plan or suitable amendment to the Plan the Commissioner shall, after notice and hearing, adopt such reasonable rules as are necessary or advisable to effectuate this Article. Such rules shall continue in force until modified by the Commissioner or superseded by a Plan submitted by the Association and approved by the Commissioner.

(2) All member self-insurers shall comply with the Plan.

(3) The Plan shall:

a. Establish the procedures whereby all the powers and duties of the Association under G.S. 97-133 will be performed;

b. Establish procedures for ~~handling assets of the Association;~~investing and managing fund assets.

c. Adopt a reasonable mechanism and procedure to achieve equity in assessing ~~the funds required in G.S. 97-133. Consideration shall be given to adjustments for audited payroll, differential effects caused by rate changes, and other relevant factors;~~members pursuant to G.S. 97-133.

d. Establish the amount and method of reimbursing members of the Board under ~~G.S. 97-132;~~G.S. 97-132.

e. Establish procedures by which claims may be filed with the Association and establish acceptable forms of proof of covered claims. ~~A list of such claims shall be periodically submitted to the Association;~~

f. Establish regular places and times for meetings of the Board;

g. Establish procedures for records to be kept of all financial transactions of the Association, its agents, and the ~~Board;~~Board.

h. Provide that any member self-insurer aggrieved by any final action or decision of the Association may appeal to the Commissioner within 30 days after the action or ~~decision;~~decision.

i. Establish the procedures whereby selections for the Board shall be submitted to the ~~Commissioner; and~~Commissioner.

j. Contain additional provisions necessary or proper for the execution of the powers and duties of the Association."

SECTION 6. G.S. 97-135 reads as rewritten:

"**§ 97-135. Insolvency.**

A member self-insurer shall be insolvent for the purposes of this ~~Article~~ Article, other than the definition of insolvency adopted by the Board for the purposes of the Association Aggregate Security System, under the following circumstances:

(1) Determination of insolvency by a court of competent jurisdiction; or

(2) Institution of bankruptcy proceedings by or regarding the member self-insurer; or

(3) The Board determines that the self-insurer's total liabilities exceed its total assets or the self-insurer is unable or ceases to pay its debts as they fall due or in the ordinary course of business."

SECTION 7. G.S. 97-140 reads as rewritten:

"**§ 97-140. Nonduplication of recovery.**

Any person having a covered claim that may be recovered under more than one insurance or self-insurance guaranty or security association or its equivalent shall seek recovery first from the association of the place or residence of the claimant. Any recovery under this Article shall be reduced by the amount of recovery from any other insurance guaranty or security association or its equivalent."

SECTION 8. G.S. 97-143 reads as rewritten:

"**§ 97-143. Use of deposits made by insolvent member self-insurers.**

After the Commissioner has notified the Association, under G.S. 97-136(a), that a member is insolvent, the Commissioner shall assign and deliver to the Association, and the Association is authorized to expend ~~the~~ any deposit made by the insolvent member under G.S. 58-47-90 or G.S. 97-185, to the extent the deposit is needed by the Association to pay covered claims against the insolvent member as required by this Article, and to the extent the deposit is needed to pay expenses of the Association relating to covered claims against the insolvent member. For insolvent members that participate in the Association Aggregate Security System, the Association is authorized to pursue recovery under every instrument, contract, and form of security comprising the composite security. The Association shall account to the Commissioner and the insolvent member or its successor for all deposits received from the Commissioner under this section."

SECTION 9. G.S. 97-165 is amended by adding a new subdivision to read:

"(11) "Association Aggregate Security System" means the security system established pursuant to G.S. 97-131 whereby self-insurers collectively secure their aggregate self-insured workers' compensation liabilities under the Act through the North Carolina Self-Insurance Security Association."

SECTION 10. G.S. 97-170 reads as rewritten:

"**§ 97-170. License applications; required information.**

(a) No employer shall self-insure its workers' compensation liabilities under the Act unless it is licensed by the Commissioner under this Article. This subsection does not apply to an employer authorized to self-insure its workers' compensation liabilities under the Act prior to December 1, 1997, whose authority to self-insure its workers' compensation liabilities under the Act has not terminated after that date.

(b) An applicant for a license as a self-insurer shall file with the Commissioner the information required by subsection (d) of this section on a form prescribed by the Commissioner at least 90 days before the proposed licensing date. No application is complete until the Commissioner has received all required information. A copy of the application must also be filed with the North Carolina Self-Insurance Association at least 120 days before the proposed licensing date.

(c) Only an applicant whose total fixed assets amount to five hundred thousand dollars ($500,000) or more may apply for a license. In judging the applicant's financial strength and liquidity relative to its ability to comply with the Act, the Commissioner shall consider the applicant's:

(1) Organizational structure and management;
(2) Financial strength;
(3) Source and reliability of financial information;
(4) Risks to be retained;
(5) Workers' compensation loss history;
(6) Number of employees;
(7) Claims administration;
(8) Excess insurance; and
(9) Access to excess insurance.

(d) The license application shall comprise the following information:

(1) Company name, organizational structure, location of principal office, contact person, organization date, type of operations within this State, management background, and addresses of all plants or offices in this State.

(2) Certified audited GAAP financial statements prepared by a CPA for the two most recent years. The financial statement formulation shall facilitate application of ratio and trend analysis.

(3) Evidence of the insurance required by G.S. 97-190.

(4) Repealed by Session Laws 1999-132, s. 13.7, effective June 4, 1999.

(5) For applicants with 20 or more full-time employees, a certificate or other evidence of safety inspection, satisfactory to the Commissioner, that certifies that all safety requirements of the Department of Labor have been met.

(6) Summary of workers' compensation benefits paid for the last three calendar years, as well as the total liability for all open claims within 30 days or some other period acceptable to the Commissioner not to exceed 90 days, before the filing of the application.

(7) Summary, by risk classification, of annual payroll and number of employees within the State.

(8) Book value of fixed assets located within the State.

(9) Proof of compliance with the claims administration provisions of Article 47 of Chapter 58 of the General Statutes.

(10) A letter of ~~assent, stipulating the applicant's acceptance of membership status in~~ approval by the North Carolina Self-Insurance ~~Guaranty~~ Security Association under Article 4 of this ~~Chapter.~~Chapter upon the granting of a license to the applicant.

(e) Every applicant shall execute and file with the Commissioner an agreement, as part of the application, in which the applicant agrees to participate in the Association Aggregate Security System or if included in the Association Aggregate Security System, to deposit with the Commissioner pursuant to G.S. 97-185, cash, acceptable securities, or a surety bond issued by a corporate surety that will guarantee the applicant's compliance with this Article and the ~~Act pursuant to G.S. 97-185.~~Act."

SECTION 11. G.S. 97-185 reads as rewritten:

"**§ 97-185. Deposits; surety bonds; letters of credit.**

~~(a) (Effective January 1, 2005, until January 1, 2006) Every self-insurer shall deposit with the Commissioner an amount not less than seventy-five percent (75%) of the self-insurer's total undiscounted outstanding claim liability per the most recent certification from a qualified actuary as required by G.S. 97-180(b), but not less than five hundred thousand dollars ($500,000), or such other greater amount as the Commissioner prescribes based on, but not limited to, the financial condition of the self-insurer and the risk retained by the self-insurer.~~

~~(a) (Effective January 1, 2006) Every self-insurer shall deposit with the Commissioner an amount not less than one hundred percent (100%) of the self-insurer's~~

~~total undiscounted outstanding claim liability per the most recent certification from a qualified actuary as required by G.S. 97-180(b), but not less than five hundred thousand dollars ($500,000), or such other greater amount as the Commissioner prescribes based on, but not limited to, the financial condition of the self-insurer and the risk retained by the self-insurer~~

(a1) All self-insurers shall participate in the Association Aggregate Security System established pursuant to G.S. 97-131 unless excluded by the Board of Directors of the North Carolina Self-Insurance Security Association. The Board of Directors of the North Carolina Self-Insurance Security Association shall notify the Commissioner of the self-insurers that are excluded from participating in the Association Aggregate Security System. The Board of Directors of the North Carolina Self-Insurance Security Association shall exclude all self-insurers whose licenses have previously been revoked by the Commissioner. The Board of Directors of the North Carolina Self-Insurance Security Association shall exclude self-insurers with a debt rating as established by Standard & Poor's Rating Service or by Moody's Investor Service, below the minimum Standard & Poor's and Moody's ratings established in the written plan for the Association Aggregate Security System submitted by the Association and approved by the Commissioner pursuant to G.S. 97-131. The Board of Directors of the North Carolina Self-Insurance Security Association shall exclude all self-insurers that have defaulted on the payment of its self-insured worker's compensation liabilities from participation in the Association Aggregate Security System.

(b) Repealed by Session Laws 2003-115, s. 3, effective January 1, 2004.

~~(b1) Notwithstanding subsection (a) of this section, member self-insurers with a debt rating of BBB or better from Standard and Poor's Rating Service, a division of McGraw-Hill, Inc., or an equivalent rating from another national rating agency shall deposit with the Commissioner an amount not less than twenty-five percent (25%) of the self-insurer's total undiscounted outstanding claim liability per the most recent certification from a qualified actuary as required by G.S. 97-180(b), but not less than five hundred thousand dollars ($500,000). The Commissioner shall consider and may, in the Commissioner's discretion, increase or reduce the deposit to a greater or lesser percentage of the member self-insurer's claims liability based on the financial strength of the self-insurer and other financial information submitted by the self-insurer.~~

(b2) A self-insurer that is excluded from participation in the Association Aggregate Security System, including self-insurers that are granted a license to self-insure after the North Carolina Self-Insurance Security Association annually implements the Association Aggregate Security System, shall deposit with the Commissioner an amount not less than one hundred percent (100%) of the self-insurer's total undiscounted outstanding claims liability per the most recent certification from a qualified actuary as required by G.S. 97-180(b), but not less than five hundred thousand dollars ($500,000), or such greater amount as the Commissioner prescribes based on, but not limited to, the financial condition of the self-insurer and the risk retained by the self-insurer.

(c) Deposits received, changes to existing deposits, or deposits exchanged after the effective date of this section, shall comprise one or more of the following:

(1) Interest-bearing bonds of the United States of America.
(2) Interest-bearing bonds of the State of North Carolina, or of its cities or counties.
(3) Certificates of deposit issued by any solvent bank domesticated in the State of North Carolina that have a maturity of one year or greater.
(4) Surety bonds in a form acceptable to the Commissioner and issued by a corporate surety. A surety bond deposited pursuant to this subsection shall require that the surety reimburse the Commissioner, or his successors, assigns, or transferees, for any costs incurred in the collection of the proceeds of the surety bond, including reasonable attorneys' fees, and any costs incurred in administering the insolvent self- insurer's workers' compensation claims.
(4a) Irrevocable letters of credit in a form acceptable to the Commissioner issued by a bank acceptable to the Commissioner. An irrevocable letter of credit deposited pursuant to this subsection shall require that the bank reimburse the Commissioner, or his successor, assigns, or transferees for any costs incurred in the collection of the proceeds of the letter of credit, including reasonable attorneys' fees.
(4b) The reimbursement of attorneys' fees and collections cost provided for in subdivisions (4) and (4a) of this subsection shall be no greater than fifteen percent (15%) of the penal amount of the bond and shall not come from the proceeds of the bond or the letter of credit but shall be in addition to the proceeds of the bond or the letter of credit.
(5) Any other investments that are approved by the Commissioner.

(d) All bonds or securities that are posted as a security deposit shall be valued annually at market value. If market value is less than face value, the Commissioner may require the self-insurer to post additional securities. In making this determination, the Commissioner shall consider the self-insurer's financial condition, the amount by which market value is less than face value, and the likelihood that the securities will be needed to provide benefits.

(e) Securities deposited under this section shall be assigned to the Commissioner, the Commissioner's successors, assigns, or trustees, on a form prescribed by the Commissioner in a manner that renders the securities negotiable by the Commissioner. If a self-insurer is deemed by the Commissioner to be in a hazardous financial condition, the Commissioner may sell or collect, or both, such amounts that will yield sufficient funds to meet the self-insurer's obligations under the Act. In the case of a letter of credit, the Commissioner may draw the full amount of a letter of credit if the letter of credit is not renewed within 90 days prior to its expiration or at any time that the bank issuing the letter of credit is no longer acceptable to the Commissioner. Interest accruing on any negotiable security deposited under this Article shall be collected and transmitted to the self-insurer if the self-insurer is not in a hazardous financial condition.

(f) No judgment creditor, other than a claimant entitled to benefits under the Act, may levy upon any deposits made under this section.

(g) Securities held by the Commissioner under this section may be exchanged or replaced by the self-insurer with other securities of like nature and amount as long as the self-insurer is not in a hazardous financial condition. No release shall be effectuated until replacement securities or bonds of an equal value have been substituted. Any surety bond may be exchanged or replaced with another surety bond that meets the requirements of this section if 90 days' advance written notice is given to the Commissioner. If a self-insurer ceases to self-insure or desires to replace securities with an acceptable surety bond or bonds, the self-insurer shall notify the Commissioner, and may recover all or a portion of the securities deposited with the Commissioner upon posting instead an acceptable special release bond issued by a corporate surety in an amount equal to the total value of the securities. The special release bond shall cover all existing liabilities under the Act plus an amount to cover future loss development and shall remain in force until all obligations under the Act have been discharged fully.

(h) If a self-insurer ceases to self-insure, no deposits shall be released by the Commissioner until the self-insurer has discharged fully all of the self-insurer's obligations under the Act.

(i) An endorsement to a surety bond shall be filed with the Commissioner within 90 days after the effective date of the endorsement."

SECTION 12. G.S. 97-195(a) reads as rewritten:

"(a) The Commissioner summarily may revoke a license if there is satisfactory evidence for the revocation. In determining whether to revoke a license summarily, the Commissioner may consider any or all of the following:

(1) Determination of insolvency by a court of competent jurisdiction.

(2) Institution of bankruptcy proceedings.

(3) If the self-insurer is in a hazardous financial condition.

(4) Failure to pay any North Carolina Self-Insurance Security Association assessments made pursuant to G.S. 97-133.

(5) Failure to participate in the Association Aggregate Security System or, if excluded from participation in the Association Aggregate Security System, failure to provide and maintain the deposit required by G.S. 97-185."

SECTION 13. This act becomes effective January 1, 2006.

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE — 5-10-05

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
ANN LANE	DOHS
Ken Melton	D.O.R.
Kay Isenhour	Sen Berger's office
Tripp Melton	Sen. Stevens Office
BERRY JENKINS	CAROLINAS AGC
Steve Council	NC Self Insurers Guaranty Assn
Lins Stuart	" "
John McMillan	NFDS
	NMRS
Bill Scoggin	FCCIL
Ron Farmer	AIA

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE — 5-10-05

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
Karen Johnson	Smith Anderson
MELITA GROOMES	PAROLE COMMISSION
Hal Miller	NCACCT
Paul Pully	NCATL
Andy Ellen	Andy Ellen & Assoc.
Andy Ellen	NCRMA
John McAlister	Duke Energy
Robert Pasichal	Young, Moore
Michael Haley	DJJDP
Judy Stephens	DJJDP
FRANK W. FOLGER	

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE — 5-10-05

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
Theresa K.	CAS
DAVID BARNES	Poyner + Spruill
Mike Okun	NC State AFL-CIO

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE — 5-10-05

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
Kathy Hawkins	Progress Energy
[signature]	[signature]
Dave Simpson	CAUC

Judiciary 1 Committee

May 17, 2005

Minutes

Senator Dan Clodfelter, Chair called the meeting to order at 10:04 a.m. with eighteen members present. He introduced Pages Tiffany Fielder and Brittney Martinez, both from Salemburg, NC.

HB-236 (Federal Jurisdiction Over Land) was introduced by Senator Clodfelter. He stated that SB 355 is a companion bill to this bill. Bill sponsor, Representative William (Bill) Culpepper explained that the bill would provide that the State automatically consents only to certain land acquisitions by the federal government. In addition, the bill would provide that the State only cedes partial jurisdiction to the federal government over land acquired with the State's consent. It would also provide that the federal government must indicate its acceptance of jurisdiction by filing a notice with the register of deeds in the applicable county or counties, and would not prevent the federal government from acquiring land in the State, but it would address what kind of jurisdiction the federal government would have when it acquired the land. (See Bill Summary) for further information. Senator Clark Jenkins spoke on the bill and moved for a Favorable Report. Senator Charlie Albertson spoke in support of the bill. Senator Clodfelter called for a vote on the motion made by Senator Jenkins. All members voted yes. Motion carried.

SB-532 (Construction Site Theft/Aggravate Penalty) Committee Substitute was introduced by Senator Clodfelter. Senator Phillip Berger moved for adoption of the Committee Substitute. All members voted yes. Motion carried. Bill sponsor Senator Berger, explained that the proposed committee substitute would aggravate the penalty from a Class 1 misdemeanor to a Class 1 felony if a person steals goods from a construction site, and the goods are valued between $300 and $1000 dollars. The penalty would also apply to those persons who possess or receive the goods. (See Bill Summary) for further information. Senator David Hoyle moved for a Favorable Report. Senator's RC Soles and Charlie Albertson had questions. Senator Berger answered the questions. Senator Clodfelter called for a vote on the motion made by Senator Hoyle. All members voted yes. Motion carried.

SB-319 (Workers' Comp. Self –Insurance Security) Committee Substitute was introduced by Vice Chair, Senator RC Soles. Senator David Hoyle moved for adoption of the Committee Substitute. All members voted yes. Motion carried. Bill sponsor, Senator Dan Clodfelter explained that the proposed committee substitute would amend the Workers' Compensation Self-Insurance laws by repealing the NC Self-Insurance Guaranty Fund and replacing it with the NC Self-Insurance Security Fund. (See Bill Summary) for further information. Senator Clodfelter offered an Amendment to the bill on page 12, line 35. (See attached Amendment), and moved for adoption of the Amendment. All members voted yes. Motion carried. Mr. Jim Long, NC Insurance Commissioner, spoke on the bill. Senator Clark Jenkins moved for a Favorable Report. Senator Soles asked for questions from the audience. Mr. Frank Folger, NC Legislative Liaison for the NC Department of Insurance and Mr. Robert Kaylor, NC Association of Independent Insurers spoke on the bill. Senator Ham Horton offered an Amendment to the bill on page 9, line 35. (See attached Amendment) All members voted for adoption of the Amendment. Mr. James Stewart, Executive Director, NC Self-Insurance Guaranty Fund spoke on the bill. Senator's Jeanne Lucas, David Hoyle, Charlie Albertson and Harry Brown had questions. Mr. Folger, Mr. Stewart, and Senator Clodfelter answered the questions. Senator Soles asked for a vote on the motion made by Senator Jenkins to give the bill a Favorable Report as amended. All members voted yes for a Favorable Report. Motion carried.

Senator Dan Clodfelter, Chair

Wanda Joyner, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Daniel G. Clodfelter, Chair

Tuesday, May 17, 2005

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

FAVORABLE

H.B.(CS #1) **236** Federal Jurisdiction Over Land.
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 1

Committee Clerk Comments:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Daniel G. Clodfelter, Chair

Wednesday, May 18, 2005

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

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

S.B. **532** Construction Site Theft/Aggravate Penalty.

Draft Number:	PCS55231
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comments:

Wanda Joyner (Sen. Clodfelter)

From: Bonnie McNeil (Senate Legislative Assistant)

Sent: Friday, May 13, 2005 3:43 PM

To: Linda Uzzle (Rep. Arthur Williams); Dot Crocker (Rep. Culpepper); Carolyn Gooden (Sen. Jenkins); Wanda Joyner (Sen. Clodfelter); Barbara Eldridge (Sen. Phil Berger); Nancy Brothers (Sen. Cowell); Rep. Arthur Williams; Rep. Bill Culpepper; Sen. Clark Jenkins; Sen. Janet Cowell; @SenateCommitteeNotice

Cc: Hal Pell (Research); Walker Reagan (Research); Bill Gilkeson (Research); Dickie Brown (Research); Brad Krehely (Sen. Clodfelter)

Subject: 5-17-05 Judiciary I Committee Notice

Principal Clerk _____
Reading Clerk _____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Tuesday	May 17, 2005	10:00 AM	1027 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 236	Federal Jurisdiction Over Land.	Representative Williams, III Representative Culpepper, III
SB 355	Federal Jurisdiction.	Senator Jenkins
SB 319	Workers' Comp. Self-Insurance Security.	Senator Clodfelter
SB 532	Construction Site Theft/Aggravate Penalty.	Senator Berger
SB 1029	Clarify/Enhance Domestic Vio. & Tenancy Laws.	Senator Cowell
SB 1048	Identity Theft Protection Act of 2005.	Senator Clodfelter

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Daniel G. Clodfelter, Chair

Monday, May 23, 2005

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

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

S.B. **319** Workers' Comp. Self-Insurance Security.

Draft Number:	PCS75312
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

S.B. **1048** Identity Theft Protection Act of 2005.

Draft Number:	PCS65319
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 2

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 3

HOUSE BILL 236

Committee Substitute Favorable 3/29/05
Third Edition Engrossed 4/12/05

Short Title: Federal Jurisdiction Over Land. (Public)

Sponsors:

Referred to:

February 15, 2005

A BILL TO BE ENTITLED

AN ACT TO LIMIT THE AUTOMATIC GRANT OF EXCLUSIVE JURISDICTION OVER LANDS ACQUIRED BY THE FEDERAL GOVERNMENT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 104-7 reads as rewritten:

"**§ 104-7. Acquisition of lands by the United States for ~~public buildings;~~ customhouses, courthouses, post offices, forts, arsenals, or armories; cession of jurisdiction; exemption from taxation.**

"(a) The consent of the State is hereby given, in accordance with the seventeenth clause, eighth section, of the first article of the Constitution of the United States, to the acquisition by the United States, by purchase, condemnation, or otherwise, of any land in the ~~State required for the sites~~ State that either is:

(1) Required for customhouses, courthouses, post offices, forts, arsenals, or armories; provided that the total land to be acquired for a particular facility does not exceed 25 acres; or ~~other public buildings whatever, or for any other purposes of the government.~~

(2) To be added to Fort Bragg, Pope Air Force Base, Camp Lejeune, New River Marine Corps Air Station, Seymour Johnson Air Force Base, Cherry Point Marine Corps Air Station, Military Ocean Terminal at Sunny Point, or the United States Coast Guard Air Station at Elizabeth City. Any of the land to be added to a military base named in this subdivision shall be contiguous to and within a 25-mile radius of the military base for which the property is acquired.

(b) Exclusive jurisdiction in and over any land ~~so~~ acquired by the United States ~~shall be and the same~~ with the consent of the State under subsection (a) of this section is hereby ceded to the United States for all purposes for which the United States requests cession of jurisdiction except that jurisdiction in and over these lands with respect to: (i) the service ~~upon such sites~~ of all civil and criminal process of the courts of this ~~State;~~

State, (ii) the concurrent power to enforce the criminal law, (iii) the power to enforce State laws for the protection of public health and the environment and for the conservation of natural resources, and (iv) the entire legislative jurisdiction of the State with respect to marriage, divorce, annulment, adoption, commitment of the mentally incompetent, and descent and distribution of property is reserved to the State. ~~but the~~ Cession of jurisdiction ~~so ceded~~ shall continue ~~no longer than~~ only so long as the ~~said~~ United States ~~shall own such lands.~~ owns the land.

(c) The jurisdiction ceded shall not vest until the United States ~~shall have~~has acquired title to ~~said lands~~ the land by purchase, condemnation, or ~~otherwise.~~otherwise; accepted the cession of jurisdiction in writing; and filed a certified copy of the acceptance in the office of the register of deeds in the county or counties in which the land is located. The acceptance of jurisdiction shall be made by an authorized official of the United States and shall include a precise description of the land involved and a statement of the extent to which cession of jurisdiction is accepted. The register of deeds shall record the acceptance of jurisdiction and index it in both the grantor and the grantee index under the name of the United States and, if title to the land over which jurisdiction is ceded is vested in any entity other than the United States, then the register of deeds shall also index the acceptance of jurisdiction in both the grantor and the grantee index under the name of that entity.

(d) So long as ~~the said lands shall remain~~ land acquired with the consent of the State under subsection (a) of this section remains the property of the United ~~States when acquired as aforesaid, and no longer, the same shall be and continue~~ States, and no longer, the land shall be exempt and exonerated from all State, county, and municipal taxation, assessment, or other charges ~~which~~ that may be levied or imposed under the authority of this State.

(e) Persons residing on lands in the State for which any jurisdiction has been ceded under this section shall not be deprived of any civil or political rights, including the right of suffrage, by reason of the cession of jurisdiction to the United States."

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

HOUSE BILL 236:
Federal Jurisdiction Over Land

BILL ANALYSIS

Committee:	Senate Judiciary I	**Date:**	May 17, 2005
Introduced by:	Reps. Culpepper, Williams	**Summary by:**	George Givens and Jennifer McGinnis, with William R. Gilkeson Committee Counsel
Version:	Third Edition		

SUMMARY: ***The Third Edition of House Bill 236 would provide that the State automatically consents only to certain land acquisitions by the federal government. In addition, the bill would provide that the State only cedes partial jurisdiction to the federal government over land acquired with the State's consent. The bill would also provide that the federal government must indicate its acceptance of jurisdiction by filing a notice with the register of deeds in the applicable county or counties. The bill would not prevent the federal government from acquiring land in the State, but it would address what kind of jurisdiction the federal government would have when it acquired the land. Effective when it becomes law.***

BACKGROUND: Article I, Section 8, Clause 17 of the United States Constitution (Art. I, §8, cl. 17) provides that Congress shall have power "to exercise exclusive legislation . . . over all places purchased by the consent of the legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dockyards and other needful buildings." Thus, if a state legislature consents to a federal purchase of land within the state, then the federal government obtains exclusive jurisdiction over the land acquired. States are not, however, limited to a choice between simply granting or withholding consent. A state may qualify its consent or cession by reservations consistent with the governmental purposes for which the property was acquired.

A state may cede exclusive, concurrent, or partial jurisdiction to the federal government over federally acquired lands. Where federal jurisdiction over a federal enclave is exclusive, the state retains no legislative or political authority over that property. It is accepted, however, that a reservation by a state of only the right to serve criminal and civil process in an area is not inconsistent with exclusive legislative jurisdiction. With concurrent jurisdiction, a state has reserved to itself the right to exercise, concurrently with the United States, all of the same authority. With partial jurisdiction, a state has reserved to itself the right to exercise, by itself or concurrently with the United States, other authority constituting more than merely the right to serve civil and criminal process. For example, the United States is considered to have partial legislative jurisdiction where the State has reserved the right to tax private property.

NOTE: In the absence of a state's consent to federal acquisition or cession of jurisdiction, the federal government nevertheless has the power to acquire land within a state, but the position of the federal government in that situation is that of an ordinary landed proprietor. The Property Clause of the United States Constitution (Art. IV, §3, cl. 2), gives Congress the power to "make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States." Thus, even absent state legislative consent, the Congress can enact regulations that are designed to maintain safety and order on government property, although, absent state legislative consent, it must do so in the context of continuing concurrent state jurisdiction.

Under federal law, the federal government must accept cession of jurisdiction by the State in order to effect exclusive jurisdiction over lands by filing a notice of acceptance with the Governor of the State or

in another manner prescribed by the laws of the State where the land is situated. Since no other manner for acceptance has been provided by the State under existing law, notice of acceptance of jurisdiction by the Federal government must be filed with the Governor.

CURRENT LAW: Under existing State law, consent of the State is given to all acquisitions by the federal government, in accordance with Art. I, §8, cl. 17, to the acquisition by the United States, by purchase, condemnation, or otherwise, of any land in the State required for the sites for customhouses, courthouses, post offices, arsenals, other public buildings, or for any other purposes of government. The State cedes exclusive jurisdiction over any land acquired by the United States for these purposes, reserving only the right to serve civil and criminal process of the courts of the State. The jurisdiction ceded continues as long as the United States owns the lands. Lands acquired by the United States for these purposes are exempt from all State, county, and municipal taxation, assessment, or other charges that may be levied or imposed under the authority of this State.

BILL ANALYSIS: The bill would provide that the State automatically consents to land acquisitions by the federal government of land required for customhouses, courthouses, post offices, forts, arsenals, or armories; provided that the total land to be acquired for a particular facility does not exceed 25 acres. In addition, the State would automatically consent to acquisitions for additions of land contiguous to and within a 25-mile radius of existing military bases as listed in the bill. The bill provides that the State would cede only partial jurisdiction over the land acquired by the federal government for these purposes, retaining to the State the following authority: service of civil and criminal process; the concurrent power to enforce the criminal law; the power to enforce State laws for the protection of public health and the environment and for the conservation of natural resources; and the entire legislative jurisdiction of the State with respect to marriage, divorce, annulment, adoption, commitment of the mentally incompetent, and descent and distribution of property. The bill would require that the federal government file notice of acceptance of the jurisdiction ceded with the registrar of deeds in the applicable county or counties. The bill also provides that persons residing on ceded lands shall not be deprived of any civil or political rights, including the right of suffrage, by reason of the cession of jurisdiction.

As introduced, this bill was identical to S355, as introduced by Sen. Jenkins, which is currently in Senate Judiciary I. This committee began consideration of S355 on March 24. At that time H236 was already moving in the House. The version of S355 this committee saw March 24 was a PCS identical to the version of H236 that had just been approved by a House committee. Since then, H236 has passed the House. The only things the House added to H236 after March 24 were the name "New River Marine Corps Air Station" to the list of existing bases, and direction to registers of deeds as to how to record acceptance of federal jurisdiction.

H0236e3-SMRR

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 532
PROPOSED COMMITTEE SUBSTITUTE S532-PCS55231-RK-19

Short Title: Construction Site Theft/Aggravate Penalty. (Public)

Sponsors:

Referred to:

March 15, 2005

A BILL TO BE ENTITLED

AN ACT TO AGGRAVATE THE PENALTY FOR THE LARCENY, POSSESSION, OR RECEIVING OF GOODS VALUED AT MORE THAN THREE HUNDRED DOLLARS FROM A PERMITTED CONSTRUCTION SITE.

The General Assembly of North Carolina enacts:

SECTION 1. Article 16 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-72.6. Felonious larceny, possession, or receiving of stolen goods from a permitted construction site.**

(a) A person is guilty of a Class I felony if he commits any of the following offenses, where the goods are valued in excess of three hundred dollars ($300.00) but less than one thousand dollars ($1,000):

(1) Larceny of goods from a permitted construction site.

(2) Possessing or receiving of stolen goods, with actual knowledge or having reasonable grounds to believe that the goods were stolen from a permitted construction site.

(b) If a person convicted under subsection (a) of this section is not subject to an active or intermediate punishment under G.S. 15A-1340.17, the person may be sentenced to an active punishment of up to 30 days, in addition to any authorized community punishment.

(c) As used in this section, a 'permitted construction site' is a site where a permit, license, or other authorization has been issued by the State or a local governmental entity for the placement of new construction or improvements to real property."

SECTION 2. This act becomes effective December 1, 2005, and applies to offenses committed on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.

SENATE BILL 532:
Construction Site Theft/Aggravate Penalty

BILL ANALYSIS

Committee:	Senate Judiciary I	**Date:**	May 17, 2005
Introduced by:	Sen. Berger of Rockingham	**Summary by:**	Hal Pell
Version:	PCS to First Edition S532-CSRK-19		Committee Co-Counsel

SUMMARY: ***This proposed committee substitute would aggravate the penalty from a Class 1 misdemeanor to a Class I felony if a person steals goods from a construction site, and the goods are valued between $300 and $1000. The penalty would also apply to those persons who possess or receive the goods. This act becomes effective December 1, 2005, and applies to offenses committed on or after that date.***

CURRENT LAW: The following conduct is penalized as indicated:

- Breaking or entering a building and stealing goods of any value: Class H felony
- Larceny, Possession or Receiving of goods valued at over $1,000: Class H felony
- Larceny, Possession, or Receiving of goods valued at under $1,000: Class 1 misdemeanor

A person convicted of a Class I felony is subject only to Community punishment, if without prior convictions (Class 1 misdemeanor or higher). A person convicted of a Class 1 misdemeanor, with one prior conviction, is subject to 45 days of active time.

BILL ANALYSIS:

The bill:

- increases the penalty from a Class 1 misdemeanor to a Class I felony for a person who steals goods from a permitted construction site, or possesses or receives such stolen goods, that are valued between $300 and $1,000.
- authorizes the sentencing judge to impose up to 30 days in jail for a violation of the statute, if the offender is not subject to an active or intermediate punishment under sentencing laws. An intermediate sanction allows for active time through use of a "split sentence."
- defines "permitted construction site" as a location where a governmental entity has issued some form of license or permit for new construction or improvements to real property.

EFFECTIVE DATE: This act becomes effective December 1, 2005, and applies to offenses committed on or after that date.

S0532e1-SMRK-CSRK-19

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 532

Short Title:	Construction Site Theft/Aggravate Penalty.	(Public)
Sponsors:	Senators Berger of Rockingham, Thomas; Apodaca, Bingham, Brown, Forrester, Garwood, Goodall, Hartsell, Hoyle, Jacumin, Kerr, Stevens, Swindell, Tillman, and Weinstein.	
Referred to:	Judiciary I.	

March 15, 2005

A BILL TO BE ENTITLED

AN ACT TO MAKE LARCENY FROM A CONSTRUCTION SITE A FELONY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-72 reads as rewritten:

"**§ 14-72. Larceny of property; receiving stolen goods or possessing stolen goods.**

~~(a) Larceny of goods of the value of more than one thousand dollars ($1,000) is a Class H felony. The receiving or possessing of stolen goods of the value of more than one thousand dollars ($1,000) while knowing or having reasonable grounds to believe that the goods are stolen is a Class H felony. Larceny as provided in subsection (b) of this section is a Class H felony. Receiving or possession of stolen goods as provided in subsection (c) of this section is a Class H felony. Except as provided in subsections (b) and (c) of this section, larceny of property, or the receiving or possession of stolen goods knowing or having reasonable grounds to believe them to be stolen, where the value of the property or goods is not more than one thousand dollars ($1,000), is a Class 1 misdemeanor. In all cases of doubt, the jury shall, in the verdict, fix the value of the property stolen.~~

(a) The following offenses are Class H felonies:

(1) Larceny of goods of the value of more than one thousand dollars ($1,000).

(2) The receiving or possessing of stolen goods of the value of more than one thousand dollars ($1,000), while knowing or having reasonable grounds to believe that the goods are stolen.

(a1) If the value of the goods described in (a)(1) or (a)(2) is not more than one thousand dollars ($1,000), then the offense is a Class 1 misdemeanor.

(a2) In all cases of doubt, the jury shall fix the value of the stolen property in the verdict.

(b) Larceny ~~The crime of larceny~~ is a Class H felony, without regard to the value of the property in question, if the larceny is:

(1) From the person; or

(2) Committed pursuant to a violation of G.S. 14-51, 14-53, 14-54 or 14-57; or

(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).

(6) From a permitted construction site. For the purposes of this subdivision only:

a. Larceny of goods with a value of less than three hundred dollars ($300.00) shall be a Class 1 misdemeanor.

b. A 'permitted construction site' is a site where a permit, license, or other authorization has been issued by a State or local governmental entity for the placement of new construction or improvements to real property.

~~(c) The crime of possessing stolen goods knowing or having reasonable grounds to believe them to be stolen in the circumstances described in subsection (b) is a felony or the crime of receiving stolen goods knowing or having reasonable grounds to believe them to be stolen in the circumstances described in subsection (b) is a felony, without regard to the value of the property in question.~~

(c) The following offenses are Class H felonies, without regard to the value of the goods:

(1) Possessing stolen goods with actual knowledge, or having reasonable grounds to believe, that the goods were stolen in one of the circumstances set forth in subsection (b) of this section.

(2) Receiving stolen goods with actual knowledge, or having reasonable grounds to believe, that the goods were stolen in one of the circumstances set forth in subsection (b) of this section.

(d) Where the larceny or receiving or possession of stolen goods as described in subsection (a) of this section involves the merchandise of any store, a merchant, a merchant's agent, a merchant's employee, or a peace officer who detains or causes the arrest of any person shall not be held civilly liable for detention, malicious prosecution, false imprisonment, or false arrest of the person detained or arrested, when such detention is upon the premises of the store or in a reasonable proximity thereto, is in a reasonable manner for a reasonable length of time, and, if in detaining or in causing the arrest of such person, the merchant, the merchant's agent, the merchant's employee, or the peace officer had, at the time of the detention or arrest, probable cause to believe that the person committed an offense under subsection (a) of this section. If the person being detained by the merchant, the merchant's agent, or the merchant's employee, is a minor under the age of 18 years, the merchant, the merchant's agent, or the merchant's employee, shall call or notify, or make a reasonable effort to call or notify the parent or guardian of the minor, during the period of detention. A merchant, a merchant's agent, or a merchant's employee, who makes a reasonable effort to call or notify the parent or guardian of the minor shall not be held civilly liable for failing to notify the parent or guardian of the minor."

SECTION 2. This act becomes effective December 1, 2005, and applies to offenses committed on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 319
PROPOSED COMMITTEE SUBSTITUTE S319-PCS75312-RU-27

Short Title: Workers' Comp. Self-Insurance Security. (Public)

Sponsors:

Referred to:

March 3, 2005

A BILL TO BE ENTITLED

AN ACT ESTABLISHING THE NORTH CAROLINA SELF-INSURANCE SECURITY SYSTEM AND MAKING CONFORMING CHANGES TO THE WORKERS' COMPENSATION LAWS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 97-130 reads as rewritten:

"**§ 97-130. Definitions.**

As used in this Article:

(1) "Association" means the North Carolina Self-Insurance ~~Guaranty~~ Security Association established by G.S. 97-131.

(1a) "Association Aggregate Security System" means the security system established by the Association pursuant to G.S. 97-133 whereby self-insurers collectively secure their aggregate self-insured workers' compensation liabilities through the North Carolina Self-Insurance Security Association.

(2) "Board" means the Board of Directors of the Association established by G.S. 97-132.

(3) "Commissioner" means the North Carolina Commissioner of Insurance.

(4) "Covered claim" means an unpaid claim against an insolvent self-insurer that relates to an injury that occurs while the self-insurer is a member of the Association and that is compensable under this Chapter.

(5) "Fund" means the North Carolina Self-Insurance ~~Guaranty~~ Security Fund established by G.S. 97-133.

(6) "Member self-insurer" or "member" means a self-insurer ~~which is authorized~~ that retains liability pursuant to G.S. 97-93 and G.S. 97-94

and is licensed by the Commissioner to self-insure pursuant to ~~G.S. 97-93 and G.S. 97-94.~~Article 5 of this Chapter.

(7) "Plan" means the Plan of Operation authorized by G.S. 97-134.

(8) "Self-insurer" means either: (i) an individual employer ~~who has demonstrated under G.S. 97-93 the financial ability to directly pay compensation in the amounts and manner and when due as provided in~~ licensed to self-insure pursuant to Article 5 of this Chapter or (ii) a group of two or more employers ~~who have agreed to pool their liabilities under this Chapter pursuant to G.S. 97-93.~~licensed to self-insure pursuant to Article 47 of Chapter 58 of the General Statues.

(9) "Servicing facility" means those persons that are delegated the authority to settle and compromise claims and expend Fund assets to pay claims pursuant to a delegation of authority from the Board."

SECTION 2. G.S. 97-131 reads as rewritten:

"**§ 97-131. Creation.**

(a) There is created a nonprofit unincorporated legal entity to be known as the North Carolina Self-Insurance ~~Guaranty~~ Security Association. The Association is to provide mechanisms for the payment of covered claims ~~under self-insurance coverage,~~ against member self-insurers, to avoid excessive delay in ~~payment,~~ payment of covered claims, to avoid financial loss to claimants because of the insolvency of a member self-insurer, ~~and to assist, when called upon to do so by the Commissioner,~~ to assist the Commissioner in the detection of self-insurer ~~insolvencies.~~insolvencies, to fund the Association Aggregate Security System, and to capitalize the Fund to insure the availability of financial resources to pay covered claims and to fund the activities of the Association.

(b) All individual and group self-insurers shall be and remain members of the Association as a condition of ~~authority~~ being licensed to self-insure in this ~~State under G.S. 97-93.~~ State. The Association shall perform its functions under a Plan of Operation established or amended, or both, by the Board and approved by the Commissioner, and shall exercise its powers through the Board.

(1) A self-insurer shall be deemed to be a member of the Association for purposes of another self-insurer's insolvency, as defined in G.S. 97-135, when:

a. The self-insurer is a member of the Association when an insolvency occurs, or

b. The self-insurer has been a member of the Association at some point in time during the 12-month period immediately preceding the insolvency in question.

(2) A self-insurer shall be deemed to be a member of the Association for purposes of its own insolvency if it is a member when the compensable injury occurs.

(3) In determining the membership of the Association ~~pursuant to~~ for the purposes of subdivisions (1) and (2) of this subsection for any date after the effective date of this Article, no employer or group of

employers claiming self-insurer status may be deemed to be a member of the Association on any date after the effective date of this Article, unless that employer ~~or~~ is on that date licensed as a self-insurer by the Commissioner pursuant to Article 5 of this Chapter or a group of employers is at that time ~~authorized~~ licensed as a group self-insurer by the Commissioner pursuant to ~~G.S. 97-93 and G.S. 97-94.~~Article 47 of Chapter 58 of the General Statutes."

SECTION 3. G.S. 97-132 reads as rewritten:

"**§ 97-132. Board of directors.**

The Board shall consist of not less than nine ~~persons~~ directors serving terms as established in the Plan. The ~~members of the Board~~ directors shall be selected by the ~~member self-insurers,~~ members of the Association, subject to the approval of the Commissioner, and shall serve for ~~terms which shall not exceed three years. If no members of the Board are selected within 60 days after the effective date of this Article, the Commissioner may appoint the initial members of the Board.~~ three-year terms and until a successor is elected and qualified. There is no limitation on the number of terms a director may serve. In approving selections to the Board, the Commissioner shall consider, among other things, whether ~~all member~~ individual and group self-insurers are fairly represented. ~~Members of the Board~~ Directors may be reimbursed from the assets of the Association for expenses incurred by them as ~~members of the Board.~~directors."

SECTION 4. G.S. 97-133 reads as rewritten:

"**§ 97-133. Powers and duties of the Association.**

(a) The Association shall:

(1) Repealed by Session Laws 1999-219, s. 7.2, effective June 25, 1999.

(1a) Administer a fund, to be known as the North Carolina Self-Insurance Security Fund, which shall receive the assessments required by subdivision (2a) of this subsection and any other sums received by the Association. In its discretion, the Board may determine that the assets of the Fund should be segregated or that a separate accounting shall be made in order to identify that portion of the Fund which represents assessments paid by individual self-insurers and that portion of the Fund which represents assessments paid by group self-insurers. If the Board determines to segregate the Fund in this manner, the Association shall thereafter pay covered claims against individual member self-insurers from that portion of the Fund that represents assessments against individual self-insurers and shall thereafter pay covered claims against group member self-insurers from that portion of the Fund that represents assessments against group self-insurers. The costs of administering the Association shall be borne by the Fund. The Association is authorized to secure insurance, primary excess insurance, reinsurance, bonds, other insurance, financial guarantees and related financial instruments to effectuate the purposes of the Association. The Board will invest the Fund assets, and the earnings

from investment of Fund assets shall be placed in or credited to the Fund.

~~(2) Assess each member of the Association as follows:~~

~~a. Each individual member self-insurer shall be annually assessed an amount equal to two percent (2%) of the annual gross premiums, as determined under G.S. 105-228.5(b), (b1), and (c), that would have been paid by that member self-insurer for workers' compensation insurance during the prior calendar year; and payment to the Association shall be made no later than May 15 following the close of that calendar year. Where any such assessment is paid based in whole or in part upon estimates of annual gross premiums for the prior calendar year, there shall be made in the next year's assessment an adjustment of the assessment of such prior year based on actual audited annual gross premiums. Each group member self-insurer shall be annually assessed an amount equal to two percent (2%) of the annual gross premiums, as determined under G.S. 105-228.5(b), (b1), and (c), of the group member self-insurer during the prior calendar year; and payment to the Association shall be made no later than May 15 following the close of that calendar year. Regardless of the size of the Fund, during its first 12 months of membership, no member self-insurer may discount or reduce this two percent (2%) assessment. For the purpose of making the assessments authorized by this subsection and subsections (c) and (d) of this section, the Secretary of Revenue shall provide to the Association the self-insurer premium and payroll information as determined under G.S. 105-228.5(b), (b1) and (c), and the Commissioner shall provide to the Association the group self-insurer premium information reported to the Commissioner under G.S. 58-47-75 and G.S. 58-2-165.~~

~~b. Each member self-insurer shall be notified of the assessment no later than 30 days before it is due.~~

~~c. If a self-insurer is a member of the Association for less than a full calendar year, the annual gross premiums shall be adjusted by that portion of the year the self-insurer is not a member of the Association.~~

~~d. If application of the contribution rates referenced in sub-subdivision a. of this subdivision would produce an amount in excess of the five million dollar ($5,000,000) limits of the fund, an equitable proration may be made; provided that every self-insurer that becomes a member of the Association shall pay an initial assessment, in an amount established by the Board, regardless of the size of the fund at the time the member joins the Association.~~

(2a) Establish, operate, and maintain the Association Aggregate Security System as defined in G.S. 97-130 and G.S. 97-165 as follows:

a. The Association shall annually prepare and submit to the Commissioner a written plan to provide an Association Aggregate Security System through a combination of cash on deposit in the Fund, securities, surety bonds, irrevocable letters of credit, insurance, or other financial instruments or guarantees owned or entered into by the Association and acceptable to the Commissioner. The noncash elements of the composite security may be one-year or multiple-year instruments.

b. Within 60 days following the submission of the plan pursuant to sub-subdivision a. of this subdivision, the Commissioner shall either approve or disapprove the plan and shall notify the Association in writing. If the Commissioner does not approve or disapprove the plan within 60 days following submission, then the plan shall be deemed to be approved by the Commissioner.

c. The Commissioner shall also determine the total undiscounted claims liability of each self-insurer that will participate in the Association Aggregate Security System as well as the aggregate total undiscounted outstanding claims liabilities of all the self-insurers that are to participate in the Association Aggregate Security System and shall notify the Guaranty Association of this determination.

d. Upon approval by the Commissioner of the Association's plan for the Association Aggregate Security System, the Association shall assess the member self-insurers that participate in the Association Aggregate Security System pursuant to subdivision (3a) of this subsection.

~~(3) Administer a fund, to be known as the North Carolina Self-Insurance Guaranty Fund, which shall receive the assessments required in subdivision (2) of this subsection. Once the Fund reaches five million dollars ($5,000,000), no further assessments shall be made except initial assessments of new member self-insurers that are required to be made in subdivision (2)d. of this subsection. Assessments may be subsequently made only to maintain the Fund at a level of five million dollars ($5,000,000). In its discretion, the Board may determine that the assets of the Fund should be segregated, or, that a separate accounting shall be made, in order to identify that portion of the Fund which represents assessments paid by individual self-insurers and that portion of the Fund which represents assessments paid by group self-insurers. If the Board determines to segregate the Fund in this manner, the Association shall thereafter pay covered claims against individual member self-insurers from that portion of the Fund which~~

~~represents assessments against individual self-insurers and shall thereafter pay covered claims against group member self-insurers from that portion of the Fund which represents assessments against group self-insurers. The cost of administration incurred by the Association shall be borne by the Fund and the Association is authorized to secure reinsurance and bonds and to otherwise invest the assets of the Fund to effectuate the purpose of the Association, subject to the approval of the Commissioner. All earnings from investment of Fund assets shall be placed in or credited to the Fund.~~

~~The Association may purchase primary excess insurance from an insurer licensed by the Commissioner for the appropriate lines of authority to defray its exposure to loss occasioned by the default of one of its members. The terms of any excess insurance so purchased shall be limited to providing coverage of liabilities which exceed the Fund's assets after the payment by member self-insurers of the maximum post-insolvency assessment provided in subdivision (c)(1) of this section herein and the Association shall fund any such purchase by levying a special assessment on its members for this purpose or by application of any unencumbered earnings of the Fund or any other available funds. The Association may obtain from each member any information the Association may reasonably require in order to facilitate the securing of this primary excess insurance. The Association shall establish reasonable safeguards designed to insure that information so received is used only for this purpose and is not otherwise disclosed;~~

(3a) Assess members of the Association as follows:

a. Association Aggregate Security System assessments. – The Association shall assess each member participating in the Association Aggregate Security System a security system assessment. The amount of the security system assessment charged to each member participating in the Association Aggregate Security System shall be based on the Association's reasonable consideration of all of the following factors:

1. The total amount of assessments necessary to provide aggregate security for all participating members.
2. The member's total workers' compensation liabilities under the Act.
3. The financial strength and creditworthiness of the member.
4. Any other relevant factors.

b. Special assessment. – In the event that there are covered claims against an insolvent member or members and the assets of the Fund are not sufficient to pay the obligations of the Association, then the Association may collect a special assessment from the

members in an amount sufficient to pay the aggregate value of such covered claims. Each member's special assessment shall be determined by the Board and shall be based on the proportion of the member's total obligations under the Act to the aggregate total of all members' obligations under the Act.

c. Initial assessments. – A self-insurer that becomes a member and does not initially participate in the Association Aggregate Security System shall pay an initial assessment to the Association in an amount determined by the Board.

d. Each member shall be notified of assessments no later than 30 days before the assessment is due.

e. Delinquent assessments, except as otherwise provided, shall bear interest at a rate to be established by the Board.

(4) Be obligated to ~~the extent of covered claims occurring prior to the determination of the member self-insurer's insolvency, or occurring after such determination but prior to the obtaining by the self-insurer of workers' compensation insurance as otherwise required under this Chapter.~~pay covered claims.

(5) After paying any ~~claim resulting from a self-insurer's insolvency,~~ covered claim, be subrogated to the rights of the injured employee and dependents and be entitled to enforce liability against the self-insurer or any third party by any appropriate action brought in its own name or in the name of the injured employee and ~~dependents;~~dependents.

(6) ~~Assess the Fund in an amount necessary to pay only:~~Expend Fund assets in amounts necessary to pay all of the following:

a. The obligations ~~for~~ of the Association under this Article subsequent to an ~~insolvency;~~insolvency.

b. The expenses of handling covered claims subsequent to an ~~insolvency;~~insolvency.

c. The cost of examinations under ~~G.S. 97-137; and~~G.S. 97-137.

d. The costs of implementing and operating the Association Aggregate Security System.

e. Other expenses authorized by this ~~Article;~~Article.

(7) Investigate claims brought against the Association and adjust, compromise, settle, and pay covered claims to the extent of the Association's obligation; and deny all other claims. The Association may review settlements to which the insolvent self-insurer was a party to determine the extent to which such settlements may be properly ~~contested;~~contested.

(8) Notify such persons as the Commissioner directs under ~~G.S. 97-136;~~G.S. 97-136.

(9) Handle claims through its ~~employees~~ directors, its employees, or through one or more self-insurers or other persons designated as servicing facilities. Designation of a servicing facility is subject to the

approval of the Commissioner, but designation of a member self-insurer as a servicing facility may be declined by such ~~self-insurer;~~self-insurer.

(10) Reimburse each servicing facility for obligations of the Association paid by the facility and for expenses incurred by the facility while handling claims on behalf of the ~~Association;~~Association.

(11) Pay ~~the~~ any other expenses of the Association authorized by this ~~section; and~~section.

~~(12) Establish in the Plan a mechanism to calculate the assessments required by subdivisions (2) and (3) of this subsection by a simple and equitable means to convert from policy or fund years that are different from a calendar year.~~

(b) The Association may:

(1) Employ or retain such persons as are necessary to handle claims and perform other duties of the ~~Association;~~Association.

(2) Borrow funds necessary to effect the purposes of this Article in accord with the ~~Plan;~~Plan, including entering into standby lines of credit.

(3) Sue or be ~~sued;~~sued.

(4) Negotiate and become a party to such contracts as are necessary to carry out the purpose of this ~~section; and~~section.

(5) Perform such other acts as are necessary or proper to effectuate the purpose of this section.

~~(c) In the event that the assets of the Fund are not sufficient to pay the obligations of the Association, then the Association shall impose an additional assessment upon its members, which shall be known as a post-insolvency assessment which shall be imposed as follows:~~

~~(1) Each individual member self-insurer shall be assessed in an amount not to exceed two percent (2%) each year of the annual gross premiums, as determined under G.S. 105-228.5(b), (b1), and (c), that would have been paid by that member self-insurer during the prior calendar year. The assessments of each individual member self-insurer shall be in the proportion that the annual gross premiums, as determined under G.S. 105-228.5(b), (b1), and (c), of the individual member self-insurer for the premium calendar year bears to the annual gross premiums of all individual member self-insurers for the preceding calendar year. For group member self-insurers, the assessment shall not exceed two percent (2%) each year the annual premium collected by that group member self-insurer during the prior calendar year. The assessments of each group member self-insurer shall be in the proportion that the annual gross premiums of the group member self-insurer for the premium calendar year bears to the annual gross premiums of all group member self-insurers for the preceding calendar year.~~

~~(2) Each member self-insurer shall be notified of the assessment no later than 30 days before it is due.~~

~~(3) The Association may exempt or defer, in whole or in part, the assessment of any member self-insurer, if the assessment would cause that member's financial statement to reflect liabilities in excess of assets.~~

~~(4) Delinquent assessments, except as provided in subdivision (3) of this subsection, shall bear interest at the rate to be established by the Board, but not to exceed the discount rate of the Federal Reserve Bank, Richmond, Virginia, on the due date of the assessment, plus four percent (4%) annually, computed from the due date of the assessment.~~

~~(5) The Association shall establish in the Plan a mechanism to calculate the assessments required by subdivision (1) of this subsection by a simple and equitable means to convert from policy or fund years that are different from a calendar year.~~

~~(d) No individual member self-insurer may be assessed in any calendar year an amount greater than two and one-half percent (2.5%) of the annual gross premiums, as determined under G.S. 105-228.5(b), (b1), and (c), that would have been paid by that individual member self-insurer during the prior calendar year. No group member self-insurer may be assessed in any calendar year an amount greater than two and one-half percent (2.5%) of the annual gross premiums of that group member self-insurer during the prior calendar year. If the maximum assessment does not provide in any one year an amount sufficient to make all necessary payments, the funds available shall be prorated and the unpaid portion shall be paid as soon thereafter as funds become available. There shall be established in the Plan a mechanism to calculate the assessments required by this section by a simple and equitable means to convert from policy or fund years that are different from a calendar year.~~"

SECTION 5. G.S. 97-134 reads as rewritten:

"**§ 97-134. Plan of Operation.**

The Plan is as follows:

(1) The Association shall submit to the Commissioner a Plan and any amendments necessary or suitable to assure the fair, reasonable, and equitable administration of the Association. The Plan and any amendments become effective upon approval in writing by the Commissioner. If the Association at any time fails to submit a suitable Plan or suitable amendment to the Plan the Commissioner shall, after notice and hearing, adopt such reasonable rules as are necessary or advisable to effectuate this Article. Such rules shall continue in force until modified by the Commissioner or superseded by a Plan submitted by the Association and approved by the Commissioner.

(2) All member self-insurers shall comply with the Plan.

(3) The Plan shall:

a. Establish the procedures whereby all the powers and duties of the Association under G.S. 97-133 will be ~~performed;~~performed.

b. Establish procedures for ~~handling assets of the Association;~~investing and managing Fund assets.

c. Adopt a reasonable mechanism and procedure to achieve equity in assessing ~~the funds required in G.S. 97-133. Consideration shall be given to adjustments for audited payroll, differential effects caused by rate changes, and other relevant factors;~~members pursuant to G.S. 97-133.

d. Establish the amount and method of reimbursing members of the Board under ~~G.S. 97-132;~~G.S. 97-132.

e. Establish procedures by which claims may be filed with the Association and establish acceptable forms of proof of covered claims. ~~A list of such claims shall be periodically submitted to the Association;~~

f. Establish regular places and times for meetings of the ~~Board;~~Board.

g. Establish procedures for records to be kept of all financial transactions of the Association, its agents, and the ~~Board;~~Board.

h. Provide that any member self-insurer aggrieved by any final action or decision of the Association may appeal to the Commissioner within 30 days after the action or ~~decision;~~decision.

i. Establish the procedures whereby selections for the Board shall be submitted to the ~~Commissioner; and~~Commissioner.

j. Contain additional provisions necessary or proper for the execution of the powers and duties of the Association."

SECTION 6. G.S. 97-135 reads as rewritten:

"**§ 97-135. Insolvency.**

A member self-insurer shall be insolvent for the purposes of this ~~Article~~Article, other than the definition of insolvency adopted by the Board for the purposes of the Association Aggregate Security System, under any of the following circumstances:

(1) Determination of insolvency by a court of competent ~~jurisdiction; or~~jurisdiction.

(2) Institution of bankruptcy proceedings by or regarding the member ~~self-insurer; or~~self-insurer.

(3) The Board determines that the self-insurer's total liabilities exceed its total assets or the self-insurer is unable or ceases to pay its debts as they fall due or in the ordinary course of business."

SECTION 7. G.S. 97-140 reads as rewritten:

"**§ 97-140. Nonduplication of recovery.**

Any person having a covered claim that may be recovered under more than one insurance or self-insurance guaranty or security association or its equivalent shall seek

recovery first from the association of the place or residence of the claimant. Any recovery under this Article shall be reduced by the amount of recovery from any other insurance guaranty or security association or its equivalent."

SECTION 8. G.S. 97-143 reads as rewritten:

"**§ 97-143. Use of deposits made by insolvent member self-insurers.**

After the Commissioner has notified the Association, under G.S. 97-136(a), that a member is insolvent, the Commissioner shall assign and deliver to the Association, and the Association is authorized to expend ~~the~~ any deposit made by the insolvent member under G.S. 58-47-90 or G.S. 97-185, to the extent the deposit is needed by the Association to pay covered claims against the insolvent member as required by this Article, and to the extent the deposit is needed to pay expenses of the Association relating to covered claims against the insolvent member. For insolvent members that participate in the Association Aggregate Security System, the Association is authorized to pursue recovery under every instrument, contract, and form of security comprising the composite security. The Association shall account to the Commissioner and the insolvent member or its successor for all deposits received from the Commissioner under this section."

SECTION 9. G.S. 97-165 is amended by adding a new subdivision to read:

"(1a) "Association Aggregate Security System" means the security system established pursuant to G.S. 97-133 whereby self-insurers collectively secure their aggregate self-insured workers' compensation liabilities under the Act through the North Carolina Self-Insurance Security Association."

SECTION 10. G.S. 97-170 reads as rewritten:

"**§ 97-170. License applications; required information.**

(a) No employer shall self-insure its workers' compensation liabilities under the Act unless it is licensed by the Commissioner under this Article. This subsection does not apply to an employer authorized to self-insure its workers' compensation liabilities under the Act prior to December 1, 1997, whose authority to self-insure its workers' compensation liabilities under the Act has not terminated after that date.

(b) An applicant for a license as a self-insurer shall file with the Commissioner the information required by subsection (d) of this section on a form prescribed by the Commissioner at least 90 days before the proposed licensing date. No application is complete until the Commissioner has received all required information. A copy of the application must also be filed with the North Carolina Self-Insurance Security Association at least 90 days before the proposed licensing date.

(c) Only an applicant whose total fixed assets amount to five hundred thousand dollars ($500,000) or more may apply for a license. In judging the applicant's financial strength and liquidity relative to its ability to comply with the Act, the Commissioner shall consider all of the following relative to the ~~applicant's:~~applicant:

(1) Organizational structure and ~~management;~~management.

(2) Financial ~~strength;~~strength.

(3) Source and reliability of financial ~~information;~~information.

(4) Risks to be ~~retained;~~retained.

(5) Workers' compensation loss ~~history;~~history.
(6) Number of ~~employees;~~employees.
(7) Claims ~~administration;~~administration.
(8) Excess ~~insurance; and~~insurance.
(9) Access to excess insurance.

(d) The license application shall comprise the following information:
(1) Company name, organizational structure, location of principal office, contact person, organization date, type of operations within this State, management background, and addresses of all plants or offices in this State.
(2) Certified audited GAAP financial statements prepared by a CPA for the two most recent years. The financial statement formulation shall facilitate application of ratio and trend analysis.
(3) Evidence of the insurance required by G.S. 97-190.
(4) Repealed by Session Laws 1999-132, s. 13.7, effective June 4, 1999.
(5) For applicants with 20 or more full-time employees, a certificate or other evidence of safety inspection, satisfactory to the Commissioner, that certifies that all safety requirements of the Department of Labor have been met.
(6) Summary of workers' compensation benefits paid for the last three calendar years, as well as the total liability for all open claims within 30 days or some other period acceptable to the Commissioner not to exceed 90 days, before the filing of the application.
(7) Summary, by risk classification, of annual payroll and number of employees within the State.
(8) Book value of fixed assets located within the State.
(9) Proof of compliance with the claims administration provisions of Article 47 of Chapter 58 of the General Statutes.
(10) A letter of ~~assent, stipulating the applicant's acceptance of membership status in~~ approval by the North Carolina Self-Insurance ~~Guaranty~~ Security Association under Article 4 of this ~~Chapter.~~Chapter upon the granting of a license to the applicant.

(e) Every applicant shall execute and file with the Commissioner an agreement, as part of the application, in which the applicant agrees to participate in the Association Aggregate Security System, or if excluded from the Association Aggregate Security System, to deposit with the Commissioner pursuant to G.S. 97-185, cash, acceptable securities, or a surety bond issued by a corporate surety that will guarantee the applicant's compliance with this Article and the ~~Act pursuant to G.S. 97-185.~~Act."

SECTION 11. G.S. 97-185 reads as rewritten:

"**§ 97-185. Deposits; surety bonds; letters of credit.**

~~(a) (Effective January 1, 2005, until January 1, 2006) Every self-insurer shall deposit with the Commissioner an amount not less than seventy-five percent (75%) of the self-insurer's total undiscounted outstanding claim liability per the most recent certification from a qualified actuary as required by G.S. 97-180(b), but not less than~~

~~five hundred thousand dollars ($500,000), or such other greater amount as the Commissioner prescribes based on, but not limited to, the financial condition of the self-insurer and the risk retained by the self-insurer.~~

~~(a) **(Effective January 1, 2006)** Every self-insurer shall deposit with the Commissioner an amount not less than one hundred percent (100%) of the self-insurer's total undiscounted outstanding claim liability per the most recent certification from a qualified actuary as required by G.S. 97-180(b), but not less than five hundred thousand dollars ($500,000), or such other greater amount as the Commissioner prescribes based on, but not limited to, the financial condition of the self-insurer and the risk retained by the self-insurer.~~

(a1) All self-insurers shall participate in the Association Aggregate Security System established pursuant to G.S. 97-131 unless excluded by the Board of Directors of the North Carolina Self-Insurance Security Association. The Board of Directors of the North Carolina Self-Insurance Security Association shall notify the Commissioner of the self-insurers that are excluded from participating in the Association Aggregate Security System. The Board of Directors of the North Carolina Self-Insurance Security Association shall exclude all self-insurers whose licenses have previously been revoked by the Commissioner. The Board of Directors of the North Carolina Self-Insurance Security Association shall exclude self-insurers with a debt rating as established by Standard & Poor's Rating Service or by Moody's Investor Service, below the minimum Standard & Poor's and Moody's ratings established in the written plan for the Association Aggregate Security System submitted by the Association and approved by the Commissioner pursuant to G.S. 97-131. The Board of Directors of the North Carolina Self-Insurance Security Association shall exclude all self-insurers that have defaulted on the payment of its self-insured workers' compensation liabilities from participation in the Association Aggregate Security System.

(b) Repealed by Session Laws 2003-115, s. 3, effective January 1, 2004.

~~(b1) Notwithstanding subsection (a) of this section, member self-insurers with a debt rating of BBB or better from Standard and Poor's Rating Service, a division of McGraw Hill, Inc., or an equivalent rating from another national rating agency shall deposit with the Commissioner an amount not less than twenty-five percent (25%) of the self-insurer's total undiscounted outstanding claim liability per the most recent certification from a qualified actuary as required by G.S. 97-180(b), but not less than five hundred thousand dollars ($500,000). The Commissioner shall consider and may, in the Commissioner's discretion, increase or reduce the deposit to a greater or lesser percentage of the member self-insurer's claims liability based on the financial strength of the self-insurer and other financial information submitted by the self-insurer.~~

(b2) A self-insurer that is excluded from participation in the Association Aggregate Security System, including self-insurers that are granted a license to self-insure after the North Carolina Self-Insurance Security Association annually implements the Association Aggregate Security System, shall deposit with the Commissioner an amount not less than one hundred percent (100%) of the self-insurer's total undiscounted outstanding claims liability per the most recent certification from a qualified actuary as required by G.S. 97-180(b), but not less than five hundred thousand

dollars ($500,000), or such greater amount as the Commissioner prescribes based on, but not limited to, the financial condition of the self-insurer and the risk retained by the self-insurer.

..."

SECTION 12. G.S. 97-195(a) reads as rewritten:

"(a) The Commissioner summarily may revoke a license if there is satisfactory evidence for the revocation. In determining whether to revoke a license summarily, the Commissioner may consider any ~~or all~~ of the following:

(1) Determination of insolvency by a court of competent jurisdiction.

(2) Institution of bankruptcy proceedings.

(3) If the self-insurer is in a hazardous financial condition.

(4) Failure to pay any North Carolina Self-Insurance Security Association assessments made pursuant to G.S. 97-133.

(5) Failure to participate in the Association Aggregate Security System or, if excluded from participation in the Association Aggregate Security System, failure to provide and maintain the deposit required by G.S. 97-185."

SECTION 13. This act becomes effective January 1, 2006.

SENATE BILL 319:
Workers' Comp. Self-Insurance Security

BILL ANALYSIS

Committee:	Senate Judiciary I	**Date:**	May 17, 2005
Introduced by:	Sen. Clodfelter	**Summary by:**	O. Walker Reagan
Version:	PCS to First Edition S319-CSRU-27		Committee Co-Counsel

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 319 would amend the Workers' Compensation self-insurance laws by repealing the North Carolina Self-Insurance Guaranty Fund and replacing it with the North Carolina Self-Insurance Security Fund.***

CURRENT LAW: Current law allows an employer to be licensed as a self-insurer for workers' compensation purposes when the employer meets certain conditions, including having at least $500,000 of total fix assets and demonstrating that the employer is sufficiently financially sound to cover its workers' compensation claims. Employers who are licensed as self-insurers are not required to purchase workers' compensation insurance coverage. All self-insurers must also participate in the NC Self-Insurance Guaranty Fund. This Fund is to guarantee workers' compensation payments in the event the employer becomes insolvent and is unable to meet its workers' compensation obligations. The Fund is funded by an assessment of all self-insurers of 2% of the annual premiums the employer would have had to pay for workers' compensation insurance coverage. If the assets of the Fund are insufficient to cover all claims of insolvent employers, additional assessments may be made.

BILL ANALYSIS: Senate Bill 319 would amend the workers' compensation self-insurance laws by eliminating the statutory assessment limits and replacing it with a system where the amount of the annual assessments for a member is determined by the NC Self-Insurance Security Association based on the following;

- The total amount of assessments necessary to provide aggregate security for all participating members.
- The member's total workers' compensation liabilities under the workers' compensation law.
- The financial strength and creditworthiness of the member.
- Any other relevant factors.

The bill also gives the Association the authority to exclude from the Association Aggregate Security System those members whose debt ratings by Moody's and Standard & Poor's fall below the minimum rating established by the Association upon the approval of the Commissioner of Insurance. A self-insurer excluded from the Association Aggregate Security System would have to deposit 100% of the employer's total undiscounted outstanding claims liability, but not less than $500,000, to continue as a self-insured employer. The Commissioner may revoke the self-insurance license of any employer who fails to comply with these standards.

EFFECTIVE DATE: This act becomes effective January 1, 2006.

S0319e1-SMRU-CSRU-27

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 5-17-05

S. B. No. 319 Amendment No. #1
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE S319-CSRU-27

Rep.) CLODFELTER
Sen.)

moves to amend the bill on page 12, line 35

( ) WHICH CHANGES THE TITLE

by REWRITING THE LINE TO READ:

"AGGREGATE SECURITY SYSTEM, OR IF EXCLUDED FROM THE ASSOCIATION AGGREGATE SECURITY".

SIGNED Daniel G. Clodfelter

ADOPTED X FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 5-17-05

S. B. No. 319 Amendment No. #2
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE S319-CSRV-27

Rep.)
(Sen.) HORTON

1 moves to amend the bill on page 9, line 35
2 ( ) WHICH CHANGES THE TITLE
3 by INSERTING BETWEEN THE WORD "A" AND "PLAN"
4 THE WORD "SUITABLE".
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SIGNED _____

ADOPTED X FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 319

Short Title:	Workers' Comp. Self-Insurance Security.	(Public)
Sponsors:	Senators Clodfelter; Berger of Rockingham, Dalton, Garrou, Hartsell, Rand, Swindell, Thomas, and Weinstein.	
Referred to:	Judiciary I.	

March 3, 2005

A BILL TO BE ENTITLED

AN ACT ESTABLISHING THE NORTH CAROLINA SELF-INSURANCE SECURITY SYSTEM AND MAKING CONFORMING CHANGES TO THE WORKERS' COMPENSATION LAWS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 97-130 reads as rewritten:

"**§ 97-130. Definitions.**

As used in this Article:

(1) "Association" means the North Carolina Self-Insurance ~~Guaranty~~ Security Association established by G.S. 97-131.

(1a) "Association Aggregate Security System" means the security system established by the Association pursuant to G.S. 97-1333 whereby self-insurers collectively secure their aggregate self-insured workers' compensation liabilities through the North Carolina Self-Insurance Security Association.

(2) "Board" means the Board of Directors of the Association established by G.S. 97-132.

(3) "Commissioner" means the North Carolina Commissioner of Insurance.

(4) "Covered claim" means an unpaid claim against an insolvent self-insurer that relates to an injury that occurs while the self-insurer is a member of the Association and that is compensable under this Chapter.

(5) "Fund" means the North Carolina Self-Insurance ~~Guaranty~~ Security Fund established by G.S. 97-133.

(6) "Member self-insurer" or "member" means a self-insurer ~~which is authorized~~ that retains liability pursuant to G.S. 97-93 and G.S. 97-94

and is licensed by the Commissioner to self-insure pursuant to ~~G.S. 97-93 and G.S. 97-94.~~Article 5 of this Chapter.

(7) "Plan" means the Plan of Operation authorized by G.S. 97-134.

(8) "Self-insurer" means either: (i) an individual employer ~~who has demonstrated under G.S. 97-93 the financial ability to directly pay compensation in the amounts and manner and when due as provided in~~ licensed to self-insure pursuant to Article 5 of this Chapter or (ii) a group of two or more employers ~~who have agreed to pool their liabilities under this Chapter pursuant to G.S. 97-93.~~licensed to self-insure pursuant to Article 47 of Chapter 58 of the General Statues.

(9) "Servicing facility" means those persons that are delegated the authority to settle and compromise claims and expend Fund assets to pay claims pursuant to a delegation of authority from the Board."

SECTION 2. G.S. 97-131 reads as rewritten:

"**§ 97-131. Creation.**

(a) There is created a nonprofit unincorporated legal entity to be known as the North Carolina Self-Insurance ~~Guaranty~~ Security Association. The Association is to provide mechanisms for the payment of covered claims ~~under self-insurance coverage,~~ against member self-insurers, to avoid excessive delay in ~~payment,~~ payment of covered claims, to avoid financial loss to claimants because of the insolvency of a member self-insurer, ~~and to assist, when called upon to do so by the Commissioner,~~ to assist the Commissioner in the detection of self-insurer ~~insolvencies.~~insolvencies, to fund the Association Aggregate Security System, and to capitalize the Fund to insure the availability of financial resources to pay covered claims and to fund the activities of the Association.

(b) All individual and group self-insurers shall be and remain members of the Association as a condition ~~of authority~~ being licensed to self-insure in this ~~State under G.S. 97-93.~~ State. The Association shall perform its functions under a Plan of Operation established or amended, or both, by the Board and approved by the Commissioner, and shall exercise its powers through the Board.

(1) A self-insurer shall be deemed to be a member of the Association for purposes of another self-insurer's insolvency, as defined in G.S. 97-135, when:

a. The self-insurer is a member of the Association when an insolvency occurs, or

b. The self-insurer has been a member of the Association at some point in time during the 12-month period immediately preceding the insolvency in question.

(2) A self-insurer shall be deemed to be a member of the Association for purposes of its own insolvency if it is a member when the compensable injury occurs.

(3) In determining the membership of the Association ~~pursuant to~~ for the purposes of subdivisions (1) and (2) of this subsection for any date after the effective date of this Article, no employer or group of

employers claiming self-insurer status may be deemed to be a member of the Association on any date after the effective date of this Article, unless that employer ~~or~~ is on that date licensed as a self-insurer by the Commissioner pursuant to Article 5 of this Chapter or a group of employers is at that time ~~authorized~~ licensed as a group self-insurer by the Commissioner pursuant to ~~G.S. 97-93 and G.S. 97-94.~~Article 47 of Chapter 58 of the General Statutes."

SECTION 3. G.S. 97-132 reads as rewritten:

"**§ 97-132. Board of directors.**

The Board shall consist of not less than nine ~~persons~~ Directors serving terms as established in the Plan. The ~~members of the Board~~ Directors shall be selected by the ~~member self-insurers,~~ members of the Association, subject to the approval of the Commissioner, and shall serve for ~~terms which shall not exceed three years. If no members of the Board are selected within 60 days after the effective date of this Article, the Commissioner may appoint the initial members of the Board.~~ three-year terms and until a successor is elected and qualified. There is no limitation on the number of terms a Director may serve. In approving selections to the Board, the Commissioner shall consider, among other things, whether ~~all member~~ individual and group self-insurers are fairly represented. ~~Members of the Board~~ Directors may be reimbursed from the assets of the Association for expenses incurred by them as ~~members of the Board.~~Directors."

SECTION 4. G.S. 97-133 reads as rewritten:

"**§ 97-133. Powers and duties of the Association.**

(a) The Association shall:

(1) Repealed by Session Laws 1999-219, s. 7.2, effective June 25, 1999.

(1a) Administer a fund, to be known as the North Carolina Self-Insurance Security Fund, which shall receive the assessments required by subdivision (2a) of this subsection and any other sums received by the Association. In its discretion, the Board may determine that the assets of the Fund should be segregated or that a separate accounting shall be made in order to identify that portion of the Fund which represents assessments paid by individual self-insurers and that portion of the Fund which represents assessments paid by group self-insurers. If the Board determines to segregate the Fund in this manner, the Association shall thereafter pay covered claims against individual member self-insurers from that portion of the Fund which represents assessments against individual self-insurers and shall thereafter pay covered claims against group member self-insurers from that portion of the Fund which represents assessments against group self-insurers. The costs of administering the Association shall be borne by the Fund. The Association is authorized to secure insurance, primary excess insurance, reinsurance, bonds, other insurance, financial guarantees and related financial instruments to effectuate the purposes of the Association. The Board will invest the Fund assets and the earnings

from investment of Fund assets shall be placed in or credited to the Fund.

~~(2) Assess each member of the Association as follows:~~

~~a. Each individual member self-insurer shall be annually assessed an amount equal to two percent (2%) of the annual gross premiums, as determined under G.S. 105-228.5(b), (b1), and (c), that would have been paid by that member self-insurer for workers' compensation insurance during the prior calendar year; and payment to the Association shall be made no later than May 15 following the close of that calendar year. Where any such assessment is paid based in whole or in part upon estimates of annual gross premiums for the prior calendar year, there shall be made in the next year's assessment an adjustment of the assessment of such prior year based on actual audited annual gross premiums. Each group member self-insurer shall be annually assessed an amount equal to two percent (2%) of the annual gross premiums, as determined under G.S. 105-228.5(b), (b1), and (c), of the group member self-insurer during the prior calendar year; and payment to the Association shall be made no later than May 15 following the close of that calendar year. Regardless of the size of the Fund, during its first 12 months of membership, no member self-insurer may discount or reduce this two percent (2%) assessment. For the purpose of making the assessments authorized by this subsection and subsections (c) and (d) of this section, the Secretary of Revenue shall provide to the Association the self-insurer premium and payroll information as determined under G.S. 105-228.5(b), (b1) and (c), and the Commissioner shall provide to the Association the group self-insurer premium information reported to the Commissioner under G.S. 58-47-75 and G.S. 58-2-165.~~

~~b. Each member self-insurer shall be notified of the assessment no later than 30 days before it is due.~~

~~c. If a self-insurer is a member of the Association for less than a full calendar year, the annual gross premiums shall be adjusted by that portion of the year the self-insurer is not a member of the Association.~~

~~d. If application of the contribution rates referenced in sub-subdivision a. of this subdivision would produce an amount in excess of the five million dollar ($5,000,000) limits of the fund, an equitable proration may be made; provided that every self-insurer that becomes a member of the Association shall pay an initial assessment, in an amount established by the Board, regardless of the size of the fund at the time the member joins the Association.~~

(2a) Establish, operate, and maintain the Association Aggregate Security System as defined in G.S. 97-165 and G.S. 97-130 as follows:

a. The Association shall annually prepare and submit to the Commissioner a written plan to provide an Association Aggregate Security System through a combination of cash on deposit in the Fund, securities, surety bonds, irrevocable letters of credit, insurance or other financial instruments or guarantees owned or entered into by the Association and acceptable to the Commissioner. The noncash elements of the composite security may be one-year or multiple-year instruments.

b. Within 30 days following the submission of the plan pursuant to sub-subdivision a. of this subdivision, the Commissioner shall either approve or disapprove the plan and shall notify the Association in writing. If the Commissioner does not approve or disapprove the plan within 30 days following submission, then the plan shall be deemed to be approved by the Commissioner.

c. The Commissioner shall also determine the total undiscounted claims liability of each self-insurer that will participate in the Association Aggregate Security System as well as the aggregate total undiscounted outstanding claims liabilities of all the self-insurers that are to participate in the Association Aggregate Security System and shall notify the Guaranty Association of this determination.

d. Upon approval by the Commissioner of the Association's plan for the Association Aggregate Security System, the Association shall assess the member self-insurers that participate in the Association Aggregate Security System pursuant to subdivison (3a) of this subsection.

~~(3) Administer a fund, to be known as the North Carolina Self-Insurance Guaranty Fund, which shall receive the assessments required in subdivision (2) of this subsection. Once the Fund reaches five million dollars ($5,000,000), no further assessments shall be made except initial assessments of new member self-insurers that are required to be made in subdivision (2)d. of this subsection. Assessments may be subsequently made only to maintain the Fund at a level of five million dollars ($5,000,000). In its discretion, the Board may determine that the assets of the Fund should be segregated, or, that a separate accounting shall be made, in order to identify that portion of the Fund which represents assessments paid by individual self-insurers and that portion of the Fund which represents assessments paid by group self-insurers. If the Board determines to segregate the Fund in this manner, the Association shall thereafter pay covered claims against individual member self-insurers from that portion of the Fund which~~

~~represents assessments against individual self-insurers and shall thereafter pay covered claims against group member self-insurers from that portion of the Fund which represents assessments against group self-insurers. The cost of administration incurred by the Association shall be borne by the Fund and the Association is authorized to secure reinsurance and bonds and to otherwise invest the assets of the Fund to effectuate the purpose of the Association, subject to the approval of the Commissioner. All earnings from investment of Fund assets shall be placed in or credited to the Fund.~~

~~The Association may purchase primary excess insurance from an insurer licensed by the Commissioner for the appropriate lines of authority to defray its exposure to loss occasioned by the default of one of its members. The terms of any excess insurance so purchased shall be limited to providing coverage of liabilities which exceed the Fund's assets after the payment by member self-insurers of the maximum post-insolvency assessment provided in subdivision (c)(1) of this section herein and the Association shall fund any such purchase by levying a special assessment on its members for this purpose or by application of any unencumbered earnings of the Fund or any other available funds. The Association may obtain from each member any information the Association may reasonably require in order to facilitate the securing of this primary excess insurance. The Association shall establish reasonable safeguards designed to insure that information so received is used only for this purpose and is not otherwise disclosed;~~

(3a) Assess members of the Association as follows:

a. Association Aggregate Security System assessments. The Association shall assess each member participating in the Association Aggregate Security System a security system assessment. The amount of the security system assessment charged to each member participating in the Association Aggregate Security System shall be based on the Association's reasonable consideration of the following factors:

(1) The total amount of assessments necessary to provide aggregate security for all participating members;

(2) The member's total workers' compensation liabilities under the Act;

(3) The financial strength and creditworthiness of the member; and

(4) Any other relevant factors.

b. Special assessment. In the event that there are covered claims against an insolvent member or members and the assets of the Fund are not sufficient to pay the obligations of the Association then the Association may collect a special assessment from the

members in an amount sufficient to pay the aggregate value of such covered claims. Each member's special assessment shall be determined by the Board and shall be based on the proportion of the member's total obligations under the Act to the aggregate total of all members' obligations under the Act.

c. Initial assessments. A self-insurer that becomes a member and does not initially participate in the Association Aggregate Security System shall pay an initial assessment to the Association in an amount determined by the Board.

d. Each member shall be notified of assessments no later than 30 days before the assessment is due.

e. Delinquent assessments, except as otherwise provided, shall bear interest at a rate to be established by the Board.

(4) Be obligated to ~~the extent of covered claims occurring prior to the determination of the member self-insurer's insolvency, or occurring after such determination but prior to the obtaining by the self-insurer of workers' compensation insurance as otherwise required under this Chapter.~~pay covered claims.

(5) After paying any ~~claim resulting from a self-insurer's insolvency,~~ covered claim, be subrogated to the rights of the injured employee and dependents and be entitled to enforce liability against the self-insurer or any third party by any appropriate action brought in its own name or in the name of the injured employee and ~~dependents;~~dependents.

(6) ~~Assess the Fund in an amount necessary to pay only:~~Expend Fund assets in amounts necessary to pay:

a. The obligations ~~for~~ of the Association under this Article subsequent to an insolvency;

b. The expenses of handling covered claims subsequent to an insolvency;

c. The cost of examinations under G.S. 97-137; ~~and~~

d. The costs of implementing and operating the Association Aggregate Security System; and

e. Other expenses authorized by this ~~Article;~~Article.

(7) Investigate claims brought against the Association and adjust, compromise, settle, and pay covered claims to the extent of the Association's obligation; and deny all other claims. The Association may review settlements to which the insolvent self-insurer was a party to determine the extent to which such settlements may be properly ~~contested;~~contested.

(8) Notify such persons as the Commissioner directs under ~~G.S. 97-136;~~G.S. 97-136.

(9) Handle claims through its ~~employees~~ Directors, its employees, or through one or more self-insurers or other persons designated as servicing facilities. Designation of a servicing facility is subject to the

approval of the Commissioner, but designation of a member self-insurer as a servicing facility may be declined by such ~~self-insurer;~~self-insurer.

(10) Reimburse each servicing facility for obligations of the Association paid by the facility and for expenses incurred by the facility while handling claims on behalf of the ~~Association;~~Association.

(11) Pay ~~the~~ any other expenses of the Association authorized by this ~~section; and~~section.

~~(12) Establish in the Plan a mechanism to calculate the assessments required by subdivisions (2) and (3) of this subsection by a simple and equitable means to convert from policy or fund years that are different from a calendar year.~~

(b) The Association may:

(1) Employ or retain such persons as are necessary to handle claims and perform other duties of the ~~Association;~~Association.

(2) Borrow funds necessary to effect the purposes of this Article in accord with the ~~Plan;~~Plan, including but not limited to, entering into standby lines of credit.

(3) Sue or be ~~sued;~~sued.

(4) Negotiate and become a party to such contracts as are necessary to carry out the purpose of this ~~section; and~~section.

(5) Perform such other acts as are necessary or proper to effectuate the purpose of this section.

~~(c) In the event that the assets of the Fund are not sufficient to pay the obligations of the Association, then the Association shall impose an additional assessment upon its members, which shall be known as a post-insolvency assessment which shall be imposed as follows:~~

~~(1) Each individual member self-insurer shall be assessed in an amount not to exceed two percent (2%) each year of the annual gross premiums, as determined under G.S. 105-228.5(b), (b1), and (c), that would have been paid by that member self-insurer during the prior calendar year. The assessments of each individual member self-insurer shall be in the proportion that the annual gross premiums, as determined under G.S. 105-228.5(b), (b1), and (c), of the individual member self-insurer for the premium calendar year bears to the annual gross premiums of all individual member self-insurers for the preceding calendar year. For group member self-insurers, the assessment shall not exceed two percent (2%) each year the annual premium collected by that group member self-insurer during the prior calendar year. The assessments of each group member self-insurer shall be in the proportion that the annual gross premiums of the group member self-insurer for the premium calendar year bears to the annual gross premiums of all group member self-insurers for the preceding calendar year.~~

~~(2) Each member self-insurer shall be notified of the assessment no later than 30 days before it is due.~~

~~(3) The Association may exempt or defer, in whole or in part, the assessment of any member self-insurer, if the assessment would cause that member's financial statement to reflect liabilities in excess of assets.~~

~~(4) Delinquent assessments, except as provided in subdivision (3) of this subsection, shall bear interest at the rate to be established by the Board, but not to exceed the discount rate of the Federal Reserve Bank, Richmond, Virginia, on the due date of the assessment, plus four percent (4%) annually, computed from the due date of the assessment.~~

~~(5) The Association shall establish in the Plan a mechanism to calculate the assessments required by subdivision (1) of this subsection by a simple and equitable means to convert from policy or fund years that are different from a calendar year.~~

~~(d) No individual member self-insurer may be assessed in any calendar year an amount greater than two and one-half percent (2.5%) of the annual gross premiums, as determined under G.S. 105-228.5(b), (b1), and (c), that would have been paid by that individual member self-insurer during the prior calendar year. No group member self-insurer may be assessed in any calendar year an amount greater than two and one-half percent (2.5%) of the annual gross premiums of that group member self-insurer during the prior calendar year. If the maximum assessment does not provide in any one year an amount sufficient to make all necessary payments, the funds available shall be prorated and the unpaid portion shall be paid as soon thereafter as funds become available. There shall be established in the Plan a mechanism to calculate the assessments required by this section by a simple and equitable means to convert from policy or fund years that are different from a calendar year.~~"

SECTION 5. G.S. 97-134 reads as rewritten:

"**§ 97-134. Plan of Operation.**

The Plan is as follows:

(1) The Association shall submit to the Commissioner a Plan and any amendments necessary or suitable to assure the fair, reasonable, and equitable administration of the Association. The Plan and any amendments become effective upon approval in writing by the Commissioner. If the Association at any time fails to submit a Plan or suitable amendment to the Plan the Commissioner shall, after notice and hearing, adopt such reasonable rules as are necessary or advisable to effectuate this Article. Such rules shall continue in force until modified by the Commissioner or superseded by a Plan submitted by the Association and approved by the Commissioner.

(2) All member self-insurers shall comply with the Plan.

(3) The Plan shall:

a. Establish the procedures whereby all the powers and duties of the Association under G.S. 97-133 will be performed;

b. Establish procedures for ~~handling assets of the Association;~~investing and managing fund assets.

c. Adopt a reasonable mechanism and procedure to achieve equity in assessing ~~the funds required in G.S. 97-133. Consideration shall be given to adjustments for audited payroll, differential effects caused by rate changes, and other relevant factors;~~members pursuant to G.S. 97-133.

d. Establish the amount and method of reimbursing members of the Board under ~~G.S. 97-132;~~G.S. 97-132.

e. Establish procedures by which claims may be filed with the Association and establish acceptable forms of proof of covered claims. ~~A list of such claims shall be periodically submitted to the Association;~~

f. Establish regular places and times for meetings of the Board;

g. Establish procedures for records to be kept of all financial transactions of the Association, its agents, and the ~~Board;~~Board.

h. Provide that any member self-insurer aggrieved by any final action or decision of the Association may appeal to the Commissioner within 30 days after the action or ~~decision;~~decision.

i. Establish the procedures whereby selections for the Board shall be submitted to the ~~Commissioner; and~~Commissioner.

j. Contain additional provisions necessary or proper for the execution of the powers and duties of the Association."

SECTION 6. G.S. 97-135 reads as rewritten:

"**§ 97-135. Insolvency.**

A member self-insurer shall be insolvent for the purposes of this ~~Article~~ Article, other than the definition of insolvency adopted by the Board for the purposes of the Association Aggregate Security System, under the following circumstances:

(1) Determination of insolvency by a court of competent jurisdiction; or

(2) Institution of bankruptcy proceedings by or regarding the member self-insurer; or

(3) The Board determines that the self-insurer's total liabilities exceed its total assets or the self-insurer is unable or ceases to pay its debts as they fall due or in the ordinary course of business."

SECTION 7. G.S. 97-140 reads as rewritten:

"**§ 97-140. Nonduplication of recovery.**

Any person having a covered claim that may be recovered under more than one insurance or self-insurance guaranty or security association or its equivalent shall seek recovery first from the association of the place or residence of the claimant. Any recovery under this Article shall be reduced by the amount of recovery from any other insurance guaranty or security association or its equivalent."

SECTION 8. G.S. 97-143 reads as rewritten:

"**§ 97-143. Use of deposits made by insolvent member self-insurers.**

After the Commissioner has notified the Association, under G.S. 97-136(a), that a member is insolvent, the Commissioner shall assign and deliver to the Association, and the Association is authorized to expend ~~the~~ any deposit made by the insolvent member under G.S. 58-47-90 or G.S. 97-185, to the extent the deposit is needed by the Association to pay covered claims against the insolvent member as required by this Article, and to the extent the deposit is needed to pay expenses of the Association relating to covered claims against the insolvent member. For insolvent members that participate in the Association Aggregate Security System, the Association is authorized to pursue recovery under every instrument, contract, and form of security comprising the composite security. The Association shall account to the Commissioner and the insolvent member or its successor for all deposits received from the Commissioner under this section."

SECTION 9. G.S. 97-165 is amended by adding a new subdivision to read:

"(11) "Association Aggregate Security System" means the security system established pursuant to G.S. 97-131 whereby self-insurers collectively secure their aggregate self-insured workers' compensation liabilities under the Act through the North Carolina Self-Insurance Security Association."

SECTION 10. G.S. 97-170 reads as rewritten:

"**§ 97-170. License applications; required information.**

(a) No employer shall self-insure its workers' compensation liabilities under the Act unless it is licensed by the Commissioner under this Article. This subsection does not apply to an employer authorized to self-insure its workers' compensation liabilities under the Act prior to December 1, 1997, whose authority to self-insure its workers' compensation liabilities under the Act has not terminated after that date.

(b) An applicant for a license as a self-insurer shall file with the Commissioner the information required by subsection (d) of this section on a form prescribed by the Commissioner at least 90 days before the proposed licensing date. No application is complete until the Commissioner has received all required information. A copy of the application must also be filed with the North Carolina Self-Insurance Association at least 120 days before the proposed licensing date.

(c) Only an applicant whose total fixed assets amount to five hundred thousand dollars ($500,000) or more may apply for a license. In judging the applicant's financial strength and liquidity relative to its ability to comply with the Act, the Commissioner shall consider the applicant's:

(1) Organizational structure and management;
(2) Financial strength;
(3) Source and reliability of financial information;
(4) Risks to be retained;
(5) Workers' compensation loss history;
(6) Number of employees;
(7) Claims administration;
(8) Excess insurance; and
(9) Access to excess insurance.

(d) The license application shall comprise the following information:

(1) Company name, organizational structure, location of principal office, contact person, organization date, type of operations within this State, management background, and addresses of all plants or offices in this State.

(2) Certified audited GAAP financial statements prepared by a CPA for the two most recent years. The financial statement formulation shall facilitate application of ratio and trend analysis.

(3) Evidence of the insurance required by G.S. 97-190.

(4) Repealed by Session Laws 1999-132, s. 13.7, effective June 4, 1999.

(5) For applicants with 20 or more full-time employees, a certificate or other evidence of safety inspection, satisfactory to the Commissioner, that certifies that all safety requirements of the Department of Labor have been met.

(6) Summary of workers' compensation benefits paid for the last three calendar years, as well as the total liability for all open claims within 30 days or some other period acceptable to the Commissioner not to exceed 90 days, before the filing of the application.

(7) Summary, by risk classification, of annual payroll and number of employees within the State.

(8) Book value of fixed assets located within the State.

(9) Proof of compliance with the claims administration provisions of Article 47 of Chapter 58 of the General Statutes.

(10) A letter of ~~assent, stipulating the applicant's acceptance of membership status in~~ approval by the North Carolina Self-Insurance ~~Guaranty~~ Security Association under Article 4 of this ~~Chapter.~~Chapter upon the granting of a license to the applicant.

(e) Every applicant shall execute and file with the Commissioner an agreement, as part of the application, in which the applicant agrees to participate in the Association Aggregate Security System or if included in the Association Aggregate Security System, to deposit with the Commissioner pursuant to G.S. 97-185, cash, acceptable securities, or a surety bond issued by a corporate surety that will guarantee the applicant's compliance with this Article and the ~~Act pursuant to G.S. 97-185.~~Act."

SECTION 11. G.S. 97-185 reads as rewritten:

"**§ 97-185. Deposits; surety bonds; letters of credit.**

~~(a) (Effective January 1, 2005, until January 1, 2006) Every self-insurer shall deposit with the Commissioner an amount not less than seventy-five percent (75%) of the self-insurer's total undiscounted outstanding claim liability per the most recent certification from a qualified actuary as required by G.S. 97-180(b), but not less than five hundred thousand dollars ($500,000), or such other greater amount as the Commissioner prescribes based on, but not limited to, the financial condition of the self-insurer and the risk retained by the self-insurer.~~

~~(a) (Effective January 1, 2006) Every self-insurer shall deposit with the Commissioner an amount not less than one hundred percent (100%) of the self-insurer's~~

~~total undiscounted outstanding claim liability per the most recent certification from a qualified actuary as required by G.S. 97-180(b), but not less than five hundred thousand dollars ($500,000), or such other greater amount as the Commissioner prescribes based on, but not limited to, the financial condition of the self-insurer and the risk retained by the self-insurer~~

(a1) All self-insurers shall participate in the Association Aggregate Security System established pursuant to G.S. 97-131 unless excluded by the Board of Directors of the North Carolina Self-Insurance Security Association. The Board of Directors of the North Carolina Self-Insurance Security Association shall notify the Commissioner of the self-insurers that are excluded from participating in the Association Aggregate Security System. The Board of Directors of the North Carolina Self-Insurance Security Association shall exclude all self-insurers whose licenses have previously been revoked by the Commissioner. The Board of Directors of the North Carolina Self-Insurance Security Association shall exclude self-insurers with a debt rating as established by Standard & Poor's Rating Service or by Moody's Investor Service, below the minimum Standard & Poor's and Moody's ratings established in the written plan for the Association Aggregate Security System submitted by the Association and approved by the Commissioner pursuant to G.S. 97-131. The Board of Directors of the North Carolina Self-Insurance Security Association shall exclude all self-insurers that have defaulted on the payment of its self-insured worker's compensation liabilities from participation in the Association Aggregate Security System.

(b) Repealed by Session Laws 2003-115, s. 3, effective January 1, 2004.

~~(b1) Notwithstanding subsection (a) of this section, member self-insurers with a debt rating of BBB or better from Standard and Poor's Rating Service, a division of McGraw-Hill, Inc., or an equivalent rating from another national rating agency shall deposit with the Commissioner an amount not less than twenty-five percent (25%) of the self-insurer's total undiscounted outstanding claim liability per the most recent certification from a qualified actuary as required by G.S. 97-180(b), but not less than five hundred thousand dollars ($500,000). The Commissioner shall consider and may, in the Commissioner's discretion, increase or reduce the deposit to a greater or lesser percentage of the member self-insurer's claims liability based on the financial strength of the self-insurer and other financial information submitted by the self-insurer.~~

(b2) A self-insurer that is excluded from participation in the Association Aggregate Security System, including self-insurers that are granted a license to self-insure after the North Carolina Self-Insurance Security Association annually implements the Association Aggregate Security System, shall deposit with the Commissioner an amount not less than one hundred percent (100%) of the self-insurer's total undiscounted outstanding claims liability per the most recent certification from a qualified actuary as required by G.S. 97-180(b), but not less than five hundred thousand dollars ($500,000), or such greater amount as the Commissioner prescribes based on, but not limited to, the financial condition of the self-insurer and the risk retained by the self-insurer.

(c) Deposits received, changes to existing deposits, or deposits exchanged after the effective date of this section, shall comprise one or more of the following:

(1) Interest-bearing bonds of the United States of America.
(2) Interest-bearing bonds of the State of North Carolina, or of its cities or counties.
(3) Certificates of deposit issued by any solvent bank domesticated in the State of North Carolina that have a maturity of one year or greater.
(4) Surety bonds in a form acceptable to the Commissioner and issued by a corporate surety. A surety bond deposited pursuant to this subsection shall require that the surety reimburse the Commissioner, or his successors, assigns, or transferees, for any costs incurred in the collection of the proceeds of the surety bond, including reasonable attorneys' fees, and any costs incurred in administering the insolvent self- insurer's workers' compensation claims.
(4a) Irrevocable letters of credit in a form acceptable to the Commissioner issued by a bank acceptable to the Commissioner. An irrevocable letter of credit deposited pursuant to this subsection shall require that the bank reimburse the Commissioner, or his successor, assigns, or transferees for any costs incurred in the collection of the proceeds of the letter of credit, including reasonable attorneys' fees.
(4b) The reimbursement of attorneys' fees and collections cost provided for in subdivisions (4) and (4a) of this subsection shall be no greater than fifteen percent (15%) of the penal amount of the bond and shall not come from the proceeds of the bond or the letter of credit but shall be in addition to the proceeds of the bond or the letter of credit.
(5) Any other investments that are approved by the Commissioner.

(d) All bonds or securities that are posted as a security deposit shall be valued annually at market value. If market value is less than face value, the Commissioner may require the self-insurer to post additional securities. In making this determination, the Commissioner shall consider the self-insurer's financial condition, the amount by which market value is less than face value, and the likelihood that the securities will be needed to provide benefits.

(e) Securities deposited under this section shall be assigned to the Commissioner, the Commissioner's successors, assigns, or trustees, on a form prescribed by the Commissioner in a manner that renders the securities negotiable by the Commissioner. If a self-insurer is deemed by the Commissioner to be in a hazardous financial condition, the Commissioner may sell or collect, or both, such amounts that will yield sufficient funds to meet the self-insurer's obligations under the Act. In the case of a letter of credit, the Commissioner may draw the full amount of a letter of credit if the letter of credit is not renewed within 90 days prior to its expiration or at any time that the bank issuing the letter of credit is no longer acceptable to the Commissioner. Interest accruing on any negotiable security deposited under this Article shall be collected and transmitted to the self-insurer if the self-insurer is not in a hazardous financial condition.

(f) No judgment creditor, other than a claimant entitled to benefits under the Act, may levy upon any deposits made under this section.

(g) Securities held by the Commissioner under this section may be exchanged or replaced by the self-insurer with other securities of like nature and amount as long as the self-insurer is not in a hazardous financial condition. No release shall be effectuated until replacement securities or bonds of an equal value have been substituted. Any surety bond may be exchanged or replaced with another surety bond that meets the requirements of this section if 90 days' advance written notice is given to the Commissioner. If a self-insurer ceases to self-insure or desires to replace securities with an acceptable surety bond or bonds, the self-insurer shall notify the Commissioner, and may recover all or a portion of the securities deposited with the Commissioner upon posting instead an acceptable special release bond issued by a corporate surety in an amount equal to the total value of the securities. The special release bond shall cover all existing liabilities under the Act plus an amount to cover future loss development and shall remain in force until all obligations under the Act have been discharged fully.

(h) If a self-insurer ceases to self-insure, no deposits shall be released by the Commissioner until the self-insurer has discharged fully all of the self-insurer's obligations under the Act.

(i) An endorsement to a surety bond shall be filed with the Commissioner within 90 days after the effective date of the endorsement."

SECTION 12. G.S. 97-195(a) reads as rewritten:

"(a) The Commissioner summarily may revoke a license if there is satisfactory evidence for the revocation. In determining whether to revoke a license summarily, the Commissioner may consider any or all of the following:

(1) Determination of insolvency by a court of competent jurisdiction.

(2) Institution of bankruptcy proceedings.

(3) If the self-insurer is in a hazardous financial condition.

(4) Failure to pay any North Carolina Self-Insurance Security Association assessments made pursuant to G.S. 97-133.

(5) Failure to participate in the Association Aggregate Security System or, if excluded from participation in the Association Aggregate Security System, failure to provide and maintain the deposit required by G.S. 97-185."

SECTION 13. This act becomes effective January 1, 2006.

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE — 5-17-05

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
Susan B. Kilzer	Attorney
Justin Wickham Jr.	3200 Croasdaile Dr. Durham
Mark Sternlicht	230 Green St., Fayetteville
Cam Cover	BPMHL
LEONARD JERNIGAN	JERNIGAN LAW FIRM
N. VICTOR FARAH	JERNIGAN LAW FIRM
Nicki Stoner	Jernigan Law Firm
Don Burris	CONTINENTAL AIRLINES (GSO)
Brandy White	Crumley & Assoc.
April Shepherd	Crumley & Associates
Evie Forest	Crumley & Associates

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE — 5-17-05

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
Rhonda Bescher	Crumley & Associates
Vivian Farrar	3405 Tryon Rd Ral 27603
Joshua Hough	506 Grant St Boden. NC
Clyde B. DeBerry	
[illegible]	Liddell - Rockingham NC
Estelle P Moore	LUMBERTON N.C.
Sheila Tatton-DeWitt	JWP Civitas Institute
Kathleen TAYLOR	NO OLF Beaufort Co
Carolyn Harding	" " " "
Karen Johnson	Smith Anderson
ANDREW HOLTON	Sen. Garrou's office

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE — 5-17-05

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
Rita Morris	
Anne Harris	Law Firm of Anne Harris
Margaret Lynn	SB-984
William Lynn	SB-984
Lisa Martin	NC Home Builders Assoc.
R. Paul Wilms	NCHBA
Allison Rogers	Martin & Jones
Donna Paschall	Durham County
Sam Taylor	Orange Co. NC
Yvonne Daugherty	Rutherford County N.C
Virgil Jones	Wayne

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE — 5-17-05

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
Roberta Holbert Jr.	Wayne
[illegible]	[illegible]
Susan Atkinson	James Scott Green
Ernest Green	Sam Taylor Atlanta
Leonard Parks	Sam Taylor
Carolyn Bowling	Sam Taylor
Brenda Gleen	Sam Taylor
Michael Parris	Sam Taylor
Harold [illegible]	James L Farris
Brenda Rogers	Sam B. Taylor
[illegible]	[illegible]

over →

Thelma L. Palmer

Kerry Bennett

Craig Bower

Donald L. Cooper

Lewis Clayton Hilburn Jr.

Pastor Rhonda Small

PASTOR. Tyrone A. Small

Tripp Melton

Jami Fitzgerald

DAVID BARNES

George Ballance

Kay Barber

Peggy WATSON

Bob Watson

DAVID I. McCARRY

C. Y. Powell, Jr

TERRY W. HONG

Morgan (Dave)

Forsyth

Dave Ford (Wendy) Morgan

JAMES SCOTT FARRIN

James Scott Farrin

James - Scott Farrin

James Scott Farrin

Sen. Stevens Off.

N. C. Family Policy Council

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PATTERSON, HARKAVY

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Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Thursday	May 19, 2005	10:00 AM	1027 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 518	City/County Planning Clarification.	Senator Clodfelter
SB 814	Modernize City/County Planning.	Senator Clodfelter
SB 970	Land-Use Permit Appeals.	Senator Kinnaird
SB 1029	Clarify/Enhance Domestic Vio. & Tenancy Laws.	Senator Cowell
SB 1048	Identity Theft Protection Act of 2005.	Senator Clodfelter

Senator Daniel G. Clodfelter, Chair

J-1 Committee

May 19-2005

Minutes

Senator Dan Clodfelter, Chair called the meeting to order at 10:08 a.m. with sixteen members present. He introduced Page Tyler Churchill from Asheboro, NC.

Senator Clodfelter made a motion that the Committee Substitutes for SB-970, SB-518, SB 814, and SB-1029 be adopted for discussion. All members voted yes. Motion carried.

SB-1048 (Identity Theft Protection Act of 2005) Committee Substitute was introduced by Vice Chair, Senator RC Soles. Senator Ham Horton moved for adoption of the Committee Substitute. All members voted yes. Motion carried. Bill sponsor, Senator Dan Clodfelter explained changes to the bill, stating that the bill 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 data bases, and by requiring State and local agencies to protect social security numbers and other personal identifying information. (See Bill Summary for more information). Mr. Josh Stein, and Mr. Greg McCloud from the NC Attorney General's office spoke on the bill explaining several points on security breach. Senator Clodfelter thanked them both for working so hard on the bill. He also thanked representatives from several private sectors for working hard on the bill. Senator Tony Rand had a question about the bill. Senator Clodfelter offered an Amendment to the bill and moved for adoption of the Amendment. (See attached Amendment) All members voted yes. Motion carried. Senator's Ham Horton, Vernon Malone, Martin Nesbitt, Janet Cowell and Harry Brown had questions. Senator Clodfelter answered the questions. Mr. Josh Stein stated that the Attorney General, Roy Cooper was very pleased with the work that had been done on the bill. Senator Clodfelter moved for a Favorable Report as amended. All members voted yes. Motion carried.

Being no further business the meeting adjourned at 10:54 a.m.

Daniel G. Clodfelter

Senator Dan Clodfelter, Chair

Wanda Joyner

Wanda Joyner, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Daniel G. Clodfelter, Chair

Monday, May 23, 2005

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

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

S.B. **319** Workers' Comp. Self-Insurance Security.

Draft Number:	PCS75312
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

S.B. **1048** Identity Theft Protection Act of 2005.

Draft Number:	PCS65319
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 2

Committee Clerk Comments:

SENATE BILL 1048:
Identity Theft Protection Act of 2005

BILL ANALYSIS

Committee:	Senate Judiciary I	**Date:**	May 19, 2005
Introduced by:	Sen. Clodfelter	**Summary by:**	O. Walker Reagan
Version:	PCS to First Edition S1048-CSRU-32		Committee Co-Counsel

SUMMARY: ***The Proposed Senate 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.***

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 14) 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 22) 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 – Consumer Protection Act – Sen. Jacumin]**

G.S. 75-64. – Destruction of personal information records. (Page 8, line 24) 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 9, line 29) 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 11, line 9) 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 11, line 16) 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 11, line 30) 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 – Government Agencies Limit Release of SSN's – Sen. Phil Berger 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 15, line 16) requires State agencies to report annually to the General Assembly on steps taken to protect personal information.

Section 6 (Page 15, line 31) 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 16, line 29) 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 16, line 43) 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.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 1048
PROPOSED COMMITTEE SUBSTITUTE S1048-PCS65319-RU-32

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) "Person". – Any individual, partnership, corporation, trust, estate, cooperative, association, government, or governmental subdivision or agency, or other entity.

(9) "Personal information". – An individual'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 information that is lawfully made available to the general public from federal, state, or local government records, or publicly available directories containing information an individual has voluntarily consented to have publicly disseminated or listed, including name, address, and telephone number.

(10) "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.

(11) "Records". – Any material on which written, drawn, spoken, visual, or electromagnetic information is recorded or preserved, regardless of physical form or characteristics.

(12) "Security breach". – An incident of unauthorized access to and acquisition of records or data containing personal information where unauthorized or illegal use of the personal information has occurred or is reasonably likely to occur. 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.

(13) "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 or any portion thereof of six digits or more.

(2) Intentionally print or imbed an individual's social security number or any portion thereof of six digits or more 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 or any portion thereof of six digits or more 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 or any portion thereof of six digits or more 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 or any portion thereof of six digits or more 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 or any portion thereof of six digits or more to a third party without written consent to the disclosure from the individual, when the party making the disclosure knows or has reasonable grounds 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, or 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.

(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.

(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 five business days 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 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.

"**§ 75-65. Protection from security breaches.**

(a) Any business that maintains or otherwise possesses personal information of residents of North Carolina or any business that conducts business in North Carolina that maintains or otherwise possesses personal information of consumers 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 (b) 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) 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.

(c) 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 consumer's personal information that was subject to the unauthorized access and acquisition.

(3) The acts of the business to protect the personal information from further unauthorized access.

(4) A telephone number that the consumer may call for further information and assistance.

(5) Advice that directs the consumer to remain vigilant over the next 12-24 months by reviewing account statements and monitoring free credit reports.

(d) 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 customers 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, 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.

(e) In the event a business provides notice to more than 1,000 consumers 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.

(f) Any waiver of the provisions of this Article is contrary to public policy and is void and unenforceable.

(g) 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.

(h) 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, any State or local government agency, or any agent, employee, or contractor acting on behalf of a government agency in connection with the performance of any governmental function, shall not do any of the following:

(1) Collect a social security number or any portion thereof of six digits or more 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 or any portion thereof of six digits or more 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 or any portion thereof of six digits or more 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 or any portion thereof of six digits or more 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 any portion thereof of six digits or more 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 or any portion thereof of six digits or more on any card required for the individual to access government services.

(7) Require an individual to transmit the individual's social security number or any portion thereof of six digits or more 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 or any portion thereof of six digits or more 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 or any portion thereof of six digits or more 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 and 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 number 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 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.

(5) To any recorded document in the official records of the county.

(6) 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 or adopted by the State Registrar on records of vital events. 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) 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 publicly available Internet website or a publicly available Internet Web site 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 identification page number 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 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. No fee will be charged for the redaction pursuant to such request.

(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 or remote electronic site made available by the register of deeds or clerk of court and used for the ordering or display of official records or images or copies of official records 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.

(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 publicly available Internet Web site or on a publicly available Internet Web site 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 identification page number 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.

(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 claims or damages that might result from a social security number or other identifying information on the public record."

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.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 1048

Short Title:	Identity Theft Protection Act of 2005.	(Public)
Sponsors:	Senators Clodfelter; Albertson, Allran, Dalton, Dannelly, Garrou, Graham, Hagan, Hoyle, Kinnaird, Purcell, Rand, Soles, Swindell, Thomas, and Weinstein.	
Referred to:	Judiciary I.	

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 which, 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:

a. Credit to be used primarily for personal, family, or household purposes;

b. Employment purposes; or

c. Any other purpose authorized under 15 U.S.C. § 168lb.

(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) "Credit header information". – Written, oral, or other communication of any information by a consumer reporting agency regarding the social security number of the consumer, or any derivative thereof, and any other personally identifiable information of the consumer that is derived using any nonpublic personal information, except the name, address, and telephone number of the consumer if all are listed in a residential telephone directory available in the locality of the consumer.

(7) "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.

(8) "Disposal" includes:

a. The discarding or abandonment of records containing personal information, and

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.

(9) "Person". – Any individual, partnership, corporation, trust, estate, cooperative, association, government, or governmental subdivision or agency, or other entity.

(10) "Personal information". – An individual's first name or first initial and last name in combination with identifying information as defined in G.S. 14-113.20(b) or any identifying information, when not in connection with the individual's first name or first initial and last name, that if compromised would be sufficient to perform or attempt to perform identity theft against the person whose information was compromised.

(11) "Records". – Any material on which written, drawn, spoken, visual, or electromagnetic information is recorded or preserved, regardless of

physical form or characteristics. "Records" does not include publicly available directories containing information an individual has voluntarily consented to have publicly disseminated or listed, such as name, address, or telephone number.

(12) "Security breach". – Unauthorized acquisition of records or data that compromises the security, or confidentiality of personal information. 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 unrelated to the business or subject to further unauthorized disclosure.

(13) "Security freeze". – Notice, 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) Print 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 disclose an individual's social security number to a third party for any purpose without written consent to the disclosure from the individual.

(b) Subsection (a) of this section shall not apply in the following instances:

(1) Subsection (a)(5) of this section shall not apply 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. 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) Subsection (a)(6) of this section shall not apply:

a. To the collection, use, or release of a social security number for internal verification or administrative purposes provided that no consideration is exchanged between the person and the third party for the collection, use, or release of the social security number.

b. To the collection, use, or release of a social security number to investigate or prevent fraud or to conduct background checks.

c. To a business acting pursuant to a court order, warrant, subpoena, or when otherwise required by law.

d. To a business providing the social security number to a federal, State, or local government entity, including a law enforcement agency, or court, or their agents or assigns.

(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. An individual may bring a civil action against a business that violates this section and may recover pursuant to G.S. 75-16 or may recover statutory damages of one thousand dollars ($1,000), whichever is greater, plus reasonable court costs and attorneys' fees.

(e) This section becomes effective July 1, 2006.

"**§ 75-63. Security freeze.**

(a) If a consumer elects to place a security freeze on his or her credit report, a credit 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 may elect to place a "security freeze" on his or her credit report by making a request directly to a consumer reporting agency by any of the following methods:

(1) By certified mail.

(2) By telephone by providing certain personal identification.

(3) Through a secure electronic mail connection if such connection is made available by the agency.

(c) 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 or telephone request from the consumer or three business days after receiving a secure electronic mail request.

(d) The consumer reporting agency shall send a written confirmation of the security freeze to the consumer within five business days of placing the freeze and at the same time shall provide the consumer with a unique personal identification number or password to be used by the consumer when providing authorization for the release of his or her credit for a specific party or period of time.

(e) If the consumer wishes to allow his or her credit report to be accessed for a specific party or period of time while a freeze is in place, he or she shall contact the consumer reporting agency via telephone, certified mail, or secure electronic mail, 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 (d) of this section.

(3) The proper information regarding the third party who is to receive the credit report or the time period for which the report shall be available to users of the credit report.

(f) A consumer reporting agency that receives a request from a consumer to temporarily lift a freeze on a credit report pursuant to subsection (e) of this section shall comply with the request no later than three business days after receiving the request.

(g) A consumer reporting agency may develop procedures involving the use of telephone, fax, or, upon the consent of the consumer in the manner required by the Electronic Signatures in Global and National Commerce Act (e-Sign) for legally required notices, by the Internet, e-mail, 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 (e) of this section in an expedited manner.

(h) 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 subsection (e) 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 subsection, the consumer reporting agency shall notify the consumer in writing five business days prior to removing the freeze on the consumer's credit report.

(i) 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 his or her credit report to be accessed for that specific party or period of time, the third party may treat the application as incomplete.

(j) If a third party requests access to a consumer credit report on which a security freeze is in effect for the purpose of receiving, extending, or otherwise utilizing the credit therein, and not for the sole purpose of account review, the consumer credit reporting agency must notify the consumer that an attempt has been made to access the credit report and by whom.

(k) 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 both of the following:

(1) Proper identification, and

(2) The unique personal identification number or password provided by the consumer reporting agency pursuant to subsection (d) of this section.

(l) A consumer reporting agency shall require proper identification of the person making a request to place or remove a security freeze.

(m) A consumer reporting agency may not suggest or otherwise state or imply to a third party that the consumer's security freeze reflects a negative credit score, history, report, or rating.

(n) A consumer may not be charged for any security freeze services, including, but not limited to, the placement or lifting of a security freeze. A consumer, however, can be charged no more than five dollars ($5.00) only in the following discrete circumstances:

(1) If the consumer fails to retain the original personal identification number provided by the agency, the consumer may not be charged for a one-time reissue of the charge no more than five dollars ($5.00) for subsequent instances of loss of the personal identification number.

(2) The consumer may be charged no more than five dollars ($5.00) for the third and each subsequent time the consumer requests a security freeze on his or her credit report be temporarily lifted pursuant to subsection (e) of this section within a calendar year.

(3) For consumers that remove a security freeze pursuant to subsection (k) of this section, the consumer may be charged no more than five dollars ($5.00) for the third and each subsequent time the consumer requests a security freeze be placed on his or her credit report be placed pursuant to subsection (b) within a calendar year.

(o) 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 may obtain a security freeze on your credit report at no charge to protect your privacy and ensure that credit is not granted in your name without your knowledge. 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 or approval.

The security freeze is designed to prevent credit, loans, and services from being approved in your name without your consent. When you place a security freeze on your credit report, within five business days you will be provided a personal identification number or password to use if you choose to remove the freeze on your credit report or to temporarily authorize the release of your credit report for a specific party, parties, or period of time after the freeze is in place. To provide that authorization, you must contact the consumer reporting agency and provide all of the following:

(1) The unique personal identification number or password provided by the consumer reporting agency.

(2) Proper identification to verify your identity.

(3) Proper information regarding the third party or parties who are to receive the credit report or the period of time for which the report shall be available to users of the credit report.

A consumer reporting agency that receives a request from a consumer to lift temporarily a freeze on a credit report shall comply with the request no later than three business days after receiving the request. A security freeze does not apply to circumstances where 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.

If you are actively seeking credit, you should understand that the procedures involved in lifting a security freeze may slow your own applications for credit. You should plan ahead and lift a freeze – either for a period of time if you are shopping around or specifically for a certain creditor – a few days before actually applying for new credit.

If you lift your freeze more than two times in a calendar year, you may be charged no more than five dollars ($5.00) for each subsequent time you wish to impose a security freeze on your credit report. 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."

(p) 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, or assignee with which the consumer has or, prior to assignment, had an account, contract, or debtor-creditor relationship for the purposes of reviewing the 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 (e) 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 which administers a program for establishing and enforcing child support obligations.

(5) The State or its agents or assigns acting to investigate fraud or acting to investigate or collect delinquent taxes or unpaid court orders or to fulfill any of its other statutory responsibilities.

(6) A person for the purposes of prescreening as defined by the federal Fair Credit Reporting Act.

(7) Any person or entity administering a credit file monitoring subscription service to which the consumer has subscribed.

(8) Any person or entity for the purpose of providing a consumer with a copy of his or her credit report upon the consumer's request.

(q) If a consumer reporting agency erroneously, whether by accident or design, violates the security freeze by releasing credit information that has been placed under a

security freeze or violates any other provision in this section, the affected consumer is entitled to:

(1) Notification within five business days of the release of the information, including specificity as to the information released and the third-party recipient of the information.

(2) File a civil action pursuant to G.S. 75-16. In addition to the remedies therein, a consumer may recover statutory damages of one thousand dollars ($1,000) per violation and seek injunctive relief to prevent or restrain further.

"**§ 75-64. Protection for credit header information.**

(a) A consumer reporting agency may furnish a consumer's credit header information only to those who have a permissible purpose to obtain the consumer's consumer report under section 604 of the federal Fair Credit Reporting Act, as codified in 15 U.S.C.§ 1681(b), or in the following circumstances:

(1) When acting pursuant to a court order, warrant, or subpoena or when otherwise required by law.

(2) To a federal, State, or local government entity, including a law enforcement agency, or court, or their agents or assigns.

(3) To investigate or prevent fraud or to conduct background checks.

(4) To financial institutions for compliance with Section 326 of the USA PATRIOT Act.

(b) A violation of this section is a violation of G.S. 75-1.1. An individual may bring a civil action against a business that violates this section and may recover pursuant to G.S. 75-16 or may recover statutory damages of one thousand dollars ($1,000), which ever is greater, plus reasonable court costs and attorneys' fees.

"**§ 75-65. 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, but may not be limited to:

(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 non-paper media containing personal information so that the information cannot practicably be read or reconstructed;

(3) Implementing and monitoring compliance with policies and procedures that require reasonable steps to be taken to ensure that no unauthorized person will have access to the personal information for the period between the discarding of the record and the record's destruction.

(4) Comprehensively describing and classifying procedures relating to the adequate destruction or proper disposal of personal records as official policy in the writings of the business entity, including corporate and employee handbooks and similar corporate documents.

(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, but may not be limited to, 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 bank or financial institution that is subject to the privacy and security provision of the Gramm-Leach-Bliley Act, 15 U.S.C. Section 6801 et seq., as amended, or any health insurer that is subject to 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.

(f) A violation of this section is a violation of G.S. 75-1.1. An individual may bring a civil action against a business that violates this section and may recover pursuant to G.S. 75-16 or may recover statutory damages of one thousand dollars ($1,000), whichever is greater, plus reasonable court costs and attorneys' fees.

"**§ 75-66. Protection from security breaches.**

(a) Except as provided in subsection (b) of this section, any business that maintains or otherwise possesses personal information of residents of North Carolina or any business that conducts business in North Carolina that maintains or otherwise possesses personal information of consumers 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 in the most expedient time possible and 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.

(b) A business shall not be required to disclose a technical security breach that does not seem reasonably likely to subject consumers to a risk of criminal activity.

(c) The notice required by this section may be delayed if a law enforcement agency determines that notification may impede a criminal investigation. The notice required by this section shall be made after the law enforcement agency determines that it will not compromise the investigation.

(d) For purposes of this section, notice to affected persons may be provided by one of the following methods:

(1) Written notice.

(2) Electronic notice, 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 section 7001 of Title 15 of the United States Code.

(3) Substitute notice, if the data collector 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 the data collector does not have sufficient contact information. Substitute notice shall consist of all the following:

a. E-mail notice when the data collector has an e-mail address for the subject persons.

b. Conspicuous posting of the notice on the data collector's Web site page, if one is maintained.

c. Notification to major statewide media.

(e) Any waiver of the provisions of this Article is contrary to public policy, and is void and unenforceable.

(f) A violation of this section is a violation of G.S. 75-1.1. An individual may bring a civil action against a business that violates this section and may recover pursuant to G.S. 75-16 or may recover statutory damages of one thousand dollars ($1,000), whichever is greater, plus reasonable court costs and attorneys' fees."

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 he or she has been the victim of identity theft may contact the local law enforcement agency that has jurisdiction over his or her 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 such as compiling open case statistics."

SECTION 4. Chapter 132 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 subsection (c) of this section, any State or local government agency, or any agent, employee, or contractor of a government agency, shall not do any of the following:

(1) Collect a person's social security number 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 person's social security number, 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 person's social security number, to provide, at the time of or prior to the actual collection of the social security number by that agency, that person 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).

(6) Print an individual's social security number on any card required for the individual to access government services.

(7) Require an individual to transmit his or her social security number overt the Internet, unless the connection is secure or the social security number is encrypted.

(8) 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.

(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.

(10) Sell, lease, loan, trade, rent, or otherwise disclose an individual's social security number to a third party for any purpose without written consent to the disclosure from the individual.

(c) Subsection (b) of this section does not apply in the following circumstances:

(1) Social security numbers and identifying information may be 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) Social security number or other identifying information may be disclosed pursuant to a court order, warrant, or subpoena.

(d) No person preparing or filing a document to be recorded in the official records by the register of deeds may include any person's social security number or other identifying information in that document, unless otherwise expressly required by law. If a social security number or other identifying information is or has been included in a document presented to the register of deeds for recording in the official records of the county before, on, or after the effective date of this section, it may be made available as part of the official record available for public inspection and copying.

(e) Any person or the person's attorney or legal guardian, has the right to request that a register of deeds remove, from an image or copy of an official record placed on a register of deeds' publicly available Internet website or a publicly available Internet website used by a register of deeds to display public records or otherwise made electronically available to the general public by such register, his or her social security number or other identifying information 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. The request must specify the identification page number that contains the social security number or other identifying information to be redacted. The register of deeds shall have no duty to inquire beyond the written request to verify the identity of a person requesting redaction. No fee will be charged for the redaction of a social security number or other identifying information pursuant to such request.

(f) A register of deeds 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 or remote electronic site made available by the register of deeds and used for the ordering or display of official records or images or copies of official records a notice, stating, in substantially similar form, the following:

(1) Any person preparing or filing a document for recordation in the official records may not include a social security number or other identifying information as defined in G.S. 14-113.20(b) in such document, unless expressly required by law.

(2) Any person has a right to request a register of deeds to remove, from an image or copy of an official record placed on a register of deeds' publicly available Internet website or on a publicly available Internet website used by a register of deeds to display public records or otherwise made electronically available to the general public, any social security number or other identifying information as defined in G.S. 14-113.20(b) contained in an official record. Such request must be made in writing and delivered by mail, facsimile, or electronic transmission, or delivered in person, to the register of deeds. The request must specify the identification page number that contains the social security number or other identifying information to be redacted. No fee will be charged for the redaction of a social security number or other identifying information pursuant to such a request.

(g) Any affected person may petition the superior court for an order directing compliance with this section.

(h) This section shall take effect on October 1, 2005, except that subsections (b)(6) and (b)(9) of this section shall take effect July 1,2007."

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 of North Carolina shall evaluate and report to the General Assembly about their 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, names, or other 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. Severability. – 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. Effective Date. – This act becomes effective December 1, 2005, and shall be applicable to offenses occurring, and to actions arising, on or after that date.

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE — 5-19-05

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
Boyd Cauble	City of Charlotte
Paul Meyer	NCACC
Betty Thorne	Bank of America
[illegible]	[illegible]
Lisa Martin	NC Home Builders
John Phelps	NCLM
ELLIS HANKINS	NCLM
Paula A. Wolf	PPHS
[illegible]	[illegible]
[illegible]	[illegible]
[illegible]	[illegible]

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE
Name of Committee

5-19-05
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
Erin Kenney	NC Conservation Network
Sheila Tatton-Dewitt	JLP Civitas Institute
Suzanne Buckley	Gov Office
Josh Stein	NCDOJ
Edna Barnett	NCDOJ
Bill Scoggin	KCCH
John Long	Martin Marietta
Mike Carpenter	NCASA
Stephanie Simpson	NCAR
John McMillan	NFIC
Mary L. Turner	REBIC

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE — 5-19-05

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
JOHN. BUSSIAN	NC Press Assn.
Peter Cassyleon	NCGA
DAVID BARNES	Poyner & Spruill
Ben Hitchings	N.C. Planning Assoc.
Ashley S. Cla	" " " "
David Owens	Inst. of Govt, UNC
ELLIN HANKINS	NCLM
Anne Wine	
Alice Barlana	NC DOC.
Christie Barlee	CPA
Alissa Dolan	NC Conservation Network

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Tuesday	May 24, 2005	10:00 AM	1027 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 157	Interest on Highway Condemnation Awards.	Senator Jenkins
SB 518	City/County Planning Clarification.	Senator Clodfelter
SB 814	Modernize City/County Planning.	Senator Clodfelter
SB 911	Class Actions and Unpaid Residuals.	Senator Hagan
SB 970	Land-Use Permit Appeals.	Senator Kinnaird
SB 1029	Clarify/Enhance Domestic Vio. & Tenancy Laws.	Senator Cowell
SB 1069	DWI Task Force Recommendations.	Senator Rand

Senator Daniel G. Clodfelter, Chair

Judiciary 1 Committee

May 24, 2005

Minutes

Senator Dan Clodfelter, Chair called the meeting to order at 10:08 a.m. with eighteen members present. He introduced Pages Abby Forrester and Jaderian Gibson both from Murphy, NC, and Zach Love and Cathleen Beal both from Gastonia, NC. Senator Clodfelter stated that SB 157 would be removed from the agenda. He stated that SB-970, SB1029, SB1069 would not be heard, but would be moved to the next Judiciary 1 meeting.

SB 911 (Class Actions and Unpaid Residuals) Committee Substitute was introduced by Senator Clodfelter. Senator Jeanne Lucas moved for adoption of the Committee Substitute. All members voted yes. Motion carried. Bill sponsor, Senator Kay Hagen explained that the bill would provide that the first $5,000,000 per year collected from undistributed money collected in class actions suits would be paid equally to the Indigent Persons' Attorney Fee Fund from which attorneys fees for counsel for indigent criminal defendants are pair, and to the NC State Bar for civil legal services for indigents. Senator Ham Horton had a question. Senator Hagen answered the question. Senator Jerry Tillman moved for a Favorable Report. All members voted yes. Motion carried.

SB-518 (City/County Planning Clarification) Committee Substitute was introduced by Vice Chair, Senator RC Soles. Bill sponsor, Senator Dan Clodfelter moved for adoption of the Committee Substitute. All members voted yes. Motion carried. Senator Clodfelter explained that the changes to the bill have been mostly technical. (See Bill Summary for further information). He thanked Mr. David Owens and Mr. Richard Drucker from the NC Institute of Government, and several other groups for their hard work on the bill. Senator's Ham Horton, Tony Rand, RC Soles, David Hoyle and Phillip Berger had questions. Senator Clodfelter answered the questions. Senator Hoyle moved for a Favorable Report. All members voted yes. Motion carried.

SB-814 (Modernize City/County Planning) Committee Substitute was introduced by Senator RC Soles. Bill sponsor, Senator Dan Clodfelter moved for adoption of the Committee Substitute. All members voted yes. Motion carried. Senator Clodfelter

explained that the bill would make several changes to the statutes about city and county planning and regulation of development. The changes are designed to adapt those statutes to current case law and practice. (See Bill Summary for further information). Senator's David Hoyle, Jeanne Lucas, Clark Jenkins, Richard Stevens, Phillip Berger, Charlie Albertson and Martin Nesbitt had questions about the bill. Mr. Rick Zechini, NC Association of Realtors spoke on the bill and answered questions. Mr. Paul Wilms, from the NC Home Builders Association spoke on the bill. Senator Clodfelter stated that the bill would not be voted on at this time, but would be brought back to committee at a later date.

Being no further business the meeting adjourned at 11:55 a.m.

Senator Dan Clodfelter, Chair

Wanda Joyner, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Daniel G. Clodfelter, Chair

Wednesday, May 25, 2005

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

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

S.B. **911** Class Actions and Unpaid Residuals.

Draft Number:	PCS65323
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comments:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Daniel G. Clodfelter, Chair

Thursday, May 26, 2005

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

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

S.B. **518** City/County Planning Clarification.

Draft Number:	PCS85256
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 911
PROPOSED COMMITTEE SUBSTITUTE S911-PCS65323-RU-38

Short Title: Class Actions and Unpaid Residuals. (Public)

Sponsors:

Referred to:

March 24, 2005

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE DISTRIBUTION OF UNPAID RESIDUALS IN CLASS ACTION LITIGATION.

The General Assembly of North Carolina enacts:

SECTION 1. Subchapter VIII of Chapter 1 of the General Statutes is amended by adding a new Article to read:

"Article 26B.

"Distribution of Unpaid Residuals in Class Action Litigation.

"**§ 1-267.10. Distribution of unpaid residuals in class action litigation.**

(a) It is the intent of the General Assembly to ensure that the unpaid residuals in class action litigation are distributed, to the extent possible, in a manner designed either to further the purposes of the underlying causes of action or to promote justice for all citizens of this State. The General Assembly finds that the use of funds collected by the State courts pursuant to this section for these purposes is in the public interest, is a proper use of the funds, and is consistent with essential public and governmental purposes.

(b) Prior to the entry of any judgment or order approving settlement in a class action established pursuant to Rule 23 of the Rules of Civil Procedure, the court shall determine the total amount that will be payable to all class members, if all class members are paid the amount to which they are entitled pursuant to the judgment or settlement. The court shall also set a date when the parties shall report to the court the total amount that was actually paid to the class members. After the report is received, the court shall direct the defendant to pay the sum of the unpaid residue to the Class Action Residual Reserve Fund established in G.S. 143-16.6."

SECTION 2. Article 1 of Chapter 143 of the General Statutes is amended by adding the following new section to read:

"**§ 143-16.6. Class Action Residual Reserve Fund.**

(a) The Class Action Residual Reserve Fund is created as a restricted reserve in the General Fund. Funds in the Fund do not revert but remain available for the purposes specified in this section. Interest earned on the Fund shall be paid to the General Fund. Except as otherwise provided in this section, funds shall be expended from the Class Action Residual Reserve Fund only by specific appropriation by the General Assembly.

(b) Of the funds available in the Class Action Residual Reserve Fund as of July 1 of each year, up to five million dollars ($5,000,000) shall be divided and credited equally to the Indigent Persons' Attorney Fee Fund and to the North Carolina State Bar for the provision of civil legal services for indigents."

SECTION 3. This act becomes effective October 1, 2005, and applies to causes of action that arise on or after that date.

SENATE BILL 911:
Class Actions and Unpaid Residuals

BILL ANALYSIS

Committee:	Senate Judiciary I	**Date:**	May 24, 2005
Introduced by:	Sen. Hagan	**Summary by:**	O. Walker Reagan
Version:	PCS to First Edition S911-CSRU-38		Committee Co-Counsel

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 911 would provide that the first $5,000,000 per year collected from undistributed money collected in class actions suits would to be paid equally to the Indigent Persons' Attorney Fee Fund from which attorneys fees for counsel for indigent criminal defendants are paid, and to the North Carolina State Bar for civil legal services for indigents.***

CURRENT LAW: Under Rule 23 of the Rules of Civil Procedure, the court has the discretion to order how money recovered in class action lawsuits is to be distributed. Payments are typically made to the members of the class, the attorneys for the class members, and the administrative costs of distributing the proceeds to the class. Any funds allocated to class members that are unable to be paid out remain with the defendant. A copy of Rule 23 is attached.

BILL ANALYSIS:

Section 1 of the bill requires the court in class action lawsuits, prior to the entry of judgment or order approving settlement, to determine the total amount payable to all class members if all class members are paid the amount they are entitled to under the judgment or settlement. The court is also required to set a date for the parties to the lawsuit to report back to the court the total amount actually paid to class members. After receiving this report, the court shall direct that the unpaid residue be paid to the Class Action Residual Reserve Fund.

Section 2 establishes the Class Action Residual Reserve Fund as a non-reverting restricted reserve in the General Fund. This section directs that of the funds available in the Fund each July 1, up to $5,000,000 be divided equally between the Indigent Persons' Attorney Fee Fund and the North Carolina State Bar for civil legal services to indigents. Moneys in excess of $5,000,000 per year could only be disbursed by the General Assembly.

EFFECTIVE DATE: The bill becomes effective October 1, 2005 and applies to causes of action that arise on or after that date.

BACKGROUND: The North Carolina State Bar currently allocates money collected from interest earned on lawyers' trust accounts to provide for civil legal services for indigents.

G.S. 1A-1, Rule 23. Class actions.

(a) Representation. – If persons constituting a class are so numerous as to make it impracticable to bring them all before the court, such of them, one or more, as will fairly insure the adequate representation of all may, on behalf of all, sue or be sued.

(b) Secondary action by shareholders. – In an action brought to enforce a secondary right on the part of one or more shareholders or members of a corporation or an unincorporated

association because the corporation or association refuses to enforce rights which may properly be asserted by it, the complaint shall be verified by oath.

(c) Dismissal or compromise. – A class action shall not be dismissed or compromised without the approval of the judge. In an action under this rule, notice of a proposed dismissal or compromise shall be given to all members of the class in such manner as the judge directs. (1967, c. 954, s. 1.)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 911

Short Title:	Class Actions and Unpaid Residuals.	(Public)
Sponsors:	Senator Hagan.	
Referred to:	Judiciary I.	

March 24, 2005

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE DISTRIBUTION OF UNPAID RESIDUALS IN CLASS ACTION LITIGATION.

The General Assembly of North Carolina enacts:

SECTION 1. Subchapter VIII of Chapter 1 of the General Statutes is amended by adding a new Article to read:

"Article 26B.

"Distribution of Unpaid Residuals in Class Action Litigation.

"**§ 1-267.10. Distribution of unpaid residuals in class action litigation.**

(a) It is the intent of the General Assembly to ensure that the unpaid residuals in class action litigation are distributed, to the extent possible, in a manner designed either to further the purposes of the underlying causes of action or to promote justice for all citizens of this State. The General Assembly finds that the use of funds collected by the North Carolina State Bar pursuant to this section for these purposes is in the public interest, is a proper use of the funds, and is consistent with essential public and governmental purposes.

(b) Prior to the entry of any judgment in a class action established pursuant to Rule 23 of the Rules of Civil Procedure, the court shall determine the total amount that will be payable to all class members, if all class members are paid the amount to which they are entitled pursuant to the judgment. The court shall also set a date when the parties shall report to the court the total amount that was actually paid to the class members. After the report is received, the court shall amend the judgment to direct the defendant to pay the sum of the unpaid residue, plus interest on that sum at the legal rate of interest from the date of entry of the initial judgment, to the Indigent Persons' Attorney Fee Fund."

SECTION 2. This act becomes effective October 1, 2005, and applies to causes of action that arise on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 518
PROPOSED COMMITTEE SUBSTITUTE S518-PCS85256-RR-29

Short Title: City/County Planning Clarification. (Public)

Sponsors:

Referred to:

March 15, 2005

A BILL TO BE ENTITLED

AN ACT TO CLARIFY AND MAKE TECHNICAL CHANGES TO CITY AND COUNTY PLANNING STATUTES.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 160A-363 reads as rewritten:

"**§ 160A-363. Supplemental powers.**

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

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

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

(d) A city may elect to combine any of the ordinances authorized by this Article into a unified ordinance. Unless expressly provided otherwise, a city may apply any of

the definitions and procedures authorized by law to any or all aspects of the unified ordinance and may employ any organizational structure, board, commission, or staffing arrangement authorized by law to any or all aspects of the ordinance."

SECTION 1.(b) G.S. 153A-322 reads as rewritten:

"**§ 153A-322. Supplemental powers.**

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

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

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

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

SECTION 2.(a) G.S. 160A-371 reads as rewritten:

"**§ 160A-371. Subdivision regulation.**

A city may by ordinance regulate the subdivision of land within its territorial jurisdiction. In addition to final plat approval, the ordinance may include provisions for review and approval of sketch plans and preliminary plats. The ordinance may provide for different review procedures for differing classes of subdivisions. The ordinance may be adopted as part of a unified development ordinance or as a separate subdivision ordinance. Decisions on approval or denial of preliminary or final plats may be made only on the basis of standards explicitly set forth in the subdivision or unified development ordinance. Whenever the ordinance includes criteria for decision that require application of judgment, those criteria must provide adequate guiding standards for the entity charged with plat approval."

SECTION 2.(b) G.S. 153A-330 reads as rewritten:

"**§ 153A-330. Subdivision regulation.**

A county may by ordinance regulate the subdivision of land within its territorial jurisdiction. If a county, pursuant to G.S. 153A-342, has adopted a zoning ordinance that applies only to one or more designated portions of its territorial jurisdiction, it may adopt subdivision regulations that apply only within the areas so zoned and need not regulate the subdivision of land in the rest of its jurisdiction. In addition to final plat approval, the ordinance may include provisions for review and approval of sketch plans and preliminary plats. The ordinance may provide for different review procedures for differing classes of subdivisions. The ordinance may be adopted as part of a unified development ordinance or as a separate subdivision ordinance. Decisions on approval or denial of preliminary or final plats may be made only on the basis of standards explicitly set forth in the subdivision or unified development ordinance. Whenever the ordinance includes criteria for decision that require application of judgment, those criteria must provide adequate guiding standards for the entity charged with plat approval."

SECTION 3.(a) G.S. 160A-373 reads as rewritten:

"**§ 160A-373. Ordinance to contain procedure for plat approval; approval prerequisite to plat recordation; statement by owner.**

Any subdivision ordinance adopted pursuant to this Part shall contain provisions setting forth the procedures to be followed in granting or denying approval of a subdivision plat prior to its registration.

The ordinance may provide that final ~~approval of each individual subdivision plat is to be given by~~decisions on preliminary plats and final plats are to be made by:

(1) The city council,

(2) The city council on recommendation of a ~~planning agency,~~ designated body, or

(3) A designated planning ~~agency~~ board, technical review committee, or other designated body or staff person.

From and after the effective date of a subdivision ordinance that is adopted by the city, no subdivision plat of land within the city's jurisdiction shall be filed or recorded until it shall have been submitted to and approved by the council or appropriate agency, as specified in the subdivision ordinance, and until this approval shall have been entered on the face of the plat in writing by an authorized representative of the city. The Review Officer, pursuant to G.S. 47-30.2, shall not certify a plat of a subdivision of land located within the territorial jurisdiction of a city that has not been approved in accordance with these provisions, nor shall the clerk of superior court order or direct the recording of a plat if the recording would be in conflict with this section."

SECTION 3.(b) G.S. 153A-332 reads as rewritten:

"**§ 153A-332. Ordinance to contain procedure for plat approval; approval prerequisite to plat recordation; statement by owner.**

A subdivision ordinance adopted pursuant to this Part shall contain provisions setting forth the procedures to be followed in granting or denying approval of a subdivision plat before its registration.

The ordinance shall provide that the following agencies be given an opportunity to make recommendations concerning an individual subdivision plat before the plat is approved:

(1) The district highway engineer as to proposed State streets, State highways, and related drainage systems;

(2) The county health director or local public utility, as appropriate, as to proposed water or sewerage systems;

(3) Any other agency or official designated by the board of commissioners.

The ordinance may provide that final ~~approval of each individual subdivision plat is to be given by:~~decisions on preliminary plats and final plats are to be made by:

(1) The board of commissioners,

(2) The board of commissioners on recommendation of a ~~planning agency,~~ designated body, or

(3) A designated planning ~~agency.~~board, technical review committee, or other designated body or staff person.

From the effective date of a subdivision ordinance that is adopted by the county, no subdivision plat of land within the county's jurisdiction may be filed or recorded until it has been submitted to and approved by the appropriate board or agency, as specified in the subdivision ordinance, and until this approval is entered in writing on the face of the plat by an authorized representative of the county. The Review Officer, pursuant to G.S. 47-30.2, shall not certify a plat of a subdivision of land located within the territorial jurisdiction of the county that has not been approved in accordance with these provisions, and the clerk of superior court may not order or direct the recording of a plat if the recording would be in conflict with this section."

SECTION 4.(a) G.S. 160A-384 reads as rewritten:

"**§ 160A-384. Method of procedure.**

(a) The city council shall provide for the manner in which zoning regulations and restrictions and the boundaries of zoning districts shall be determined, established and enforced, and from time to time amended, supplemented or changed, in accordance with the provisions of this Article. The procedures adopted pursuant to this section shall provide that whenever there is a zoning map amendment, the owner of that parcel of land as shown on the county tax listing, and the owners of all parcels of land abutting that parcel of land as shown on the county tax listing, shall be mailed a notice of a public hearing on the proposed amendment by first class mail at the last addresses listed for such owners on the county tax abstracts. This notice must be deposited in the mail at least 10 but not more than 25 days prior to the date of the public hearing. The person or persons mailing such notices shall certify to the City Council that fact, and such certificate shall be deemed conclusive in the absence of fraud.

(b) The first class mail notice required under subsection (a) of this section shall not be required if the zoning map amendment directly affects more than 50 properties, owned by a total of at least 50 different property owners, and the city elects to use the expanded published notice provided for in this subsection. In this instance, a city may elect to either make the mailed notice provided for in subsection (a) of this section or

may as an alternative elect to publish ~~once a week for four successive calendar weeks in a newspaper having general circulation in the area an advertisement of the public hearing that shows the boundaries of the area affected by the proposed zoning map amendment and explains the nature of the proposed change. The final two advertisements shall comply with and be deemed to satisfy the provisions of G.S. 160A-364. The advertisement~~ notice of the hearing as required by G.S. 160A-364, but provided that each advertisement shall not be less than one-half of a newspaper page in size. The advertisement shall only be effective for property owners who reside in the area of general circulation of the newspaper which publishes the notice. Property owners who reside outside of the newspaper circulation area, according to the address listed on the most recent property tax listing for the affected property, shall be notified ~~by first class mail pursuant to~~ according to the provisions of subsection (a) of this section. ~~The person or persons mailing the notices shall certify to the city council that fact, and the certificates shall be deemed conclusive in the absence of fraud. In addition to the published notice, a city shall post one or more prominent signs on or immediately adjacent to the subject area reasonably calculated to give public notice of the proposed rezoning.~~

(c) When a zoning map amendment is proposed, the city shall prominently post a notice of the public hearing on the site proposed for rezoning. When multiple parcels are included within a proposed zoning map amendment, a posting on each individual parcel is not required, but the city shall post sufficient notices to provide reasonable notice to interested persons."

SECTION 4.(b) G.S. 153A-343 reads as rewritten:

"**§ 153A-343. Method of procedure.**

(a) The board of commissioners shall, in accordance with the provisions of this Article, provide for the manner in which zoning regulations and restrictions and the boundaries of zoning districts shall be determined, established, and enforced, and from time to time amended, supplemented, or changed. The procedures adopted pursuant to this section shall provide that whenever there is a zoning map amendment, the owner of that parcel of land as shown on the county tax listing, and the owners of all parcels of land abutting that parcel of land as shown on the county tax listing, shall be mailed a notice of a public hearing on the proposed amendment by first class mail at the last addresses listed for such owners on the county tax abstracts. This notice must be deposited in the mail at least 10 but not more than 25 days prior to the date of the public hearing. The person or persons mailing such notices shall certify to the Board of Commissioners that fact, and such certificate shall be deemed conclusive in the absence of fraud.

(b) The first class mail notice required under subsection (a) of this section shall not be required if the zoning map amendment directly affects more than 50 properties, owned by a total of at least 50 different property owners, and the county elects to use the expanded published notice provided for in this subsection. In this instance, a county may elect to either make the mailed notice provided for in subsection (a) of this section or may as an alternative elect to publish ~~once a week for four successive calendar weeks in a newspaper having general circulation in the area an advertisement of the public~~

~~hearing that shows the boundaries of the area affected by the proposed zoning map amendment and explains the nature of the proposed change. The final two advertisements shall comply with and be deemed to satisfy the provisions of G.S. 153A-323. The advertisement~~ notice of the hearings required by G.S. 153A-323, but provided that each of the advertisements shall not be less than one-half of a newspaper page in size. The advertisement shall only be effective for property owners who reside in the area of general circulation of the newspaper which publishes the notice. Property owners who reside outside of the newspaper circulation area, according to the address listed on the most recent property tax listing for the affected property, shall be notified ~~by first class mail pursuant to~~ according to the provisions of subsection (a) of this section. ~~The person or persons mailing the notices shall certify to the board of commissioners that fact, and the certificates shall be deemed conclusive in the absence of fraud. In addition to the published notice, a county shall post one or more prominent signs on or immediately adjacent to the subject area reasonably calculated to give public notice of the proposed rezoning.~~

~~(c) The provisions of this section shall not be applicable to any zoning map adoption that initially zones property added to the territorial coverage of the ordinance.~~

(d) When a zoning map amendment is proposed, the county shall prominently post a notice of the public hearing on the site proposed for rezoning. When multiple parcels are included within a proposed zoning map amendment, a posting on each individual parcel is not required, but the county shall post sufficient notices to provide reasonable notice to interested persons."

SECTION 5. G.S. 160A-385 reads as rewritten:

"**§ 160A-385. Changes.**

(a) Qualified Protests.

(1) Zoning ~~regulations and restrictions and zone boundaries~~ ordinances may from time to time be amended, supplemented, changed, modified or repealed. In case, however, of a qualified protest against ~~such change, signed by the owners of twenty percent (20%) or more either of the area of the lots included in a proposed change, or of those immediately adjacent thereto either in the rear thereof or on either side thereof, extending 100 feet therefrom, or of those directly opposite thereto extending 100 feet from the street frontage of the opposite lots, an amendment~~ a zoning map amendment, that amendment shall not become effective except by favorable vote of three-fourths of all the members of the city council. For the purposes of this subsection, vacant positions on the council and members who are excused from voting shall not be considered 'members of the council' for calculation of the requisite supermajority.

(2) To qualify as a protest under this section, the petition must be signed by the owners of either (i) twenty percent (20%) or more of the area included in the proposed change or (ii) five percent (5%) of a 100-foot-wide buffer extending along the entire boundary of each discrete or separate area proposed to be rezoned. A street right-of-way

shall not be considered in computing the 100-foot buffer area. When less than an entire parcel of land is subject to the proposed zoning map amendment, the 100-foot buffer shall be measured from the property line of that parcel. For the purposes of this section, the 'owners' are those listed on the county tax listing.

(3) The foregoing provisions concerning protests shall not be applicable to any amendment which initially zones property added to the territorial coverage of the ordinance as a result of annexation or otherwise, or to an amendment to an adopted (i) special use ~~district or~~ district, (ii) conditional use ~~district~~ district, or (iii) conditional district if the amendment does not change the types of uses that are permitted within the district or increase the approved density for residential development, or increase the total approved size of nonresidential development, or reduce the size of any buffers or screening approved for the special ~~use or~~ use district, conditional use ~~district.~~district, or conditional district.

(b) ~~Amendments, modifications, supplements, repeal or other changes in zoning regulations and restrictions and zone boundaries~~ Amendments in zoning ordinances shall not be applicable or enforceable without consent of the owner with regard to buildings and uses for which either (i) building permits have been issued pursuant to G.S. 160A-417 prior to the enactment of the ordinance making the change or changes so long as the permits remain valid and unexpired pursuant to G.S. 160A-418 and unrevoked pursuant to G.S. 160A-422 or (ii) a vested right has been established pursuant to G.S. 160A-385.1 and such vested right remains valid and unexpired pursuant to G.S. 160A-385.1."

SECTION 6. G.S. 160A-386 reads as rewritten:

"**§ 160A-386. Protest petition; form; requirements; time for filing.**

No protest against any change in or amendment to a zoning ordinance or zoning map shall be valid or effective for the purposes of G.S. 160A-385 unless it be in the form of a written petition actually bearing the signatures of the requisite number of property owners and stating that the signers do protest the proposed change or amendment, and unless it shall have been received by the city clerk in sufficient time to allow the city at least two normal work days, excluding Saturdays, Sundays and legal holidays, before the date established for a public hearing on the proposed change or amendment to determine the sufficiency and accuracy of the petition. The city council may by ordinance require that all protest petitions be on a form prescribed and furnished by the city, and such form may prescribe any reasonable information deemed necessary to permit the city to determine the sufficiency and accuracy of the petition. Unless specifically provided otherwise within the ordinance, a person who has signed a protest petition may withdraw his or her name from the petition at any time prior to the vote on the proposed zoning amendment. Only those protest petitions that meet the qualifying standards set forth in G.S. 160A-385 at the time of the vote on the zoning amendment shall trigger the supermajority voting requirement."

SECTION 7.(a) G.S. 160A-387 reads as rewritten:

"**§ 160A-387. Planning ~~agency;~~ board; zoning plan; certification to city council.**

In order to initially exercise the powers conferred by this Part, a city council shall create or designate a planning ~~agency~~ board under the provisions of this Article or of a special act of the General Assembly. The planning ~~agency~~ board shall ~~prepare~~ review and comment upon a proposed zoning ordinance, including both the full text of such ordinance and maps showing proposed district boundaries. The planning ~~agency~~ board may hold public hearings in the course of preparing the ordinance. Upon completion, the planning ~~agency~~ board shall ~~certify~~ make a written recommendation regarding adoption of the ordinance to the city council. The city council shall not hold its required public hearing or take action until it has received a ~~certified~~ recommendation regarding ordinance from the planning ~~agency.~~ board. Following its required public hearing, the city council may refer the ordinance back to the planning ~~agency~~ board for any further recommendations that the ~~agency~~ board may wish to make prior to final action by the city council in adopting, modifying and adopting, or rejecting the ordinance.

Subsequent to initial adoption of a zoning ordinance, all proposed amendments to the zoning ordinance or zoning map shall be submitted to the planning board for review and comment, including amendments proposed by the planning board, city council, city staff, landowners, or any other person. 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. If no written report is received from the planning board within 30 days of referral of the amendment to that board, the governing board may proceed in its consideration of the amendment without the planning board report."

SECTION 7.(b) G.S. 153A-344 reads as rewritten:

"**§ 153A-344. Planning ~~agency; board;~~ zoning plan; certification to board of ~~commissioners; amendments.~~commissioners.**

(a) To initially exercise the powers conferred by this Part, a county shall create or designate a planning ~~agency~~ board under the provisions of this Article or of a local act. The planning ~~agency~~ board shall ~~prepare~~ review and comment upon a proposed zoning ordinance, including both the full text of such ordinance and maps showing proposed district boundaries. The planning ~~agency~~ board may hold public hearings in the course of preparing the ordinance. Upon completion, the planning ~~agency~~ board shall ~~certify~~ make a written recommendation regarding adoption of the ordinance to the board of commissioners. The board of commissioners shall not hold the public hearing required by G.S. 153A-323 or take action until it has received a ~~certified~~ recommendation regarding the ordinance from the planning ~~agency.~~ board. Following its required public hearing, the board of commissioners may refer the ordinance back to the planning ~~agency~~ board for any further recommendations that the ~~agency~~ board may wish to make prior to final action by the board in adopting, modifying and adopting, or rejecting the ordinance.

~~Zoning regulations and restrictions and zone boundaries may from time to time be amended, supplemented, changed, modified, or repealed. Whenever territory is added to an existing designated zoning area, it shall be treated as an amendment to the zoning ordinance for that area. Before an amendment may be adopted, it must be referred to the planning agency for the agency's recommendation. The agency shall be given at least 30 days in which to make a recommendation.~~ Subsequent to initial adoption of a zoning ordinance, all proposed amendments to the zoning ordinance or zoning map shall be submitted to the planning board for review and comment, including amendments proposed by the planning board, the board of county commissioners, county staff, landowners, or any other person. 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 board of county commissioners 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. If no written report is received from the planning board within 30 days of referral of the amendment to that board, the board of county commissioners may proceed in its consideration of the amendment without the planning board report. The board of commissioners is not bound by the recommendations, if any, of the planning ~~agency.~~board.

(b) ~~Amendments, modifications, supplements, repeal or other changes in zoning regulations and restrictions and zone boundaries~~ Amendments in zoning ordinances shall not be applicable or enforceable without consent of the owner with regard to buildings and uses for which either (i) building permits have been issued pursuant to G.S. 153A-357 prior to the enactment of the ordinance making the change or changes so long as the permits remain valid and unexpired pursuant to G.S. 153A-358 and unrevoked pursuant to G.S. 153A-362 or (ii) a vested right has been established pursuant to G.S. 153A-344.1 and such vested right remains valid and unexpired pursuant to G.S. 153A-344.1."

SECTION 8.(a) G.S. 160A-388 reads as rewritten:

"**§ 160A-388. Board of adjustment.**

(a) The city council may provide for the appointment and compensation of a board of adjustment consisting of five or more members, each to be appointed for three years. In appointing the original members of such board, or in the filling of vacancies caused by the expiration of the terms of existing members, the council may appoint certain members for less than three years to the end that thereafter the terms of all members shall not expire at the same time. The council may, in its discretion, appoint and provide compensation for alternate members to serve on the board in the absence or temporary disqualification of any regular ~~member.~~member or to fill a vacancy pending appointment of a member. Alternate members shall be appointed for the same term, at the same time, and in the same manner as regular members. Each alternate member, while attending any regular or special meeting of the board and serving ~~in the absence~~ on behalf of any regular member, shall have and may exercise all the powers and duties

of a regular member. A city may designate a planning ~~agency~~ board or governing board to perform any or all of the duties of a board of adjustment in addition to its other duties.

(b) ~~The board of adjustment shall hear and decide appeals from and review any order, requirement, decision, or determination made by an administrative official charged with the enforcement of any ordinance adopted pursuant to this Part.~~ A zoning ordinance or those provisions of a unified development ordinance adopted pursuant to the authority granted in this Part may provide that the board of adjustment shall hear and decide appeals from and review any order, requirement, decision, or determination made by an administrative official charged with the enforcement of that ordinance. An appeal may be taken by any person aggrieved or by an officer, department, board, or bureau of the city. Appeals shall be taken within times prescribed by the board of adjustment by general rule, by filing with the officer from whom the appeal is taken and with the board of adjustment a notice of appeal, specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken. An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the board of adjustment, after notice of appeal has been filed with him, that because of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property or that because the violation charged is transitory in nature a stay would seriously interfere with enforcement of the ordinance. In that case proceedings shall not be stayed except by a restraining order, which may be granted by the board of adjustment or by a court of record on application, on notice to the officer from whom the appeal is taken and on due cause shown. The board of adjustment shall fix a reasonable time for the hearing of the appeal, give due notice thereof to the parties, and decide it within a reasonable time. The board of adjustment may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from, and shall make any order, requirement, decision, or determination that in its opinion ought to be made in the premises. To this end the board shall have all the powers of the officer from whom the appeal is taken.

(c) The zoning ordinance may provide that the board of adjustment may permit special exceptions to the zoning regulations in specified classes of cases or situations ~~and~~ such as minor modifications, not including variances in permitted uses, and that the board may use special and conditional use permits, all to be in accordance with the principles, conditions, safeguards, and procedures specified in the ordinance. The ordinance may also authorize the board to interpret zoning maps and pass upon disputed questions of lot lines or district boundary lines and similar questions as they arise in the administration of the ordinance. The board shall hear and decide all matters referred to it or upon which it is required to pass under any zoning ordinance.

(d) When practical difficulties or unnecessary hardships would result from carrying out the strict letter of a zoning ordinance, the board of adjustment shall have the ~~power, in passing upon appeals,~~ power to vary or modify any of the regulations or provisions of the ordinance ~~relating to the use, construction or alteration of buildings or~~

~~structures or the use of land,~~ so that the spirit of the ordinance shall be observed, public safety and welfare secured, and substantial justice done. No change in permitted uses may be authorized by variance. Appropriate conditions, which must be reasonably related to the condition or circumstance that gives rise to the need for a variance, may be imposed on any approval issued by the board.

(e) The concurring vote of four-fifths of the members of the board shall be necessary to reverse any order, requirement, decision, or determination of any administrative official charged with the enforcement of an ordinance adopted pursuant to this Part, or to decide in favor of the applicant any matter upon which it is required to pass under any ordinance, or to grant a variance from the provisions of the ordinance. For the purposes of this subsection, vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter shall not be considered 'members of the board' for calculation of the requisite supermajority if there are no qualified alternates available to take the place of such members.

(e1) A member of the board or any other body exercising the functions of a board of adjustment shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible conflicts include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter. If an objection is raised to a member's participation and that member does not recuse himself or herself, the remaining members shall by majority vote rule on the objection.

(e2) Every decision of the board shall be subject to review by the superior court by proceedings in the nature of certiorari. Any petition for review by the superior court shall be filed with the clerk of superior court within 30 days after the decision of the board is filed in such office as the ordinance specifies, or after a written copy thereof is delivered to every aggrieved party who has filed a written request for such copy with the secretary or chairman of the board at the time of its hearing of the case, whichever is later. The decision of the board may be delivered to the aggrieved party either by personal service or by registered mail or certified mail return receipt requested.

(f) The chairman of the board of adjustment or any member temporarily acting as chairman, is authorized in his official capacity to administer oaths to witnesses in any matter coming before the board.

(g) The board of adjustment may subpoena witnesses and compel the production of evidence. If a person fails or refuses to obey a subpoena issued pursuant to this subsection, the board of adjustment may apply to the General Court of Justice for an order requiring that its order be obeyed, and the court shall have jurisdiction to issue these orders after notice to all proper parties. No testimony of any witness before the board of adjustment pursuant to a subpoena issued in exercise of the power conferred by this subsection may be used against the witness in the trial of any civil or criminal action other than a prosecution for false swearing committed on the examination. Any person who, while under oath during a proceeding before the board of adjustment, willfully swears falsely, is guilty of a Class 1 misdemeanor."

SECTION 8.(b) G.S. 153A-345 reads as rewritten:

"**§ 153A-345. Board of adjustment.**

(a) The board of commissioners may provide for the appointment and compensation, if any, of a board of adjustment consisting of at least five members, each to be appointed for three years. In appointing the original members of the board, or in filling vacancies caused by the expiration of the terms of existing members, the board of commissioners may appoint some members for less than three years to the end that thereafter the terms of all members do not expire at the same time. The board of commissioners may provide for the appointment and compensation, if any, of alternate members to serve on the board in the absence or temporary disqualification of any regular ~~member.~~ member or to fill a vacancy pending appointment of a member. Alternate members shall be appointed for the same term, at the same time, and in the same manner as regular members. Each alternate member, while attending any regular or special meeting of the board and serving ~~in the absence~~ on behalf of a regular member, has and may exercise all the powers and duties of a regular member. If the board of commissioners does not zone the entire territorial jurisdiction of the county, each designated zoning area shall have at least one resident as a member of the board of adjustment.

A county may designate a planning ~~agency~~ board or the board of county commissioners to perform any or all of the duties of a board of adjustment in addition to its other duties.

(b) ~~The board of adjustment shall hear and decide appeals from and review any order, requirement, decision, or determination made by an administrative official charged with enforcing an ordinance adopted pursuant to this Part.~~ A zoning ordinance or those provisions of a unified development ordinance adopted pursuant to the authority granted in this Part may provide that the board of adjustment shall hear and decide appeals from and review any order, requirement, decision, or determination made by an administrative official charged with the enforcement of that ordinance. Any person aggrieved or any officer, department, board, or bureau of the county may take an appeal. Appeals shall be taken within times prescribed by the board of adjustment by general rule, by filing with the officer from whom the appeal is taken and with the board of adjustment a notice of appeal, specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the board all the papers constituting the record upon which action appealed from was taken. An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the board of adjustment, after notice of appeal has been filed with him, that because of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property or that because the violation charged is transitory in nature a stay would seriously interfere with enforcement of the ordinance. In that case proceedings may not be stayed except by a restraining order, which may be granted by the board of adjustment or by a court of record on application, on notice to the officer from whom the appeal is taken and on due cause shown. The board of adjustment shall fix a reasonable time for the hearing of the appeal, give due notice of the appeal to the parties, and decide the appeal within a reasonable time. The board of adjustment may

reverse or affirm, in whole or in part, or may modify the order, requirement, decision, or determination appealed from, and shall make any order, requirement, decision, or determination that in its opinion ought to be made in the circumstances. To this end the board has all of the powers of the officer from whom the appeal is taken.

(c) The zoning ordinance may provide that the board of adjustment may permit special exceptions to the zoning regulations in specified classes of cases or situations ~~and~~ such as minor modifications, not including variances in permitted uses, and that the board may use special and conditional use permits, all to be in accordance with the principles, conditions, safeguards, and procedures specified in the ordinance. The ordinance may also authorize the board to interpret zoning maps and pass upon disputed questions of lot lines or district boundary lines and similar questions that may arise in the administration of the ordinance. The board shall hear and decide all matters referred to it or upon which it is required to pass under the zoning ordinance.

(d) When practical difficulties or unnecessary hardships would result from carrying out the strict letter of a zoning ordinance, the board of adjustment ~~may, in passing upon appeals,~~ shall have the power to vary or modify any regulation or provision of the ordinance ~~relating to the use, construction, or alteration of buildings or structures or the use of land,~~ so that the spirit of the ordinance is observed, public safety and welfare secured, and substantial justice done. No change in permitted uses may be authorized by variance. Appropriate conditions, which must be reasonably related to the condition or circumstance that gives rise to the need for a variance, may be imposed on any approval issued by the board.

(e) The board of adjustment, by a vote of four-fifths of its members, may reverse any order, requirement, decision, or determination of an administrative officer charged with enforcing an ordinance adopted pursuant to this Part, or may decide in favor of the applicant a matter upon which the board is required to pass under the ordinance, or may grant a variance from the provisions of the ordinance. For the purposes of this subsection, vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter shall not be considered 'members of the board' for calculation of the requisite supermajority if there are no qualified alternates available to take the place of such members.

(e1) A member of the board or any other body exercising the functions of a board of adjustment shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible conflicts include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter. If an objection is raised to a member's participation and that member does not recuse himself or herself, the remaining members shall by majority vote rule on the objection.

(e2) Each decision of the board is subject to review by the superior court by proceedings in the nature of certiorari. Any petition for review by the superior court shall be filed with the clerk of superior court within 30 days after the decision of the board is filed in such office as the ordinance specifies, or after a written copy thereof is

SECTION 12. G.S. 160A-400.7 reads as rewritten:

"**§ 160A-400.7. Historic Preservation Commission.**

Before it may designate one or more landmarks or historic districts, a municipality shall establish or designate a historic preservation commission. The municipal governing board shall determine the number of the members of the commission, which shall be at least three, and the length of their terms, which shall be no greater than four years. A majority of the members of such a commission shall have demonstrated special interest, experience, or education in history, architecture, archaeology, or related fields. All the members shall reside within the territorial jurisdiction of the municipality as established pursuant to G.S. 160A-360. The commission may appoint advisory bodies and committees as appropriate.

In lieu of establishing a historic preservation commission, a municipality may designate as its historic preservation commission, (i) a separate historic districts commission or a separate historic landmarks commission established pursuant to this Part to deal only with historic districts or landmarks respectively, (ii) a planning ~~agency~~ board established pursuant to this Article, or (iii) a community appearance commission established pursuant to Part 7 of this Article. In order for a commission or board other than the preservation commission to be designated, at least three of its members shall have demonstrated special interest, experience, or education in history, architecture, or related fields. At the discretion of the municipality the ordinance may also provide that the preservation commission may exercise within a historic district any or all of the powers of a planning ~~agency~~ board or a community appearance commission.

A county and one or more cities in the county may establish or designate a joint preservation commission. If a joint commission is established or designated, the county and cities involved shall determine the residence requirements of members of the joint preservation commission."

SECTION 13. G.S. 160A-400.14(a) reads as rewritten:

"(a) An application for a certificate of appropriateness authorizing the relocation, demolition or destruction of a designated landmark or a building, structure or site within the district may not be denied except as provided in subsection (c). However, the effective date of such a certificate may be delayed for a period of up to 365 days from the date of approval. The maximum period of delay authorized by this section shall be reduced by the commission where it finds that the owner would suffer extreme hardship or be permanently deprived of all beneficial use of or return from such property by virtue of the delay. During such period the preservation commission shall negotiate with the owner and with any other parties in an effort to find a means of preserving the building or site. If the preservation commission finds that a building or site within a district has no special significance or value toward maintaining the character of the district, it shall waive all or part of such period and authorize earlier demolition, or removal.

If the commission or planning ~~agency~~ board has voted to recommend designation of a property as a landmark or designation of an area as a district, and final designation has not been made by the local governing board, the demolition or destruction of any building, site, or structure located on the property of the proposed landmark or in the

proposed district may be delayed by the commission or planning ~~agency~~ board for a period of up to 180 days or until the local governing board takes final action on the designation, whichever occurs first."

SECTION 14. The provisions of this act shall not be deemed to repeal or amend the validity or enforceability of any local act or charter provision previously enacted by the General Assembly.

SECTION 15. This act becomes effective January 1, 2006.

SENATE BILL 518:
City/County Planning Clarification

BILL ANALYSIS

Committee:	Senate Judiciary I	**Date:**	May 24, 2005
Introduced by:	Sen. Clodfelter	**Summary by:**	William R. Gilkeson
Version:	PCS to First Edition S518-CSRR-29 [v.13]		Committee Co-Counsel

SUMMARY: This Proposed Committee Substitute for Senate Bill 518 makes mostly technical changes to the city and county planning statutes.

Section 1 – Unified Development Ordinance (UDO). This section would expressly allow cities and counties to pass a unified land development ordinance, encompassing zoning, subdivision, housing code, and other development regulations. It would also allow the city or county to use the same enforcement tools (such as variance power) and institutions (with limitations in Section 8 for the board of adjustment) for all aspects of the development regulations. The UDO could cover any ordinance a city is authorized to adopt under Article 19 of Chapter 160A of the General Statutes and any that a county is authorized to adopt under Article 18 of Chapter 153A. Those are the planning and development articles. This section, as well as other sections throughout the bill, attempt to complete the job begun in the 2004 Technical Corrections bill of changing the term "planning agency" to "planning board" as the standard way of the referring to the body that advises the governing board on zoning and other planning decisions.

Secs 2 and 3 – Preliminary Plat Approval. These sections add "sketch plans" and "preliminary plats" to the provisions for plat approval in the statutes about subdivision regulation. Section 2 expressly gives cities and counties the authority to set up different review procedures for different classes of subdivisions (e.g., big ones as opposed to small ones). Section 2 also says plat approval must be based on standards from the ordinance. If the criteria for decisions involves the exercise of judgment, the criteria must provide adequate guiding standards for the decision maker. Section 3 clarifies that plat approval may be delegated to a staff person or technical review committee.

Section 4 – Notice for Zoning Amendments. This section simplifies the alternate notice provision for a public hearing on large-scale zoning (affecting more than 50 parcels) by requiring the half-page newspaper ad to be published twice rather than four times. A new requirement is added for hearings about zoning map amendments that a notice must be posted on the site of the affected parcel. If more than one parcel is involved, a notice need not be posted on every parcel, but on enough to provide reasonable notice to interested persons.

Secs. 5 and 6 – Protest Petitions. The city zoning statutes allow property owners within an area around the parcel affected by a proposed zoning change to sign protest petitions. If enough sign, the zoning change is subject to a ¾ vote of the city council. (There is no corresponding county provision.) Section 5 makes clear that the protest petition statute only applies to amendments to the zoning map – not to text amendments. It also changes the delineation of the territory within which an owner is qualified to sign a protest petition. Currently, persons qualify if they own property in the lots to be rezoned, or in lots "immediately adjacent thereto either in the rear thereof or on either side thereof, extending 100 feet therefrom, or of those directly opposite thereto extending 100 feet from the street frontage of the opposing lots." That identifies five areas around the parcel, and the ¾ majority requirement is triggered if 20% of the property owners in any one of them sign protest petitions. It also works much better if the property to be rezoned is rectangular, which many are not. Section 5 simplifies this by saying that the ¾ is triggered if 20% of the owners sign in the affected area, or if 5% sign in a 100-foot buffer extending along the entire boundary of each area proposed to be rezoned. A street right of way is not counted in the buffer. Section 5 also says that for calculating the ¾ majority, vacant seats and members excused from voting are not counted. Section 6 expressly states that any signers of a protest petition may withdraw their protest before the vote, and only the unwithdrawn protests at the time of the vote will count for triggering the ¾ majority.

Section 7 – Planning Board Review. This section expressly states that the recommendation of a city or county planning board is required before initial adoption of zoning. It also requires that subsequent proposals to change the zoning ordinance must be submitted to the planning agency for its review and recommendation before the governing body decides it. Under current law, counties are required to do this but cities are not (though most do).

This section standardizes the language requiring planning agency review for cities and counties. It gives the planning board 30 days to send a written recommendation to the governing board. That recommendation must address the proposed amendment's consistency with any comprehensive plan that has been adopted and with other official plans that are applicable. A comment that the proposal is inconsistent with the plan does not preclude its consideration by the governing body. If there is no planning board recommendation within 30 days, the governing board may proceed without it.

Section 8 – Board of Adjustment. This section deals with the Board of Adjustment, whose job is to make quasi-judicial decisions about the application of the zoning ordinance. These often include appeals from administrative decisions, variances, and exceptions to zoning regulations, if the zoning ordinance permits those variances and exceptions. The section provides for alternate members of the BOA to be appointed to serve when a member has been temporarily disqualified (as for a financial conflict). The section codifies case law about when BOA members must excuse themselves from voting on a decision. Currently, a 4/5 majority of the BOA is required to issue a variance or to overrule an administrative official. This section says vacant board seats and seats of members temporarily disqualified are not counted in calculating the 4/5 majority. The section authorizes the BOA, in issuing a variance, to impose conditions on it, provided that the conditions are reasonably related to the condition or circumstance that gives rise to the variance. The section expressly allows special and conditional use permits, but forbids variances in permitted uses, in both cases reflecting case law. The section provides a limitation to the breadth of a city or county's authority under a UDO to grant powers to the BOA, limiting the BOA's appellate and variance authority to zoning matters.

Section 9 – Typo Correction in Transportation Corridor Statute. This amends Chapter 136, the Transportation chapter, to correct a drafting oversight that occurred when the requirement to begin work on an environmental impact statute or preliminary engineering was changed from two years from the adoption of a transportation corridor map or amendment to one year. The change from two years to one year needed to be made in two places, but was only made in one. This makes the second change.

Secs. 10-13 – Changing "Planning Agency" to "Planning Board." These sections make only those conforming changes, which are also made elsewhere throughout the bill.

Section 14 – Saving Clause for Local Acts. This section states the legislative intent that the enactment of the bill does not override previously enacted local bills or charter provisions.

EFFECTIVE DATE: The bill would become effective January 1, 2006.

S0518e1-SMRR-CSRR-29 v13

Article 18.

Parks and Recreation.

Sec.
160A-350. Short title.
160A-351. Declaration of State policy.
160A-352. Recreation defined.
160A-353. Powers.
160A-354. Administration of parks and recreation programs.
160A-355. Joint parks and recreation systems.
160A-356. Financing parks and recreation.
160A-357. [Repealed.]
160A-358, 160A-359. [Reserved.]

Article 19.

Planning and Regulation of Development.

Part 1. General Provisions.

160A-360. Territorial jurisdiction.
160A-361. Planning agency.
160A-362. Extraterritorial representation.
160A-363. Supplemental powers. §1
160A-364. Procedure for adopting or amending ordinances under Article.
160A-364.1. Statute of limitations.
160A-365. Enforcement of ordinances.
160A-366. Validation of ordinance.
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GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 518

Short Title:	City/County Planning Clarification.	(Public)
Sponsors:	Senator Clodfelter.	
Referred to:	Judiciary I.	

March 15, 2005

A BILL TO BE ENTITLED

AN ACT TO CLARIFY AND MAKE TECHNICAL CHANGES TO CITY AND COUNTY PLANNING STATUTES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 160A-363 reads as rewritten:

"**§ 160A-363. Supplemental powers.**

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

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

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

(d) A city may elect to combine any of the ordinances authorized by law into a unified ordinance. Unless expressly provided otherwise, a city may apply any of the definitions and procedures authorized by law to any or all aspects of the unified

ordinance and may employ any organizational structure, board, commission, or staffing arrangement authorized by law to any or all aspects of the ordinance."

SECTION 2. G.S. 153A-322 reads as rewritten:

"**§ 153A-322. Supplemental powers.**

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

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

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

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

SECTION 3. G.S. 160A-371 reads as rewritten:

"**§ 160A-371. Subdivision regulation.**

A city may by ordinance regulate the subdivision of land within its territorial jurisdiction. In addition to final plat approval, the ordinance may include provisions for review and approval of sketch plans and preliminary plats. The ordinance may provide for different review procedures for differing classes of subdivisions. The ordinance may be adopted as part of a unified development ordinance or as a separate subdivision ordinance."

SECTION 4. G.S. 160A-373 reads as rewritten:

"**§ 160A-373. Ordinance to contain procedure for plat approval; approval prerequisite to plat recordation; statement by owner.**

Any subdivision ordinance adopted pursuant to this Part shall contain provisions setting forth the procedures to be followed in granting or denying approval of a subdivision plat prior to its registration.

The ordinance may provide that final ~~approval of each individual subdivision plat is to be given by~~decisions on preliminary plats and final plats are to be made by:

(1) The city council,

(2) The city council on recommendation of a ~~planning agency,~~ designated body, or

(3) A designated planning ~~agency.~~board, technical review committee, or other designated body or staff person.

From and after the effective date of a subdivision ordinance that is adopted by the city, no subdivision plat of land within the city's jurisdiction shall be filed or recorded until it shall have been submitted to and approved by the council or appropriate agency, as specified in the subdivision ordinance, and until this approval shall have been entered on the face of the plat in writing by an authorized representative of the city. The Review Officer, pursuant to G.S. 47-30.2, shall not certify a plat of a subdivision of land located within the territorial jurisdiction of a city that has not been approved in accordance with these provisions, nor shall the clerk of superior court order or direct the recording of a plat if the recording would be in conflict with this section."

SECTION 5. G.S. 153A-330 reads as rewritten:

"**§ 153A-330. Subdivision regulation.**

A county may by ordinance regulate the subdivision of land within its territorial jurisdiction. If a county, pursuant to G.S. 153A-342, has adopted a zoning ordinance that applies only to one or more designated portions of its territorial jurisdiction, it may adopt subdivision regulations that apply only within the areas so zoned and need not regulate the subdivision of land in the rest of its jurisdiction. In addition to final plat approval, the ordinance may include provisions for review and approval of sketch plans and preliminary plats. The ordinance may provide for different review procedures for differing classes of subdivisions. The ordinance may be adopted as part of a unified development ordinance or as a separate subdivision ordinance."

SECTION 6. G.S. 153A-332 reads as rewritten:

"**§ 153A-332. Ordinance to contain procedure for plat approval; approval prerequisite to plat recordation; statement by owner.**

A subdivision ordinance adopted pursuant to this Part shall contain provisions setting forth the procedures to be followed in granting or denying approval of a subdivision plat before its registration.

The ordinance shall provide that the following agencies be given an opportunity to make recommendations concerning an individual subdivision plat before the plat is approved:

(1) The district highway engineer as to proposed State streets, State highways, and related drainage systems;

(2) The county health director or local public utility, as appropriate, as to proposed water or sewerage systems;

(3) Any other agency or official designated by the board of commissioners.

The ordinance may provide that final ~~approval of each individual subdivision plat is to be given by:~~decisions on preliminary plats and final plats are to be made by:

(1) The board of commissioners,
(2) The board of commissioners on recommendation of a ~~planning agency,~~ designated body, or
(3) A designated planning ~~agency.~~board, technical review committee, or other designated body or staff person.

From the effective date of a subdivision ordinance that is adopted by the county, no subdivision plat of land within the county's jurisdiction may be filed or recorded until it has been submitted to and approved by the appropriate board or agency, as specified in the subdivision ordinance, and until this approval is entered in writing on the face of the plat by an authorized representative of the county. The Review Officer, pursuant to G.S. 47-30.2, shall not certify a plat of a subdivision of land located within the territorial jurisdiction of the county that has not been approved in accordance with these provisions, and the clerk of superior court may not order or direct the recording of a plat if the recording would be in conflict with this section."

SECTION 7. G.S. 160A-384 reads as rewritten:

"**§ 160A-384. Method of procedure.**

(a) The city council shall provide for the manner in which zoning regulations and restrictions and the boundaries of zoning districts shall be determined, established and enforced, and from time to time amended, supplemented or changed, in accordance with the provisions of this Article. The procedures adopted pursuant to this section shall provide that whenever there is a zoning map amendment, the owner of that parcel of land as shown on the county tax listing, and the owners of all parcels of land abutting that parcel of land as shown on the county tax listing, shall be mailed a notice of a public hearing on the proposed amendment by first class mail at the last addresses listed for such owners on the county tax abstracts. This notice must be deposited in the mail at least 10 but not more than 25 days prior to the date of the public hearing. The person or persons mailing such notices shall certify to the City Council that fact, and such certificate shall be deemed conclusive in the absence of fraud.

(b) The first class mail notice required under subsection (a) of this section shall not be required if the zoning map amendment directly affects more than 50 properties, owned by a total of at least 50 different property owners, and the city elects to use the expanded published notice provided for in this subsection. In this instance, a city may elect to either make the mailed notice provided for in subsection (a) of this section or may as an alternative elect to publish ~~once a week for four successive calendar weeks in a newspaper having general circulation in the area an advertisement of the public hearing that shows the boundaries of the area affected by the proposed zoning map amendment and explains the nature of the proposed change. The final two advertisements shall comply with and be deemed to satisfy the provisions of G.S. 160A-364. The advertisement~~ notice of the hearing as required by G.S. 160A-364, but provided that each advertisement shall not be less than one-half of a newspaper page in size. The advertisement shall only be effective for property owners who reside in the area of general circulation of the newspaper which publishes the notice. Property owners who reside outside of the newspaper circulation area, according to the address listed on the most recent property tax listing for the affected property, shall be notified

~~by first-class mail pursuant to~~according to the provisions of subsection (a) of this section. ~~The person or persons mailing the notices shall certify to the city council that fact, and the certificates shall be deemed conclusive in the absence of fraud. In addition to the published notice, a city shall post one or more prominent signs on or immediately adjacent to the subject area reasonably calculated to give public notice of the proposed rezoning.~~

(c) The provisions of this section shall not be applicable to any zoning map adoption that initially zones property added to the territorial coverage of the ordinance."

SECTION 8. G.S. 160A-385 reads as rewritten:

"**§ 160A-385. Changes.**

(a) Qualified Protests.

(1) Zoning ~~regulations and restrictions and zone boundaries~~ ordinances may from time to time be amended, supplemented, changed, modified or repealed. In case, however, of a qualified protest against ~~such change, signed by the owners of twenty percent (20%) or more either of the area of the lots included in a proposed change, or of those immediately adjacent thereto either in the rear thereof or on either side thereof, extending 100 feet therefrom, or of those directly opposite thereto extending 100 feet from the street frontage of the opposite lots, an amendment~~ a zoning map amendment, that amendment shall not become effective except by favorable vote of three-fourths of all the members of the city council. For the purposes of this subsection, vacant positions on the council and members who are excused from voting shall not be considered 'members of the council' for calculation of the requisite supermajority.

(2) To qualify as a protest under this section, the petition must be signed by the owners of either (i) twenty percent (20%) or more of the area included in the proposed change or (ii) five percent (5%) of a 100-foot-wide buffer extending along the entire boundary of each discrete or separate area proposed to be rezoned. Street rights-of-way shall not be considered in computing the 100-foot buffer area. When less than an entire parcel of land is subject to the proposed zoning map amendment, the 100-foot buffer shall be measured from the property line of that parcel. For the purposes of this section, the 'owners' are those listed on the county tax listing.

(3) The foregoing provisions concerning protests shall not be applicable to any amendment which initially zones property added to the territorial coverage of the ordinance as a result of annexation or otherwise, or to an amendment to an adopted (i) special use ~~district or~~ district, (ii) conditional use ~~district~~ district, or (iii) conditional district if the amendment does not change the types of uses that are permitted within the district or increase the approved density for residential development, or increase the total approved size of nonresidential development, or reduce the size of any buffers or screening approved

for the special ~~use or~~ use district, conditional use ~~district.~~district, or conditional district.

(b) ~~Amendments, modifications, supplements, repeal or other changes in zoning regulations and restrictions and zone boundaries~~ Amendments in zoning ordinances shall not be applicable or enforceable without consent of the owner with regard to buildings and uses for which either (i) building permits have been issued pursuant to G.S. 160A-417 prior to the enactment of the ordinance making the change or changes so long as the permits remain valid and unexpired pursuant to G.S. 160A-418 and unrevoked pursuant to G.S. 160A-422 or (ii) a vested right has been established pursuant to G.S. 160A-385.1 and such vested right remains valid and unexpired pursuant to G.S. 160A-385.1."

SECTION 9. G.S. 160A-386 reads as rewritten:

"**§ 160A-386. Protest petition; form; requirements; time for filing.**

No protest against any change in or amendment to a zoning ordinance or zoning map shall be valid or effective for the purposes of G.S. 160A-385 unless it be in the form of a written petition actually bearing the signatures of the requisite number of property owners and stating that the signers do protest the proposed change or amendment, and unless it shall have been received by the city clerk in sufficient time to allow the city at least two normal work days, excluding Saturdays, Sundays and legal holidays, before the date established for a public hearing on the proposed change or amendment to determine the sufficiency and accuracy of the petition. The city council may by ordinance require that all protest petitions be on a form prescribed and furnished by the city, and such form may prescribe any reasonable information deemed necessary to permit the city to determine the sufficiency and accuracy of the petition. Unless specifically provided otherwise within the ordinance, a person who has signed a protest petition may withdraw his or her name from the petition at any time prior to the vote on the proposed zoning amendment. Only those protest petitions that meet the qualifying standards set forth in G.S. 160A-385 at the time of the vote on the zoning amendment shall trigger the supermajority voting requirement."

SECTION 10. G.S. 160A-387 reads as rewritten:

"**§ 160A-387. Planning agency; zoning plan; certification to city council.**

In order to initially exercise the powers conferred by this Part, a city council shall create or designate a planning ~~agency~~ board under the provisions of this Article or of a special act of the General Assembly. The planning ~~agency~~ board shall ~~prepare~~ review and comment upon a proposed zoning ordinance, including both the full text of such ordinance and maps showing proposed district boundaries. The planning ~~agency~~ board may hold public hearings in the course of preparing the ordinance. Upon completion, the planning ~~agency~~ board shall ~~certify~~ make a written recommendation regarding adoption of the ordinance to the city council. The city council shall not hold its required public hearing or take action until it has received a ~~certified~~ recommendation regarding ordinance from the planning ~~agency.~~ board. Following its required public hearing, the city council may refer the ordinance back to the planning ~~agency~~ board for any further recommendations that the ~~agency~~ board may wish to make prior to final action by the city council in adopting, modifying and adopting, or rejecting the ordinance.

Subsequent to initial adoption of a zoning ordinance, all proposed amendments to the zoning ordinance or zoning map shall be submitted to the planning board for review and comment, including amendments proposed by the planning board, city council, city staff, landowners, or any other person. The planning board shall consider whether the proposed amendment is consistent with the comprehensive plan and any other officially adopted plans that are 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. If no written report is received from the planning board within 30 days of referral of the amendment to that board, the governing board may proceed in its consideration of the amendment without the planning board report."

SECTION 11. G.S. 160A-388 reads as rewritten:

"**§ 160A-388. Board of adjustment.**

(a) The city council may provide for the appointment and compensation of a board of adjustment consisting of five or more members, each to be appointed for three years. In appointing the original members of such board, or in the filling of vacancies caused by the expiration of the terms of existing members, the council may appoint certain members for less than three years to the end that thereafter the terms of all members shall not expire at the same time. The council may, in its discretion, appoint and provide compensation for alternate members to serve on the board in the absence or temporary disqualification of any regular ~~member.~~member or to fill a vacancy pending appointment of a member. Alternate members shall be appointed for the same term, at the same time, and in the same manner as regular members. Each alternate member, while attending any regular or special meeting of the board and serving ~~in the absence~~ on behalf of any regular member, shall have and may exercise all the powers and duties of a regular member. A city may designate a planning ~~agency~~ board or governing board to perform any or all of the duties of a board of adjustment in addition to its other duties.

(b) The board of adjustment shall hear and decide appeals from and review any order, requirement, decision, or determination made by an administrative official charged with the enforcement of any ordinance adopted pursuant to this Part. An appeal may be taken by any person aggrieved or by an officer, department, board, or bureau of the city. Appeals shall be taken within times prescribed by the board of adjustment by general rule, by filing with the officer from whom the appeal is taken and with the board of adjustment a notice of appeal, specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken. An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the board of adjustment, after notice of appeal has been filed with him, that because of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property or that because the violation charged is transitory in nature a stay would seriously interfere with enforcement of the ordinance. In that case proceedings shall not be stayed except by a restraining order, which may be granted by the board of adjustment or by a court of record on application, on notice to the officer

from whom the appeal is taken and on due cause shown. The board of adjustment shall fix a reasonable time for the hearing of the appeal, give due notice thereof to the parties, and decide it within a reasonable time. The board of adjustment may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from, and shall make any order, requirement, decision, or determination that in its opinion ought to be made in the premises. To this end the board shall have all the powers of the officer from whom the appeal is taken.

(c) The zoning ordinance may provide that the board of adjustment may permit special exceptions to the zoning regulations in specified classes of cases or situations ~~and~~ such as minor modifications to dimensional and nonuse related regulations and that the board may issue special and conditional use permits, all to be in accordance with the principles, conditions, safeguards, and procedures specified in the ordinance. The ordinance may also authorize the board to interpret zoning maps and pass upon disputed questions of lot lines or district boundary lines and similar questions as they arise in the administration of the ordinance. The board shall hear and decide all matters referred to it or upon which it is required to pass under any zoning ordinance.

(d) When practical difficulties or unnecessary hardships would result from carrying out the strict letter of a zoning or other land development ordinance, the board of adjustment shall have the ~~power, in passing upon appeals,~~ power to vary or modify any of the regulations or provisions of the ordinance ~~relating to the use, construction or alteration of buildings or structures or the use of land,~~ so that the spirit of the ordinance shall be observed, public safety and welfare secured, and substantial justice done. No change in permitted uses may be authorized by variance.

(e) The concurring vote of four-fifths of the members of the board shall be necessary to reverse any order, requirement, decision, or determination of any administrative official charged with the enforcement of an ordinance adopted pursuant to this Part, or to decide in favor of the applicant any matter upon which it is required to pass under any ordinance, or to grant a variance from the provisions of the ordinance. For the purposes of this subsection, vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter shall not be considered 'members of the board' for calculation of the requisite supermajority if there are no qualified alternates available to take the place of such members. Appropriate conditions may be imposed on any approval issued by the board where the condition is reasonably necessary to secure compliance with the standards of the ordinance.

(e1) A member of the board or any other body exercising the functions of a board of adjustment shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible conflicts include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter. If an objection is raised to a member's participation and that member does not recuse himself or herself, the remaining members of the board shall by majority vote rule on the objection.

(e2) Every decision of the board shall be subject to review by the superior court by proceedings in the nature of certiorari. Any petition for review by the superior court shall be filed with the clerk of superior court within 30 days after the decision of the board is filed in such office as the ordinance specifies, or after a written copy thereof is delivered to every aggrieved party who has filed a written request for such copy with the secretary or chairman of the board at the time of its hearing of the case, whichever is later. The decision of the board may be delivered to the aggrieved party either by personal service or by registered mail or certified mail return receipt requested.

(f) The chairman of the board of adjustment or any member temporarily acting as chairman, is authorized in his official capacity to administer oaths to witnesses in any matter coming before the board.

(g) The board of adjustment may subpoena witnesses and compel the production of evidence. If a person fails or refuses to obey a subpoena issued pursuant to this subsection, the board of adjustment may apply to the General Court of Justice for an order requiring that its order be obeyed, and the court shall have jurisdiction to issue these orders after notice to all proper parties. No testimony of any witness before the board of adjustment pursuant to a subpoena issued in exercise of the power conferred by this subsection may be used against the witness in the trial of any civil or criminal action other than a prosecution for false swearing committed on the examination. Any person who, while under oath during a proceeding before the board of adjustment, willfully swears falsely, is guilty of a Class 1 misdemeanor."

SECTION 12. G.S. 153A-343(b) reads as rewritten:

"(b) The first class mail notice required under subsection (a) of this section shall not be required if the zoning map amendment directly affects more than 50 properties, owned by a total of at least 50 different property owners, and the county elects to use the expanded published notice provided for in this subsection. In this instance, a county may elect to either make the mailed notice provided for in subsection (a) of this section or may as an alternative elect to publish ~~once a week for four successive calendar weeks in a newspaper having general circulation in the area an advertisement of the public hearing that shows the boundaries of the area affected by the proposed zoning map amendment and explains the nature of the proposed change. The final two advertisements shall comply with and be deemed to satisfy the provisions of G.S. 153A-323. The advertisement~~ notice of the hearings required by G.S. 153A-323, but provided that each of the advertisements shall not be less than one-half of a newspaper page in size. The advertisement shall only be effective for property owners who reside in the area of general circulation of the newspaper which publishes the notice. Property owners who reside outside of the newspaper circulation area, according to the address listed on the most recent property tax listing for the affected property, shall be notified ~~by first class mail pursuant to~~ according to the provisions of subsection (a) of this section. ~~The person or persons mailing the notices shall certify to the board of commissioners that fact, and the certificates shall be deemed conclusive in the absence of fraud. In addition to the published notice, a county shall post one or more prominent signs on or immediately adjacent to the subject area reasonably calculated to give public notice of the proposed rezoning.~~"

SECTION 13. G.S. 153A-344 reads as rewritten:

"**§ 153A-344. Planning agency; zoning plan; certification to board of ~~commissioners; amendments.~~commissioners.**

(a) To initially exercise the powers conferred by this Part, a county shall create or designate a planning ~~agency~~ board under the provisions of this Article or of a local act. The planning ~~agency~~ board shall ~~prepare~~ review and comment upon a proposed zoning ordinance, including both the full text of such ordinance and maps showing proposed district boundaries. The planning ~~agency~~ board may hold public hearings in the course of preparing the ordinance. Upon completion, the planning ~~agency~~ board shall ~~certify~~ make a written recommendation regarding adoption of the ordinance to the board of commissioners. The board of commissioners shall not hold the public hearing required by G.S. 153A-323 or take action until it has received a ~~certified~~ recommendation regarding the ordinance from the planning ~~agency.~~board. Following its required public hearing, the board of commissioners may refer the ordinance back to the planning ~~agency~~ board for any further recommendations that the ~~agency~~ board may wish to make prior to final action by the board in adopting, modifying and adopting, or rejecting the ordinance.

~~Zoning regulations and restrictions and zone boundaries may from time to time be amended, supplemented, changed, modified, or repealed. Whenever territory is added to an existing designated zoning area, it shall be treated as an amendment to the zoning ordinance for that area. Before an amendment may be adopted, it must be referred to the planning agency for the agency's recommendation. The agency shall be given at least 30 days in which to make a recommendation.~~ Subsequent to initial adoption of a zoning ordinance, all proposed amendments to the zoning ordinance or zoning map shall be submitted to the planning board for review and comment, including amendments proposed by the planning board, the board of county commissioners, county staff, landowners, or any other person. The planning board shall consider whether the proposed amendment is consistent with the comprehensive plan and any other officially adopted plans that are applicable. The planning board shall provide a written recommendation to the board of county commissioners that addresses plan consistency and other matters as deemed appropriate by the planning board. If no written report is received from the planning board within 30 days of referral of the amendment to that board, the board of county commissioners may proceed in its consideration of the amendment without the planning board report. The board of commissioners is not bound by the recommendations, if any, of the planning ~~agency.~~board.

(b) ~~Amendments, modifications, supplements, repeal or other changes in zoning regulations and restrictions and zone boundaries~~ Amendments in zoning ordinances shall not be applicable or enforceable without consent of the owner with regard to buildings and uses for which either (i) building permits have been issued pursuant to G.S. 153A-357 prior to the enactment of the ordinance making the change or changes so long as the permits remain valid and unexpired pursuant to G.S. 153A-358 and unrevoked pursuant to G.S. 153A-362 or (ii) a vested right has been established pursuant to G.S. 153A-344.1 and such vested right remains valid and unexpired pursuant to G.S. 153A-344.1."

SECTION 14. G.S. 153A-345 reads as rewritten:

"**§ 153A-345. Board of adjustment.**

(a) The board of commissioners may provide for the appointment and compensation, if any, of a board of adjustment consisting of at least five members, each to be appointed for three years. In appointing the original members of the board, or in filling vacancies caused by the expiration of the terms of existing members, the board of commissioners may appoint some members for less than three years to the end that thereafter the terms of all members do not expire at the same time. The board of commissioners may provide for the appointment and compensation, if any, of alternate members to serve on the board in the absence or temporary disqualification of any regular ~~member.~~ member or to fill a vacancy pending appointment of a member. Alternate members shall be appointed for the same term, at the same time, and in the same manner as regular members. Each alternate member, while attending any regular or special meeting of the board and serving ~~in the absence~~ on behalf of a regular member, has and may exercise all the powers and duties of a regular member. If the board of commissioners does not zone the entire territorial jurisdiction of the county, each designated zoning area shall have at least one resident as a member of the board of adjustment.

A county may designate a planning ~~agency~~ board or the board of county commissioners to perform any or all of the duties of a board of adjustment in addition to its other duties.

(b) The board of adjustment shall hear and decide appeals from and review any order, requirement, decision, or determination made by an administrative official charged with enforcing an ordinance adopted pursuant to this Part. Any person aggrieved or any officer, department, board, or bureau of the county may take an appeal. Appeals shall be taken within times prescribed by the board of adjustment by general rule, by filing with the officer from whom the appeal is taken and with the board of adjustment a notice of appeal, specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the board all the papers constituting the record upon which action appealed from was taken. An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the board of adjustment, after notice of appeal has been filed with him, that because of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property or that because the violation charged is transitory in nature a stay would seriously interfere with enforcement of the ordinance. In that case proceedings may not be stayed except by a restraining order, which may be granted by the board of adjustment or by a court of record on application, on notice to the officer from whom the appeal is taken and on due cause shown. The board of adjustment shall fix a reasonable time for the hearing of the appeal, give due notice of the appeal to the parties, and decide the appeal within a reasonable time. The board of adjustment may reverse or affirm, in whole or in part, or may modify the order, requirement, decision, or determination appealed from, and shall make any order, requirement, decision, or determination that in its opinion ought to be made in the circumstances. To this end the board has all of the powers of the officer from whom the appeal is taken.

(c) The zoning ordinance may provide that the board of adjustment may permit special exceptions to the zoning regulations in specified classes of cases or situations ~~and~~ such as minor modifications to dimensional and nonuse related regulations and that the board may issue special and conditional use permits, all to be in accordance with the principles, conditions, safeguards, and procedures specified in the ordinance. The ordinance may also authorize the board to interpret zoning maps and pass upon disputed questions of lot lines or district boundary lines and similar questions that may arise in the administration of the ordinance. The board shall hear and decide all matters referred to it or upon which it is required to pass under the zoning ordinance.

(d) When practical difficulties or unnecessary hardships would result from carrying out the strict letter of a zoning or other land development ordinance, the board of adjustment ~~may, in passing upon appeals,~~ shall have the power to vary or modify any regulation or provision of the ordinance ~~relating to the use, construction, or alteration of buildings or structures or the use of land,~~ so that the spirit of the ordinance is observed, public safety and welfare secured, and substantial justice done. No change in permitted uses may be authorized by variance.

(e) The board of adjustment, by a vote of four-fifths of its members, may reverse any order, requirement, decision, or determination of an administrative officer charged with enforcing an ordinance adopted pursuant to this Part, or may decide in favor of the applicant a matter upon which the board is required to pass under the ordinance, or may grant a variance from the provisions of the ordinance. For the purposes of this subsection, vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter shall not be considered 'members of the board' for calculation of the requisite supermajority if there are no qualified alternates available to take the place of such members. Appropriate conditions may be imposed on any approval issued by the board where the condition is reasonably necessary to secure compliance with the standards of the ordinance.

(e1) A member of the board or any other body exercising the functions of a board of adjustment shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible conflicts include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter. If an objection is raised to a member's participation and that member does not recuse himself or herself, the remaining members of the board shall by majority vote rule on the objection.

(e2) Each decision of the board is subject to review by the superior court by proceedings in the nature of certiorari. Any petition for review by the superior court shall be filed with the clerk of superior court within 30 days after the decision of the board is filed in such office as the ordinance specifies, or after a written copy thereof is delivered to every aggrieved party who has filed a written request for such copy with the secretary or chairman of the board at the time of its hearing of the case, whichever is later. The decision of the board may be delivered to the aggrieved party either by personal service or by registered mail or certified mail return receipt requested.

(f) The chairman of the board of adjustment or any member temporarily acting as chairman may in his official capacity administer oaths to witnesses in any matter coming before the board.

(g) The board of adjustment may subpoena witnesses and compel the production of evidence. If a person fails or refuses to obey a subpoena issued pursuant to this subsection, the board of adjustment may apply to the General Court of Justice for an order requiring that its order be obeyed, and the court shall have jurisdiction to issue these orders after notice to all proper parties. No testimony of any witness before the board of adjustment pursuant to a subpoena issued in exercise of the power conferred by this subsection may be used against the witness in the trial of any civil or criminal action other than a prosecution for false swearing committed on the examination. Any person who, while under oath during a proceeding before the board of adjustment, willfully swears falsely, is guilty of a Class 1 misdemeanor."

SECTION 15. G.S. 136-44.50(d) reads as rewritten:

"(d) Within one year following the establishment of a transportation corridor official map or amendment, work shall begin on an environmental impact statement or preliminary engineering. The failure to begin work on the environmental impact statement or preliminary engineering within the one-year period shall constitute an abandonment of the corridor, and the provisions of this Article shall no longer apply to properties or portions of properties embraced within the transportation corridor. A city may prepare environmental impact studies and preliminary engineering work in connection with the establishment of a transportation corridor official map or amendments to a transportation corridor official map. When a city prepares a transportation corridor official map for a street or highway that has been designated a State responsibility pursuant to G.S. 136-66.2, the environmental impact study and preliminary engineering work shall be reviewed and approved by the Department of Transportation. An amendment to a corridor shall not extend the ~~two-year~~ one-year period provided by this section unless it establishes a substantially different corridor in a primarily new location."

SECTION 16. The provisions of this act shall not be deemed to amend or affect the validity or enforceability of any local act or charter provision previously enacted by the General Assembly.

SECTION 17. This act becomes effective September 1, 2005.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

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SENATE BILL 814
PROPOSED COMMITTEE SUBSTITUTE S814-CSRR-26 [v.17]

5/23/2005 6:48:54 PM

Short Title: Modernize City/County Planning. (Public)

Sponsors:

Referred to:

March 23, 2005

A BILL TO BE ENTITLED

AN ACT TO MODERNIZE AND SIMPLIFY CITY AND COUNTY PLANNING AND LAND-USE MANAGEMENT STATUTES.

The General Assembly of North Carolina enacts:

PART I. GENERAL PROVISIONS

SECTION 1.(a) G.S. 160A-364 reads as rewritten:

"**§ 160A-364. Procedure for adopting or amending ordinances under Article.**

(a) Before ~~adopting or amending~~ adopting, amending, or repealing any ordinance authorized by this Article, the city council shall hold a public hearing on it. A notice of the public hearing shall be given once a week for two successive calendar weeks in a newspaper having general circulation in the area. The notice shall be published the first time not less than 10 days nor more than 25 days before the date fixed for the hearing. In computing such period, the day of publication is not to be included but the day of the hearing shall be included. A city may adopt ordinances providing that notice of public hearings may be given through electronic means, including, but not limited to, the city's Internet site and email listserves. If electronic notice is made not less than 10 days nor more than 25 days before the date fixed for the hearing, that electronic notice may be substituted for the second week's newspaper notice required by this section, but not for the first week's newspaper notice.

(b) If the adoption or modification of the ordinance would result in changes to the zoning map or would change or affect the permitted uses of land located five miles or less from the perimeter boundary of a military base, the governing body of the local government shall provide written notice of the proposed changes by certified mail, return receipt requested, to the commander of the military base not less than 10 days nor more than 25 days before the date fixed for the public hearing. If the military provides comments or analysis regarding the compatibility of the proposed ordinance or

amendment with military operations at the base, the governing body of the local government shall take the comments and analysis into consideration before making a final determination on the ordinance. "

SECTION 1.(b) G.S. 153A-323 reads as rewritten:

"**§ 153A-323. Procedure for adopting or amending ordinances under this Article and Chapter 160A, Article 19.**

(a) Before ~~adopting or amending~~ adopting, amending, or repealing any ordinance authorized by this Article or Chapter 160A, Article 19, the board of commissioners shall hold a public hearing on the ordinance or amendment. The board shall cause notice of the hearing to be published once a week for two successive calendar weeks. The notice shall be published the first time not less than 10 days nor more than 25 days before the date fixed for the hearing. In computing such period, the day of publication is not to be included but the day of the hearing shall be included. A county may adopt ordinances providing that notice of public hearings may be given through electronic means, including, but not limited to, the county's Internet site and email listserves. If electronic notice is made not less than 10 days nor more than 25 days before the date fixed for the hearing, that electronic notice may be substituted for the second week's newspaper notice required by this section, but not for the first week's newspaper notice.

(b) If the adoption or modification of the ordinance would result in changes to the zoning map or would change or affect the permitted uses of land located five miles or less from the perimeter boundary of a military base, the board of commissioners shall provide written notice of the proposed changes by certified mail, return receipt requested, to the commander of the military base not less than 10 days nor more than 25 days before the date fixed for the public hearing. If the military provides comments or analysis regarding the compatibility of the proposed ordinance or amendment with military operations at the base, the board of commissioners shall take the comments and analysis into consideration before making a final determination on the ordinance."

PART II. SUBDIVISION REGULATION

SECTION 2.(a) G.S. 160A-372 reads as rewritten:

"**§ 160A-372. Contents and requirements of ordinance.**

(a) A subdivision control ordinance may provide for the orderly growth and development of the city; for the coordination of ~~streets and highways~~transportation networks and utilities within proposed subdivisions with existing or planned streets and highways and with other public facilities; for the dedication or reservation of recreation areas serving residents of the immediate neighborhood within the subdivision or, alternatively, for provision of funds to be used to acquire recreation areas serving residents of the development or subdivision or more than one subdivision or development within the immediate area, and rights-of-way or easements for street and utility purposes including the dedication of rights-of-way pursuant to G.S. 136-66.10 or G.S. 136-66.11; and for the distribution of population and traffic in a manner that will avoid congestion and overcrowding and will create conditions ~~essential to~~that substantially promote public health, safety, and the general welfare.

(b) The ordinance may require a plat be prepared, approved, and recorded pursuant to the provisions of the ordinance whenever any subdivision of land takes place. The ordinance may include requirements that ~~the final plat~~plats show sufficient data to determine readily and reproduce accurately on the ground the location, bearing, and length of every street and alley line, lot line, easement boundary line, and other property boundaries, including the radius and other data for curved property lines, to an appropriate accuracy and in conformance with good surveying practice.

(c) The ordinance may provide for the more orderly development of subdivisions by requiring the construction of community service facilities in accordance with municipal ~~policies and standards and, to assure compliance with these requirements, the ordinance may provide for the posting of bond or any other method that will offer guarantee of compliance.~~plans, policies, and standards.

The ordinance may provide for the reservation of school sites in accordance with comprehensive land use plans approved by the council or the planning ~~agency.~~ board. In order for this authorization to become effective, before approving such plans the council or planning ~~agency~~ board and the board of education with jurisdiction over the area shall jointly determine the specific location and size of any school sites to be reserved, which information shall appear in the comprehensive land use plan. Whenever a subdivision is submitted for approval which includes part or all of a school site to be reserved under the plan, the council or planning ~~agency~~ board shall immediately notify the board of education and the board of education shall promptly decide whether it still wishes the site to be reserved. If the board of education does not wish to reserve the site, it shall so notify the council or planning ~~agency~~ board and no site shall be reserved. If the board of education does wish to reserve the site, the subdivision shall not be approved without such reservation. The board of education shall then have 18 months beginning on the date of final approval of the subdivision within which to acquire the site by purchase or by initiating condemnation proceedings. If the board of education has not purchased or begun proceedings to condemn the site within 18 months, the subdivider may treat the land as freed of the reservation.

~~The ordinance may require that a plat be prepared, approved, and recorded pursuant to its provisions whenever any subdivision of land takes place.~~

The ordinance may provide that a developer may provide funds to the city whereby the city may acquire recreational land or areas to serve the development or subdivision, including the purchase of land ~~which~~that may be used to serve more than one subdivision or development within the immediate area. All funds received by the city pursuant to this paragraph shall be used only for the acquisition or development of recreation, park, or open space sites. Any formula enacted to determine the amount of funds that are to be provided under this paragraph shall be based on the value of the development or subdivision for property tax purposes. The ordinance may allow a combination or partial payment of funds and partial dedication of land when the governing body of the city determines that this combination is in the best interests of the citizens of the area to be served.

The ordinance may provide that in lieu of required street construction, a developer may be required to provide funds that the city may use for the construction of roads to

serve the occupants, residents, or invitees of the subdivision or development and these funds may be used for roads which serve more than one subdivision or development within the area. All funds received by the city pursuant to this paragraph shall be used only for development of roads, including design, land acquisition, and construction. However, a city may undertake these activities in conjunction with the Department of Transportation under an agreement between the city and the Department of Transportation. Any formula adopted to determine the amount of funds the developer is to pay in lieu of required street construction shall be based on the trips generated from the subdivision or development. The ordinance may require a combination of partial payment of funds and partial dedication of constructed streets when the governing body of the city determines that a combination is in the best interests of the citizens of the area to be served.

To assure compliance with these and other ordinance requirements, the ordinance may provide for performance guarantees to assure successful completion of required improvements. If a performance guarantee is required, the city shall provide a range of options of types of performance guarantees, such as surety bonds or letters of credit, from which the developer may choose. For any specific development, the type of performance guarantee from the range specified by the city shall be at the election of the developer."

SECTION 2.(b) G.S. 153A-331 reads as rewritten:

"**§ 153A-331. Contents and requirements of ordinance.**

(a) A subdivision control ordinance may provide for the orderly growth and development of the county; for the coordination of ~~streets and highways~~transportation networks and utilities within proposed subdivisions with existing or planned streets and highways and with other public facilities; for the dedication or reservation of recreation areas serving residents of the immediate neighborhood within the subdivision and of rights-of-way or easements for street and utility purposes including the dedication of rights-of-way pursuant to G.S. 136-66.10 or G.S. 136-66.11; and for the distribution of population and traffic in a manner that will avoid congestion and overcrowding and will create conditions ~~essential to~~ that substantially promote public health, safety, and the general welfare.

(b) The ordinance may require that a plat be prepared, approved, and recorded pursuant to the provisions of the ordinance whenever any subdivision of land takes place. The ordinance may include requirements that the final plat show sufficient data to determine readily and reproduce accurately on the ground the location, bearing, and length of every street and alley line, lot line, easement boundary line, and other property boundaries, including the radius and other data for curved property lines, to an appropriate accuracy and in conformity with good surveying practice.

(c) A subdivision control ordinance may provide that a developer may provide funds to the county whereby the county may acquire recreational land or areas to serve the development or subdivision, including the purchase of land ~~which~~that may be used to serve more than one subdivision or development within the immediate area.

The ordinance may provide that in lieu of required street construction, a developer may provide funds to be used for the development of roads to serve the occupants,

residents, or invitees of the subdivision or development. All funds received by the county under this section shall be transferred to the municipality to be used solely for the development of roads, including design, land acquisition, and construction. Any municipality receiving funds from a county under this section is authorized to expend such funds outside its corporate limits for the purposes specified in the agreement between the municipality and the county. Any formula adopted to determine the amount of funds the developer is to pay in lieu of required street construction shall be based on the trips generated from the subdivision or development. The ordinance may require a combination of partial payment of funds and partial dedication of constructed streets when the governing body of the county determines that a combination is in the best interest of the citizens of the area to be served.

The ordinance may provide for the more orderly development of subdivisions by requiring the construction of community service facilities in accordance with county ~~policies and standards, and, to assure compliance with these requirements, the ordinance may provide for the posting of bond or any other method that will offer guarantee of compliance.~~ plans, policies, and standards.

The ordinance may provide for the reservation of school sites in accordance with comprehensive land use plans approved by the board of commissioners or the planning ~~agency.~~ board. For the authorization to reserve school sites to be effective, the board of commissioners or planning ~~agency,~~ board, before approving a comprehensive land use plan, shall determine jointly with the board of education with jurisdiction over the area the specific location and size of each school site to be reserved, and this information shall appear in the plan. Whenever a subdivision that includes part or all of a school site to be reserved under the plan is submitted for approval, the board of commissioners or the planning ~~agency~~ board shall immediately notify the board of education. ~~That~~ The board of education shall promptly decide whether it still wishes the site to be reserved and shall notify the board of commissioners or planning ~~agency~~ board of its decision. If the board of education does not wish the site to be reserved, no site may be reserved. If the board of education does wish the site to be reserved, the subdivision may not be approved without the reservation. The board of education must acquire the site within 18 months after the date the site is reserved, either by purchase or by exercise of the power of eminent domain. If the board of education has not purchased the site or begun proceedings to condemn the site within the 18 months, the subdivider may treat the land as freed of the reservation.

~~The ordinance may require that a plat be prepared, approved, and recorded pursuant to its provisions whenever a subdivision of land takes place.~~

To assure compliance with these and other ordinance requirements, the ordinance may provide for performance guarantees to assure successful completion of required improvements. If a performance guarantee is required, the county shall provide a range of options of types of performance guarantees, such as surety bonds or letters of credit, from which the developer may choose. For any specific development, the type of performance guarantee from the range specified by the county shall be at the election of the developer."

SECTION 3.(a) G.S. 160A-375 reads as rewritten:

"**§ 160A-375. Penalties for transferring lots in unapproved subdivisions.**

(a) If a city adopts an ordinance regulating the subdivision of land as authorized herein, any person who, being the owner or agent of the owner of any land located within the jurisdiction of that city, thereafter subdivides his land in violation of the ordinance or transfers or sells land by reference to, exhibition of, or any other use of a plat showing a subdivision of the land before the plat has been properly approved under such ordinance and recorded in the office of the appropriate register of deeds, shall be guilty of a Class 1 misdemeanor. The description by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring land shall not exempt the transaction from this penalty. The city may bring an action for injunction of any illegal subdivision, transfer, conveyance, or sale of land, and the court shall, upon appropriate findings, issue an injunction and order requiring the offending party to comply with the subdivision ordinance. Building permits required pursuant to G.S. 160A-417 may be denied for lots that have been illegally subdivided. In addition to other remedies, a city may institute any appropriate action or proceedings to prevent the unlawful subdivision of land, to restrain, correct, or abate the violation, or to prevent any illegal act or conduct.

(b) The provisions of this section are not violated by pre-sale or pre-lease contracts entered into by an owner or by the owner's agent for the purpose of obtaining development financing where that pre-sale or pre-lease contract describes or refers to land by reference to a subdivision plat that has not yet been approved or recorded in the office of the register of deeds, provided that presale or pre-lease contract complies with each of the following provisions:

(1) The contract must plainly and conspicuously notify the prospective buyer or lessee that a subdivision plat has not been approved or recorded and that the contract is cancelable by either party until the final subdivision plat is recorded and the buyer or lessee elects not to terminate the contract under subdivision (4) of this subsection.

(2) The contract must plainly and conspicuously notify the prospective buyer or lessee that execution of the contract confers on the prospective buyer or lessee no right to receive or to compel favorable action on the subdivision plat and that no governmental body incurs any obligation to the prospective buyer or lessee with respect to approval of the subdivision plat.

(3) The contract obligates the owner or the owner's agent to deliver to the prospective buyer or lessee a copy of the approved and recorded subdivision plat prior to any closing and conveyance.

(4) The contract grants to the prospective buyer or lessee a period of 15 days after receipt of the recorded plat to terminate the contract and to receive a refund of all earnest money if, in the sole judgment of the prospective buyer or lessee, the approved and recorded subdivision plat differs in any way from any representative relied upon by the buyer or lessee or is in any way unsatisfactory to that prospective buyer or lessee.

(5) The contract provides that the prospective buyer or lessee may not be required to close any earlier than five days after expiration of the period for termination set forth in subdivision (4) of this subsection."

SECTION 3.(b) G.S. 153A-334 reads as rewritten:

"**§ 153A-334. Penalties for transferring lots in unapproved subdivisions.**

(a) If a person who is the owner or the agent of the owner of any land located within the territorial jurisdiction of a county that has adopted a subdivision regulation ordinance subdivides his land in violation of the ordinance or transfers or sells land by reference to, exhibition of, or any other use of a plat showing a subdivision of the land before the plat has been properly approved under the ordinance and recorded in the office of the appropriate register of deeds, he is guilty of a Class 1 misdemeanor. The description by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring land does not exempt the transaction from this penalty. The county may bring an action for injunction of any illegal subdivision, transfer, conveyance, or sale of land, and the court shall, upon appropriate findings, issue an injunction and order requiring the offending party to comply with the subdivision ordinance. Building permits required pursuant to G.S. 153A-357 may be denied for lots that have been illegally subdivided. In addition to other remedies, a county may institute any appropriate action or proceedings to prevent the unlawful subdivision of land, to restrain, correct, or abate the violation, or to prevent any illegal act or conduct.

(b) The provisions of this section are not violated by pre-sale or pre-lease contracts entered into by an owner or by the owner's agent for the purpose of obtaining development financing where that pre-sale or pre-lease contract describes or refers to land by reference to a subdivision plat that has not yet been approved or recorded in the office of the register of deeds, provided that presale or pre-lease contract complies with each of the following provisions:

(1) The contract must plainly and conspicuously notify the prospective buyer or lessee that a subdivision plat has not been approved or recorded and that the contract is cancelable by either party until the final subdivision plat is recorded and the buyer or lessee elects not to terminate the contract under subdivision (4) of this subsection.

(2) The contract must plainly and conspicuously notify the prospective buyer or lessee that execution of the contract confers on the prospective buyer or lessee no right to receive or to compel favorable action on the subdivision plat and that no governmental body incurs any obligation to the prospective buyer or lessee with respect to approval of the subdivision plat.

(3) The contract obligates the owner or the owner's agent to deliver to the prospective buyer or lessee a copy of the approved and recorded subdivision plat prior to any closing and conveyance.

(4) The contract grants to the prospective buyer or lessee a period of 15 days after receipt of the recorded plat to terminate the contract and to receive a refund of all earnest money if, in the sole judgment of the

prospective buyer or lessee, the approved and recorded subdivision plat differs in any way from any representative relied upon by the buyer or lessee or is in any way unsatisfactory to that prospective buyer or lessee.

(5) The contract provides that the prospective buyer or lessee may not be required to close any earlier than five days after expiration of the period for termination set forth in subdivision (4) of this subsection."

SECTION 4.(a) G.S. 160A-376 reads as rewritten:

"**§ 160A-376. Definition.**

(a) For the purpose of this Part, "subdivision" means all divisions of a tract or parcel of land into two or more lots, building sites, or other divisions when any one or more of those divisions is created for the purpose of sale or building development (whether immediate or future) and shall include all divisions of land involving the dedication of a new street or a change in existing streets; but the following shall not be included within this definition nor be subject to the regulations authorized by this Part:

(1) The combination or recombination of portions of previously subdivided and recorded lots where the total number of lots is not increased and the resultant lots are equal to or exceed the standards of the municipality as shown in its subdivision ~~regulations;~~regulations.

(2) The division of land into parcels greater than 10 acres where no street right-of-way dedication is ~~involved;~~involved.

(3) The public acquisition by purchase of strips of land for the widening or opening of streets or for public transportation system ~~corridors; and~~ corridors.

(4) The division of a tract in single ownership whose entire area is no greater than two acres into not more than three lots, where no street right-of-way dedication is involved and where the resultant lots are equal to or exceed the standards of the municipality, as shown in its subdivision regulations.

(b) A city may provide for expedited review of specified classes of subdivisions."

SECTION 4.(b) G.S. 153A-335 reads as rewritten:

"**§ 153A-335. "Subdivision" defined.**

(a) For purposes of this Part, "subdivision" means all divisions of a tract or parcel of land into two or more lots, building sites, or other divisions when any one or more of those divisions is created for the purpose of sale or building development (whether immediate or future) and includes all division of land involving the dedication of a new street or a change in existing streets; however, the following is not included within this definition and is not subject to any regulations enacted pursuant to this Part:

(1) The combination or recombination of portions of previously subdivided and recorded lots if the total number of lots is not increased and the resultant lots are equal to or exceed the standards of the county as shown in its subdivision ~~regulations;~~regulations.

(2) The division of land into parcels greater than 10 acres if no street right-of-way dedication is ~~involved;~~ involved.

(3) The public acquisition by purchase of strips of land for widening or opening streets or for public transportation system ~~corridors; and~~ corridors.

(4) The division of a tract in single ownership the entire area of which is no greater than two acres into not more than three lots, if no street right-of-way dedication is involved and if the resultant lots are equal to or exceed the standards of the county as shown by its subdivision regulations.

(b) A county may provide for expedited review of specified classes of subdivisions."

PART III. ZONING REGULATION

SECTION 5.(a) G.S. 160A-381 reads as rewritten:

"**§ 160A-381. Grant of power.**

(a) For the purpose of promoting health, safety, morals, or the general welfare of the community, any city may adopt zoning and development regulation ordinances. These ordinances may be adopted as part of a unified development ordinance or as a separate ordinance. A zoning ordinance may regulate and restrict the height, number of stories and size of buildings and other structures, the percentage of lots that may be occupied, the size of yards, courts and other open spaces, the density of population, ~~and~~ the location and use of buildings, structures and ~~land for trade, industry, residence or other purposes and to~~ land. The ordinance may provide density credits or severable development rights for dedicated rights of way pursuant to G.S. 136 66.10 or G.S. 136 66.11.

(b) Expired.

(b1) These regulations may provide that a board of adjustment may determine and vary their application in harmony with their general purpose and intent and in accordance with general or specific rules therein ~~contained.~~contained, provided no change in permitted uses may be authorized by variance.

(c) The regulations may also provide that the board of ~~adjustment~~adjustment, the planning board, or the city council may issue special use permits or conditional use permits in the classes of cases or situations and in accordance with the principles, conditions, safeguards, and procedures specified therein and may impose reasonable and appropriate conditions and safeguards upon these permits. When deciding special use permits or conditional use permits, the city council shall follow quasi-judicial procedures. No vote greater than a majority vote shall be required for the city council to issue such permits. For the purposes of this section, vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter shall not be considered 'members of the board' for calculation of the requisite majority. Every such decision of the city council shall be subject to review of the superior court in the nature of certiorari in accordance with G.S. 160A-388.

~~(c)~~ Where appropriate, such conditions may include requirements that street and utility rights-of-way be dedicated to the public and that provision be made of

recreational space and facilities. ~~When issuing or denying special use permits or conditional use permits, the city council shall follow the procedures for boards of adjustment except that no vote greater than a majority vote shall be required for the city council to issue such permits, and every such decision of the city council shall be subject to review by the superior court by proceedings in the nature of certiorari. Any petition for review by the superior court shall be filed with the clerk of superior court within 30 days after the decision of the city council is filed in such office as the ordinance specifies, or after a written copy thereof is delivered to every aggrieved party who has filed a written request for such copy with the clerk at the time of the hearing of the case, whichever is later. The decision of the city council may be delivered to the aggrieved party either by personal service or by registered mail or certified mail return receipt requested.~~

(d) A city council member shall not vote on any zoning map or text amendment where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. Members of appointed boards providing advice to the city council shall not vote on recommendations regarding any zoning map or text amendment where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member.

(e) As provided in this subsection, cities may adopt temporary moratoria on any city development approval required by law. The duration of any moratorium shall be reasonable in light of the specific conditions that warrant imposition of the moratorium and may not exceed the period of time necessary to correct, modify, or resolve such conditions. A development moratorium with a duration of 60 days or any shorter period may be adopted without the necessity of a public hearing and notice that would otherwise be required pursuant to G.S. 160A-364. A development moratorium with a duration of 61 days or longer, and any extension of a moratorium adopted without a hearing to a total duration of more than 60 days, is subject to the notice and hearing requirements of G.S. 160A-364. Absent an imminent threat to public health and safety, a development moratorium adopted pursuant to this section shall not apply to any project for which a valid building permit issued pursuant to G.S. 160A-417 is outstanding, to development set forth in a site-specific or phased development plan approved pursuant to G.S. 160A-385.1, to development for which substantial expenditures have already been made in good faith reliance on a prior valid administrative or quasi-judicial permit or approval, or to preliminary or final subdivision plats that have been accepted for review by the city prior to the initiation of any procedure to adopt the moratorium.

Any ordinance establishing a development moratorium must expressly include at the time of adoption each of the following:

(1) A clear statement of the problems or conditions necessitating the moratorium and what courses of action, alternative to a moratorium, were considered by the city.

(2) A clear statement of the development approvals subject to the moratorium and how a moratorium on those approvals will address the problems or conditions leading to imposition of the moratorium.

(3) An express date for termination of the moratorium and a statement setting forth why that duration is reasonably necessary to address the problems or conditions leading to imposition of the moratorium.

(4) A clear statement of the actions, and the schedule for those actions, proposed to be taken by the city during the duration of the moratorium to address the problems or conditions leading to imposition of the moratorium.

No moratorium may be subsequently renewed or extended for any additional period unless the city shall have taken all reasonable and feasible steps proposed to be taken by the city in its ordinance establishing the moratorium to address the problems or conditions leading to imposition of the moratorium and unless new facts and conditions warrant an extension. Any ordinance renewing or extending a development moratorium must expressly include, at the time of adoption, the findings set forth in subdivisions (1) through (4) of this subsection, including what new facts or conditions warrant the extension."

SECTION 5.(b) G.S. 153A-340 reads as rewritten:

"**§ 153A-340. Grant of power.**

(a) For the purpose of promoting health, safety, morals, or the general welfare, a county may adopt zoning and development regulation ordinances. These ordinances may be adopted as part of a unified development ordinance or as a separate ordinance. A zoning ordinance may regulate and restrict the height, number of stories and size of buildings and other structures, the percentage of lots that may be occupied, the size of yards, courts and other open spaces, the density of population, and the location and use of buildings, structures, and land for trade, industry, residence, or other ~~purposes, and to~~ purposes. The ordinance may provide density credits or severable development rights for dedicated rights of way pursuant to G.S. 136 66.10 or G.S. 136 66.11.

(b) (1) These regulations may affect property used for bona fide farm purposes only as provided in subdivision (3) of this subsection. This subsection does not limit regulation under this Part with respect to the use of farm property for nonfarm purposes.

(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 having a domestic or foreign market.

(3) The definitions set out in G.S. 106-802 apply to this subdivision. A county may adopt zoning regulations governing swine farms served by animal waste management systems having a design capacity of 600,000 pounds steady state live weight (SSLW) or greater provided that the zoning regulations may not have the effect of excluding swine farms served by an animal waste management system having a design

capacity of 600,000 pounds SSLW or greater from the entire zoning jurisdiction.

(c) The regulations may provide that a board of adjustment may determine and vary their application in harmony with their general purpose and intent and in accordance with general or specific rules therein ~~contained.~~contained, provided no change in permitted uses may be authorized by variance.

(c1) The regulations may also provide that the board of ~~adjustment~~adjustment, the planning board, or the board of commissioners may issue special use permits or conditional use permits in the classes of cases or situations and in accordance with the principles, conditions, safeguards, and procedures specified therein and may impose reasonable and appropriate conditions and safeguards upon these permits. Where appropriate, the conditions may include requirements that street and utility rights-of-way be dedicated to the public and that recreational space be provided. ~~When issuing or denying special use permits or conditional use permits, the board of commissioners shall follow the procedures for boards of adjustment except that no vote greater than a majority vote shall be required for the board of commissioners to issue such permits, and every such decision of the board of commissioners shall be subject to review by the superior court by proceedings in the nature of certiorari.~~ When deciding special use permits or conditional use permits, the board of county commissioners shall follow quasi-judicial procedures. No vote greater than a majority vote shall be required for the city council to issue such permits. For the purposes of this section, vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter shall not be considered 'members of the board' for calculation of the requisite majority. Every such decision of the board of county commissioners shall be subject to review of the superior court in the nature of certiorari consistent with G.S. 153A-345.

(d) A county may regulate the development over estuarine waters and over lands covered by navigable waters owned by the State pursuant to G.S. 146-12, within the bounds of that county.

(e) For the purpose of this section, the term "structures" shall include floating homes.

~~(f) Any petition for review by the superior court shall be filed with the clerk of superior court within 30 days after the decision of the board of commissioners is filed in such office as the ordinance specifies, or after a written copy thereof is delivered to every aggrieved party who has filed a written request for such copy with the clerk at the time of the hearing of the case, whichever is later. The decision of the board of commissioners may be delivered to the aggrieved party either by personal service or by registered mail or certified mail return receipt requested.~~

(g) A member of the board of county commissioners shall not vote on any zoning map or text amendment where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. Members of appointed boards providing advice to the board of county commissioners shall not vote on recommendations regarding any zoning map or text

amendment where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member.

(h) As provided in this subsection, counties may adopt temporary moratoria on any county development approval required by law. The duration of any moratorium shall be reasonable in light of the specific conditions that warrant imposition of the moratorium and may not exceed the period of time necessary to correct, modify, or resolve such conditions. A development moratorium with a duration of 60 days or any shorter period may be adopted without the necessity of a public hearing and notice that would otherwise be required pursuant to G.S. 153A-323. A development moratorium with a duration of 61 days or longer, and any extension of a moratorium adopted without a hearing to a total duration of more than 60 days, is subject to the notice and hearing requirements of G.S. 153A-323. Absent an imminent threat to public health and safety, a development moratorium adopted pursuant to this section shall not apply to any project for which a valid building permit issued pursuant to G.S. 153A-357 is outstanding, to development set forth in a site-specific or phased development plan approved pursuant to G.S. 153A-344.1, to development for which substantial expenditures have already been made in good faith reliance on a prior valid administrative or quasi-judicial permit or approval, or to preliminary or final subdivision plats that have been accepted for review by the county prior to the initiation of any procedure to adopt the moratorium.

Any ordinance establishing a development moratorium must expressly include at the time of adoption each of the following:

(1) A clear statement of the problems or conditions necessitating the moratorium and what courses of action, alternative to a moratorium, were considered by the county.

(2) A clear statement of the development approvals subject to the moratorium and how a moratorium on those approvals will address the problems or conditions leading to imposition of the moratorium.

(3) An express date for termination of the moratorium and a statement setting forth why that duration is reasonably necessary to address the problems or conditions leading to imposition of the moratorium.

(4) A clear statement of the actions, and the schedule for those actions, proposed to be taken by the county during the duration of the moratorium to address the problems or conditions leading to imposition of the moratorium.

No moratorium may be subsequently renewed or extended for any additional period unless the city shall have taken all reasonable and feasible steps proposed to be taken by the county in its ordinance establishing the moratorium to address the problems or conditions leading to imposition of the moratorium and unless new facts and conditions warrant an extension. Any ordinance renewing or extending a development moratorium must expressly include, at the time of adoption, the findings set forth in subdivisions (1) through (4) of this subsection, including what new facts or conditions warrant the extension."

SECTION 5.1.(a) G.S. 160A-75 reads as rewritten:

"**§ 160A-75. Voting.**

No member shall be excused from voting except upon matters involving the consideration of the member's own financial interest or official conduct or on matters on which the member is prohibited from voting under G.S. ~~14-234.~~ 14-234 or 160A-381(d). In all other cases, a failure to vote by a member who is physically present in the council chamber, or who has withdrawn without being excused by a majority vote of the remaining members present, shall be recorded as an affirmative vote. The question of the compensation and allowances of members of the council is not a matter involving a member's own financial interest or official conduct.

An affirmative vote equal to a majority of all the members of the council not excused from voting on the question in issue, including the mayor's vote in case of an equal division, shall be required to adopt an ordinance, take any action having the effect of an ordinance, authorize or commit the expenditure of public funds, or make, ratify, or authorize any contract on behalf of the city. In addition, no ordinance nor any action having the effect of any ordinance may be finally adopted on the date on which it is introduced except by an affirmative vote equal to or greater than two thirds of all the actual membership of the council, excluding vacant seats and not including the mayor unless the mayor has the right to vote on all questions before the council. For purposes of this section, an ordinance shall be deemed to have been introduced on the date the subject matter is first voted on by the council. "

SECTION 5.1.(b) G.S. 153A-44 reads as rewritten:

"**§ 153A-44. Members excused from voting.**

The board may excuse a member from voting, but only upon questions involving the member's own financial interest or official conduct or on matters on which the member is prohibited from voting under G.S. ~~14-234.~~ 14-234 or 153A-340(g). For purposes of this section, the question of the compensation and allowances of members of the board does not involve a member's own financial interest or official conduct."

SECTION 6.(a) G.S. 160A-382 reads as rewritten:

"**§ 160A-382. Districts.**

(a) For any or all these purposes, the city may divide its territorial jurisdiction into districts of any number, shape, and area that may be deemed best suited to carry out the purposes of this Part; and within those districts it may regulate and restrict the erection, construction, reconstruction, alteration, repair or use of buildings, structures, or land. Such districts may include, but shall not be limited to, general use districts, in which a variety of uses are permissible in accordance with general standards; overlay districts, in which additional requirements are imposed on certain properties within one or more underlying general or special use districts; and special use districts or conditional use districts, in which uses are permitted only upon the issuance of a special use permit or a conditional use ~~permit.~~ permit and conditional zoning districts, in which site plans and individualized development conditions are imposed.

(b) Property may be placed in a special use ~~district or conditional use district~~ district, conditional use district, or conditional district only in response to a petition by the owners of all the property to be included. Specific conditions applicable to these

districts may be proposed by the petitioner, the city or its agencies, or any affected person, but only those conditions mutually approved by the city and the petitioner may be incorporated into the zoning regulations or permit requirements. Conditions and site-specific standards imposed in a conditional district shall be limited to those that address the conformance of the development and use of the site to city ordinances and an officially adopted comprehensive or other plan, and those that address the impacts reasonably expected to be generated by the development or use of the site.

A statement analyzing the reasonableness of the proposed rezoning shall be prepared for each petition for a rezoning to a special or conditional use district, or a conditional district, or other small-scale or spot zoning.This statement may be prepared by the petitioner or by the city, and it shall be completed and available for public inspection at the time notice is provided for the public hearing on the proposed rezoning. This statement shall address the consistency of the proposed rezoning with any comprehensive plan that has been adopted and any other officially adopted plan that is applicable and the compatibility of the proposed rezoning with the site and surrounding area.

(c) Except as authorized by the foregoing, all regulations shall be uniform for each class or kind of building throughout each district, but the regulations in one district may differ from those in other districts."

SECTION 6.(b) G.S. 153A-342 reads as rewritten:

"**§ 153A-342. Districts; zoning less than entire jurisdiction.**

(a) A county may divide its territorial jurisdiction into districts of any number, shape, and area that it may consider best suited to carry out the purposes of this Part. Within these districts a county may regulate and restrict the erection, construction, reconstruction, alteration, repair, or use of buildings, structures, or land. Such districts may include, but shall not be limited to, general use districts, in which a variety of uses are permissible in accordance with general standards; overlay districts, in which additional requirements are imposed on certain properties within one or more underlying general or special use districts; ~~and~~ special use districts or conditional use districts, in which uses are permitted only upon the issuance of a special use permit or a conditional use ~~permit.~~permit and conditional zoning districts, in which site plans and individualized development conditions are imposed.

(b) Property may be placed in a special use ~~district or conditional use district~~ district, conditional use district, or conditional district only in response to a petition by the owners of all the property to be included. Specific conditions applicable to the districts may be proposed by the petitioner, the county or its agencies, or any affected person, but only those conditions mutually approved by the county and the petitioner may be incorporated into the zoning regulations or permit requirements.

A statement analyzing the reasonableness of the proposed rezoning shall be prepared for each petition for a rezoning to a special or conditional use district, or a conditional district, or other small-scale or spot zoning.This statement may be prepared by the petitioner or by the county, and it shall be completed and available for public inspection at the time notice is provided for the public hearing on the proposed rezoning. This statement shall address the consistency of the proposed rezoning with any

comprehensive plan that has been adopted and any other officially adopted plan that is applicable and the compatibility of the proposed rezoning with the site and surrounding area.

(c) Except as authorized by the foregoing, all regulations shall be uniform for each class or kind of building throughout each district, but the regulations in one district may differ from those in other districts.

(d) A county may determine that the public interest does not require that the entire territorial jurisdiction of the county be zoned and may designate one or more portions of that jurisdiction as a zoning area or areas. A zoning area must originally contain at least 640 acres and at least 10 separate tracts of land in separate ownership and may thereafter be expanded by the addition of any amount of territory. A zoning area may be regulated in the same manner as if the entire county were zoned, and the remainder of the county need not be regulated."

SECTION 7.(a) G.S. 160A-383 reads as rewritten:

"**§ 160A-383. Purposes in view.**

Zoning regulations shall be made in accordance with a comprehensive ~~plan and designed to lessen congestion in the streets; to secure safety from fire, panic and other dangers;~~plan. Prior to adopting or rejecting any zoning amendment, the governing board shall adopt a statement describing whether its action is consistent with an adopted comprehensive plan and explaining why the board considers the action taken to be reasonable and in the public interest. That statement is not subject to judicial review.

Zoning regulations shall be designed to promote ~~health~~the public health, safety, and ~~the~~ general ~~welfare;~~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.~~requirements; and to maintain and improve the quality of neighborhoods and communities. 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 7.(b) G.S. 153A-341 reads as rewritten:

"**§ 153A-341. Purposes in view.**

Zoning regulations shall be made in accordance with a comprehensive ~~plan and designed to lessen congestion in the streets; to secure safety from fire, panic, and other dangers;~~plan. Prior to adopting or rejecting any zoning amendment, the governing board shall adopt a statement describing whether its action is consistent with an adopted comprehensive plan and explaining why the board considers the action taken to be reasonable and in the public interest. That statement is not subject to judicial review.

Zoning regulations shall be designed to promote the public ~~health~~health, safety, and ~~the~~ general ~~welfare;~~ 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.~~ requirements; and to maintain and improve the quality of neighborhoods and communities. The regulations shall be made with reasonable consideration as to, among other things, 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 the county. In addition, the regulations shall be made with reasonable consideration to expansion and development of any cities within the county, so as to provide for their orderly growth and development. "

PART IV. INFRASTRUCTURE AGREEMENTS

SECTION 8.(a) Article 21 of Chapter 160A of the General Statutes is amended by adding a new section to read:

"**§ 160A-499. Reimbursement agreements.**

(a) A city may enter into reimbursement agreements with private developers and property owners for the design and construction of municipal infrastructure that is included on the city's Capital Improvement Plan and serves the developer or property owner. For the purpose of this act, municipal infrastructure includes, without limitation, water mains, sanitary sewer lines, lift stations, stormwater lines, streets, curb and gutter, sidewalks, traffic control devices, and other associated facilities.

(b) A city shall enact ordinances setting forth procedures and terms under which such agreements may be approved.

(c) A city may provide for such reimbursements to be paid from any lawful source.

(d) No reimbursement pursuant to an agreement authorized by this act shall be deemed to be construction subject to Article 8 of Chapter 143 of the General Statutes or to be deemed to be a violation or evasion of any provision of said Article. Notwithstanding the foregoing provisions of this section, a construction contract subject to a reimbursement agreement authorized by this act shall not be awarded by a developer or property owner who is a party to such reimbursement agreement without complying with the requirements of G.S. 143-129 and G.S. 143-128.2 relating to public advertising and bid opening requirements which would be applicable if the construction contract had been awarded by the city.

(e) This section also applies to counties."

SECTION 8.(b) Article 15 of Chapter 160A of the General Statutes is amended by adding a new section to read:

"**§ 160A-309. Intersection and roadway improvements.**

A city may contract with a private party for public intersection or roadway improvements that are adjacent or ancillary to a private land development project. Such a contract is not subject to Article 8 of Chapter 143 of the General Statutes if the public cost will not exceed one hundred seventy-five thousand dollars ($175,000) and the city determines that: (i) the public cost will not exceed the estimated cost of providing for

such public intersection or roadway improvements through either eligible force account qualified labor or through a public contract let pursuant to Article 8 of Chapter 143 of the General Statutes; or (ii) the coordination of separately constructed public intersection or roadway improvements and the adjacent or ancillary private land development improvements would be impracticable."

SECTION 8.(c) Article 16 of Chapter 160A of the General Statutes is amended by adding a new section to read:

"**§ 160A-320. Public enterprise improvements.**

(a) Authorization. – A city may contract with a private party for public enterprise improvements that are adjacent or ancillary to a private land development project. Such a contract shall allow the city to reimburse the private party for costs associated with the design and construction of improvements that are in addition to those required by the city's land development regulations. Such a contract is not subject to Article 8 of Chapter 143 of the General Statutes if the public cost will not exceed one hundred seventy-five thousand dollars ($175,000) and the city determines that: (i) the public cost will not exceed the estimated cost of providing for such improvements through either eligible force account qualified labor or through a public contract let pursuant to Article 8 of Chapter 143 of the General Statutes; or (ii) the coordination of separately constructed improvements would be impracticable.

(b) Property Acquisition. – The improvements may be constructed on property owned or acquired by the private party or on property directly acquired by the city. The private party may assist the city in obtaining easements in favor of the city from private property owners on those properties that will be involved in or affected by the project. The contract between the city and the private party may be entered into before the acquisition of any real property necessary to the project.

(c) This section also applies to counties."

PART V. DEVELOPMENT AGREEMENTS

SECTION 9. Article 19 of Chapter 160A of the General Statutes is amended by adding a new Part to read:

"Part 3D. Development Agreements.

"**§ 160A-400.20. Authorization for development agreements.**

(a) The General Assembly finds:

(1) Large scale development projects often occur in multiple phases extending over a period of years, requiring a long-term commitment of both public and private resources.

(2) Such large scale developments often create potential community impacts and potential opportunities that are difficult or impossible to accommodate within traditional zoning processes.

(3) Because of their scale and duration, such large scale projects often require careful integration between public capital facilities planning, financing, and construction schedules and the phasing of the private development.

(4) Because of their scale and duration, such large scale projects involve substantial commitments of private capital by developers, which developers are usually unwilling to risk without sufficient assurances that development standards will remain stable through the extended period of the development.

(5) Because of their size and duration, such developments often permit communities and developers to experiment with different or non-traditional types of development concepts and standards, while still managing impacts on the surrounding areas.

(6) To better structure and manage development approvals for such large scale developments and insure their proper integration into local capital facilities programs, local governments need the flexibility in negotiating such developments.

(b) Local governments and agencies may enter into development agreements with developers, subject to the procedures and requirements of this Part. In entering into such agreements, a city may not exercise any authority or make any commitment not authorized by general or local act.

(c) This Part is supplemental to the powers conferred upon local governments and does not preclude or supersede rights and obligations established pursuant to other law regarding building permits, site-specific development plans, phased development plans, or other provisions of law.

"**§ 160A-400.21. Definitions.**

The following definitions apply in this Part:

(1) Comprehensive plan. – The comprehensive plan, land-use plan, small area plans, neighborhood plans, transportation plan, capital improvement plan, official map, and any other plans regarding land use and development that have been officially adopted by the governing board.

(2) Developer. – A person, including a governmental agency or redevelopment authority, who intends to undertake any development and who has a legal or equitable interest in the property to be developed.

(3) Development. – The planning for or carrying out of a building activity, the making of a material change in the use or appearance of any structure or property, or the dividing of land into two or more parcels. 'Development', as designated in a law or development permit, includes the planning for and all other activity customarily associated with it unless otherwise specified. When appropriate to the context, 'development' refers to the planning for or the act of developing or to the result of development. Reference to a specific operation is not intended to mean that the operation or activity, when part of other operations or activities, is not development. Reference to particular operations is not intended to limit the generality of this item.

(4) Development permit. – A building permit, zoning permit, subdivision approval, special or conditional use permit, variance, or any other official action of local government having the effect of permitting the development of property.

(5) Governing body. – The city council of a municipality or the board of county commissioners of a county.

(6) Land development regulations. – Ordinances and regulations enacted by the appropriate governing body for the regulation of any aspect of development and includes zoning, subdivision, or any other land development ordinances.

(7) Laws. – All ordinances, resolutions, regulations, comprehensive plans, land development regulations, policies, and rules adopted by a local government affecting the development of property, and includes laws governing permitted uses of the property, density, design, and improvements.

(8) Property. – All real property subject to land use regulation by a local government and includes any improvements or structures customarily regarded as a part of real property.

(9) Local government. – Any municipality or county that exercises regulatory authority over and grants development permits for land development or which provides public facilities.

(10) Local planning board. – Any planning board established pursuant to G.S. 160A-361 or G.S. 153A-321.

(11) Person. – An individual, corporation, business or land trust, estate, trust, partnership, association, two or more persons having a joint or common interest, State agency, or any legal entity.

(12) Public facilities. – Major capital improvements, including, but not limited to, transportation, sanitary sewer, solid waste, drainage, potable water, educational, parks and recreational, and health systems and facilities.

"**§ 160A-400.22. Local governments authorized to enter into development agreements; approval of county or municipal governing body required.**

A local government may establish procedures and requirements, as provided in this Part, to consider and enter into development agreements with developers. A development agreement must be approved by the governing body of a county or municipality by ordinance.

"**§ 160A-400.23. Developed property must contain certain number of acres; permissible durations of agreements.**

A local government may enter into a development agreement with a developer for the development of property as provided in this Part, provided the property contains 25 acres or more of developable property (exclusive of wetlands, mandatory buffers, steep slopes, and other portions of the property precluded from development at the time of application). Development agreements shall be of a term specified in the agreement, provided they may not be for a term exceeding 20 years.

"**§ 160A-400.24. Public hearing.**

Before entering into a development agreement, a local government shall conduct a public hearing on the proposed agreement following the procedures set forth in G.S. 160A-364 or G.S. 153A-323 regarding zoning ordinance adoption or property subject to the development agreement, the development uses proposed on the property, and must specify a place where a copy of the proposed development agreement can be obtained. In the event that the development agreement provides that the local government shall provide certain public facilities, the development agreement shall provide that the delivery date of such public facilities will be tied to successful performance by the developer in implementing the proposed development (such as meeting defined completion percentages or other performance standards).

"**§ 160A-400.25. What development agreement must provide; what it may provide; major modification requires public notice and hearing.**

(a) A development agreement shall at a minimum include all of the following:

(1) A legal description of the property subject to the agreement and the names of its legal and equitable property owners.

(2) The duration of the agreement. However, the parties are not precluded from entering into subsequent development agreements that may extend the original duration period.

(3) The development uses permitted on the property, including population densities and building types, intensities, placement on the site, and design.

(4) A description of public facilities that will service the development, including who provides the facilities, the date any new public facilities, if needed, will be constructed, and a schedule to assure public facilities are available concurrent with the impacts of the development.

(5) A description, where appropriate, of any reservation or dedication of land for public purposes and any provisions to protect environmentally sensitive property.

(6) A description of all local development permits approved or needed to be approved for the development of the property together with a statement indicating that the failure of the agreement to address a particular permit, condition, term, or restriction does not relieve the developer of the necessity of complying with the law governing their permitting requirements, conditions, terms, or restriction.

(7) A description of any conditions, terms, restrictions, or other requirements determined to be necessary by the local government for the public health, safety, or welfare of its citizens.

(8) A description, where appropriate, of any provisions for the preservation and restoration of historic structures.

(b) A development agreement may provide that the entire development or any phase of it be commenced or completed within a specified period of time. The development agreement must provide a development schedule including

commencement dates and interim completion dates at no greater than five-year intervals; provided, however, the failure to meet a commencement or completion date shall not, in and of itself, constitute a material breach of the development agreement pursuant to G.S. 160A-400.27 but must be judged based upon the totality of the circumstances. The development agreement may include other defined performance standards to be met by the developer. The developer may request a modification in the dates as set forth in the agreement. Consideration of a proposed major modification of the agreement shall follow the same procedures as required for initial approval of a development agreement.

(c) If more than one local government is made party to an agreement, the agreement must specify which local government is responsible for the overall administration of the development agreement.

(d) The development agreement also may cover any other matter not inconsistent with this Part.

"**§ 160A-400.26. Law in effect at time of agreement governs development; exceptions.**

(a) Unless the development agreement specifically provides for the application of subsequently enacted laws, the laws applicable to development of the property subject to a development agreement are those in force at the time of execution of the agreement.

(b) Except for grounds specified in G.S. 160A-385.1(e), a local government may not apply subsequently adopted ordinances or development policies to a development that is subject to a development agreement.

(c) In the event State or federal law is changed after a development agreement has been entered into and the change prevents or precludes compliance with one or more provisions of the development agreement, the city may modify the affected provisions, upon a finding that the change in State or federal law has a fundamental effect on the development agreement, by ordinance after notice and a hearing.

(d) This section does not abrogate any rights preserved by G.S. 160A-385, 160A-385.1, 153A-344, and 153A-344.1 or that may vest pursuant to common law or otherwise in the absence of a development agreement.

"**§ 160A-400.27. Periodic review to assess compliance with agreement; material breach by developer; notice of breach; cure of breach or modification or termination of agreement.**

(a) Procedures established pursuant to G.S. 160A-400.22 must include a provision for requiring periodic review by the zoning administrator or other appropriate officer of the local government at least every 12 months, at which time the developer must be required to demonstrate good faith compliance with the terms of the development agreement.

(b) If, as a result of a periodic review, the local government finds and determines that the developer has committed a material breach of the terms or conditions of the agreement, the local government shall serve notice in writing, within a reasonable time after the periodic review, upon the developer setting forth with reasonable particularity the nature of the breach and the evidence supporting the finding and determination, and providing the developer a reasonable time in which to cure the material breach.

(c) If the developer fails to cure the material breach within the time given, then the local government unilaterally may terminate or modify the development agreement; provided, the notice of termination or modification may be appealed to the board of adjustment in the manner provided by G.S. 160A-388(b) and G.S. 153A-345(b).

"**§ 160A-400.28. Amendment or cancellation of development agreement by mutual consent of parties or successors in interest.**

A development agreement may be amended or canceled by mutual consent of the parties to the agreement or by their successors in interest.

"**§ 160A-400.29. Validity and duration of agreement entered into prior to change of jurisdiction; subsequent modification or suspension.**

(a) Except as otherwise provided by this Part, any development agreement entered into by a local government before the effective date of a change of jurisdiction shall be valid for the duration of the agreement, or eight years from the effective date of the change in jurisdiction, whichever is earlier. The parties to the development agreement and the local government assuming jurisdiction have the same rights and obligations with respect to each other regarding matters addressed in the development agreement as if the property had remained in the previous jurisdiction.

(b) A local government assuming jurisdiction may modify or suspend the provisions of the development agreement if the local government determines that the failure of the local government to do so would place the residents of the territory subject to the development agreement, or the residents of the local government, or both, in a condition dangerous to their health or safety, or both.

"**§ 160A-400.30. Developer to record agreement within 14 days; burdens and benefits inure to successors in interest.**

Within 14 days after a local government enters into a development agreement, the developer shall record the agreement with the register of deeds in the county where the property is located. The burdens of the development agreement are binding upon, and the benefits of the agreement shall inure to, all successors in interest to the parties to the agreement.

"**§ 160A-400.31. Applicability to local government of constitutional and statutory procedures for approval of debt.**

In the event that any of the obligations of the local government in the development agreement constitute debt, the local government shall comply, at the time of the obligation to incur the debt and before the debt becomes enforceable against the local government, with any applicable constitutional and statutory procedures for the approval of this debt.

"**§ 160A-400.32. Relationship of agreement to building or housing code.**

A development agreement adopted pursuant to this Chapter shall not exempt the property owner or developer from compliance with the State Building Code or State or local housing codes that are not part of the city's or county's planning, zoning, or subdivision regulations."

PART VI . LOCAL ACTS SAVING CLAUSE

SECTION 10. The provisions of this act shall not be deemed to repeal or amend the validity or enforceability of any local act or charter provision previously enacted by the General Assembly.

PART VII. EFFECTIVE DATE

SECTION 11. This act becomes effective January 1, 2006.

SENATE BILL 814:
Modernize City/County Planning

BILL ANALYSIS

Committee:	Senate Judiciary I	**Date:**	May 24, 2005
Introduced by:	Sen. Clodfelter	**Summary by:**	William R. Gilkeson Committee Co-Counsel
Version:	PCS to First Edition S814-CSRR-26 [v.17]		

SUMMARY: This Proposed Committee Substitute for Senate Bill 814 would make several changes to the statutes about city and county planning and regulation of development. The changes are designed to adapt those statutes to current case law and practice.

§ 1 – Notice. Currently, any amendment to a city or county planning or development ordinance requires a public hearing and a newspaper notice about the hearing that runs for two weeks. The first notice must be no earlier than 25 days and no later than 10 days before the hearing. The PCS provides that notice may be given through electronic means (Internet or email listserves) and made during the 25-10 day period, may be substituted for the second newspaper notice.

§§ 2-4 – Subdivision Regulation. These sections, Part II of the PCS, make parallel changes to the city and county statutes allowing regulation of subdivisions.

Section 2 – Purpose; Performance Guarantees. This section makes changes to the city and county statements of purpose for regulation of subdivisions. The section changes one clause of the purpose language for subdivision regulation from "for the distribution of population and traffic in a manner that will avoid congestion and overcrowding and will create conditions essential to public health, safety, and the general welfare" to something that says they will "create conditions that substantially promote" those things. It also says the government may require a range of performance guarantees such as surety bonds or letters of credit, but says that within that range the developer gets the choice of type of guarantee.

Section 3 – Denial of Building Permits; Remedies; Lot Sales. This section codifies case law that says building permits may be denied because lots were illegally subdivided. It also provides for routine enforcement methods of city and county subdivision regulations, short of criminal sanctions and injunctive relief. The section also provides that an owner may sell or lease land by reference to a plat that has not yet been approved – but with protections for the buyer, including full disclosure and a period after approval in which the buyer or seller may back out until the buyer is satisfied with the approved plat.

Section 4 – Definition. This section makes changes to the definition of "subdivision," providing that the division of land to create only one lot for sale or development can be a subdivision and that cities and counties may provide for expedited review of certain classes of subdivisions.

§§ 5-7 – Zoning Regulation. These sections, Part III of the PCS, make parallel changes to the city and county basic zoning statutes.

Section 5 – Grants of Power. This section amends the grants of power to cities and counties to enact zoning. It does the following:

- *UDO.* Allows zoning to be incorporated into a unified development ordinance. *Subsection (a) for both cities and counties.*

- *No Use Variances.* Codifies case law prohibiting variances for uses. *Subsection (b1) for cities, (c) for counties.*

- *Conditional Use Permits.* Clarifies that planning boards, as well as governing boards, may authorize special and conditional use permits, and do not need a supermajority vote to do so. Also clarifies that vacancies on the board and members disqualified to vote on an issue are not counted for purposes of calculating the majority. *Subsection (c) for cities, (c1) for counties.*

- *Conflicts of Interest.* Codifies case law on prohibiting financial conflicts of interest on zoning amendments and applying the same rule to planning board advisory decisions. *Subsection (d) for cities, (g) for counties.* (Section 5.1 makes conforming references in existing statutes about being excused from voting.)

- *Moratoria.* Explicitly allows cities and counties to adopt temporary moratoria on approvals of some type of development. Many have assumed they have implicit authority to impose moratoria. The provision says any moratorium must be reasonable in light of the conditions that caused it, and the government may keep it in place only so long as is necessary to correct, modify, or resolve those conditions. If it is for 60 days or less, the moratorium may be imposed without a public hearing, but otherwise the same hearing and notice requirements would apply as for amendments to the zoning ordinance. Exempt from the moratorium (absent imminent threat to public health and safety) would be projects for which building permits have been issued, to development in a site-specific or phased-development plan, to a development for which substantial expenditures have already been made in reliance on a prior permit or approval, or to preliminary or final subdivision plats that were accepted for review before the procedure for the moratorium was initiated. The moratorium ordinance would have to state the problems giving rise to the moratorium, what action other than a moratorium the governing board considered to solve the problem, the development approvals that will be subject to the moratorium and how a moratorium on those approvals will address the problem, a specific end date for the moratorium and why it needs to last that long, and what the government intends to do during the moratorium (and a schedule for doing it) to address the problem. The governing board may not extend the moratorium unless it has taken all the reasonable and feasible steps it proposed to take to solve the triggering problem and unless new facts and conditions warrant an extension. *Subsection (e) for cities, (h) for counties.*

Section 6 – Conditional Zoning. This section codifies court decisions allowing conditional zoning. Conditional zoning is the creation of a zoning district in which development can take place only if certain conditions, stated in the zoning ordinance, are met. The section also takes some of the findings courts say governments must make to justify "spot zoning" and requires that governments must make those findings to justify creation or special use or conditional zones.

Section 7 – The Comprehensive Plan; Purposes. Current planning statutes require a jurisdiction that does zoning to adopt zoning regulations in accordance with a comprehensive plan and with other general-welfare-type considerations. These sections reframe that language somewhat, saying the zoning regulations must be in accordance with the comprehensive plan, that before adopting a zoning amendment the governing board shall adopt a statement describing whether the amendment is consistent with the comprehensive plan and – whether it is or is not consistent -- explaining why the board considers the action to be reasonable and in the public interest. The new language separately states the purposes for zoning regulations, adding to old language the purpose "to maintain and improve the quality of neighborhoods and communities."

§ 8 – Infrastructure Agreements. This section, Part IV of the PCS, gives statewide effect to local acts adopted for Charlotte in 2001. It applies to cities and counties (except that intersection and roadway agreements apply only to cities), and allows those governments to enter into agreements to reimburse private developers or property owners for three kinds of improvements that would serve the development or property in question:

- The design and construction of municipal infrastructure that serves the developer or property owner. Examples of "municipal infrastructure" are provided in the act. *Section 8(a).*
- Public intersection and roadway improvements that are adjacent or ancillary to a private land development project. The agreements would not be subject to the general requirements for public contracts if the public cost was no more than $175,000 and the government determines that the public cost of the agreement would not exceed what it would be under conventional public methods and coordination of separate contracts on the project would be impracticable. *Section 8(b).*
- "Public enterprise" improvements (defined in 160A-311 to be various kinds of public utilities) adjacent or ancillary to a private land development project. The exemption from public contracts would be triggered by the same analysis as for intersection and roadway improvements. *Section 8(c).*

§ 9 – Development Agreements. This section, Part V of the PCS, authorizes cities and counties to enter into agreements with developers. This is adapted from a South Carolina statute. If a developer enters into a development agreement with the local government – and abides by the agreement – this section would basically give the developer a vested right to proceed under the agreement and the laws in effect at the time the agreement was executed. Only certain limited circumstances, listing in current law or in the agreement, would justify a zoning action that ran counter to the development agreement. Similar vested rights are available now to developers who have obtained approval of a "phased development plan" or a "site-specific development plan."

Development agreements would be available only for property containing 25 acres or more of developable property. They could last no longer than 20 years.

This section sets up procedures for the adoption of a development agreement, including a public hearing. It specifies what provisions must be contained in the agreement. The burdens and benefits of the agreement would inure to any successor in interest.

EFFECTIVE DATE: The bill becomes effective January 1, 2006.

S0814e1-SMRR-CSRR-26 v17

Article 18.

Parks and Recreation.

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153A-372. Equitable enforcement.
153A-373. Records and reports.
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Part 5. Community Development.

153A-376. Community development programs and activities.
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Article 19.

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153A-391. Creation; admission of new members.
153A-392. Contents of resolution.
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VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE — 5/24/05

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
Barbara Hunter	Smith Moore
Richard Lee	AOC
Leah Bryant	AOC
[illegible]	[illegible]
Charles Wilson	Hamilton Moore LLC N.C. Bramdparents Kids
Louise V. Wilson	Henderson NC Grandchildren Grandparent. Kids
[illegible]	[illegible]
Suzanne Bradley	GA office

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Daniel G. Clodfelter, Chair

Tuesday, May 31, 2005

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

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

S.B. **814** Modernize City/County Planning.

Draft Number:	PCS55240
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

S.B. **970** Land-Use Permit Appeals.

Draft Number:	PCS75321
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 2

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 814
PROPOSED COMMITTEE SUBSTITUTE S814-PCS55240-RR-26

Short Title: Modernize City/County Planning. (Public)

Sponsors:

Referred to:

March 23, 2005

A BILL TO BE ENTITLED

AN ACT TO MODERNIZE AND SIMPLIFY CITY AND COUNTY PLANNING AND LAND-USE MANAGEMENT STATUTES.

The General Assembly of North Carolina enacts:

PART I. GENERAL PROVISIONS

SECTION 1.(a) G.S. 160A-364 reads as rewritten:

"**§ 160A-364. Procedure for ~~adopting or amending~~ adopting, amending, or repealing ordinances under Article.**

(a) Before ~~adopting or amending~~ adopting, amending, or repealing any ordinance authorized by this Article, the city council shall hold a public hearing on it. A notice of the public hearing shall be given once a week for two successive calendar weeks in a newspaper having general circulation in the area. The notice shall be published the first time not less than 10 days nor more than 25 days before the date fixed for the hearing. In computing such period, the day of publication is not to be included but the day of the hearing shall be included.

(b) If the adoption or modification of the ordinance would result in changes to the zoning map or would change or affect the permitted uses of land located five miles or less from the perimeter boundary of a military base, the governing body of the local government shall provide written notice of the proposed changes by certified mail, return receipt requested, to the commander of the military base not less than 10 days nor more than 25 days before the date fixed for the public hearing. If the military provides comments or analysis regarding the compatibility of the proposed ordinance or amendment with military operations at the base, the governing body of the local government shall take the comments and analysis into consideration before making a final determination on the ordinance. "

SECTION 1.(b) G.S. 153A-323 reads as rewritten:

"§ 153A-323. Procedure for ~~adopting or amending~~ adopting, amending, or repealing ordinances under this Article and Chapter 160A, Article 19.

(a) Before ~~adopting or amending~~ adopting, amending, or repealing any ordinance authorized by this Article or Chapter 160A, Article 19, the board of commissioners shall hold a public hearing on the ordinance or amendment. The board shall cause notice of the hearing to be published once a week for two successive calendar weeks. The notice shall be published the first time not less than 10 days nor more than 25 days before the date fixed for the hearing. In computing such period, the day of publication is not to be included but the day of the hearing shall be included.

(b) If the adoption or modification of the ordinance would result in changes to the zoning map or would change or affect the permitted uses of land located five miles or less from the perimeter boundary of a military base, the board of commissioners shall provide written notice of the proposed changes by certified mail, return receipt requested, to the commander of the military base not less than 10 days nor more than 25 days before the date fixed for the public hearing. If the military provides comments or analysis regarding the compatibility of the proposed ordinance or amendment with military operations at the base, the board of commissioners shall take the comments and analysis into consideration before making a final determination on the ordinance."

PART II. SUBDIVISION REGULATION

SECTION 2.(a) G.S. 160A-372 reads as rewritten:

"§ 160A-372. Contents and requirements of ordinance.

(a) A subdivision control ordinance may provide for the orderly growth and development of the city; for the coordination of ~~streets and highways~~transportation networks and utilities within proposed subdivisions with existing or planned streets and highways and with other public facilities; for the dedication or reservation of recreation areas serving residents of the immediate neighborhood within the subdivision or, alternatively, for provision of funds to be used to acquire recreation areas serving residents of the development or subdivision or more than one subdivision or development within the immediate area, and rights-of-way or easements for street and utility purposes including the dedication of rights-of-way pursuant to G.S. 136-66.10 or G.S. 136-66.11; and for the distribution of population and traffic in a manner that will avoid congestion and overcrowding and will create conditions ~~essential to~~that substantially promote public health, safety, and the general welfare.

(b) The ordinance may require a plat be prepared, approved, and recorded pursuant to the provisions of the ordinance whenever any subdivision of land takes place. The ordinance may include requirements that ~~the final plat~~plats show sufficient data to determine readily and reproduce accurately on the ground the location, bearing, and length of every street and alley line, lot line, easement boundary line, and other property boundaries, including the radius and other data for curved property lines, to an appropriate accuracy and in conformance with good surveying practice.

(c) The ordinance may provide for the more orderly development of subdivisions by requiring the construction of community service facilities in accordance with

municipal ~~policies and standards and, to assure compliance with these requirements, the ordinance may provide for the posting of bond or any other method that will offer guarantee of compliance.~~plans, policies, and standards.

The ordinance may provide for the reservation of school sites in accordance with comprehensive land use plans approved by the council or the planning ~~agency.~~board. In order for this authorization to become effective, before approving such plans the council or planning ~~agency~~ board and the board of education with jurisdiction over the area shall jointly determine the specific location and size of any school sites to be reserved, which information shall appear in the comprehensive land use plan. Whenever a subdivision is submitted for approval which includes part or all of a school site to be reserved under the plan, the council or planning ~~agency~~ board shall immediately notify the board of education and the board of education shall promptly decide whether it still wishes the site to be reserved. If the board of education does not wish to reserve the site, it shall so notify the council or planning ~~agency~~ board and no site shall be reserved. If the board of education does wish to reserve the site, the subdivision shall not be approved without such reservation. The board of education shall then have 18 months beginning on the date of final approval of the subdivision within which to acquire the site by purchase or by initiating condemnation proceedings. If the board of education has not purchased or begun proceedings to condemn the site within 18 months, the subdivider may treat the land as freed of the reservation.

~~The ordinance may require that a plat be prepared, approved, and recorded pursuant to its provisions whenever any subdivision of land takes place.~~

The ordinance may provide that a developer may provide funds to the city whereby the city may acquire recreational land or areas to serve the development or subdivision, including the purchase of land ~~which~~that may be used to serve more than one subdivision or development within the immediate area. All funds received by the city pursuant to this paragraph shall be used only for the acquisition or development of recreation, park, or open space sites. Any formula enacted to determine the amount of funds that are to be provided under this paragraph shall be based on the value of the development or subdivision for property tax purposes. The ordinance may allow a combination or partial payment of funds and partial dedication of land when the governing body of the city determines that this combination is in the best interests of the citizens of the area to be served.

The ordinance may provide that in lieu of required street construction, a developer may be required to provide funds that the city may use for the construction of roads to serve the occupants, residents, or invitees of the subdivision or development and these funds may be used for roads which serve more than one subdivision or development within the area. All funds received by the city pursuant to this paragraph shall be used only for development of roads, including design, land acquisition, and construction. However, a city may undertake these activities in conjunction with the Department of Transportation under an agreement between the city and the Department of Transportation. Any formula adopted to determine the amount of funds the developer is to pay in lieu of required street construction shall be based on the trips generated from the subdivision or development. The ordinance may require a combination of partial

payment of funds and partial dedication of constructed streets when the governing body of the city determines that a combination is in the best interests of the citizens of the area to be served.

To assure compliance with these and other ordinance requirements, the ordinance may provide for performance guarantees to assure successful completion of required improvements. If a performance guarantee is required, the city shall provide a range of options of types of performance guarantees, such as surety bonds or letters of credit, from which the developer may choose. For any specific development, the type of performance guarantee from the range specified by the city shall be at the election of the developer."

SECTION 2.(b) G.S. 153A-331 reads as rewritten:

"**§ 153A-331. Contents and requirements of ordinance.**

(a) A subdivision control ordinance may provide for the orderly growth and development of the county; for the coordination of ~~streets and highways~~transportation networks and utilities within proposed subdivisions with existing or planned streets and highways and with other public facilities; for the dedication or reservation of recreation areas serving residents of the immediate neighborhood within the subdivision and of rights-of-way or easements for street and utility purposes including the dedication of rights-of-way pursuant to G.S. 136-66.10 or G.S. 136-66.11; and for the distribution of population and traffic in a manner that will avoid congestion and overcrowding and will create conditions ~~essential to~~ that substantially promote public health, safety, and the general welfare.

(b) The ordinance may require that a plat be prepared, approved, and recorded pursuant to the provisions of the ordinance whenever any subdivision of land takes place. The ordinance may include requirements that the final plat show sufficient data to determine readily and reproduce accurately on the ground the location, bearing, and length of every street and alley line, lot line, easement boundary line, and other property boundaries, including the radius and other data for curved property lines, to an appropriate accuracy and in conformity with good surveying practice.

(c) A subdivision control ordinance may provide that a developer may provide funds to the county whereby the county may acquire recreational land or areas to serve the development or subdivision, including the purchase of land ~~which~~that may be used to serve more than one subdivision or development within the immediate area.

The ordinance may provide that in lieu of required street construction, a developer may provide funds to be used for the development of roads to serve the occupants, residents, or invitees of the subdivision or development. All funds received by the county under this section shall be transferred to the municipality to be used solely for the development of roads, including design, land acquisition, and construction. Any municipality receiving funds from a county under this section is authorized to expend such funds outside its corporate limits for the purposes specified in the agreement between the municipality and the county. Any formula adopted to determine the amount of funds the developer is to pay in lieu of required street construction shall be based on the trips generated from the subdivision or development. The ordinance may require a combination of partial payment of funds and partial dedication of constructed streets

when the governing body of the county determines that a combination is in the best interest of the citizens of the area to be served.

The ordinance may provide for the more orderly development of subdivisions by requiring the construction of community service facilities in accordance with county ~~policies and standards, and, to assure compliance with these requirements, the ordinance may provide for the posting of bond or any other method that will offer guarantee of compliance.~~plans, policies, and standards.

The ordinance may provide for the reservation of school sites in accordance with comprehensive land use plans approved by the board of commissioners or the planning ~~agency.~~ board. For the authorization to reserve school sites to be effective, the board of commissioners or planning ~~agency,~~board, before approving a comprehensive land use plan, shall determine jointly with the board of education with jurisdiction over the area the specific location and size of each school site to be reserved, and this information shall appear in the plan. Whenever a subdivision that includes part or all of a school site to be reserved under the plan is submitted for approval, the board of commissioners or the planning ~~agency~~ board shall immediately notify the board of education. ~~That~~ The board of education shall promptly decide whether it still wishes the site to be reserved and shall notify the board of commissioners or planning ~~agency~~ board of its decision. If the board of education does not wish the site to be reserved, no site may be reserved. If the board of education does wish the site to be reserved, the subdivision may not be approved without the reservation. The board of education must acquire the site within 18 months after the date the site is reserved, either by purchase or by exercise of the power of eminent domain. If the board of education has not purchased the site or begun proceedings to condemn the site within the 18 months, the subdivider may treat the land as freed of the reservation.

~~The ordinance may require that a plat be prepared, approved, and recorded pursuant to its provisions whenever a subdivision of land takes place.~~

To assure compliance with these and other ordinance requirements, the ordinance may provide for performance guarantees to assure successful completion of required improvements. If a performance guarantee is required, the county shall provide a range of options of types of performance guarantees, such as surety bonds or letters of credit, from which the developer may choose. For any specific development, the type of performance guarantee from the range specified by the county shall be at the election of the developer."

SECTION 3.(a) G.S. 160A-375 reads as rewritten:

"**§ 160A-375. Penalties for transferring lots in unapproved subdivisions.**

(a) If a city adopts an ordinance regulating the subdivision of land as authorized herein, any person who, being the owner or agent of the owner of any land located within the jurisdiction of that city, thereafter subdivides his land in violation of the ordinance or transfers or sells land by reference to, exhibition of, or any other use of a plat showing a subdivision of the land before the plat has been properly approved under such ordinance and recorded in the office of the appropriate register of deeds, shall be guilty of a Class 1 misdemeanor. The description by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring land shall not

exempt the transaction from this penalty. The city may bring an action for injunction of any illegal subdivision, transfer, conveyance, or sale of land, and the court shall, upon appropriate findings, issue an injunction and order requiring the offending party to comply with the subdivision ordinance. Building permits required pursuant to G.S. 160A-417 may be denied for lots that have been illegally subdivided. In addition to other remedies, a city may institute any appropriate action or proceedings to prevent the unlawful subdivision of land, to restrain, correct, or abate the violation, or to prevent any illegal act or conduct.

(b) The provisions of this section are not violated by presale or prelease contracts entered into by an owner or by the owner's agent for the purpose of obtaining development financing where that presale or prelease contract describes or refers to land by reference to a subdivision plat that has not yet been approved or recorded in the office of the register of deeds, provided that presale or prelease contract complies with each of the following provisions:

(1) The contract must plainly and conspicuously notify the prospective buyer or lessee that a subdivision plat has not been approved or recorded and that the contract is cancelable by either party until the final subdivision plat is recorded and the buyer or lessee elects not to terminate the contract under subdivision (4) of this subsection.

(2) The contract must plainly and conspicuously notify the prospective buyer or lessee that execution of the contract confers on the prospective buyer or lessee no right to receive or to compel favorable action on the subdivision plat and that no governmental body incurs any obligation to the prospective buyer or lessee with respect to approval of the subdivision plat.

(3) The contract obligates the owner or the owner's agent to deliver to the prospective buyer or lessee a copy of the approved and recorded subdivision plat prior to any closing and conveyance.

(4) The contract grants to the prospective buyer or lessee a period of 15 days after receipt of the recorded plat to terminate the contract and to receive a refund of all earnest money if, in the sole judgment of the prospective buyer or lessee, the approved and recorded subdivision plat differs in any way from any representative relied upon by the buyer or lessee or is in any way unsatisfactory to that prospective buyer or lessee.

(5) The contract provides that the prospective buyer or lessee may not be required to close any earlier than five days after expiration of the period for termination set forth in subdivision (4) of this subsection."

SECTION 3.(b) G.S. 153A-334 reads as rewritten:

"**§ 153A-334. Penalties for transferring lots in unapproved subdivisions.**

(a) If a person who is the owner or the agent of the owner of any land located within the territorial jurisdiction of a county that has adopted a subdivision regulation ordinance subdivides his land in violation of the ordinance or transfers or sells land by reference to, exhibition of, or any other use of a plat showing a subdivision of the land

before the plat has been properly approved under the ordinance and recorded in the office of the appropriate register of deeds, he is guilty of a Class 1 misdemeanor. The description by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring land does not exempt the transaction from this penalty. The county may bring an action for injunction of any illegal subdivision, transfer, conveyance, or sale of land, and the court shall, upon appropriate findings, issue an injunction and order requiring the offending party to comply with the subdivision ordinance. Building permits required pursuant to G.S. 153A-357 may be denied for lots that have been illegally subdivided. In addition to other remedies, a county may institute any appropriate action or proceedings to prevent the unlawful subdivision of land, to restrain, correct, or abate the violation, or to prevent any illegal act or conduct.

(b) The provisions of this section are not violated by presale or prelease contracts entered into by an owner or by the owner's agent for the purpose of obtaining development financing where that presale or prelease contract describes or refers to land by reference to a subdivision plat that has not yet been approved or recorded in the office of the register of deeds, provided that presale or prelease contract complies with each of the following provisions:

(1) The contract must plainly and conspicuously notify the prospective buyer or lessee that a subdivision plat has not been approved or recorded and that the contract is cancelable by either party until the final subdivision plat is recorded and the buyer or lessee elects not to terminate the contract under subdivision (4) of this subsection.

(2) The contract must plainly and conspicuously notify the prospective buyer or lessee that execution of the contract confers on the prospective buyer or lessee no right to receive or to compel favorable action on the subdivision plat and that no governmental body incurs any obligation to the prospective buyer or lessee with respect to approval of the subdivision plat.

(3) The contract obligates the owner or the owner's agent to deliver to the prospective buyer or lessee a copy of the approved and recorded subdivision plat prior to any closing and conveyance.

(4) The contract grants to the prospective buyer or lessee a period of 15 days after receipt of the recorded plat to terminate the contract and to receive a refund of all earnest money if, in the sole judgment of the prospective buyer or lessee, the approved and recorded subdivision plat differs in any way from any representative relied upon by the buyer or lessee or is in any way unsatisfactory to that prospective buyer or lessee.

(5) The contract provides that the prospective buyer or lessee may not be required to close any earlier than five days after expiration of the period for termination set forth in subdivision (4) of this subsection."

SECTION 4.(a) G.S. 160A-376 reads as rewritten:

"**§ 160A-376. Definition.**

(a) For the purpose of this Part, "subdivision" means all divisions of a tract or parcel of land into two or more lots, building sites, or other divisions when any one or more of those divisions is created for the purpose of sale or building development (whether immediate or future) and shall include all divisions of land involving the dedication of a new street or a change in existing streets; but the following shall not be included within this definition nor be subject to the regulations authorized by this Part:

(1) The combination or recombination of portions of previously subdivided and recorded lots where the total number of lots is not increased and the resultant lots are equal to or exceed the standards of the municipality as shown in its subdivision ~~regulations;~~regulations.

(2) The division of land into parcels greater than 10 acres where no street right-of-way dedication is ~~involved;~~involved.

(3) The public acquisition by purchase of strips of land for the widening or opening of streets or for public transportation system ~~corridors; and~~ corridors.

(4) The division of a tract in single ownership whose entire area is no greater than two acres into not more than three lots, where no street right-of-way dedication is involved and where the resultant lots are equal to or exceed the standards of the municipality, as shown in its subdivision regulations.

(b) A city may provide for expedited review of specified classes of subdivisions."

SECTION 4.(b) G.S. 153A-335 reads as rewritten:

"**§ 153A-335. "Subdivision" defined.**

(a) For purposes of this Part, "subdivision" means all divisions of a tract or parcel of land into two or more lots, building sites, or other divisions when any one or more of those divisions are created for the purpose of sale or building development (whether immediate or future) and includes all division of land involving the dedication of a new street or a change in existing streets; however, the following is not included within this definition and is not subject to any regulations enacted pursuant to this Part:

(1) The combination or recombination of portions of previously subdivided and recorded lots if the total number of lots is not increased and the resultant lots are equal to or exceed the standards of the county as shown in its subdivision ~~regulations;~~regulations.

(2) The division of land into parcels greater than 10 acres if no street right-of-way dedication is ~~involved;~~ involved.

(3) The public acquisition by purchase of strips of land for widening or opening streets or for public transportation system ~~corridors; and~~ corridors.

(4) The division of a tract in single ownership the entire area of which is no greater than two acres into not more than three lots, if no street right-of-way dedication is involved and if the resultant lots are equal to or exceed the standards of the county as shown by its subdivision regulations.

(b) A county may provide for expedited review of specified classes of subdivisions."

PART III. ZONING REGULATION

SECTION 5.(a) G.S. 160A-381 reads as rewritten:

"**§ 160A-381. Grant of power.**

(a) For the purpose of promoting health, safety, morals, or the general welfare of the community, any city may adopt zoning and development regulation ordinances. These ordinances may be adopted as part of a unified development ordinance or as a separate ordinance. A zoning ordinance may regulate and restrict the height, number of stories and size of buildings and other structures, the percentage of lots that may be occupied, the size of yards, courts and other open spaces, the density of population, ~~and~~ the location and use of buildings, structures and ~~land for trade, industry, residence or other purposes and to~~ land. The ordinance may provide density credits or severable development rights for dedicated rights-of-way pursuant to G.S. 136-66.10 or G.S. 136-66.11.

(b) Expired.

(b1) These regulations may provide that a board of adjustment may determine and vary their application in harmony with their general purpose and intent and in accordance with general or specific rules therein ~~contained.~~contained, provided no change in permitted uses may be authorized by variance.

(c) The regulations may also provide that the board of ~~adjustment~~adjustment, the planning board, or the city council may issue special use permits or conditional use permits in the classes of cases or situations and in accordance with the principles, conditions, safeguards, and procedures specified therein and may impose reasonable and appropriate conditions and safeguards upon these permits. When deciding special use permits or conditional use permits, the city council shall follow quasi-judicial procedures. No vote greater than a majority vote shall be required for the city council to issue such permits. For the purposes of this section, vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter shall not be considered 'members of the board' for calculation of the requisite majority. Every such decision of the city council shall be subject to review of the superior court in the nature of certiorari in accordance with G.S. 160A-388.

~~(c)~~ Where appropriate, such conditions may include requirements that street and utility rights-of-way be dedicated to the public and that provision be made of recreational space and facilities. ~~When issuing or denying special use permits or conditional use permits, the city council shall follow the procedures for boards of adjustment except that no vote greater than a majority vote shall be required for the city council to issue such permits, and every such decision of the city council shall be subject to review by the superior court by proceedings in the nature of certiorari. Any petition for review by the superior court shall be filed with the clerk of superior court within 30 days after the decision of the city council is filed in such office as the ordinance specifies, or after a written copy thereof is delivered to every aggrieved party~~

~~who has filed a written request for such copy with the clerk at the time of the hearing of the case, whichever is later. The decision of the city council may be delivered to the aggrieved party either by personal service or by registered mail or certified mail return receipt requested.~~

(d) A city council member shall not vote on any zoning map or text amendment where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. Members of appointed boards providing advice to the city council shall not vote on recommendations regarding any zoning map or text amendment where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member.

(e) As provided in this subsection, cities may adopt temporary moratoria on any city development approval required by law. The duration of any moratorium shall be reasonable in light of the specific conditions that warrant imposition of the moratorium and may not exceed the period of time necessary to correct, modify, or resolve such conditions. A development moratorium with a duration of 60 days or any shorter period may be adopted without the necessity of a public hearing and notice that would otherwise be required pursuant to G.S. 160A-364. A development moratorium with a duration of 61 days or longer, and any extension of a moratorium adopted without a hearing to a total duration of more than 60 days, is subject to the notice and hearing requirements of G.S. 160A-364. Absent an imminent threat to public health and safety, a development moratorium adopted pursuant to this section shall not apply to any project for which a valid building permit issued pursuant to G.S. 160A-417 is outstanding, to development set forth in a site-specific or phased development plan approved pursuant to G.S. 160A-385.1, to development for which substantial expenditures have already been made in good faith reliance on a prior valid administrative or quasi-judicial permit or approval, or to preliminary or final subdivision plats that have been accepted for review by the city prior to the initiation of any procedure to adopt the moratorium.

Any ordinance establishing a development moratorium must expressly include at the time of adoption each of the following:

(1) A clear statement of the problems or conditions necessitating the moratorium and what courses of action, alternative to a moratorium, were considered by the city.

(2) A clear statement of the development approvals subject to the moratorium and how a moratorium on those approvals will address the problems or conditions leading to imposition of the moratorium.

(3) An express date for termination of the moratorium and a statement setting forth why that duration is reasonably necessary to address the problems or conditions leading to imposition of the moratorium.

(4) A clear statement of the actions, and the schedule for those actions, proposed to be taken by the city during the duration of the moratorium to address the problems or conditions leading to imposition of the moratorium.

No moratorium may be subsequently renewed or extended for any additional period unless the city shall have taken all reasonable and feasible steps proposed to be taken by the city in its ordinance establishing the moratorium to address the problems or conditions leading to imposition of the moratorium and unless new facts and conditions warrant an extension. Any ordinance renewing or extending a development moratorium must expressly include, at the time of adoption, the findings set forth in subdivisions (1) through (4) of this subsection, including what new facts or conditions warrant the extension."

SECTION 5.(b) G.S. 153A-340 reads as rewritten:

"**§ 153A-340. Grant of power.**

(a) For the purpose of promoting health, safety, morals, or the general welfare, a county may adopt zoning and development regulation ordinances. These ordinances may be adopted as part of a unified development ordinance or as a separate ordinance. A zoning ordinance may regulate and restrict the height, number of stories and size of buildings and other structures, the percentage of lots that may be occupied, the size of yards, courts and other open spaces, the density of population, and the location and use of buildings, structures, and land for trade, industry, residence, or other ~~purposes, and to~~ purposes. The ordinance may provide density credits or severable development rights for dedicated rights-of-way pursuant to G.S. 136-66.10 or G.S. 136-66.11.

(b) (1) These regulations may affect property used for bona fide farm purposes only as provided in subdivision (3) of this subsection. This subsection does not limit regulation under this Part with respect to the use of farm property for nonfarm purposes.

(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 having a domestic or foreign market.

(3) The definitions set out in G.S. 106-802 apply to this subdivision. A county may adopt zoning regulations governing swine farms served by animal waste management systems having a design capacity of 600,000 pounds steady state live weight (SSLW) or greater provided that the zoning regulations may not have the effect of excluding swine farms served by an animal waste management system having a design capacity of 600,000 pounds SSLW or greater from the entire zoning jurisdiction.

(c) The regulations may provide that a board of adjustment may determine and vary their application in harmony with their general purpose and intent and in accordance with general or specific rules therein ~~contained.~~contained, provided no change in permitted uses may be authorized by variance.

(c1) The regulations may also provide that the board of ~~adjustment~~adjustment, the planning board, or the board of commissioners may issue special use permits or conditional use permits in the classes of cases or situations and in accordance with the principles, conditions, safeguards, and procedures specified therein and may impose reasonable and appropriate conditions and safeguards upon these permits. Where

appropriate, the conditions may include requirements that street and utility rights-of-way be dedicated to the public and that recreational space be provided. ~~When issuing or denying special use permits or conditional use permits, the board of commissioners shall follow the procedures for boards of adjustment except that no vote greater than a majority vote shall be required for the board of commissioners to issue such permits, and every such decision of the board of commissioners shall be subject to review by the superior court by proceedings in the nature of certiorari.~~ When deciding special use permits or conditional use permits, the board of county commissioners shall follow quasi-judicial procedures. No vote greater than a majority vote shall be required for the city council to issue such permits. For the purposes of this section, vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter shall not be considered 'members of the board' for calculation of the requisite majority. Every such decision of the board of county commissioners shall be subject to review of the superior court in the nature of certiorari consistent with G.S. 153A-345.

(d) A county may regulate the development over estuarine waters and over lands covered by navigable waters owned by the State pursuant to G.S. 146-12, within the bounds of that county.

(e) For the purpose of this section, the term "structures" shall include floating homes.

~~(f) Any petition for review by the superior court shall be filed with the clerk of superior court within 30 days after the decision of the board of commissioners is filed in such office as the ordinance specifies, or after a written copy thereof is delivered to every aggrieved party who has filed a written request for such copy with the clerk at the time of the hearing of the case, whichever is later. The decision of the board of commissioners may be delivered to the aggrieved party either by personal service or by registered mail or certified mail return receipt requested.~~

(g) A member of the board of county commissioners shall not vote on any zoning map or text amendment where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. Members of appointed boards providing advice to the board of county commissioners shall not vote on recommendations regarding any zoning map or text amendment where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member.

(h) As provided in this subsection, counties may adopt temporary moratoria on any county development approval required by law. The duration of any moratorium shall be reasonable in light of the specific conditions that warrant imposition of the moratorium and may not exceed the period of time necessary to correct, modify, or resolve such conditions. A development moratorium with a duration of 60 days or any shorter period may be adopted without the necessity of a public hearing and notice that would otherwise be required pursuant to G.S. 153A-323. A development moratorium with a duration of 61 days or longer, and any extension of a moratorium adopted without a hearing to a total duration of more than 60 days, is subject to the notice and hearing requirements of G.S. 153A-323. Absent an imminent threat to public health and

safety, a development moratorium adopted pursuant to this section shall not apply to any project for which a valid building permit issued pursuant to G.S. 153A-357 is outstanding, to development set forth in a site-specific or phased development plan approved pursuant to G.S. 153A-344.1, to development for which substantial expenditures have already been made in good faith reliance on a prior valid administrative or quasi-judicial permit or approval, or to preliminary or final subdivision plats that have been accepted for review by the county prior to the initiation of any procedure to adopt the moratorium.

Any ordinance establishing a development moratorium must expressly include at the time of adoption each of the following:

(1) A clear statement of the problems or conditions necessitating the moratorium and what courses of action, alternative to a moratorium, were considered by the county.

(2) A clear statement of the development approvals subject to the moratorium and how a moratorium on those approvals will address the problems or conditions leading to imposition of the moratorium.

(3) An express date for termination of the moratorium and a statement setting forth why that duration is reasonably necessary to address the problems or conditions leading to imposition of the moratorium.

(4) A clear statement of the actions, and the schedule for those actions, proposed to be taken by the county during the duration of the moratorium to address the problems or conditions leading to imposition of the moratorium.

No moratorium may be subsequently renewed or extended for any additional period unless the city shall have taken all reasonable and feasible steps proposed to be taken by the county in its ordinance establishing the moratorium to address the problems or conditions leading to imposition of the moratorium and unless new facts and conditions warrant an extension. Any ordinance renewing or extending a development moratorium must expressly include, at the time of adoption, the findings set forth in subdivisions (1) through (4) of this subsection, including what new facts or conditions warrant the extension."

SECTION 5.1.(a) G.S. 160A-75 reads as rewritten:

"**§ 160A-75. Voting.**

No member shall be excused from voting except upon matters involving the consideration of the member's own financial interest or official conduct or on matters on which the member is prohibited from voting under G.S. ~~14-234.~~ 14-234 or G.S. 160A-381(d). In all other cases, a failure to vote by a member who is physically present in the council chamber, or who has withdrawn without being excused by a majority vote of the remaining members present, shall be recorded as an affirmative vote. The question of the compensation and allowances of members of the council is not a matter involving a member's own financial interest or official conduct.

An affirmative vote equal to a majority of all the members of the council not excused from voting on the question in issue, including the mayor's vote in case of an equal division, shall be required to adopt an ordinance, take any action having the effect

of an ordinance, authorize or commit the expenditure of public funds, or make, ratify, or authorize any contract on behalf of the city. In addition, no ordinance nor any action having the effect of any ordinance may be finally adopted on the date on which it is introduced except by an affirmative vote equal to or greater than two thirds of all the actual membership of the council, excluding vacant seats and not including the mayor unless the mayor has the right to vote on all questions before the council. For purposes of this section, an ordinance shall be deemed to have been introduced on the date the subject matter is first voted on by the council. "

SECTION 5.1.(b) G.S. 153A-44 reads as rewritten:

"**§ 153A-44. Members excused from voting.**

The board may excuse a member from voting, but only upon questions involving the member's own financial interest or official conduct or on matters on which the member is prohibited from voting under G.S. ~~14-234.~~ 14-234 or G.S. 153A-340(g). For purposes of this section, the question of the compensation and allowances of members of the board does not involve a member's own financial interest or official conduct."

SECTION 6.(a) G.S. 160A-382 reads as rewritten:

"**§ 160A-382. Districts.**

(a) For any or all these purposes, the city may divide its territorial jurisdiction into districts of any number, shape, and area that may be deemed best suited to carry out the purposes of this Part; and within those districts it may regulate and restrict the erection, construction, reconstruction, alteration, repair or use of buildings, structures, or land. Such districts may include, but shall not be limited to, general use districts, in which a variety of uses are permissible in accordance with general standards; overlay districts, in which additional requirements are imposed on certain properties within one or more underlying general or special use districts; and special use districts or conditional use districts, in which uses are permitted only upon the issuance of a special use permit or a conditional use ~~permit.~~ permit and conditional zoning districts, in which site plans and individualized development conditions are imposed.

(b) Property may be placed in a special use ~~district or conditional use district~~ district, conditional use district, or conditional district only in response to a petition by the owners of all the property to be included. Specific conditions applicable to these districts may be proposed by the petitioner, the city or its agencies, or any affected person, but only those conditions mutually approved by the city and the petitioner may be incorporated into the zoning regulations or permit requirements. Conditions and site-specific standards imposed in a conditional district shall be limited to those that address the conformance of the development and use of the site to city ordinances and an officially adopted comprehensive or other plan and those that address the impacts reasonably expected to be generated by the development or use of the site.

A statement analyzing the reasonableness of the proposed rezoning shall be prepared for each petition for a rezoning to a special or conditional use district, or a conditional district, or other small-scale or spot zoning. This statement may be prepared by the petitioner or by the city, and it shall be completed and available for public inspection at the time notice is provided for the public hearing on the proposed rezoning. This statement shall address the consistency of the proposed rezoning with any

comprehensive plan that has been adopted and any other officially adopted plan that is applicable and the compatibility of the proposed rezoning with the site and surrounding area.

(c) Except as authorized by the foregoing, all regulations shall be uniform for each class or kind of building throughout each district, but the regulations in one district may differ from those in other districts."

SECTION 6.(b) G.S. 153A-342 reads as rewritten:

"**§ 153A-342. Districts; zoning less than entire jurisdiction.**

(a) A county may divide its territorial jurisdiction into districts of any number, shape, and area that it may consider best suited to carry out the purposes of this Part. Within these districts a county may regulate and restrict the erection, construction, reconstruction, alteration, repair, or use of buildings, structures, or land. Such districts may include, but shall not be limited to, general use districts, in which a variety of uses are permissible in accordance with general standards; overlay districts, in which additional requirements are imposed on certain properties within one or more underlying general or special use districts; ~~and~~ special use districts or conditional use districts, in which uses are permitted only upon the issuance of a special use permit or a conditional use ~~permit.~~permit and conditional zoning districts, in which site plans and individualized development conditions are imposed.

(b) Property may be placed in a special use ~~district or conditional use district~~ district, conditional use district, or conditional district only in response to a petition by the owners of all the property to be included. Specific conditions applicable to the districts may be proposed by the petitioner, the county or its agencies, or any affected person, but only those conditions mutually approved by the county and the petitioner may be incorporated into the zoning regulations or permit requirements.

A statement analyzing the reasonableness of the proposed rezoning shall be prepared for each petition for a rezoning to a special or conditional use district, or a conditional district, or other small-scale or spot zoning. This statement may be prepared by the petitioner or by the county, and it shall be completed and available for public inspection at the time notice is provided for the public hearing on the proposed rezoning. This statement shall address the consistency of the proposed rezoning with any comprehensive plan that has been adopted and any other officially adopted plan that is applicable and the compatibility of the proposed rezoning with the site and surrounding area.

(c) Except as authorized by the foregoing, all regulations shall be uniform for each class or kind of building throughout each district, but the regulations in one district may differ from those in other districts.

(d) A county may determine that the public interest does not require that the entire territorial jurisdiction of the county be zoned and may designate one or more portions of that jurisdiction as a zoning area or areas. A zoning area must originally contain at least 640 acres and at least 10 separate tracts of land in separate ownership and may thereafter be expanded by the addition of any amount of territory. A zoning area may be regulated in the same manner as if the entire county were zoned, and the remainder of the county need not be regulated."

SECTION 7.(a) G.S. 160A-383 reads as rewritten:

"**§ 160A-383. Purposes in view.**

Zoning regulations shall be made in accordance with a comprehensive ~~plan and designed to lessen congestion in the streets; to secure safety from fire, panic and other dangers;~~plan. Prior to adopting or rejecting any zoning amendment, the governing board shall adopt a statement describing whether its action is consistent with an adopted comprehensive plan and explaining why the board considers the action taken to be reasonable and in the public interest. That statement is not subject to judicial review.

Zoning regulations shall be designed to promote ~~health~~the public health, safety, and ~~the~~ general ~~welfare;~~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.~~requirements; and to maintain and improve the quality of neighborhoods and communities. 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 7.(b) G.S. 153A-341 reads as rewritten:

"**§ 153A-341. Purposes in view.**

Zoning regulations shall be made in accordance with a comprehensive ~~plan and designed to lessen congestion in the streets; to secure safety from fire, panic, and other dangers;~~plan. Prior to adopting or rejecting any zoning amendment, the governing board shall adopt a statement describing whether its action is consistent with an adopted comprehensive plan and explaining why the board considers the action taken to be reasonable and in the public interest. That statement is not subject to judicial review.

Zoning regulations shall be designed to promote the public ~~health~~health, safety, and ~~the~~ general ~~welfare;~~ 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.~~requirements; and to maintain and improve the quality of neighborhoods and communities. The regulations shall be made with reasonable consideration as to, among other things, 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 the county. In addition, the regulations shall be made with reasonable consideration to expansion and development of any cities within the county, so as to provide for their orderly growth and development."

PART IV. INFRASTRUCTURE AGREEMENTS

SECTION 8.(a) Article 21 of Chapter 160A of the General Statutes is amended by adding a new section to read:

"**§ 160A-499. Reimbursement agreements.**

(a) A city may enter into reimbursement agreements with private developers and property owners for the design and construction of municipal infrastructure that is included on the city's Capital Improvement Plan and serves the developer or property owner. For the purpose of this act, municipal infrastructure includes, without limitation, water mains, sanitary sewer lines, lift stations, stormwater lines, streets, curb and gutter, sidewalks, traffic control devices, and other associated facilities.

(b) A city shall enact ordinances setting forth procedures and terms under which such agreements may be approved.

(c) A city may provide for such reimbursements to be paid from any lawful source.

(d) No reimbursement pursuant to an agreement authorized by this act shall be deemed to be construction subject to Article 8 of Chapter 143 of the General Statutes or to be deemed to be a violation or evasion of any provision of said Article. Notwithstanding the foregoing provisions of this section, a construction contract subject to a reimbursement agreement authorized by this act shall not be awarded by a developer or property owner who is a party to such reimbursement agreement without complying with the requirements of G.S. 143-129 and G.S. 143-128.2 relating to public advertising and bid opening requirements which would be applicable if the construction contract had been awarded by the city.

(e) This section also applies to counties."

SECTION 8.(b) Article 15 of Chapter 160A of the General Statutes is amended by adding a new section to read:

"**§ 160A-309. Intersection and roadway improvements.**

A city may contract with a private party for public intersection or roadway improvements that are adjacent or ancillary to a private land development project. Such a contract is not subject to Article 8 of Chapter 143 of the General Statutes if the public cost will not exceed one hundred seventy-five thousand dollars ($175,000) and the city determines that: (i) the public cost will not exceed the estimated cost of providing for such public intersection or roadway improvements through either eligible force account qualified labor or through a public contract let pursuant to Article 8 of Chapter 143 of the General Statutes; or (ii) the coordination of separately constructed public intersection or roadway improvements, and the adjacent or ancillary private land development improvements would be impracticable."

SECTION 8.(c) Article 16 of Chapter 160A of the General Statutes is amended by adding a new section to read:

"**§ 160A-320. Public enterprise improvements.**

(a) Authorization. – A city may contract with a private party for public enterprise improvements that are adjacent or ancillary to a private land development project. Such a contract shall allow the city to reimburse the private party for costs associated with the design and construction of improvements that are in addition to those required by the city's land development regulations. Such a contract is not subject to Article 8 of

Chapter 143 of the General Statutes if the public cost will not exceed one hundred seventy-five thousand dollars ($175,000) and the city determines that: (i) the public cost will not exceed the estimated cost of providing for such improvements through either eligible force account qualified labor or through a public contract let pursuant to Article 8 of Chapter 143 of the General Statutes; or (ii) the coordination of separately constructed improvements would be impracticable.

(b) Property Acquisition. – The improvements may be constructed on property owned or acquired by the private party or on property directly acquired by the city. The private party may assist the city in obtaining easements in favor of the city from private property owners on those properties that will be involved in or affected by the project. The contract between the city and the private party may be entered into before the acquisition of any real property necessary to the project.

(c) This section also applies to counties."

PART V. DEVELOPMENT AGREEMENTS

SECTION 9. Article 19 of Chapter 160A of the General Statutes is amended by adding a new Part to read:

"Part 3D. Development Agreements.

"**§ 160A-400.20. Authorization for development agreements.**

(a) The General Assembly finds:

(1) Large-scale development projects often occur in multiple phases extending over a period of years, requiring a long-term commitment of both public and private resources.

(2) Such large-scale developments often create potential community impacts and potential opportunities that are difficult or impossible to accommodate within traditional zoning processes.

(3) Because of their scale and duration, such large-scale projects often require careful integration between public capital facilities planning, financing, and construction schedules and the phasing of the private development.

(4) Because of their scale and duration, such large-scale projects involve substantial commitments of private capital by developers, which developers are usually unwilling to risk without sufficient assurances that development standards will remain stable through the extended period of the development.

(5) Because of their size and duration, such developments often permit communities and developers to experiment with different or nontraditional types of development concepts and standards, while still managing impacts on the surrounding areas.

(6) To better structure and manage development approvals for such large-scale developments and ensure their proper integration into local capital facilities programs, local governments need the flexibility in negotiating such developments.

(b) Local governments and agencies may enter into development agreements with developers, subject to the procedures and requirements of this Part. In entering into such agreements, a city may not exercise any authority or make any commitment not authorized by general or local act.

(c) This Part is supplemental to the powers conferred upon local governments and does not preclude or supersede rights and obligations established pursuant to other law regarding building permits, site-specific development plans, phased development plans, or other provisions of law.

"**§ 160A-400.21. Definitions.**

The following definitions apply in this Part:

(1) Comprehensive plan. – The comprehensive plan, land-use plan, small area plans, neighborhood plans, transportation plan, capital improvement plan, official map, and any other plans regarding land use and development that have been officially adopted by the governing board.

(2) Developer. – A person, including a governmental agency or redevelopment authority, who intends to undertake any development and who has a legal or equitable interest in the property to be developed.

(3) Development. – The planning for or carrying out of a building activity, the making of a material change in the use or appearance of any structure or property, or the dividing of land into two or more parcels. 'Development', as designated in a law or development permit, includes the planning for and all other activity customarily associated with it unless otherwise specified. When appropriate to the context, 'development' refers to the planning for or the act of developing or to the result of development. Reference to a specific operation is not intended to mean that the operation or activity, when part of other operations or activities, is not development. Reference to particular operations is not intended to limit the generality of this item.

(4) Development permit. – A building permit, zoning permit, subdivision approval, special or conditional use permit, variance, or any other official action of local government having the effect of permitting the development of property.

(5) Governing body. – The city council of a municipality or the board of county commissioners of a county.

(6) Land development regulations. – Ordinances and regulations enacted by the appropriate governing body for the regulation of any aspect of development and includes zoning, subdivision, or any other land development ordinances.

(7) Laws. – All ordinances, resolutions, regulations, comprehensive plans, land development regulations, policies, and rules adopted by a local government affecting the development of property, and includes laws

governing permitted uses of the property, density, design, and improvements.

(8) Property. – All real property subject to land-use regulation by a local government and includes any improvements or structures customarily regarded as a part of real property.

(9) Local government. – Any municipality or county that exercises regulatory authority over and grants development permits for land development or which provides public facilities.

(10) Local planning board. – Any planning board established pursuant to G.S. 160A-361 or G.S. 153A-321.

(11) Person. – An individual, corporation, business or land trust, estate, trust, partnership, association, two or more persons having a joint or common interest, State agency, or any legal entity.

(12) Public facilities. – Major capital improvements, including, but not limited to, transportation, sanitary sewer, solid waste, drainage, potable water, educational, parks and recreational, and health systems and facilities.

"**§ 160A-400.22. Local governments authorized to enter into development agreements; approval of county or municipal governing body required.**

A local government may establish procedures and requirements, as provided in this Part, to consider and enter into development agreements with developers. A development agreement must be approved by the governing body of a county or municipality by ordinance.

"**§ 160A-400.23. Developed property must contain certain number of acres; permissible durations of agreements.**

A local government may enter into a development agreement with a developer for the development of property as provided in this Part, provided the property contains 25 acres or more of developable property (exclusive of wetlands, mandatory buffers, steep slopes, and other portions of the property precluded from development at the time of application). Development agreements shall be of a term specified in the agreement, provided they may not be for a term exceeding 10 years.

"**§ 160A-400.24. Public hearing.**

Before entering into a development agreement, a local government shall conduct a public hearing on the proposed agreement following the procedures set forth in G.S. 160A-364 or G.S. 153A-323 regarding zoning ordinance adoption or property subject to the development agreement, the development uses proposed on the property, and must specify a place where a copy of the proposed development agreement can be obtained. In the event that the development agreement provides that the local government shall provide certain public facilities, the development agreement shall provide that the delivery date of such public facilities will be tied to successful performance by the developer in implementing the proposed development (such as meeting defined completion percentages or other performance standards).

"**§ 160A-400.25. What development agreement must provide; what it may provide; major modification requires public notice and hearing.**

(a) A development agreement shall at a minimum include all of the following:

(1) A legal description of the property subject to the agreement and the names of its legal and equitable property owners.

(2) The duration of the agreement. However, the parties are not precluded from entering into subsequent development agreements that may extend the original duration period.

(3) The development uses permitted on the property, including population densities and building types, intensities, placement on the site, and design.

(4) A description of public facilities that will service the development, including who provides the facilities, the date any new public facilities, if needed, will be constructed, and a schedule to assure public facilities are available concurrent with the impacts of the development.

(5) A description, where appropriate, of any reservation or dedication of land for public purposes and any provisions to protect environmentally sensitive property.

(6) A description of all local development permits approved or needed to be approved for the development of the property together with a statement indicating that the failure of the agreement to address a particular permit, condition, term, or restriction does not relieve the developer of the necessity of complying with the law governing their permitting requirements, conditions, terms, or restriction.

(7) A description of any conditions, terms, restrictions, or other requirements determined to be necessary by the local government for the public health, safety, or welfare of its citizens.

(8) A description, where appropriate, of any provisions for the preservation and restoration of historic structures.

(b) A development agreement may provide that the entire development or any phase of it be commenced or completed within a specified period of time. The development agreement must provide a development schedule including commencement dates and interim completion dates at no greater than five-year intervals; provided, however, the failure to meet a commencement or completion date shall not, in and of itself, constitute a material breach of the development agreement pursuant to G.S. 160A-400.27 but must be judged based upon the totality of the circumstances. The development agreement may include other defined performance standards to be met by the developer. The developer may request a modification in the dates as set forth in the agreement. Consideration of a proposed major modification of the agreement shall follow the same procedures as required for initial approval of a development agreement.

(c) If more than one local government is made party to an agreement, the agreement must specify which local government is responsible for the overall administration of the development agreement.

(d) The development agreement also may cover any other matter not inconsistent with this Part.

"**§ 160A-400.26. Law in effect at time of agreement governs development; exceptions.**

(a) Unless the development agreement specifically provides for the application of subsequently enacted laws, the laws applicable to development of the property subject to a development agreement are those in force at the time of execution of the agreement.

(b) Except for grounds specified in G.S. 160A-385.1(e), a local government may not apply subsequently adopted ordinances or development policies to a development that is subject to a development agreement.

(c) In the event State or federal law is changed after a development agreement has been entered into and the change prevents or precludes compliance with one or more provisions of the development agreement, the city may modify the affected provisions, upon a finding that the change in State or federal law has a fundamental effect on the development agreement, by ordinance after notice and a hearing.

(d) This section does not abrogate any rights preserved by G.S. 160A-385, 160A-385.1, 153A-344, and 153A-344.1 or that may vest pursuant to common law or otherwise in the absence of a development agreement.

"**§ 160A-400.27. Periodic review to assess compliance with agreement; material breach by developer; notice of breach; cure of breach or modification or termination of agreement.**

(a) Procedures established pursuant to G.S. 160A-400.22 must include a provision for requiring periodic review by the zoning administrator or other appropriate officer of the local government at least every 12 months, at which time the developer must be required to demonstrate good faith compliance with the terms of the development agreement.

(b) If, as a result of a periodic review, the local government finds and determines that the developer has committed a material breach of the terms or conditions of the agreement, the local government shall serve notice in writing, within a reasonable time after the periodic review, upon the developer setting forth with reasonable particularity the nature of the breach and the evidence supporting the finding and determination, and providing the developer a reasonable time in which to cure the material breach.

(c) If the developer fails to cure the material breach within the time given, then the local government unilaterally may terminate or modify the development agreement; provided, the notice of termination or modification may be appealed to the board of adjustment in the manner provided by G.S. 160A-388(b) and G.S. 153A-345(b).

"**§ 160A-400.28. Amendment or cancellation of development agreement by mutual consent of parties or successors in interest.**

A development agreement may be amended or canceled by mutual consent of the parties to the agreement or by their successors in interest.

"**§ 160A-400.29. Validity and duration of agreement entered into prior to change of jurisdiction; subsequent modification or suspension.**

(a) Except as otherwise provided by this Part, any development agreement entered into by a local government before the effective date of a change of jurisdiction

shall be valid for the duration of the agreement, or eight years from the effective date of the change in jurisdiction, whichever is earlier. The parties to the development agreement and the local government assuming jurisdiction have the same rights and obligations with respect to each other regarding matters addressed in the development agreement as if the property had remained in the previous jurisdiction.

(b) A local government assuming jurisdiction may modify or suspend the provisions of the development agreement if the local government determines that the failure of the local government to do so would place the residents of the territory subject to the development agreement, or the residents of the local government, or both, in a condition dangerous to their health or safety, or both.

"**§ 160A-400.30. Developer to record agreement within 14 days; burdens and benefits inure to successors in interest.**

Within 14 days after a local government enters into a development agreement, the developer shall record the agreement with the register of deeds in the county where the property is located. The burdens of the development agreement are binding upon, and the benefits of the agreement shall inure to, all successors in interest to the parties to the agreement.

"**§ 160A-400.31. Applicability to local government of constitutional and statutory procedures for approval of debt.**

In the event that any of the obligations of the local government in the development agreement constitute debt, the local government shall comply, at the time of the obligation to incur the debt and before the debt becomes enforceable against the local government, with any applicable constitutional and statutory procedures for the approval of this debt.

"**§ 160A-400.32. Relationship of agreement to building or housing code.**

A development agreement adopted pursuant to this Chapter shall not exempt the property owner or developer from compliance with the State Building Code or State or local housing codes that are not part of the city's or county's planning, zoning, or subdivision regulations."

PART VI. LOCAL ACTS SAVING CLAUSE

SECTION 10. The provisions of this act shall not be deemed to repeal or amend the validity or enforceability of any local act or charter provision previously enacted by the General Assembly.

PART VII. EFFECTIVE DATE

SECTION 11. This act becomes effective January 1, 2006.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 814

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

S814-ARR-65 [v.1]

Date 5-26 ,2005

Comm. Sub. [YES]
Amends Title [NO]
S814-CSRR-26[v.17]

Senator Nesbitt

moves to amend the bill on page 20, line 44,
by deleting the term "20" and substituting the term "10".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED X FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 814

AMENDMENT NO. 2
(to be filled in by
Principal Clerk)

S814-ARR-64 [v.1]

Date 5-26 ,2005

Comm. Sub. [YES]
Amends Title [NO]
S814-CSRR-26 [v.17]

Senator _____

moves to amend the bill on page 1, lines 16 through 21, and on page 2, lines 13 through 18,
by deleting the underlined language on those lines.

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED X FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 814

Short Title:	Modernize City/County Planning.	(Public)
Sponsors:	Senator Clodfelter.	
Referred to:	Judiciary I.	

March 23, 2005

A BILL TO BE ENTITLED

AN ACT TO MODERNIZE AND SIMPLIFY CITY AND COUNTY PLANNING AND LAND-USE MANAGEMENT STATUTES.

The General Assembly of North Carolina enacts:

PART I. GENERAL PROVISIONS

SECTION 1. G.S. 160A-364 reads as rewritten:

"**§ 160A-364. Procedure for adopting or amending ordinances under Article.**

(a) Before ~~adopting or amending~~ adopting, amending, or repealing any ordinance authorized by this Article, the city council shall hold a public hearing on it. A notice of the public hearing shall be given once a week for two successive calendar weeks in a newspaper having general circulation in the area. The notice shall be published the first time not less than 10 days nor more than 25 days before the date fixed for the hearing. In computing such period, the day of publication is not to be included but the day of the hearing shall be included.

~~(b) If the adoption or modification of the ordinance would result in changes to the zoning map or would change or affect the permitted uses of land located five miles or less from the perimeter boundary of a military base, the governing body of the local government shall provide written notice of the proposed changes by certified mail, return receipt requested, to the commander of the military base not less than 10 days nor more than 25 days before the date fixed for the public hearing. If the military provides comments or analysis regarding the compatibility of the proposed ordinance or amendment with military operations at the base, the governing body of the local government shall take the comments and analysis into consideration before making a final determination on the ordinance.~~

(b1) A city may adopt ordinances providing that notice of public hearings may be given through electronic means, including, but not limited to, the city's Internet site. Electronic notice of public hearings on zoning map amendments may be substituted for

the published notice required by this section provided there is also a posting of a notice of the hearing on the affected site, with both the electronic and on-site posting being made not less than 10 days nor more than 25 days before the date fixed for the hearing. If such timely electronic notice of a public hearing on a zoning map amendment or posting of notice of the hearing on the affected site is made, but not both, such electronic or posted notice may be substituted for the second published notice required by this section. Electronic and on-site posting shall not supersede any other law that requires notice by mail to certain classes of people or the posting of signs on certain property and shall not alter the publication schedule for any public notice."

SECTION 2. G.S. 153A-323 reads as rewritten:

"**§ 153A-323. Procedure for adopting or amending ordinances under this Article and Chapter 160A, Article 19.**

(a) Before ~~adopting or amending~~ adopting, amending, or repealing any ordinance authorized by this Article or Chapter 160A, Article 19, the board of commissioners shall hold a public hearing on the ordinance or amendment. The board shall cause notice of the hearing to be published once a week for two successive calendar weeks. The notice shall be published the first time not less than 10 days nor more than 25 days before the date fixed for the hearing. In computing such period, the day of publication is not to be included but the day of the hearing shall be included.

~~(b) If the adoption or modification of the ordinance would result in changes to the zoning map or would change or affect the permitted uses of land located five miles or less from the perimeter boundary of a military base, the board of commissioners shall provide written notice of the proposed changes by certified mail, return receipt requested, to the commander of the military base not less than 10 days nor more than 25 days before the date fixed for the public hearing. If the military provides comments or analysis regarding the compatibility of the proposed ordinance or amendment with military operations at the base, the board of commissioners shall take the comments and analysis into consideration before making a final determination on the ordinance.~~

(b1) A county may adopt ordinances providing that notice of public hearings may be given through electronic means, including, but not limited to, the county's Internet site. Electronic notice of public hearings on zoning map amendments may be substituted for the published notice required by this section provided there is also a posting of a notice of the hearing on the affected site, with both electronic and on-site posting being made not less than 10 days nor more than 25 days before the date fixed for the hearing. If such timely electronic notice of a public hearing on a zoning map amendment or posting of notice of the hearing on the affected site is made, but not both, such electronic or posted notice may be substituted for the second published notice required by this section. Electronic and on-site posting shall not supersede any other law that requires notice by mail to certain classes of people or the posting of signs on certain property and shall not alter the publication schedule for any public notice."

PART II. SUBDIVISION REGULATION

SECTION 3. G.S. 160A-372 reads as rewritten:

"§ 160A-372. Contents and requirements of ordinance.

(a) A subdivision control ~~provide~~ provide, among other things, for the orderly growth and development of the city; for the safe and efficient provision of transportation networks, public utilities, education and recreation space and facilities, and other public and community needs; for protection of natural resources and open space; for the coordination of ~~streets and highways~~streets, highways, and utilities within proposed subdivisions with existing or planned streets and highways and with other public facilities; for the dedication or reservation of recreation areas serving residents of the immediate neighborhood within the subdivision or, alternatively, for provision of funds to be used to acquire recreation areas serving residents of the development or subdivision or more than one subdivision or development within the immediate area, and rights-of-way or easements for street and utility purposes including the dedication of rights-of-way pursuant to G.S. 136-66.10 or G.S. 136-66.11; and for the distribution of population and traffic in a manner that will avoid congestion and overcrowding and will create conditions ~~essential to~~that promote public health, safety, and the general welfare.

(b) The ordinance may require a plat be prepared, approved, and recorded pursuant to the provisions of the ordinance whenever any subdivision of land takes place. The ordinance may include requirements that ~~the final plat~~plats show sufficient data to determine readily and reproduce accurately on the ground the location, bearing, and length of every street and alley line, lot line, easement boundary line, and other property boundaries, including the radius and other data for curved property lines, to an appropriate accuracy and in conformance with good surveying practice.

(c) The ordinance may provide for the more orderly development of subdivisions by requiring the construction of community service facilities in accordance with municipal ~~policies and standards and, to assure compliance with these requirements, the ordinance may provide for the posting of bond or any other method that will offer guarantee of compliance.~~plans, policies, and standards.

The ordinance may provide for the reservation of school sites in accordance with comprehensive land use plans approved by the council or the planning agency. In order for this authorization to become effective, before approving such plans the council or planning agency and the board of education with jurisdiction over the area shall jointly determine the specific location and size of any school sites to be reserved, which information shall appear in the comprehensive land use plan. Whenever a subdivision is submitted for approval which includes part or all of a school site to be reserved under the plan, the council or planning agency shall immediately notify the board of education and the board shall promptly decide whether it still wishes the site to be reserved. If the board of education does not wish to reserve the site, it shall so notify the council or planning agency and no site shall be reserved. If the board does wish to reserve the site, the subdivision shall not be approved without such reservation. The board of education shall then have 18 months beginning on the date of final approval of the subdivision within which to acquire the site by purchase or by initiating condemnation proceedings. If the board of education has not purchased or begun proceedings to condemn the site within 18 months, the subdivider may treat the land as freed of the reservation.

~~The ordinance may require that a plat be prepared, approved, and recorded pursuant to its provisions whenever any subdivision of land takes place.~~

The ordinance may provide that a developer may provide funds to the city whereby the city may acquire recreational land or areas to serve the development or subdivision, including the purchase of land ~~which~~that may be used to serve more than one subdivision or development within the immediate area. All funds received by the city pursuant to this paragraph shall be used only for the acquisition or development of recreation, park, or open space sites. ~~Any formula enacted to determine the amount of funds that are to be provided under this paragraph shall be based on the value of the development or subdivision for property tax purposes.~~ The ordinance may allow a combination or partial payment of funds and partial dedication of land when the governing body of the city determines that this combination is in the best interests of the citizens of the area to be served.

The ordinance may provide that in lieu of required street construction, a developer may be required to provide funds that the city may use for the construction of roads to serve the occupants, residents, or invitees of the subdivision or development and these funds may be used for roads which serve more than one subdivision or development within the area. All funds received by the city pursuant to this paragraph shall be used only for development of roads, including design, land acquisition, and construction. However, a city may undertake these activities in conjunction with the Department of Transportation under an agreement between the city and the Department of Transportation. Any formula adopted to determine the amount of funds the developer is to pay in lieu of required street construction shall be based on the trips generated from the subdivision or development. The ordinance may require a combination of partial payment of funds and partial dedication of constructed streets when the governing body of the city determines that a combination is in the best interests of the citizens of the area to be served.

To assure compliance with these and other ordinance requirements, the ordinance may provide for the posting of bonds, letters of credit, or other performance guarantees to assure successful completion of required improvements."

SECTION 4. G.S. 160A-375 reads as rewritten:

"**§ 160A-375. Penalties for transferring lots in unapproved subdivisions.**

If a city adopts an ordinance regulating the subdivision of land as authorized herein, any person who, being the owner or agent of the owner of any land located within the jurisdiction of that city, thereafter subdivides his land in violation of the ordinance or transfers or sells land by reference to, exhibition of, or any other use of a plat showing a subdivision of the land before the plat has been properly approved under such ordinance and recorded in the office of the appropriate register of deeds, shall be guilty of a Class 1 misdemeanor. The description by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring land shall not exempt the transaction from this penalty. The city may bring an action for injunction of any illegal subdivision, transfer, conveyance, or sale of land, and the court shall, upon appropriate findings, issue an injunction and order requiring the offending party to comply with the subdivision ordinance. Building permits required pursuant to G.S. 160A-417 may be

denied for lots that have been illegally subdivided. In addition to other remedies, a city may institute any appropriate action or proceedings to prevent the unlawful subdivision of land, to restrain, correct, or abate the violation, or to prevent any illegal act or conduct."

SECTION 5. G.S. 160A-376 reads as rewritten:

"**§ 160A-376. Definition.**

For the purpose of this Part, "subdivision" means all divisions of a tract or parcel of land into ~~two or more~~ lots, building sites, or other divisions for the purpose of sale or building development (whether immediate or future) and shall include all divisions of land involving the dedication of a new street or a change in existing streets; but the following shall not be included within this definition nor be subject to the regulations authorized by this Part:

(1) The combination or recombination of portions of previously subdivided and recorded lots where the total number of lots is not increased and the resultant lots and required supporting infrastructure (including streets, utilities, open space, and recreation areas) are equal to or exceed the standards of the municipality as shown in its subdivision regulations;

(2) The division of land into parcels greater than 10 acres where no street right-of-way dedication is involved;

(3) The public acquisition by purchase of strips of land for the widening or opening of streets or for public transportation system corridors; and

(4) The division of a tract in single ownership whose entire area is no greater than two acres into not more than three lots, where no street right-of-way dedication is involved and where the resultant lots and required supporting infrastructure (including streets, utilities, open space, and recreation areas) are equal to or exceed the standards of the municipality, as shown in its subdivision regulations.

A city may provide for expedited review of specified classes of subdivisions."

SECTION 6. G.S. 153A-331 reads as rewritten:

"**§ 153A-331. Contents and requirements of ordinance.**

(a) A subdivision control ordinance may provide for the orderly growth and development of the county; for the safe and efficient provision of transportation networks, public utilities, education, and recreation space and facilities, and other public and community needs; for protection of natural resources and open space; for the coordination of ~~streets and highways~~streets, highways, and utilities within proposed subdivisions with existing or planned streets and highways and with other public facilities; for the dedication or reservation of recreation areas serving residents of the immediate neighborhood within the subdivision and of rights-of-way or easements for street and utility purposes including the dedication of rights-of-way pursuant to G.S. 136-66.10 or G.S. 136-66.11; and for the distribution of population and traffic in a manner that will avoid congestion and overcrowding and will create conditions ~~essential to~~ that promote public health, safety, and the general welfare.

(b) The ordinance may require that a plat be prepared, approved, and recorded pursuant to the provisions of the ordinance whenever any subdivision of land takes place. The ordinance may include requirements that the final plat show sufficient data to determine readily and reproduce accurately on the ground the location, bearing, and length of every street and alley line, lot line, easement boundary line, and other property boundaries, including the radius and other data for curved property lines, to an appropriate accuracy and in conformity with good surveying practice.

(c) A subdivision control ordinance may provide that a developer may provide funds to the county whereby the county may acquire recreational land or areas to serve the development or subdivision, including the purchase of land ~~which~~that may be used to serve more than one subdivision or development within the immediate area.

The ordinance may provide that in lieu of required street construction, a developer may provide funds to be used for the development of roads to serve the occupants, residents, or invitees of the subdivision or development. All funds received by the county under this section shall be transferred to the municipality to be used solely for the development of roads, including design, land acquisition, and construction. Any municipality receiving funds from a county under this section is authorized to expend such funds outside its corporate limits for the purposes specified in the agreement between the municipality and the county. Any formula adopted to determine the amount of funds the developer is to pay in lieu of required street construction shall be based on the trips generated from the subdivision or development. The ordinance may require a combination of partial payment of funds and partial dedication of constructed streets when the governing body of the county determines that a combination is in the best interest of the citizens of the area to be served.

The ordinance may provide for the more orderly development of subdivisions by requiring the construction of community service facilities in accordance with county ~~policies and standards, and, to assure compliance with these requirements, the ordinance may provide for the posting of bond or any other method that will offer guarantee of compliance.~~plans, policies, and standards.

The ordinance may provide for the reservation of school sites in accordance with comprehensive land use plans approved by the board of commissioners or the planning agency. For the authorization to reserve school sites to be effective, the board of commissioners or planning agency, before approving a comprehensive land use plan, shall determine jointly with the board of education with jurisdiction over the area the specific location and size of each school site to be reserved, and this information shall appear in the plan. Whenever a subdivision that includes part or all of a school site to be reserved under the plan is submitted for approval, the board of commissioners or the planning agency shall immediately notify the board of education. That board shall promptly decide whether it still wishes the site to be reserved and shall notify the board of commissioners or planning agency of its decision. If the board of education does not wish the site to be reserved, no site may be reserved. If the board of education does wish the site to be reserved, the subdivision may not be approved without the reservation. The board of education must acquire the site within 18 months after the date the site is reserved, either by purchase or by exercise of the power of eminent domain. If the board

of education has not purchased the site or begun proceedings to condemn the site within the 18 months, the subdivider may treat the land as freed of the reservation.

~~The ordinance may require that a plat be prepared, approved, and recorded pursuant to its provisions whenever a subdivision of land takes place.~~

To assure compliance with these and other ordinance requirements, the ordinance may provide for the posting of bonds, letters of credit, or other performance guarantees to assure successful completion of required improvements."

SECTION 7. G.S. 153A-334 reads as rewritten:

"**§ 153A-334. Penalties for transferring lots in unapproved subdivisions.**

If a person who is the owner or the agent of the owner of any land located within the territorial jurisdiction of a county that has adopted a subdivision regulation ordinance subdivides his land in violation of the ordinance or transfers or sells land by reference to, exhibition of, or any other use of a plat showing a subdivision of the land before the plat has been properly approved under the ordinance and recorded in the office of the appropriate register of deeds, he is guilty of a Class 1 misdemeanor. The description by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring land does not exempt the transaction from this penalty. The county may bring an action for injunction of any illegal subdivision, transfer, conveyance, or sale of land, and the court shall, upon appropriate findings, issue an injunction and order requiring the offending party to comply with the subdivision ordinance. Building permits required pursuant to G.S. 153A-357 may be denied for lots that have been illegally subdivided. In addition to other remedies, a city may institute any appropriate action or proceedings to prevent the unlawful subdivision of land, to restrain, correct, or abate the violation, or to prevent any illegal act or conduct."

SECTION 8. G.S. 153A-335 reads as rewritten:

"**§ 153A-335. "Subdivision" defined.**

For purposes of this Part, "subdivision" means all divisions of a tract or parcel of land into ~~two or more~~ lots, building sites, or other divisions for the purpose of sale or building development (whether immediate or future) and includes all division of land involving the dedication of a new street or a change in existing streets; however, the following is not included within this definition and is not subject to any regulations enacted pursuant to this Part:

(1) The combination or recombination of portions of previously subdivided and recorded lots if the total number of lots is not increased and the resultant lots and required supporting infrastructure (including streets, utilities, open space, and recreation areas) are equal to or exceed the standards of the county as shown in its subdivision regulations;

(2) The division of land into parcels greater than 10 acres if no street right-of-way dedication is involved;

(3) The public acquisition by purchase of strips of land for widening or opening streets or for public transportation system corridors; and

(4) The division of a tract in single ownership the entire area of which is no greater than two acres into not more than three lots, if no street

right-of-way dedication is involved and if the resultant lots and required supporting infrastructure (including streets, utilities, open space, and recreation areas) are equal to or exceed the standards of the county as shown by its subdivision regulations.

A county may provide for expedited review of specified classes of subdivisions."

PART III. ZONING REGULATION

SECTION 9. G.S. 160A-381 reads as rewritten:

"**§ 160A-381. Grant of power.**

(a) For the purpose of promoting health, safety, morals, or the general welfare of the community, any city may adopt zoning and development regulation ordinances. These ordinances may be adopted as part of a unified development ordinance or as a separate ordinance. A zoning may regulate ~~and restrict the height, number of stories and~~ the type, form, and size of buildings and other structures, the percentage of lots that may be occupied, the size of yards, courts and other open spaces, the density of population, ~~and~~ the location, maintenance, and use of buildings, structures and ~~land for trade, industry, residence or other purposes and to~~ land. The ordinance may provide density credits or severable development ~~rights for dedicated rights-of-way pursuant to G.S. 136-66.10 or G.S. 136-66.11.~~rights.

(b) Expired.

(b1) These regulations may provide that a board of adjustment may determine and vary their application in harmony with their general purpose and intent and in accordance with general or specific rules therein ~~contained.~~contained, provided no change in permitted uses may be authorized by variance.

(c) The regulations may also provide that the board of ~~adjustment~~adjustment, the planning board, or the city council may issue special use permits or conditional use permits in the classes of cases or situations and in accordance with the principles, conditions, safeguards, and procedures specified therein and may impose reasonable and appropriate conditions and safeguards upon these permits. When deciding special use permits or conditional use permits, the city council shall follow the procedures for boards of adjustment except that no vote greater than a majority vote shall be required for the city council to issue such permits. For the purposes of this section, vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter shall not be considered 'members of the board' for calculation of the requisite majority. Every such decision of the city council shall be subject to review by the superior court in the manner as is set forth in G.S. 160A-393.

~~(c)~~ Where appropriate, such conditions may include requirements that street and utility rights-of-way be dedicated to the public and that provision be made of recreational space and facilities. ~~When issuing or denying special use permits or conditional use permits, the city council shall follow the procedures for boards of adjustment except that no vote greater than a majority vote shall be required for the city council to issue such permits, and every such decision of the city council shall be subject to review by the superior court by proceedings in the nature of certiorari. Any~~

~~petition for review by the superior court shall be filed with the clerk of superior court within 30 days after the decision of the city council is filed in such office as the ordinance specifies, or after a written copy thereof is delivered to every aggrieved party who has filed a written request for such copy with the clerk at the time of the hearing of the case, whichever is later. The decision of the city council may be delivered to the aggrieved party either by personal service or by registered mail or certified mail return receipt requested.~~

(d) A city council member shall not vote on any zoning map or text amendment where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. Members of appointed boards providing advice to the city council shall not vote on recommendations regarding any zoning map or text amendment where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member.

(e) Cities may adopt temporary development moratoria of reasonable duration on any city development approval required by law. A development moratorium with a duration of 60 days or any shorter period may be adopted without the necessity of a public hearing and notice that would otherwise be required pursuant to G.S. 160A-364. A development moratorium with a duration of 61 days or longer, and any extension of a moratorium adopted without a hearing to a total duration of more than 60 days, is subject to the notice and hearing requirements of G.S. 160A-364. Absent and imminent threat to public health and safety, a development moratorium adopted pursuant to this section shall not apply to any project for which a valid building permit issued pursuant to G.S. 160A-417 is outstanding, to development set forth in a site-specific or phased development plan approved pursuant to G.S. 160A-385.1, or to development for which substantial expenditures have already been made in good faith reliance on a prior valid zoning approval.

Any ordinance establishing a development moratorium must expressly include at the time of adoption each of the following:

(1) A clear statement of the problems or conditions necessitating the moratorium.

(2) A clear statement of the development approvals subject to the moratorium and how a moratorium on those approvals will address the problems or conditions leading to imposition of the moratorium.

(3) An express date for termination of the moratorium and a statement setting forth why that duration is reasonably necessary to address the problems or conditions leading to imposition of the moratorium.

(4) A clear statement of the actions proposed to be taken by the city during the duration of the moratorium to address the problems or conditions leading to imposition of the moratorium.

(f) A city may require that site-specific development restrictions imposed by individual special or conditional use permits, variances, site-specific or phased development plans, planned unit development approvals, special or conditional use

districts, conditional rezonings, overlay districts, or otherwise be recorded in the chain of title of affected properties."

SECTION 10. G.S. 160A-382 reads as rewritten:

"**§ 160A-382. Districts.**

(a) For any or all these purposes, the city may divide its territorial jurisdiction into districts of any number, shape, and area that may be deemed best suited to carry out the purposes of this Part; and within those districts it may regulate and restrict the erection, construction, reconstruction, alteration, repair or use of buildings, structures, or land. Such districts may include, but shall not be limited to, general use districts, in which a variety of uses are permissible in accordance with general standards; overlay districts, in which additional requirements are imposed on certain properties within one or more underlying general or special use districts; and special use districts or conditional use districts, in which uses are permitted only upon the issuance of a special use permit or a conditional use ~~permit.~~ permit and conditional zoning districts, in which site plans and individualized development conditions are imposed.

(b) Property may be placed in a special use ~~district or conditional use district~~ district, conditional use district, or conditional district only in response to a petition by the owners of all the property to be included. Specific conditions applicable to these districts may be proposed by the petitioner, the city or its agencies, or any affected person, but only those conditions mutually approved by the city and the petitioner may be incorporated into the zoning regulations or permit requirements. Conditions and site-specific standards imposed in a conditional district shall be limited to those that address the conformance of the development and use of the site to city ordinances and an officially adopted comprehensive or other plan, and those that address the impacts reasonably expected to be generated by the development or use of the site.

A statement analyzing the reasonableness of the proposed rezoning shall be prepared for each petition for a rezoning to a special or conditional use district or a conditional district. This statement may be prepared by the petitioner or by the city, and it shall be completed and available for public inspection at the time notice is provided for the public hearing on the proposed rezoning. This statement shall address the consistency of the proposed rezoning with any comprehensive plan that has been adopted and any other officially adopted plan that is applicable, the compatibility of the proposed rezoning with the site and surrounding area, and the benefits and detriments of the proposed rezoning for the landowner, the immediate neighbors, and the surrounding community. The ordinance may require meetings to be held between the petitioner and neighboring property owners prior to the submittal of a petition for rezoning to a special or conditional use district or a conditional zoning district.

(c) Except as authorized by the foregoing, all regulations shall be uniform for each class or kind of building throughout each district, but the regulations in one district may differ from those in other districts."

SECTION 11. G.S. 160A-383 reads as rewritten:

"**§ 160A-383. Purposes in view.**

Zoning regulations shall be made in accordance with a comprehensive ~~plan and designed to lessen congestion in the streets; to secure safety from fire, panic and other~~

~~dangers;~~plan. Prior to adoption of any zoning provision that is not consistent with an adopted comprehensive plan or any other applicable plan that has been officially adopted by the city, the governing board shall adopt a statement describing the inconsistency and explaining why the board considers the action taken to be reasonable and in the public interest.

Zoning regulations shall be designed to promote ~~health~~the public health, safety, and ~~the~~ general ~~welfare;~~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.~~requirements; to manage the impacts of development and land uses on other properties and public interests; and to maintain and improve the quality of neighborhoods and communities. 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 12. G.S. 153A-340 reads as rewritten:

"**§ 153A-340. Grant of power.**

(a) For the purpose of promoting health, safety, morals, or the general welfare, a county may adopt zoning and development regulation ordinances. These ordinances may be adopted as part of a unified development ordinance or as a separate ordinance. A zoning ordinance may regulate ~~and restrict the height, number of stories~~the type, form, and size of buildings and other structures, the percentage of lots that may be occupied, the size of yards, courts and other open spaces, the density of population, and the ~~location~~ location, maintenance, and use of buildings, structures, and land for trade, industry, residence, or other ~~purposes, and to~~ purposes. The ordinance may provide density credits or severable development ~~rights for dedicated rights-of-way pursuant to G.S. 136-66.10 or G.S. 136-66.11.~~rights.

(b) (1) These regulations may affect property used for bona fide farm purposes only as provided in subdivision (3) of this subsection. This subsection does not limit regulation under this Part with respect to the use of farm property for nonfarm purposes.

(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 having a domestic or foreign market.

(3) The definitions set out in G.S. 106-802 apply to this subdivision. A county may adopt zoning regulations governing swine farms served by animal waste management systems having a design capacity of 600,000 pounds steady state live weight (SSLW) or greater provided that the zoning regulations may not have the effect of excluding swine farms served by an animal waste management system having a design

capacity of 600,000 pounds SSLW or greater from the entire zoning jurisdiction.

(c) The regulations may provide that a board of adjustment may determine and vary their application in harmony with their general purpose and intent and in accordance with general or specific rules therein ~~contained.~~contained, provided no change in permitted uses may be authorized by variance.

(c1) The regulations may also provide that the board of ~~adjustment~~adjustment, the planning board, or the board of commissioners may issue special use permits or conditional use permits in the classes of cases or situations and in accordance with the principles, conditions, safeguards, and procedures specified therein and may impose reasonable and appropriate conditions and safeguards upon these permits. Where appropriate, the conditions may include requirements that street and utility rights-of-way be dedicated to the public and that recreational space be provided. ~~When issuing or denying special use permits or conditional use permits, the board of commissioners shall follow the procedures for boards of adjustment except that no vote greater than a majority vote shall be required for the board of commissioners to issue such permits, and every such decision of the board of commissioners shall be subject to review by the superior court by proceedings in the nature of certiorari.~~ When deciding special use permits or conditional use permits, the board of county commissioners shall follow the procedures for boards of adjustment except that no vote greater than a majority vote shall be required for the board of county commissioners to issue such permits. For the purposes of this section, vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter shall not be considered 'members of the board' for calculation of the requisite majority. Every such decision of the board of county commissioners shall be subject to review by the superior court in the same manner as is set forth in G.S. 160A-393.

(d) A county may regulate the development over estuarine waters and over lands covered by navigable waters owned by the State pursuant to G.S. 146-12, within the bounds of that county.

(e) For the purpose of this section, the term "structures" shall include floating homes.

~~(f) Any petition for review by the superior court shall be filed with the clerk of superior court within 30 days after the decision of the board of commissioners is filed in such office as the ordinance specifies, or after a written copy thereof is delivered to every aggrieved party who has filed a written request for such copy with the clerk at the time of the hearing of the case, whichever is later. The decision of the board of commissioners may be delivered to the aggrieved party either by personal service or by registered mail or certified mail return receipt requested.~~

(g) A member of the board of county commissioners shall not vote on any zoning map or text amendment where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. Members of appointed boards providing advice to the board of county commissioners shall not vote on recommendations regarding any zoning map or text

amendment where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member.

(h) Counties may adopt temporary development moratoria of reasonable duration on any county development approval required by law. A development moratorium with a duration of 60 days or any shorter period may be adopted without the necessity of a public hearing and notice that would otherwise be required pursuant to G.S. 153A-323. A development moratorium with a duration of 61 days or longer, and any extension of a moratorium adopted without a hearing to a total duration of more than 60 days, is subject to the notice and hearing requirements of G.S. 153A-323. Absent an imminent threat to public health and safety, a development moratorium adopted pursuant to this section shall not apply to any project for which a valid building permit issued pursuant to G.S. 153A-357 is outstanding, to development set forth in a site-specific or phased development plan approved pursuant to G.S. 153A-344.1, or to development for which substantial expenditures have already been made in good faith reliance on a prior valid zoning approval.

Any ordinance establishing a development moratorium must expressly include at the time of adoption each of the following:

(1) A clear statement of the problems or conditions necessitating the moratorium.

(2) A clear statement of the development approvals subject to the moratorium and how a moratorium on those approvals will address the problems or conditions leading to imposition of the moratorium.

(3) An express date for termination of the moratorium and a statement setting forth why that duration is reasonably necessary to address the problems or conditions leading to imposition of the moratorium.

(4) A clear statement of the actions proposed to be taken by the county during the duration of the moratorium to address the problems or conditions leading to imposition of the moratorium.

(i) A county may require that site-specific development restrictions imposed by individual special or conditional use permits, variances, site-specific or phased development plans, planned unit development approvals, special or conditional use districts, conditional rezonings, overlay districts, or otherwise be recorded in the chain of title of affected properties."

SECTION 13. G.S. 153A-341 reads as rewritten:

"**§ 153A-341. Purposes in view.**

Zoning regulations shall be made in accordance with a comprehensive ~~plan and designed to lessen congestion in the streets; to secure safety from fire, panic, and other dangers;~~plan. Prior to adoption of any zoning provision that is not consistent with an adopted comprehensive plan or any other applicable plan that has been officially adopted by the county, the board of county commissioners shall adopt a statement describing the inconsistency and explaining why the board considers the action taken to be reasonable and in the public interest.

Zoning regulations shall be designed to promote the public ~~health~~health, safety, and ~~the~~ general ~~welfare;~~ 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.~~requirements; to manage the impacts of development and land uses on other properties and public interests; and to maintain and improve the quality of neighborhoods and communities. The regulations shall be made with reasonable consideration as to, among other things, 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 the county. In addition, the regulations shall be made with reasonable consideration to expansion and development of any cities within the county, so as to provide for their orderly growth and development."

SECTION 14. G.S. 153A-342 reads as rewritten:

"**§ 153A-342. Districts; zoning less than entire jurisdiction.**

(a) A county may divide its territorial jurisdiction into districts of any number, shape, and area that it may consider best suited to carry out the purposes of this Part. Within these districts a county may regulate and restrict the erection, construction, reconstruction, alteration, repair, or use of buildings, structures, or land. Such districts may include, but shall not be limited to, general use districts, in which a variety of uses are permissible in accordance with general standards; overlay districts, in which additional requirements are imposed on certain properties within one or more underlying general or special use districts; ~~and~~ special use districts or conditional use districts, in which uses are permitted only upon the issuance of a special use permit or a conditional use ~~permit.~~permit and conditional zoning districts, in which site plans and individualized development conditions are imposed.

(b) Property may be placed in a special use ~~district or conditional use district~~ district, conditional use district, or conditional district only in response to a petition by the owners of all the property to be included. Specific conditions applicable to the districts may be proposed by the petitioner, the county or its agencies, or any affected person, but only those conditions mutually approved by the county and the petitioner may be incorporated into the zoning regulations or permit requirements.

A statement analyzing the reasonableness of the proposed rezoning shall be prepared for each petition for a rezoning to a special or conditional use district or a conditional district. This statement may be prepared by the petitioner or by the county, and it shall be completed and available for public inspection at the time notice is provided for the public hearing on the proposed rezoning. This statement shall address the consistency of the proposed rezoning with any comprehensive plan that has been adopted and any other officially adopted plan that is applicable, the compatibility of the proposed rezoning with the site and surrounding area, and the benefits and detriments of the proposed rezoning for the landowner, the immediate neighbors, and the surrounding community. The ordinance may require meetings to be held between the petitioner and neighboring property owners prior to the submittal of a petition for rezoning to a special or conditional use district or a conditional zoning district.

(c) Except as authorized by the foregoing, all regulations shall be uniform for each class or kind of building throughout each district, but the regulations in one district may differ from those in other districts.

(d) A county may determine that the public interest does not require that the entire territorial jurisdiction of the county be zoned and may designate one or more portions of that jurisdiction as a zoning area or areas. A zoning area must originally contain at least 640 acres and at least 10 separate tracts of land in separate ownership and may thereafter be expanded by the addition of any amount of territory. A zoning area may be regulated in the same manner as if the entire county were zoned, and the remainder of the county need not be regulated."

SECTION 15. Article 18 of Chapter 153A of the General Statutes is amended by adding a new section to read:

"**§ 153A-343.1. Changes.**

(a) Zoning ordinances may from time to time be amended, supplemented, changed, modified, or repealed. A county may elect to provide that when a qualified protest against a zoning map amendment is made, that amendment shall not become effective except by favorable vote of three-fourths of the members of the board of county commissioners. For the purposes of this subsection, vacant positions on the board of county commissioners and members who are excused from voting shall not be considered 'members of the board' for calculation of the requisite supermajority.

(b) If a county elects to provide for zoning protest petitions, the provisions and procedures for protest petitions set forth in G.S. 160A-385 and G.S. 160A-386 shall be applicable."

PART IV. INFRASTRUCTURE AGREEMENTS

SECTION 16. Article 21 of Chapter 160A of the General Statutes is amended by adding a new section to read:

"**§ 160A-499. Reimbursement agreements.**

(a) A city may enter into reimbursement agreements with private developers and property owners for the design and construction of municipal infrastructure that is included on the city's Capital Improvement Plan and serves the developer or property owner. For the purpose of this act, municipal infrastructure includes, without limitation, water mains, sanitary sewer lines, lift stations, stormwater lines, streets, curb and gutter, sidewalks, traffic control devices, and other associated facilities.

(b) A city shall enact ordinances setting forth procedures and terms under which such agreements may be approved.

(c) A city may provide for such reimbursements to be paid from any lawful source.

(d) No reimbursement pursuant to an agreement authorized by this act shall be deemed to be construction subject to Article 8 of Chapter 143 of the General Statutes or to be deemed to be a violation or evasion of any provision of said Article. Notwithstanding the foregoing provisions of this section, a construction contract subject to a reimbursement agreement authorized by this act shall not be awarded by a

developer or property owner who is a party to such reimbursement agreement without complying with the requirements of G.S. 143-129 and G.S. 143-128(f) relating to public advertising and bid opening requirements which would be applicable if the construction contract had been awarded by the city."

SECTION 17. Article 15 of Chapter 160A of the General Statutes is amended by adding a new section to read:

"**§ 160A-309. Intersection and roadway improvements.**

A city may contract with a private party for public intersection or roadway improvements that are adjacent or ancillary to a private land development project. Such a contract is not subject to Article 8 of Chapter 143 of the General Statutes if the public cost will not exceed one hundred seventy-five thousand dollars ($175,000) and the city determines that: (i) the public cost will not exceed the estimated cost of providing for such public intersection or roadway improvements through either eligible force account qualified labor or through a public contract let pursuant to Article 8 of Chapter 143 of the General Statutes; or (ii) the coordination of separately constructed public intersection or roadway improvements and the adjacent or ancillary private land development improvements would be impracticable."

SECTION 18. Article 16 of Chapter 160A of the General Statutes is amended by adding a new section to read:

"**§ 160A-320. Public enterprise improvements.**

(a) Authorization. – A city may contract with a private party for public enterprise improvements that are adjacent or ancillary to a private land development project. Such a contract shall allow the city to reimburse the private party for costs associated with the design and construction of improvements that are in addition to those required by the city's land development regulations. Such a contract is not subject to Article 8 of Chapter 143 of the General Statutes if the public cost will not exceed one hundred seventy-five thousand dollars ($175,000) and the city determines that: (i) the public cost will not exceed the estimated cost of providing for such improvements through either eligible force account qualified labor or through a public contract let pursuant to Article 8 of Chapter 143 of the General Statutes; or (ii) the coordination of separately constructed improvements would be impracticable.

(b) Property Acquisition. – The improvements may be constructed on property owned or acquired by the private party or on property directly acquired by the city. The private party may assist the city in obtaining easements in favor of the city from private property owners on those properties that will be involved in or affected by the project. The contract between the city and the private party may be entered into before the acquisition of any real property necessary to the project."

PART V. DEVELOPMENT AGREEMENTS

SECTION 19. Article 19 of Chapter 160A of the General Statutes is amended by adding a new Part to read:

"Part 3D. Development Agreements.

"**§ 160A-400.20. Authorization for development agreements.**

(a) The General Assembly finds:

(1) The lack of certainty in the approval of development can result in a waste of economic and land resources, can discourage sound capital improvement planning and financing, can cause the cost of housing and development to escalate, and can discourage commitment to comprehensive planning.

(2) Developers should be assured that upon receipt of a development permit, they may proceed in accordance with existing laws and policies, subject to the conditions of a development agreement. A development agreement should strengthen the public planning process, encourage sound capital improvement planning and financing, assist in assuring there are adequate capital facilities for the development, encourage private participation in comprehensive planning, reduce the economic costs of development, allow for the orderly planning of public facilities and services, and allow for the equitable allocation of the cost of public services.

(3) Because the development approval process involves the expenditure of considerable sums of money, predictability encourages the maximum efficient utilization of resources at the least economic cost to the public.

(4) Public benefits derived from development agreements may include, but are not limited to, affordable housing, design standards, and on- and off-site infrastructure and other improvements. These public benefits may be negotiated in return for the vesting of development rights for a specific period.

(5) Land planning and development involve review and action by multiple governmental agencies having jurisdiction over land development.

(6) Development agreements will encourage the vesting of property rights by protecting such rights from the effect of subsequently enacted local government agencies which may conflict with any term or provision of the development agreement. Development agreements will provide a reasonable certainty as to the lawful requirements that must be met in protecting vested property rights, while maintaining the authority and duty of government to enforce laws and regulations which promote the public safety, health, and general welfare of the citizens of our State.

(b) It is the intent of the General Assembly to encourage a stronger commitment to comprehensive and capital facilities planning, ensure the provision of adequate public facilities for development, encourage the efficient use of resources, and reduce the economic cost of development.

(c) Local governments and agencies may enter into development agreements with developers, subject to the procedures and requirements of this Part.

(d) This Part is supplemental to the powers conferred upon local governments and does not preclude or supersede rights and obligations established pursuant to other

law regarding building permits, site-specific development plans, phased development plans, or other provisions of law.

"**§ 160A-400.21. Definitions.**

The following definitions apply in this Part:

(1) Comprehensive plan. – The comprehensive plan, land-use plan, small area plans, neighborhood plans, transportation plan, capital improvement plan, official map, and any other plans regarding land use and development that have been officially adopted by the governing board.

(2) Developer. – A person, including a governmental agency or redevelopment authority, who intends to undertake any development and who has a legal or equitable interest in the property to be developed.

(3) Development. – The planning for or carrying out of a building activity, the making of a material change in the use or appearance of any structure or property, or the dividing of land into two or more parcels. 'Development', as designated in a law or development permit, includes the planning for and all other activity customarily associated with it unless otherwise specified. When appropriate to the context, 'development' refers to the planning for or the act of developing or to the result of development. Reference to a specific operation is not intended to mean that the operation or activity, when part of other operations or activities, is not development. Reference to particular operations is not intended to limit the generality of this item.

(4) Development permit. – A building permit, zoning permit, subdivision approval, special or conditional use permit, variance, or any other official action of local government having the effect of permitting the development of property.

(5) Governing body. – The city council of a municipality or the board of county commissioners of a county.

(6) Land development regulations. – Ordinances and regulations enacted by the appropriate governing body for the regulation of any aspect of development and includes zoning, subdivision, or any other land development ordinances.

(7) Laws. – All ordinances, resolutions, regulations, comprehensive plans, land development regulations, policies, and rules adopted by a local government affecting the development of property, and includes laws governing permitted uses of the property, density, design, and improvements.

(8) Property. – All real property subject to land use regulation by a local government and includes any improvements or structures customarily regarded as a part of real property.

(9) Local government. – Any municipality or county that exercises regulatory authority over and grants development permits for land development or which provides public facilities.

(10) Local planning board. – Any planning board established pursuant to G.S. 160A-361 or G.S. 153A-321.

(11) Person. – An individual, corporation, business or land trust, estate, trust, partnership, association, two or more persons having a joint or common interest, State agency, or any legal entity.

(12) Public facilities. – Major capital improvements, including, but not limited to, transportation, sanitary sewer, solid waste, drainage, potable water, educational, parks and recreational, and health systems and facilities.

"**§ 160A-400.22. Local governments authorized to enter into development agreements; approval of county or municipal governing body required.**

A local government may establish procedures and requirements, as provided in this Part, to consider and enter into development agreements with developers. A development agreement must be approved by the governing body of a county or municipality by written resolution.

"**§ 160A-400.23. Developed property must contain certain number of acres; permissible durations of agreements.**

A local government may enter into a development agreement with a developer for the development of property as provided in this Part, provided the property contains 25 acres or more of developable property (exclusive of wetlands, mandatory buffers, steep slopes, and other portions of the property precluded from development at the time of application). Development agreements shall be of a term specified in the agreement, provided they may not be for a term exceeding 10 years.

"**§ 160A-400.24. Public hearing.**

Before entering into a development agreement, a local government shall conduct a public hearing on the proposed agreement following the procedures set forth in G.S. 160A-364 or G.S. 153A-323 regarding zoning ordinance adoption or property subject to the development agreement, the development uses proposed on the property, and must specify a place where a copy of the proposed development agreement can be obtained. In the event that the development agreement provides that the local government shall provide certain public facilities, the development agreement shall provide that the delivery date of such public facilities will be tied to successful performance by the developer in implementing the proposed development (such as meeting defined completion percentages or other performance standards).

"**§ 160A-400.25. What development agreement must provide; what it may provide; major modification requires public notice and hearing.**

(a) A development agreement shall at a minimum include all of the following:

(1) A legal description of the property subject to the agreement and the names of its legal and equitable property owners.

(2) The duration of the agreement. However, the parties are not precluded from entering into subsequent development agreements that may extend the original duration period.

(3) The development uses permitted on the property, including population densities and building types, intensities, placement on the site, and design.

(4) A description of public facilities that will service the development, including who provides the facilities, the date any new public facilities, if needed, will be constructed, and a schedule to assure public facilities are available concurrent with the impacts of the development.

(5) A description, where appropriate, of any reservation or dedication of land for public purposes and any provisions to protect environmentally sensitive property.

(6) A description of all local development permits approved or needed to be approved for the development of the property together with a statement indicating that the failure of the agreement to address a particular permit, condition, term, or restriction does not relieve the developer of the necessity of complying with the law governing their permitting requirements, conditions, terms, or restriction.

(7) A finding that the development permitted or proposed is consistent with the local government's comprehensive plan and land development regulations.

(8) A description of any conditions, terms, restrictions, or other requirements determined to be necessary by the local government for the public health, safety, or welfare of its citizens.

(9) A description, where appropriate, of any provisions for the preservation and restoration of historic structures.

(b) A development agreement may provide that the entire development or any phase of it be commenced or completed within a specified period of time. The development agreement must provide a development schedule including commencement dates and interim completion dates at no greater than five-year intervals; provided, however, the failure to meet a commencement or completion date shall not, in and of itself, constitute a material breach of the development agreement pursuant to G.S. 160A-400.28 but must be judged based upon the totality of the circumstances. The development agreement may include other defined performance standards to be met by the developer. The developer may request a modification in the dates as set forth in the agreement. Consideration of a proposed major modification of the agreement shall follow the same procedures as required for initial approval of a development agreement.

(c) If more than one local government is made party to an agreement, the agreement must specify which local government is responsible for the overall administration of the development agreement.

(d) The development agreement also may cover any other matter not inconsistent with this Part.

"**§ 160A-400.26. Agreement and development must be consistent with local government comprehensive plan and land development regulations.**

A development agreement and authorized development must be consistent with the local government's comprehensive plan and land development regulations.

"**§ 160A-400.27. Law in effect at time of agreement governs development; exceptions.**

(a) Unless otherwise provided by the development agreement, the laws applicable to development of the property subject to a development agreement are those in force at the time of execution of the agreement.

(b) A local government may apply subsequently adopted laws to a development that is subject to a development agreement only for the grounds specified in G.S. 160A-385.1(e).

(c) This section does not abrogate any rights preserved by G.S. 160A-385, 160A-385.1, 153A-344, and 153A-344.1 or that may vest pursuant to common law or otherwise in the absence of a development agreement.

"**§ 160A-400.28. Periodic review to assess compliance with agreement; material breach by developer; notice of breach; cure of breach or modification or termination of agreement.**

(a) Procedures established pursuant to G.S. 160A-400.22 must include a provision for requiring periodic review by the zoning administrator or other appropriate officer of the local government at least every 12 months, at which time the developer must be required to demonstrate good faith compliance with the terms of the development agreement.

(b) If, as a result of a periodic review, the local government finds and determines that the developer has committed a material breach of the terms or conditions of the agreement, the local government shall serve notice in writing, within a reasonable time after the periodic review, upon the developer setting forth with reasonable particularity the nature of the breach and the evidence supporting the finding and determination, and providing the developer a reasonable time in which to cure the material breach.

(c) If the developer fails to cure the material breach within the time given, then the local government unilaterally may terminate or modify the development agreement; provided, the notice of termination or modification may be appealed to the board of adjustment in the manner provided by G.S. 160A-388(b) and G.S. 153A-345(b).

"**§ 160A-400.29. Amendment or cancellation of development agreement by mutual consent of parties or successors in interest.**

A development agreement may be amended or canceled by mutual consent of the parties to the agreement or by their successors in interest.

"**§ 160A-400.30. Validity and duration of agreement entered into prior to change of jurisdiction; subsequent modification or suspension.**

(a) Except as otherwise provided by this Part, any development agreement entered into by a local government before the effective date of a change of jurisdiction shall be valid for the duration of the agreement, or eight years from the effective date of

the change in jurisdiction, whichever is earlier. The parties to the development agreement and the local government assuming jurisdiction have the same rights and obligations with respect to each other regarding matters addressed in the development agreement as if the property had remained in the previous jurisdiction.

(b) A local government assuming jurisdiction may modify or suspend the provisions of the development agreement if the local government determines that the failure of the local government to do so would place the residents of the territory subject to the development agreement, or the residents of the local government, or both, in a condition dangerous to their health or safety, or both.

"**§ 160A-400.31. Developer to record agreement within 14 days; burdens and benefits inure to successors in interest.**

Within 14 days after a local government enters into a development agreement, the developer shall record the agreement with the register of deeds in the county where the property is located. The burdens of the development agreement are binding upon, and the benefits of the agreement shall inure to, all successors in interest to the parties to the agreement.

"**§ 160A-400.32. Agreement to be modified or suspended to comply with later-enacted State or federal laws or regulations.**

In the event State or federal laws or regulations, enacted after a development agreement has been entered into, prevent or preclude compliance with one or more provisions of the development agreement, the provisions of the agreement must be modified or suspended as may be necessary to comply with the State or federal laws or regulations.

"**§ 160A-400.33. Rights, duties, and privileges of gas and electricity suppliers not affected.**

The provisions of this act are not intended nor may they be construed in any way to alter or amend in any way the rights, duties, and privileges of suppliers of electricity or natural gas with reference to the provision of electricity or gas service, including, but not limited to, the generation, transmission, distribution, or provision of electricity at wholesale, retail, or in any other capacity.

"**§ 160A-400.34. Applicability to local government of constitutional and statutory procedures for approval of debt.**

In the event that any of the obligations of the local government in the development agreement constitute debt, the local government shall comply, at the time of the obligation to incur the debt and before the debt becomes enforceable against the local government, with any applicable constitutional and statutory procedures for the approval of this debt.

"**§ 160A-400.35. Agreement may not contravene or supersede building or housing code; compliance with code if subsequently enacted.**

Notwithstanding any other provision of law, a development agreement adopted pursuant to this Chapter must comply with any building or housing codes subsequently adopted by the governing body of a municipality or county. A development agreement may not include provisions that supersede or contravene the requirements of any

building or housing code adopted by the State or the governing body of a municipality or county."

PART VI. APPEALS

SECTION 20. Article 19 of Chapter 160A of the General Statutes is amended by adding a new section to read:

"**§ 160A-393. Appeals in the nature of certiorari.**

(a) Applicability. – This section applies to appeals to superior court by proceedings in the nature of certiorari authorized under the provisions of this Article.

(b) Filing the Petition. – An appeal in the nature of certiorari shall be initiated by filing with the superior court a petition for Writ of Certiorari. The petition shall state the facts that demonstrate that the petitioner has standing to seek review and shall set forth the grounds upon which the petitioner contends that an error was made as well as the relief the petitioner seeks. The facts in support of allegations that the votes of one or more members of the decision-making body were affected by impermissible bias or conflict of interest shall be set forth with particularity.

(c) Standing. –

(1) A petition may be filed under this section only by a person who has standing to challenge the decision being appealed. A person has standing if a reasonable person in the position of the person seeking to challenge the decision could reasonably conclude that the use of the property authorized by the decision would be likely to adversely affect the interests of such person in some real, substantial, and concrete (i.e., not purely speculative, insignificant, or philosophical) way that is demonstrably different in nature or degree than the manner in which the decision affects members of the general public. Without limiting the generality of the foregoing, the following principles shall apply in determining whether a petitioner has standing.

(2) If the decision being appealed involves a denial of a permit request, a denial of a variance, or a determination that property is being used in violation of an ordinance adopted under this Article, then any person with an ownership or leasehold interest in the property in question, as well as the applicant for the permit or the variance (if different than the owner), has standing to file a petition.

(3) If the decision being appealed involves the issuance of a permit, the granting of a variance, or a determination that property is being used in conformity with an ordinance adopted under this Article, then the following persons shall have standing to file a petition, so long as they satisfy the general criteria set forth at the beginning of this subdivision:

a. Any person who resides or owns property in such close proximity to the property that is the subject of the decision that the use of the property authorized by the decision would adversely affect such person's use or enjoyment of his or her

residence or property or would adversely affect the value of such property.

b. Any person whose economic interests are directly threatened by the use authorized by the decision.

c. An incorporated property owners association to which all owners of property in a designated area belong by virtue of their ownership or property in such area shall have standing to challenge the issuance of a permit, the granting of a variance, or a determination that property is being used in conformity with an ordinance adopted under this Part if any of the members of such incorporated property owners association would have standing to challenge the decision as an individual.

For purposes of this subsection, the term "person" refers to any legal entity authorized to bring suit in his, her, or its own name, and the term "owner" refers to any person having an ownership interest in property.

(d) Respondent. – The respondent named in the petition shall be the city whose council, board of adjustment, planning agency, or other body made the decision that is being appealed. If the petitioner is not the applicant before the council, board of adjustment, or planning agency whose decision is being appealed, the petitioner shall name such applicant as a respondent. Any petitioner may, but need not, also name as a respondent any person who participated in the hearing before the council, board of adjustment, or planning agency.

(e) Writ of Certiorari. – Upon filing the petition, the petitioner shall present the petition and a proposed Writ of Certiorari to the clerk of court of the county in which the matter arose. The writ shall direct the respondent city to prepare and certify to the court the record of proceedings below within a specified date. The writ shall also direct that the petitioner shall serve the petition and the writ upon each respondent named therein in the manner provided for service of a complaint under Rule 4j of the Rules of Civil Procedure. No summons shall be issued. The clerk shall issue the writ without notice to the respondent or respondents if the petition has been properly filed and the writ is in proper form. A copy of the executed writ shall be filed with the court.

(f) Answer to the Petition. – The respondent may, but need not, file an answer to the petition, except that, if the respondent contends that any petitioner lacks standing to bring the appeal, such contention must be set forth in an answer served on all petitioners at least 30 days prior to the hearing on the petition.

(g) Intervention. – Rule 24 of the Rules of Civil Procedure shall govern motions to intervene as a petitioner or respondent in an action initiated under this section, except that:

(1) If the petitioner is not the applicant before the council, board of adjustment, or planning agency whose decision is being appealed, and the petitioner fails to name such applicant as a respondent, then such applicant may intervene as a matter of right.

(2) Except as otherwise stated in subdivision (1) of this subsection, an intervenor must demonstrate that a reasonable person in the position of

the intervenor could reasonably believe that the outcome of the appeal could adversely affect the interests of such person in some real, substantial, and concrete (i.e,. not purely speculative, insignificant, or philosophical) way that is demonstrably different in nature or degree than the manner in which the decision affects members of the general public.

(h) The Record. – The record shall consist of all documents and exhibits submitted to the council, planning agency, or board of adjustment whose decision is challenged, together with the minutes of the meeting or meetings at which the matter appealed was considered. Upon request of any party, the record shall also contain an audio or videotape of the meeting or meetings at which the matter appealed was considered if such a recording was made. Any party may also include in the record a transcript of such proceedings, which shall be prepared at the cost of the party choosing to include it. The parties may agree, or the court may direct, that matters unnecessary to the court's decision be deleted from the record or that matters other than those specified herein be included. The record shall be bound and paginated or otherwise organized for the convenience of the parties and the court. A copy of the record shall be served by the municipal respondent upon all petitioners within three days after it is filed with the court.

(i) Hearing on the Record. – The court shall hear and decide all issues raised by the petition by reviewing the record submitted in accordance with subsection (h) of this section, except that the court may, in its discretion, allow the record to be supplemented with affidavits, testimony of witnesses, or documentary or other evidence if and to the extent that the record is not adequate to allow an appropriate determination of the following issues:

(1) Whether a petitioner or intervenor has standing.

(2) Whether, as a result of bias or conflict of interest, the decision-making body was not sufficiently impartial to comply with due process principles.

(3) Whether the decision-making body erred for the reasons set forth in subsection (j) of this section.

(j) Scope of Review. –

When reviewing the decision of a city council, board of adjustment, or planning agency under the provisions of this section, the trial court shall ensure that the rights of petitioners have not been prejudiced because the decision-making body's findings, inferences, conclusions, or decisions were:

(1) In violation of constitutional provisions, including but not limited to, those protecting procedural due process rights.

(2) In excess of the statutory authority conferred upon the municipality or the authority conferred upon the decision-making body by ordinance.

(3) Inconsistent with applicable procedures specified by statute or ordinance.

(4) Affected by other error of law.

(5) Unsupported by substantial competent evidence in view of the entire record.

(6) Arbitrary or capricious.

(7) When the issue before the trial court is whether the decision-making body below erred in the interpretation of an ordinance, the trial court may review that issue de novo and substitute its own judgment for that of the decision-making body.

The term "competent evidence", as used in this subsection, shall not preclude reliance by the decision-making body on evidence that would not be admissible under the rules of evidence as applied in the trial division of the General Court of Justice if (i) the evidence was admitted without objection, or (ii) the evidence appears to be sufficiently trustworthy and was admitted under such circumstances that were reasonable for the decision-making body to rely upon it. Notwithstanding the foregoing, the term "competent evidence" shall not be deemed to include the opinion testimony of lay witnesses (i.e., persons not qualified by reason of specialized knowledge, skill, experience, training, or education to testify as an expert) as to matters about which only expert testimony would generally be admissible under the rules of evidence. By way of illustration without limitation, the term "competent evidence" shall not be deemed to include the opinion of lay witnesses as to whether (i) the use of property in a particular way would affect the value of other property, or (ii) the increase in vehicular traffic resulting from a proposed development would pose a danger to the public safety.

(k) Decision of the Trial Court. – Following its review of the decision making body in accordance with subsection (j) of this section, the trial court may affirm the decision, reverse the decision and remand the case with appropriate instructions, or remand the case for further proceedings. If the court does not affirm the decision below in its entirety, then the court shall be guided by the following in determining what relief should be granted to the petitioners.

(1) If the court concludes that the error committed by the decision-making body is procedural only, the court may remand the case for further proceedings to correct the procedural error.

(2) If the court concludes that the decision-making body has erred by failing to make findings of fact such that the court cannot properly perform its function, then the court may remand the case with appropriate instructions so long as the record contains substantial competent evidence that could support the decision below with appropriate findings of fact. However, findings of fact are not necessary when the record sufficiently reveals the basis for the decision below or when the material facts are undisputed and the case presents only an issue of law.

(3) If the court concludes that the decision below is not supported by substantial competent evidence in the record, or is based upon an error of law, then the court may remand the case with an order that directs the council, board of adjustment, or planning agency to take whatever action should have been taken had the error not been committed or to

take such other action as is necessary to correct the error. Without limiting the generality of the foregoing, (i) if the court concludes that a permit was wrongfully denied because the denial was not based on substantial competent evidence or was otherwise based on an error of law, the court shall remand with instructions that the permit be issued; and (ii) if the court concludes that a permit was wrongfully issued because the issuance was not based on substantial competent evidence or was otherwise based on an error of law, the court shall remand with instructions that the permit be revoked.

(l) Ancillary Injunctive Relief. – Upon motion of a party to a proceeding under this section, and under appropriate circumstances, the trial court may issue an injunctive order requiring any other party to such proceeding to take certain action or refrain from taking action that is consistent with the court's decision on the merits of the appeal. By way of illustration without limitation, if the court affirms the decision of a board of adjustment that a petitioner is in violation of a zoning ordinance, the court may issue an order enjoining the petitioner from continuing the violation."

SECTION 21. Article 18 of Chapter 153A of the General Statutes is amended by adding a new section to read:

"**§ 153A-349. Appeals in the nature of certiorari.**

Whenever appeals to superior court by proceedings in the nature of certiorari are authorized under the provisions of this Article, the provisions of G.S. 160A-393 shall be applicable to such appeals. In this context, the term "city council", as used in G.S. 160A-393, shall be deemed to refer to the "board of commissioners", and the term "municipality" shall be deemed to refer to the "county"."

SECTION 22. Article 19 of Chapter 160A of the General Statutes is amended by adding a new section to read:

"**§ 160A-377. Appeals of decisions on subdivision plats.**

(a) When a subdivision ordinance adopted under this Part provides that the decision whether to approve or deny a preliminary or final subdivision plat is to be made by a city council or a designated planning agency (other than a planning agency comprised solely of members of a city planning staff), and the ordinance authorizes the council or planning agency to make a quasi-judicial determination in deciding whether to approve the subdivision plat, then the decision of the council or planning agency shall be subject to review by the superior court by proceedings in the nature of certiorari. The provisions of G.S. 160A-381(c) and G.S. 160A-393 shall apply to such appeals.

(b) When a subdivision ordinance adopted under this Part provides that a city council, designated planning agency, or staff member is authorized to make only an administrative or ministerial determination in deciding whether to approve a preliminary or final subdivision plat, then any party aggrieved by such decision may seek to have the decision reviewed by filing an action in superior court seeking appropriate declaratory or equitable relief. Such an action must be filed within the time frame specified in G.S. 160A-381(c) for petitions in the nature of certiorari.

(c) For purposes of this section, an ordinance shall be deemed to authorize a quasi-judicial determination on a preliminary or final plat application if the ordinance (i)

authorizes the council or planning agency to decide whether to approve or deny the plat based not only on whether the application complies with the specific requirements set forth in the ordinance, but also whether it complies with one or more generally stated standards requiring a discretionary determination to be made by the council or planning agency; or (ii) authorizes the council or planning agency to approve the subdivision plat subject to conditions that impose requirements or limitations on the subdivision beyond those set forth in the ordinance."

SECTION 23. Article 18 of Chapter 153A of the General Statutes is amended by adding a new section to read:

"**§ 153A-336. Appeals of decisions on subdivision plats.**

(a) When a subdivision ordinance adopted under this Part provides that the decision whether to approve or deny a preliminary or final subdivision plat is to be made by a board of commissioners or a designated planning agency (other than a planning agency comprised solely of members of a county planning staff), and the ordinance authorizes the board of commissioners or planning agency to make a quasi-judicial determination in deciding whether to approve the subdivision plat, then the decision of the board of commissioners or planning agency shall be subject to review by the superior court by proceedings in the nature of certiorari. The provisions of G.S. 153A-340(f) and G.S. 153A-349 shall apply to such appeals.

(b) When a subdivision ordinance adopted under this Part provides that a board of commissioners, planning agency, or staff member is authorized to make only an administrative or ministerial determination in deciding whether to approve a preliminary or final subdivision plat, then any party aggrieved by such decision may seek to have the decision reviewed by filing an action in superior court seeking appropriate declaratory or equitable relief. Such an action must be filed within the time frame specified in G.S. 153A-340(f) for petitions in the nature of certiorari.

(c) For purposes of this section, an ordinance shall be deemed to authorize a quasi-judicial determination on a preliminary or final plat application if the ordinance (i) authorizes the board of commissioners or planning agency to decide whether to approve or deny the plat based not only on whether the application complies with the specific requirements set forth in the ordinance, but also whether it complies with one or more generally stated standards requiring a discretionary determination to be made by the board of commissioners or planning agency; or (ii) authorizes the board of commissioners or planning agency to approve the subdivision plat subject to conditions that impose requirements or limitations on the subdivision beyond those set forth in the ordinance."

PART VII. EFFECTIVE DATES

SECTION 24. Sections 1 to 19 of this act become effective October 1, 2005. Sections 20 to 23 of this act become effective January 1, 2006, and apply to actions filed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 832

Short Title:	Tow Trucks and Recovery Vehicles.	(Public)
Sponsors:	Senator Hagan.	
Referred to:	Judiciary I.	

March 23, 2005

A BILL TO BE ENTITLED

AN ACT RELATING TO THE WEIGHTS OF TOW TRUCKS AND RECOVERY VEHICLES AND TO STATUTORY LIENS ON CARGO CONTAINED IN TOWED VEHICLES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 44A-1 reads as rewritten:

"**§ 44A-1. Definitions.**

As used in this Article:

(1) "Cargo" means property that is transported in the nonpassenger area of a vehicle or combination of vehicles with a GVWR of 10,001 lbs. or more.

~~(1)~~(1a) "Legal possessor" means

a. Any person entrusted with possession of personal property by an owner thereof, or

b. Any person in possession of personal property and entitled thereto by operation of law.

(2) "Lienor" means any person entitled to a lien under this Article.

(2a) "Motor Vehicle" has the meaning provided in G.S. 20-4.01.

(3) "Owner" means

a. Any person having legal title to the property, or

b. A lessee of the person having legal title, or

c. A debtor entrusted with possession of the property by a secured party, or

d. A secured party entitled to possession, or

e. Any person entrusted with possession of the property by his employer or principal who is an owner under any of the above.

(4) "Secured party" means a person holding a security interest.

(5) "Security interest" means any interest in personal property ~~which interest~~ that is subject to the provisions of Article 9 of the Uniform

Commercial Code, or any other interest intended to create security in real or personal property.

(6) "Vessel" has the meaning provided in G.S. 75A-2."

SECTION 2. G.S. 44A-2(d) reads as rewritten:

"(d) Any person who repairs, services, tows, or stores motor vehicles in the ordinary course of the person's business pursuant to an express or implied contract with an owner or legal possessor of the motor vehicle, except for a motor vehicle seized pursuant to G.S. 20-28.3, has a lien upon the motor vehicle and any cargo being transported by the motor vehicle for reasonable charges for ~~such~~ the repairs, servicing, towing, storing, or for the rental of one or more substitute vehicles provided during the repair, servicing, or storage. This lien shall have priority over perfected and unperfected security interests. Payment for towing and storing a motor vehicle seized pursuant to G.S. 20-28.3 shall be as provided for in G.S. 20-28.2 through G.S. 20-28.5."

SECTION 3. G.S. 20-118(c) reads as rewritten:

"(c) Exceptions. – The following exceptions apply to G.S. 20-118(b) and 20-118(e).

...

(7) A wrecker may tow ~~a~~ any disabled vehicle or combination of vehicles ~~in an emergency~~ to a place for repairs, ~~the nearest feasible point for parking~~ parking, or storage within 50 miles from the point that the vehicle was disabled and may tow a truck tractor or other replacement vehicle to the site of the disabled vehicle without being in violation of G.S. 20-118 provided that the wrecker and towed vehicle or combination of vehicles otherwise meet all requirements of this section."

SECTION 4. G.S. 20-116(e) reads as rewritten:

"(e) Except as provided by G.S. 20-115.1, no combination of vehicles coupled together shall consist of more than two units and no such combination of vehicles shall exceed a total length of 60 feet inclusive of front and rear bumpers, subject to the following exceptions: Said length limitation shall not apply to vehicles operated in the daytime when transporting poles, pipe, machinery or other objects of a structural nature which cannot readily be dismembered, nor to such vehicles transporting such objects operated at nighttime by a public utility when required for emergency repair of public service facilities or properties, but in respect to such night transportation every such vehicle and the load thereon shall be equipped with a sufficient number of clearance lamps on both sides and marker lamps upon the extreme ends of said projecting load to clearly mark the dimensions of such load: Provided that vehicles designed and used exclusively for the transportation of motor vehicles shall be permitted an overhang tolerance front or rear not to exceed five feet. Provided, that wreckers ~~in an emergency~~ may tow ~~a combination tractor and trailer~~ any disabled vehicle or combination of vehicles to a place for ~~to the nearest feasible point for repair and/or storage:~~ repair, parking, or storage within 50 miles of the point where the vehicle was disabled and may tow a truck tractor or other replacement vehicle to the site of the disabled vehicle. Provided, however, that a combination of a house trailer used as a mobile home,

together with its towing vehicle, shall not exceed a total length of 55 feet exclusive of front and rear bumpers. Provided further, that the said limitation that no combination of vehicles coupled together shall consist of more than two units shall not apply to trailers not exceeding three in number drawn by a motor vehicle used by municipalities for the removal of domestic and commercial refuse and street rubbish, but such combination of vehicles shall not exceed a total length of 50 feet inclusive of front and rear bumpers. Provided further, that the said limitation that no combination of vehicles coupled together shall consist of more than two units shall not apply to a combination of vehicles coupled together by a saddle mount device used to transport motor vehicles in a driveway service when no more than three saddle mounts are used and provided further, that equipment used in said combination is approved by the safety regulations of the Federal Highway Administration and the safety rules of the Department of Crime Control and Public Safety."

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

SENATE BILL 832:
Tow Trucks and Recovery Vehicles.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Date:**	May 26, 2005
Introduced by:	Sen. Hagan	**Summary by:**	Hal Pell
Version:	First Edition		Committee Co-Counsel

SUMMARY: This bill provides that cargo being hauled by a truck with a gross weight of over 10,001 lbs. is subject to a statutory lien. The bill would also exempt wreckers from highway weight and size limitations in order to tow disabled vehicles up to 50 miles from the place of disablement. The act is effective when it becomes law.

BILL ANALYSIS:

Section 1: Adds "cargo" to the list of defined terms relating to statutory liens on towed vehicles. "Cargo" would be defined as property transported in the non-passenger area of a vehicle, or combination of vehicles, with a gross vehicle weight of 10,001 lbs. or more.

Section 2: The amendment would allow a person who repairs, services, tows, or stores motor vehicles to have a lien on a motor vehicle's cargo, in addition to the motor vehicle itself.

Section 3: Current law excepts wreckers, in an emergency, from weight limitations while operating on State highways. However, a wrecker may only tow a disabled vehicle to the "nearest feasible point" for parking or storage. The bill would amend the law to allow a wrecker, under any circumstance, to tow any disabled vehicle, or combination of vehicles, up to 50 miles from the point that the vehicle was disabled.

Section 4: Current law excepts wreckers, in an emergency, from size limitations while operating on State highways. However, a wrecker may only tow a disabled vehicle to the "nearest feasible point" for parking or storage. The bill would amend the law to allow a wrecker, under any circumstance, to tow any disabled vehicle, or combination of vehicles, up to 50 miles from the point that the vehicle was disabled.

The act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 1069
PROPOSED COMMITTEE SUBSTITUTE S1069-CSRK-17 [v.18]

5/25/2005 1:40:12 PM

Short Title: DWI Task Force Recommendations. (Public)

Sponsors:

Referred to:

March 24, 2005

A BILL TO BE ENTITLED

AN ACT TO AMEND VARIOUS STATUTES RELATED TO DRIVING WHILE IMPAIRED, AS RECOMMENDED BY THE GOVERNOR'S TASK FORCE ON DRIVING WHILE IMPAIRED.

The General Assembly of North Carolina enacts:

PART I. INTEGRATED DATA SYSTEM TO PROVIDE ESSENTIAL INFORMATION ABOUT DWI OFFENSES STATEWIDE

SECTION 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) 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 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 Operation showing 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 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 II. PREVENT NONCOMPLIANT PERMIT HOLDERS FROM CONTINUING IRRESPONSIBLE ALCOHOL SERVICE PRACTICES BY SWITCHING PERMITS TO ANOTHER NAME

SECTION 3. 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 III. STANDARDIZE CRITERIA FOR LAW ENFORCEMENT CHECKPOINTS

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.~~

(2) 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/or insurance information. The ~~plan~~ pattern need not be in writing 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 or insurance information.

(3) ~~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) Other roadblocks. 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. No court shall suppress any evidence or dismiss any case unless the court specifies in writing that there was a substantial and willful violation of the provisions of this section and that such violation was not made in good faith and such violation

amounts to a violation of the United States Constitution or 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 IV. ADMIT ALCO-SENSOR RESULTS AT TRIAL

SECTION 5. 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 alcohol screening test or a driver's refusal to submit may be used by a law-enforcement officer, a court, or an administrative agency in determining if there are reasonable grounds for believing that the driver has committed an implied-consent offense under ~~G.S. 20-16.2.~~G.S. 20-16.2, and are admissible in any court or administrative proceeding. 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 V. CLARIFY PER SE OFFENSES

SECTION 6. G.S. 20-138.1(a) reads as rewritten:

"(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:~~State and if, after having consumed sufficient alcohol and at any relevant time after driving: the person has an alcohol concentration of 0.08 or more, or submits to a chemical analysis, and the result is 0.08 or more. A person also commits the offense of impaired driving if he drives any vehicle upon any highway, any street, or any public vehicular area while under the influence of an impairing substance.

~~(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.~~"

SECTION 7. G.S. 20-138.2(a) 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:~~State and if, after having consumed sufficient alcohol and at any relevant time after driving: the person has an alcohol concentration of 0.04 or more, or submits to a chemical analysis, and the result is 0.04 or more. A person also commits the offense of impaired driving if he drives any vehicle upon any highway, any street, or any public vehicular area while under the influence of an impairing substance.

~~(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 0.4 or more.~~"

PART VI. INCREASE/CREATE PENALTY FOR DWI DEATH/INJURY

SECTION 8. 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.**

(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

(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 (a3)(2) 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 (a4)(2) 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 (a5)(2) 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.

(b) Punishments. – 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 G felony.

(3) Aggravated felony serious injury by vehicle is a Class E felony.

(4) Felony serious injury by vehicle is a Class H 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 VII. IMPROVED ACCESS TO MEDICAL RECORDS IN IMPAIRED DRIVING CASES

SECTION 9. 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 prior to trial 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."

PART VIII. DWI TRAINING FOR JUDGES

SECTION 10. 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 judges shall be required to obtain two hours every two years of continuing judicial education regarding driving while impaired offenses and related issues."

PART IX. DRIVING WHILE LICENSE REVOKED FOR FAILURE TO APPEAR IN DRIVING WHILE IMPAIRED

SECTION 11. 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 a 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 in 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 12. 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 his license is revoked for an impaired driving 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) and the original revocation was pursuant to GS 20-16.5, in order to obtain reinstatement of the 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 and treatment within the time limits specified.

(3) if revoked under subsection (a2) of this section, 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 for three years, 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

(1) the former licensee has not been convicted of a moving violation under this Chapter or the laws of another state,

(2) a violation of any provision of the alcoholic beverage laws of this State or another state, or

(3) 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) The Division may only conditionally restore the license in accordance with this section if

(1) the person drove while his license was revoked, and the revocation was an impaired driving license revocation as defined in G.S. 20-28.2, or

(2) the revocation was for violating subsection (a2) of this section and the revocation was for more than one year.

(c4) For a conditional restoration under subsection (c3), 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, then the Division shall require the person to install and use an ignition interlock on any vehicles that are to be driven.

(c5) The Division shall cancel a conditionally restored 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 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."

PART X. MODIFY SENTENCING STATUTES TO COMPLY WITH BLAKELY V. WASHINGTON

SECTION 13. G.S. 20-179(a) reads as rewritten:

"(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, or when any of those offenses are remanded back to district court after an appeal to superior court, the judge must 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 make all feasible efforts to secure the defendant's full record of traffic convictions, and must present to the judge that record for consideration in the hearing. Upon request of the defendant, the prosecutor must 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 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 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 the

subdivisions (c) and (d) of this section. The notice must list all the aggravating factors that the State seeks to establish.

(2) 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) 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) 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) 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.

(a3) 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.

SECTION 15. G.S. 20-179(c) reads as rewritten:

"(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. 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."

SECTION 16. G.S. 20-179(d) reads as rewritten:

"(d) Aggravating Factors to Be Weighed. – The ~~judge~~ judge, or the jury in superior court, must determine before sentencing under subsection (f) whether any of the aggravating factors listed below apply to the defendant. The judge must 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 occur during the same transaction or occurrence as the impaired driving offense."

SECTION 17. G.S. 20-179(f) reads as rewritten:

"(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 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 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 note in the judgment any factors found and his 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 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 be imposed."

PART XI. REQUIRE A DA SIGNATURE BEFORE A MOTION FOR APPROPRIATE RELIEF IS GRANTED IN DISTRICT COURT

SECTION 18. 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 belief 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)."

PART XII. 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 19. 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. – 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.

(c) Aider and Abettor.

(1) By Underage Person. – Any person who is under the lawful age to purchase and who aids or abets another in violation of subsection (a) or (b) of this section shall be guilty of a Class 2 misdemeanor.

(2) By Person over Lawful Age. – Any person who is over the lawful age to purchase and who aids or abets another in violation of subsection (a) or (b) of this section shall be guilty of a Class 1 misdemeanor.

(d) Defense. – It shall be a defense to a violation of subsection (a) of this section if the seller:

(1) Shows that the purchaser produced a driver's license, a special identification card issued under G.S. 20-37.7, a military identification card, or a passport, showing his age to be at least the required age for purchase and bearing a physical description of the person named on the card reasonably describing the purchaser; or

(2) Produces evidence of other facts that reasonably indicated at the time of sale that the purchaser was at least the required age.

(e) Fraudulent Use of Identification. – It shall be unlawful for any person to enter or attempt to enter a place where alcoholic beverages are sold or consumed, or to obtain or attempt to obtain alcoholic beverages, or to obtain or attempt to obtain permission to purchase alcoholic beverages, in violation of subsection (b) of this section, by using or attempting to use any of the following:

(1) A fraudulent or altered drivers license.

(2) A fraudulent or altered identification document other than a drivers license.

(3) A drivers license issued to another person.

(4) An identification document other than a drivers license issued to another person.

(5) Any other form or means of identification that indicates or symbolizes that the person is not prohibited from purchasing or possessing alcoholic beverages under this section.

(f) Allowing Use of Identification. – It shall be unlawful for any person to permit the use of the person's drivers license or any other form of identification of any kind issued or given to the person by any other person who violates or attempts to violate subsection (b) of this section.

(g) Conviction Report Sent to Division of Motor Vehicles. – The court shall file a conviction report with the Division of Motor Vehicles indicating the name of the person convicted and any other information requested by the Division if the person is convicted of:

(1) A violation of subsection (e) or (f) of this section; or

(2) A violation of subdivision (c)(1) of this section; or

(3) A violation of subsection (b) of this section, if the violation occurred while the person was purchasing or attempting to purchase an alcoholic beverage.

Upon receipt of a conviction report, the Division shall revoke the person's license as required by G.S. 20-17.3.

(h) Handling in Course of Employment. – Nothing in this section shall be construed to prohibit an underage person from selling, transporting, possessing or dispensing alcoholic beverages in the course of employment, if the employment of the person for that purpose is lawful under applicable youth employment statutes and Commission rules.

(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 XIII. ALLOW CREDIT ONLY FOR HOURS SERVED FOR WEEKEND JAIL TIME

SECTION 20. G.S. 20-179(s) reads as rewritten:

"(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 (s)(2), 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

(i) the defendant had previously consumed alcohol in his body as shown by an alcohol screening device, or

(ii) 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."

PART XIV. REQUIRE DWI OFFENDERS ON SUPERVISED PROBATION TO SUBMIT TO TESTING FOR ALCOHOL OR DRUGS

SECTION 21. G.S. 20-179 is amended by adding a new subsection to read:

"(u) Mandatory Terms of Supervised Probation. – When placing a defendant convicted of an offense of impaired driving on supervised probation, the judge shall require as special conditions of probation that the defendant not use, possess, or control any illegal or controlled substance, and submit to any physical, chemical, blood or breath test, or to a urinalysis for the detection of alcohol or controlled substances."

PART XV. EFFECTIVE DATE

SECTION 22. Section 3 of this act becomes effective December 1, 2005, and applies to all permit applications and renewals on or after that date. Section 10 of this act becomes effective January 1, 2006. Sections 13 through 17 are effective when they become law. Section 18 becomes effective December 1, 2005, and applies to all motions filed on or after that date. Section 20 of this act is effective when it becomes law. The remainder of this act becomes effective December 1, 2005, and applies to offenses committed on or after that date.

SENATE BILL 1069:
DWI Task Force Recommendations

BILL ANALYSIS

Committee:	Senate Judiciary I	**Date:**	May 26, 2005
Introduced by:	Sen. Rand	**Summary by:**	Hal Pell
Version:	PCS to First Edition S1069-CSRK-17		Committee Co-Counsel

SUMMARY: ***This bill, based upon the findings of the Governor's Task Force on Driving While Impaired, provides measures relating to DWI arrest, enforcement, education, and training. The measures have varying effective dates.***

BILL ANALYSIS:

Section 1:

Requires the clerk of court to keep specific file data on persons charged with impaired driving offenses, including: reasons for dismissal, continuances, suppression of evidence, reduction of charges, or waivers of fines; punishments; compliance with orders; and subsequent court proceedings to enforce sentences or payments of fines, costs, and fees.

Section 2:

Requires the AOC to maintain the data described in Section 1, and provide an annual report (by calendar year) to the Joint Legislative Commission on Governmental Operations. The report is to include the amount of fines, costs, and fees ordered at disposition, and defendants' compliance with sanctions. The AOC is charged with insuring public access to the information by posting it on the agency's internet page, and making the report available to the public at no cost.

Section 3:

The bill provides that a permittee may not employ someone who has been a permit holder and who has had their permit revoked within three years. This is designed to prevent a current permit holder who becomes ineligible from using a surrogate to be the designated permit holder, while remaining in charge of the business.

Section 4:

Creates uniform criteria for all roadway checkpoints, and deletes any specific plan requirement. The criteria for drivers' license checks have been established by case law; there is a statutory provision providing for impaired driving checkpoints that includes a written plan and signs. The bill would amend the law to provide for multi-agency checkpoints. Agencies doing routine drivers' license checkpoints rely on their policy; written plans are not required by law.

The provision allows for an alcohol-screening test upon a reasonable suspicion by an officer that alcohol has been consumed, or there is an open container. The provision also provides that any roadblock that complies with the State and federal constitution is authorized; evidence will not be suppressed unless there was a substantial and willful violation of the section and constitutional provisions, and that the violation was not made in good faith. The statute would also be amended to require checkpoints to be random; agencies are to avoid placing checkpoints repeatedly in the same location or proximity.

Section 5:

Makes technical changes and changes the current law to allow screening tests as evidence in court and administrative proceedings.

Sections 6 and 7:

Adds to the separate laws for non-commercial and commercial vehicle drivers, to provide that the *per se* impaired driving offense is committed if a "chemical analysis" shows an 0.08 reading. The Task Force found that some judges do not accept the Intoxilyzer reading as meeting the BAC level requirement, and want evidence of impairment to corroborate the reading.

The current "alcohol concentration" language allows for expert testimony that, although a chemical analysis hours subsequent to the stop or arrest was less than 0.08, the alcohol concentration at the "relevant time" was in excess of 0.08.

Section 8:

Creates three new offenses: Felony Serious Injury by Vehicle, Aggravated Felony Death by Vehicle, and Aggravated Felony Serious Injury by Vehicle. Under current law, unintentionally causing a death (not impaired) while violating a statute or ordinance is a Class 1 misdemeanor. Unintentionally causing death while impaired is a Class G felony.

- Felony Serious Injury – A person who unintentionally causes serious injury while driving impaired is guilty of a Class H felony.
- Aggravated Felony Serious Injury – A person who unintentionally causes serious injury while driving impaired, and who has an impaired driving conviction within 7 years of the offense, is guilty of a Class E felony.
- Aggravated Felony Death -- A person who unintentionally causes the death of another while driving impaired, and who has an impaired driving conviction within 7 years of the offense, is guilty of a Class D felony.

Section 9:

Allows healthcare providers to disclose information relating to a person receiving medical treatment appears to be impaired. Health care information provided to law enforcement personnel would be precluded from disclosing the information, unless otherwise provided by law. Certified copies of relevant health care information would be admissible in any hearing or trial.

Section 10:

Requires all justices and judges in the General Court of Justice to receive a minimum of two hours of continuing judicial education, every two years, on DWI issues.

Section 11:

This section provides that the Division of Motor Vehicles may prove notice of personal delivery, or by mail, by making a notation in its records. A certified copy of the Division's records would be admissible in any court or administrative agency proceeding as proof of notice.

Section 12:

Under this amendment, a person is also guilty of a Class 1 misdemeanor if

- The Division has sent a notice of revocation of license for driving while impaired, and the person drives on a highway with a revoked license.
- The person fails to appear for two years from the charge date if charged with an implied consent offense.

Upon conviction, the person license is revoked an additional year for the first offense, two years for the second offense, and permanently for a third or subsequent offense. The bill provides that if the license was revoked for a reason stated above, the person may only apply after one year.

If a person whose license had been revoked because of an implied consent offense, the person must obtain a substance abuse assessment (and complete any required education or treatment), and show proof of financial responsibility. The Division may only conditionally restore a license when

- The person drove after having their license revoked for an impaired driving offense, or
- The person (i) drove while their license was revoked based on an impaired driving license revocation, or (ii) failed to appear two years from an implied consent charge, and (iii) their license was revoked for more than one year.

The Division may also require the installation of ignition interlock on vehicles, and may cancel conditionally restored licenses if any conditions of restoration are violated. The Division may also cancel vehicle registrations and require the surrender of cards and plates.

Sections 13 through 17:

In *Blakely v. Washington,* decided by the United States Supreme Court in June 2004, the Court held that the facts supporting the imposition of a sentence longer than the statutory maximum must be found by a jury beyond a reasonable doubt, or be admitted by the defendant. In *State v. Allen*, the North Carolina Court of Appeals, in applying Blakely under North Carolina's Structured Sentencing Act, held that the existence of aggravating factors that will increase a felony sentence beyond that which is permitted under the presumptive range must be found by a jury beyond a reasonable doubt, or be admitted by the defendant.

Chapter 20 also includes sentencing provisions that rely on the proof of aggravating factors. Consequently, based upon the holding in *Blakely*, the amendments in these sections provide the procedures for holding a sentencing hearing in Superior Court. A jury would find the aggravating factors necessary for enhanced punishment. The judge is not required to allow proof of aggravating factors to the jury if the defendant stipulates to their existence.

The procedures allow for a defendant to admit to the aggravating factor only, or plead guilty only to the charge. A judge may find the existence of prior convictions without a jury determination. The State must provide notice of its intent to use one or more aggravating factors if the defendant appeals to Superior court.

Section 18:

The section provides that a motion for appropriate relief (MAR) may not be granted without the signature of the District Attorney. An MAR is a pleading by the defendant seeking relief from a judgment of the court. If the defendant gives notice by oral motion in court, or written notice to the District Attorney, then the court may grant the motion if the DA has not signed 10 days after receipt of notice.

Section 19:

The section makes it illegal for a person under 21 years of age to consume any alcoholic beverages. The exceptions are: during the course of treatment by a licensed physician, druggists, or dental surgeons for medicinal or pharmaceutical purposes, or by medical facilities established and maintained for the treatment of addicts; for sacramental purposes by any organized church or ordained minister; and under the direct supervision of an instructor during a culinary class that is part of a curriculum at an accredited college or university.

The bill authorizes a law enforcement officer to administer a screening test on a person under 21 years of age if there is probable cause that the person has consumed alcohol. The test result would be admissible in any court or administrative proceeding.

Section 20:

The bill provides that a defendant sentenced to a term of imprisonment that is 48 hours or more must serve the term hour for hour. Consequently, a defendant arriving at a confinement facility on a Friday evening would not be eligible for release on Sunday morning, although two "days" have passed.

A defendant reporting to jail that shows positive on an alcohol screening test would forfeit any option to serve confinement time on weekends.

Section 21:

The section requires a judge sentencing a person convicted of an impaired driving offense to special probation to include the following conditions: that the defendant not use, possess, or control any illegal or controlled substance, and that the person submit to any physical chemical or blood test, or urinalysis.

EFFECTIVE DATES:

Section 3 of this act becomes effective December 1, 2005, and applies to all permit applications and renewals on or after that date.

Section 10 of this act becomes effective January 1, 2006.

Sections 13 through 17 are effective when they become law.

Section 18 becomes effective December 1, 2005, and applies to all motions filed on or after that date.

Section 20 of this act is effective when it becomes law.

The remainder of 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 1

SENATE BILL 1069

Short Title:	DWI Task Force Recommendations.	(Public)
Sponsors:	Senator Rand.	
Referred to:	Judiciary I.	

March 24, 2005

A BILL TO BE ENTITLED

AN ACT TO AMEND VARIOUS STATUTES RELATED TO DRIVING WHILE IMPAIRED, AS RECOMMENDED BY THE GOVERNOR'S TASK FORCE ON DRIVING WHILE IMPAIRED.

The General Assembly of North Carolina enacts:

PART I. INTEGRATED DATA SYSTEM TO PROVIDE ESSENTIAL INFORMATION ABOUT DWI OFFENSES STATEWIDE

SECTION 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) 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 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 Operation showing 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 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 II. PREVENT NONCOMPLIANT PERMIT HOLDERS FROM CONTINUING IRRESPONSIBLE ALCOHOL SERVICE PRACTICES BY SWITCHING PERMITS TO ANOTHER NAME

SECTION 3. G.S. 18B-900 reads as rewritten:

"**§ 18B-900. Qualifications for permit.**

(a) Requirements. – To be eligible to receive and to hold an ABC permit, a person shall:

(1) Be at least 21 years old, unless the person is a manager of a business selling only malt beverages and unfortified wine, in which case the person shall be at least 19 years old;
(2) Be a resident of North Carolina unless:
a. He is an officer, director or stockholder of a corporate applicant or permittee and is not a manager or otherwise responsible for the day-to-day operation of the business; or

b. He has executed a power of attorney designating a qualified resident of this State to serve as attorney in fact for the purposes of receiving service of process and managing the business for which permits are sought; or

c. He is applying for a nonresident malt beverage vendor permit, a nonresident wine vendor permit, or a vendor representative permit;

(3) Not have been convicted of a felony within three years, and, if convicted of a felony before then, shall have had his citizenship restored;

(4) Not have been convicted of an alcoholic beverage offense within two years;

(5) Not have been convicted of a misdemeanor controlled substance offense within two years; and

(6) Not have had an alcoholic beverage permit revoked within three years, except where the revocation was based solely on a permittee's failure to pay the annual registration and inspection fee required in G.S. 18B-903(b1).

(7) Not have, whether as an individual or as an officer, director, shareholder, or manager of a corporate permittee, an unsatisfied outstanding final judgment that was entered against him in an action under Article 1A of this Chapter.

To avoid undue hardship, however, the Commission may decline to take action under G.S. 18B-104 against a permittee who is in violation of subdivisions (3), (4), or (5).

(b) Definition of Conviction. – A person has been "convicted" for the purposes of subsection (a) when he has been found guilty, or has entered a plea of guilty or nolo contendere, and judgment has been entered against him. A felony conviction in another jurisdiction shall disqualify a person from being eligible to receive or hold an ABC permit if his conduct would also constitute a felony in North Carolina. A conviction of an alcoholic beverage offense or misdemeanor drug offense in another jurisdiction shall disqualify a person from being eligible to receive or hold an ABC permit if his conduct would constitute an offense in North Carolina, unless the Commission determines that under North Carolina procedure judgment would not have been entered under the same circumstances. Revocation of a permit in another jurisdiction shall disqualify a person if his conduct would be grounds for revocation in North Carolina.

(c) Who Must Qualify; Exceptions. – For an ABC permit to be issued to and held for a business, each of the following persons associated with that business must qualify under subsection (a):

(1) The owner of a sole proprietorship;

(2) Each member of a firm, association or general partnership;

(2a) Each general partner in a limited partnership;

(2b) Each manager and any member with a twenty-five percent (25%) or greater interest in a limited liability company;

(3) Each officer, director and owner of twenty-five percent (25%) or more of the stock of a corporation except that the requirement of subdivision (a)(1) does not apply to such an officer, director, or stockholder unless he is a manager or is otherwise responsible for the day-to-day operation of the business;

(4) The manager of an establishment operated by a corporation other than an establishment with only off-premises malt beverage, off-premises unfortified wine, or off-premises fortified wine permits;

(5) Any manager who has been empowered as attorney-in-fact for a nonresident individual or partnership.

(d) Manager of Off-Premises Establishment. – Although he need not otherwise meet the requirements of this section, the manager of an establishment operated by a corporation and holding off-premises permits for malt beverages, unfortified wine, or fortified wine shall be at least 19 years old and shall meet the requirements of subdivisions (3), (4), (5), and (6) of subsection (a).

(e) Convention Centers. – With the approval of the Commission, the manager of a convention center may contract with another person to provide food and beverages at conventions and banquets at the convention center, and that person may engage in the activities authorized by the convention center's permit, under conditions set by the Commission. The person with whom the convention center contracts must meet the qualifications of this section.

(f) Definition of Manager. – For purposes of this section, a manager is someone who has direct or indirect possession of the power to direct or cause the direction of the management and policies of a permitted establishment."

PART III. STANDARDIZE CRITERIA FOR LAW ENFORCEMENT CHECKPOINTS

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.~~

(2) Designates 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/or insurance information. The ~~plan~~ pattern need not be in writing 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 or insurance information.

(3) ~~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 the driver 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) Other roadblocks. Law enforcement agencies may conduct any type of checking station or roadblock as long as it is established and operated in accordance with the provision of the United States Constitution and the Constitution of North Carolina. No court shall suppress any evidence or dismiss any case unless the court specifies in writing that there was a substantial and willful violation of the provisions of this section and that such violation was not made in good faith and such violation amounts to a violation of the United States Constitution or the Constitution of North Carolina.

~~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 IV. ADMIT ALCO-SENSOR RESULTS AT TRIAL

SECTION 5. 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 alcohol screening test or a driver's refusal to submit may be used by a law-enforcement officer, a court, or an administrative agency in determining if there are reasonable grounds for believing that the driver has committed an implied-consent offense under ~~G.S. 20-16.2.~~G.S. 20-16.2, and are admissible in a court or administrative proceeding to prove that the driver had consumed alcohol and that previously consumed alcohol was present in the driver's body, 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 V. CLARIFY PER SE OFFENSES

SECTION 6. G.S. 20-138.1(a) reads as rewritten:

"(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;~~that, at any relevant time after the ~~driving, an alcohol concentration of 0.08 or more.~~driving, the person submits to a chemical analysis, and the result is 0.08 or more."

SECTION 7. G.S. 20-138.2(a) 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;~~that, at any relevant time after the ~~driving an alcohol concentration of 0.04 or more.~~driving, the person submits to a chemical analysis, and the result is 0.04 or more."

PART VI. INCREASE/CREATE PENALTY FOR DWI DEATH/INJURY

SECTION 8. 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.

(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.

(a4) Aggravated Felony Death by Vehicle. – A person commits the offense of aggravated 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. 138.2, the commission of that offense is the proximate cause of the death, and the person has a been convicted of an offense involving impaired driving as defined in G.S. 20-4.01(24a) within seven years of the date of this offense.

(a5) Aggravated Felony Serious Injury by Vehicle. – A person commits the offense of aggravated 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, the commission of that offense is the proximate cause of the death, and the person has been convicted of an offense involving impaired driving as defined in G.S. 20-4.01(24a) within seven years of the date of this offense.

(b) Punishments. – Felony death by vehicle is a Class G felony. Aggravated felony death by vehicle is a Class D felony. Felony serious injury by vehicle is a Class H felony. Aggravated 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."

PART VII. IMPROVED ACCESS TO MEDICAL RECORDS IN IMPAIRED DRIVING CASES

SECTION 9. 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 prior to trial 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."

PART VIII. DWI TRAINING FOR JUDGES

SECTION 10. 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 judges shall be required to obtain two hours every two years of continuing judicial education regarding driving while impaired offenses and related issues."

PART IX. DRIVING WHILE LICENSE REVOKED FOR FAILURE TO APPEAR IN DRIVING WHILE IMPAIRED

SECTION 11. 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 a 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 in 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 12. 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 who drives upon a highway while his license is revoked for an impaired driving license revocation after the Division has sent notification in accordance with G.S. 20-48 or who fails to appear for two years from the date of the charge after being charged with an implied consent offense shall be guilty of a Class 1 misdemeanor. 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 under subsection (a) or (a1) of this section for one year may apply for a license after 90 days. A person whose license has been revoked under subsection (a2) of this section for one year may apply for a license after one year. 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. 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. 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. If the person was revoked pursuant to subsection (a1) of this section and the person drove while his license was revoked for an impaired driving revocation, or the revocation was for violating subsection (a2) of this section and the revocation was for more than one year, the Division may only conditionally restore the license in accordance with this subsection and shall require at a minimum as a condition of restoration 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, then the Division shall require the person to install and use an ignition interlock on any vehicles that are to be driven. If the person violates any condition of the restoration or is convicted of any moving offense in this or another state or the alcoholic beverage or control substance laws of this or any other state, the Division shall cancel the conditionally restored license and impose the remaining revocation period. The Division shall also cancel the registration on any vehicles 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."

PART X. MODIFY SENTENCING STATUTES TO COMPLY WITH BLAKELY V. WASHINGTON

SECTION 13. G.S. 20-179(a) reads as rewritten:

"(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, or when any of those offenses are remanded back to district court after an appeal to superior court, the judge must hold a sentencing hearing to determine whether there are aggravating or mitigating factors that affect the sentence to be imposed. Before the hearing the prosecutor must make all feasible efforts to secure the defendant's full record of traffic convictions, and must present to the judge that record for consideration in the hearing. Upon request of the defendant, the prosecutor must 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 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 present evidence of the resulting alcohol concentration."

SECTION 14. G.S. 20-179 is amended by adding a new subsection to read:

"(a1) Sentencing Hearing in Superior Court. – Upon a determination of guilt by the jury, the court shall submit to the same jury or a different jury if using the same jury is impracticable, any grossly aggravating or aggravating factors supported by the evidence. Prior to submitting these factors to the jury, the court shall allow the State and the defendant to present evidence to the jury that is relevant to proving any grossly aggravating factors that had not been presented to the jury during the guilt phase of the trial. Provided, however, the court is not required to allow proof of or submit to the jury any grossly aggravating or aggravating factor that is a conviction of a crime or determination of responsibility for an infraction or that is stipulated to by the defendant."

SECTION 15. G.S. 20-179(c) reads as rewritten:

"(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. 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)."

SECTION 16. G.S. 20-179(d) reads as rewritten:

"(d) Aggravating Factors to Be Weighed. – The ~~judge~~ judge, or the jury in superior court, must determine before sentencing under subsection (f) whether any of

the aggravating factors listed below apply to the defendant. The judge must 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 occur during the same transaction or occurrence as the impaired driving offense."

SECTION 17. G.S. 20-179(f) reads as rewritten:

"(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 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 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 note in the judgment any factors found and his 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 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 be imposed."

PART XI. REQUIRE A DA SIGNATURE BEFORE A MOTION FOR APPROPRIATE RELIEF IS GRANTED IN DISTRICT COURT

SECTION 18. 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 belief 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)."

PART XII. 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 19. 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. – 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.

(c) Aider and Abettor.

(1) By Underage Person. – Any person who is under the lawful age to purchase and who aids or abets another in violation of subsection (a) or (b) of this section shall be guilty of a Class 2 misdemeanor.

(2) By Person over Lawful Age. – Any person who is over the lawful age to purchase and who aids or abets another in violation of subsection (a) or (b) of this section shall be guilty of a Class 1 misdemeanor.

(d) Defense. – It shall be a defense to a violation of subsection (a) of this section if the seller:

(1) Shows that the purchaser produced a driver's license, a special identification card issued under G.S. 20-37.7, a military identification card, or a passport, showing his age to be at least the required age for purchase and bearing a physical description of the person named on the card reasonably describing the purchaser; or

(2) Produces evidence of other facts that reasonably indicated at the time of sale that the purchaser was at least the required age.

(e) Fraudulent Use of Identification. – It shall be unlawful for any person to enter or attempt to enter a place where alcoholic beverages are sold or consumed, or to obtain or attempt to obtain alcoholic beverages, or to obtain or attempt to obtain permission to purchase alcoholic beverages, in violation of subsection (b) of this section, by using or attempting to use any of the following:

(1) A fraudulent or altered drivers license.

(2) A fraudulent or altered identification document other than a drivers license.

(3) A drivers license issued to another person.

(4) An identification document other than a drivers license issued to another person.

(5) Any other form or means of identification that indicates or symbolizes that the person is not prohibited from purchasing or possessing alcoholic beverages under this section.

(f) Allowing Use of Identification. – It shall be unlawful for any person to permit the use of the person's drivers license or any other form of identification of any kind issued or given to the person by any other person who violates or attempts to violate subsection (b) of this section.

(g) Conviction Report Sent to Division of Motor Vehicles. – The court shall file a conviction report with the Division of Motor Vehicles indicating the name of the person convicted and any other information requested by the Division if the person is convicted of:

(1) A violation of subsection (e) or (f) of this section; or
(2) A violation of subdivision (c)(1) of this section; or
(3) A violation of subsection (b) of this section, if the violation occurred while the person was purchasing or attempting to purchase an alcoholic beverage.

Upon receipt of a conviction report, the Division shall revoke the person's license as required by G.S. 20-17.3.

(h) Handling in Course of Employment. – Nothing in this section shall be construed to prohibit an underage person from selling, transporting, possessing or dispensing alcoholic beverages in the course of employment, if the employment of the person for that purpose is lawful under applicable youth employment statutes and Commission rules.

(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 to prove that a person possessed or consumed an alcoholic beverage. A refusal to submit to an alcohol screening test shall be admissible in any court or administrative proceeding."

PART XIII. ALLOW CREDIT ONLY FOR HOURS SERVED FOR WEEKEND JAIL TIME

SECTION 20. G.S. 20-179(s) reads as rewritten:

"(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. 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. 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, the defendant shall

be refused entrance and shall be reported back to court. If, after a hearing, the court determines that when the defendant reported to jail, the defendant had remaining in his body any alcohol previously consumed as shown by an alcohol screening device or controlled substance previously consumed, unless lawfully obtained and taken in therapeutically appropriate amounts, the defendant must be ordered to serve his jail time immediately and shall not be eligible to serve jail time on weekends.

PART XIV. REQUIRE DWI OFFENDERS ON SUPERVISED PROBATION TO SUBMIT TO TESTING FOR ALCOHOL OR DRUGS

SECTION 21. G.S. 20-179 is amended by adding a new subsection to read:

"(u) Mandatory Terms of Supervised Probation. – When placing a defendant convicted of an offense of impaired driving on supervised probation, the judge shall require as special conditions of probation that the defendant not use, possess, or control any illegal or controlled substance, and submit to any physical, chemical, blood or breath test, or to a urinalysis for the detection of alcohol or controlled substances."

PART XV. EFFECTIVE DATE

SECTION 22. Section 3 of this act becomes effective December 1, 2005, and applies to all permit applications and renewals on or after that date. Section 10 of this act becomes effective January 1, 2006. Sections 13 through 17 are effective when they become law. Section 18 becomes effective December 1, 2005, and applies to all motions filed on or after that date. Section 20 of this act is effective when it becomes law. The remainder of this act becomes effective December 1, 2005, and applies to offenses committed on or after that date.

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE — 5-26-05 AM

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
Mac Boxley	NC Aggregates Assoc.
Angeline Seneshyara	NCCA intern.
Susan Valaani	Nationwide
Cam Cowen	BPMH
Karen John	Smith Anderson
Rick Zechini	NC Assn. of Realtors
Kim Hibbard	NCLM
Richard O'Brien	PFPNC
[illegible]	JD, AL, PA
Chris Wilson	NC Beer & Wine

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE
Name of Committee

5/26/05 AM
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
Jo McCants	AOC
IKE Avery	Avery PC PO Box 10174 Raleigh
AL EISELE	FIA / DHHS
Barbara Hunter	Smith Moore
Dave Bette	City of Raleigh Planning Dept
Bill Rowe	NC Justice Center
Mike Carey	Carey & Associates
Daniel Blau	ACLU-NC
TeAndra Miller	Legal Aid of North Carolina
[illegible]	[illegible]
MB Loucks-Sorrell	NCCADV

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE
Name of Committee

5/26/05 AM
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
Amy Jo Horne	NCMS
Stacy Flannery	NCIAFP
Robin Smith	DENR
David Owens	Inst. of Govt.
Kate Thompson	Intern/Sen Cowell
Brent McConkey	Parker, Poe, Adams + Bernstein
Rob Stone	NCDOT
Bobby Disher	TRPNC
Steve Bowman	TRPNC
Lisa Martin	NC Home Builders
David Crawford	AIA

VISITOR REGISTRATION SHEET

AM

JUDICIARY 1 COMMITTEE
Name of Committee

5/26/05
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
Will Polk	NCDOJ
Mary Thomas	REBIC
Kary Isenhour	Sen P. Berger's office
Sheila Talton DeWitt	JLWP Civitas Institute
Anita Watkins	NCLM
Paul Meyer	County Comm Assoc
Erin Kinney	NC Conservation Network
Beth Gray	NC COG Director
Lisa Wallmeyer	Virginia Division of Legislative Services
Holly Bryan	NCATL
Colleen Kochanek	TRPNC / AAANC

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Thursday	May 26, 2005	12:30 PM	1027 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 428	No Lasers Pointed at Planes.	Senator Rand
SB 814	Modernize City/County Planning.	Senator Clodfelter
SB 832	Tow Trucks and Recovery Vehicles.	Senator Hagan
SB 951	Public-Private Solid Waste Collection.	Senator Hoyle
SB 970	Land-Use Permit Appeals.	Senator Kinnaird
SB 1029	Clarify/Enhance Domestic Vio. & Tenancy Laws.	Senator Cowell
SB 1044	Undertaking to Stay Money Judgment.	Senator Clodfelter
SB 1069	DWI Task Force Recommendations.	Senator Rand
SB 1080	Criminal Changes.	Senator Berger
SB 1081	Procedures for Advertising Tax Liens.	Senator Berger

Senator Daniel G. Clodfelter, Chair

Judiciary 1 Committee

May 26, 2005 p.m.

Minutes

Senator Dan Clodfelter, Chair called the meeting to order at 12:30 p.m. with fourteen members present.

SB-428 (No Lasers Pointed at Planes) Committee Substitute was introduced by Senator Clodfelter. Senator Tony Rand moved for adoption of the Committee Substitute. All members voted yes. Motion carried. Senator Rand explained that this act creates a new criminal offense. A Person who discharges a laser at an aircraft is guilty of a Class H felony. (See attached Bill Summary for further information). Senator David Hoyle moved for a Favorable Report. Senator's Phillip Berger and David Hoyle had questions. Senator Rand answered the questions. Senator Clodfelter asked for a vote on Senator Hoyle's motion for a Favorable Report. All members voted yes. Motion carried.

SB-1029 (Clarify/Enhance Domestic Vio. & Tenancy Laws) Committee Substitute was introduced by Senator Clodfelter. Bill sponsor, Senator Janet Cowell explained the changes to the bill. Senator Ham Horton's Amendment made at the earlier meeting today was withdrawn. Senator Janet Cowell offered an Amendment to the bill on page 6, lines 38 through 43, and page 7, lines 14 and 18, and page 7, lines 31 and 32. Senator Richard Stevens offered an Amendment to the bill on page 7, line 26, Senator Horton moved for adoption of the Amendments. All members voted yes. Motion carried. (See attached Amendments). Senator's Martin Nesbitt, David Hoyle, Tony Rand, Richard Stevens had questions. Staff attorney, Walker Reagan answered the questions. Mr. Rick Gechini, NC Realtor's Association answered questions. Mr. Bill Rowe, NC Justice System spoke on the bill. Senator Horton moved for a Favorable Report. All members voted yes. Motion carried.

SB-1081 (Procedures for Advertising Tax Liens) Committee Substitute was introduced by Senator Clodfelter. Bill sponsor, Senator Phillip Berger explained that the bill would remove the requirement that the public advertisement of a tax lien on a piece of real property sold during a year must contain the name of the "listing owner" of the property, that means, the owner of the property as of January 1 of the year the property was sold. (See Bill Summary for further information). Senator's Vernon Malone and Martin Nesbitt had questions. Senator Berger

answered the questions. Senator David Hoyle moved for a Favorable Report. All members voted yes. Motion carried.

SB-970 (Land-Use Permit Appeals) Committee Substitute was introduced by Senator Clodfelter. Bill Sponsor, Senator Ellie Kinnaird moved for adoption of the Committee Substitute. All members voted yes. Motion carried. Senator Kinnaird explained that the bill would establish a statutory appeals procedure for quasi-judicial decisions of local governments on land use. (See attached Bill Summary for further information). Senator Clodfelter spoke on the bill, and answered questions asked by Senator Martin Nesbitt. Senator Richard Stevens moved for a Favorable Report. All members voted yes. Motion carried.

Being no further business the meeting adjourned at 1:25 p.m.

Senator Dan Clodfelter, Chair

Wanda Joyner, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Daniel G. Clodfelter, Chair

Tuesday, May 31, 2005

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

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

S.B. **428** No Lasers Pointed at Planes.

Draft Number:	PCS85258
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

S.B. **1029** Clarify/Enhance Domestic Vio. & Tenancy Laws.

Draft Number:	PCS85260
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 2

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 428
PROPOSED COMMITTEE SUBSTITUTE S428-PCS85258-RK-5

Short Title: No Lasers Pointed at Planes. (Public)

Sponsors:

Referred to:

March 9, 2005

A BILL TO BE ENTITLED

AN ACT TO CREATE THE CRIMINAL OFFENSE OF UNAUTHORIZED DISCHARGE OF LASER AT AN AIRCRAFT.

The General Assembly of North Carolina enacts:

SECTION 1. Article 36 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-280A. Discharge of laser at an aircraft.**

(a) Any person who, intentionally and without legal authorization, discharges a laser at an aircraft while the aircraft is taking off, landing, or in flight, is guilty of a Class H felony.

(b) The following definitions apply to this section:

(1) "Aircraft" is as defined in G.S. 63-1.

(2) "Laser" is as defined in G.S. 14-34.8."

SECTION 2. This act becomes effective December 1, 2005, and applies to offenses committed on or after that date.

SENATE BILL 428:
No Lasers Pointed at Planes.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Senator Rand
Date:	May 26, 2005	**Summary by:**	Hal Pell
Version:	PCS S428-CSRK-5		Committee Co-Counsel

SUMMARY: ***This act creates a new criminal offense. A person who discharges a laser at an aircraft is guilty of a Class H felony. The act is effective on December 1, 2005, and applies to offenses occurring on or after that date.***

CURRENT LAW: It is an infraction to point a laser device at a law enforcement officer, or at the head or face of another person, while the device is emitting a laser beam.

BILL ANALYSIS: This bill would make it a Class H felony to discharge a laser at a moving aircraft. A Class H felon, with no prior offenses, is subject to a penalty of community service, an intermediate punishment, or an active sentence. The minimum presumptive active sentence would be from 5 to 6 months.

S428-smrk-01

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 428

Short Title:	No Lasers Pointed at Planes.	(Public)
Sponsors:	Senators Rand; Albertson, Apodaca, Atwater, Berger of Franklin, Boseman, Clodfelter, Cowell, Dalton, Dannelly, Garrou, Graham, Holloman, Horton, Hoyle, Kerr, Kinnaird, Lucas, Malone, Purcell, Snow, Soles, Swindell, and Weinstein.	
Referred to:	Judiciary I.	

March 9, 2005

A BILL TO BE ENTITLED

AN ACT TO CREATE THE CRIMINAL OFFENSE OF UNAUTHORIZED LASER ILLUMINATION OF AN AIRCRAFT.

The General Assembly of North Carolina enacts:

SECTION 1. Article 36 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-282.1. Unauthorized laser illumination of an aircraft.**

(a) The following definitions apply to this section:

(1) "Aircraft" is as defined in G.S. 63-1.

(2) "Laser" is as defined in G.S. 14-34.8.

(b) Any person who, intentionally and without legal authorization, illuminates an aircraft with a laser while the aircraft is taking off, landing, or in flight is guilty of a Class H felony."

SECTION 2. 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 1029
PROPOSED COMMITTEE SUBSTITUTE S1029-PCS85260-RU-31

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 AND TO CLARIFY THAT THE FAILURE TO FILE A COUNTERCLAIM IN A SMALL CLAIMS ACTION DOES NOT BAR THE CLAIM IN A SEPARATE ACTION.

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 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,~~include 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 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 actual 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 verification 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 actual 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, after service upon the perpetrator, 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 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) or (b) of this section shall change the locks within 48 hours to the protected tenant's dwelling unit at the protected tenant's expense or give the protected tenant permission to change the locks. If a landlord fails to act within 48 hours, 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."

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 a safety plan and either a copy of a valid permanent order of protection issued by a court pursuant to G.S. 50B-3 or 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. The safety plan, dated during the term of the tenancy to be terminated, must be provided by a domestic violence program which 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 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 medium 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. 78A-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. This act becomes effective October 1, 2005.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 5-26-05

S. B. No. S1029 Amendment No. 1

(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE S1029-CSRU-31

Rep.) HORTON
)
Sen.)

moves to amend the bill on page 7, line 31

( ) WHICH CHANGES THE TITLE

by DELETING THE WORD "OF" AND SUBSTITUTING THE WORDS "RESIDING IN"

WITHDRAWN

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1029

AMENDMENT NO. 2
(to be filled in by Principal Clerk)

S1029-ARU-26 [v.2]

Date 5-26 ,2005

Comm. Sub. [YES]
Amends Title [NO]
S1029-CSRU-31 [v.8]

Senator Cowell

moves to amend the bill on page 6, lines 38 through 43, by rewriting the lines to read:
"this subsection remains liable under the lease with any other tenant of the dwelling unit for rent or damages to the dwelling unit."; and

on page 7, lines 14 through 18, by rewriting the lines to read:
"The notice to the landlord shall be accompanied by safety plan and either a copy of a valid permanent order of protection issued by a court pursuant to G.S. 50B-3 or 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. The safety plan, dated during the term of the tenancy to be terminated,"; and

on page 7, lines 31 and 32, by rewriting the lines to read:
"sexual assault or stalking by court order, if there are any remaining tenants remaining 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."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED X FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 5-26-05

S. B. No. 1029 Amendment No. #3

(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE S1029-CSRV-31

Rep.)
) STEVENS
Sen.)

moves to amend the bill on page 7, line 26

( ) WHICH CHANGES THE TITLE

by INSERTING BETWEEN THE WORD "DUE" AND "TO" THE WORD "ONLY".

SIGNED _____

ADOPTED X FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

SENATE BILL 1029:
Clarify/Enhance Domestic Vio. & Tenancy Laws

BILL ANALYSIS

Committee:	Senate Judiciary I	**Date:**	May 26, 2005
Introduced by:	Sen. Cowell	**Summary by:**	O. Walker Reagan
Version:	PCS to First Edition S1029-CSRU-31		Committee Co-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.***

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 permit protective orders to be entered by the court with the consent of the parties. This section extends 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.

Section 2 allows 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 3 prohibits the return of a seized firearm seized under Chapter 50B to a third-party owner if the owner has any pending criminal charges.

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 medium 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.

EFFECTIVE DATE: This act becomes effective October 1, 2005.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 1029

Short Title:	Clarify/Enhance Domestic Vio. & Tenancy Laws.	(Public)
Sponsors:	Senators Cowell; Berger of Franklin, Bingham, Clodfelter, Graham, Kinnaird, and Malone.	
Referred to:	Judiciary I.	

March 24, 2005

A BILL TO BE ENTITLED

AN ACT TO CLARIFY AND ENHANCE THE LAWS RELATING TO DOMESTIC VIOLENCE AND TO ENACT LAWS REGARDING DOMESTIC VIOLENCE VICTIMS AND TENANCY.

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. Except as otherwise provided by subsection (b) of this section, orders entered upon the consent of the parties are not required to contain findings of fact that an act of violence occurred. A protective order may include any of the following types of relief:

(1) Direct a party to refrain from such acts;

(2) Grant to a party possession of the residence or household of the parties and exclude the other party from the residence or household;

(3) Require a party to provide a spouse and his or her children suitable alternate housing;

(4) Award temporary custody of minor children and establish temporary visitation rights 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;

(5) Order the eviction of a party from the residence or household and assistance to the victim in returning to it;

(6) Order either party to make payments for the support of a minor child as required by law;

(7) Order either party to make payments for the support of a spouse as required by law;
(8) Provide for possession of personal property of the parties;
(9) Order a party to refrain from doing any or all of the following:
a. Threatening, abusing, or following the other party,
b. Harassing the other party, including by telephone, visiting the home or workplace, or other means, or
c. Otherwise interfering with the other party;
(10) Award attorney's fees to either party;
(11) Prohibit a party from purchasing a firearm for a time fixed in the order;
(12) Order any party the court finds is responsible for acts of domestic violence to attend and complete an abuser treatment program if the program is approved by the Domestic Violence Commission; and
(13) Include any additional prohibitions or requirements the court deems necessary to protect any party or any minor child.

(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 issued promptly to 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. 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 tenant who is or has a household member who is a victim of domestic violence, sexual assault, or stalking 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 14 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 pursuant to G.S. 50B-3 or any other court order that restrains a person from contact with the tenant or a member of the tenant's household or a copy of a police report regarding an act of domestic violence, sexual assault, or stalking against the tenant or a minor member of the tenant's household.

Upon termination of a rental agreement under this section, the tenant 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 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.

(b) The provisions of this section may not be waived or modified by agreement of the parties."

SECTION 5. Article 5 of Chapter 42 of the General Statutes is amended by adding the following new section to read:

"**§ 42-47. Victim protection.**

(a) 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 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.

(b) A tenant may give actual or written notice to the landlord that the tenant or a member of the tenant's household is a victim of domestic violence, sexual assault, or stalking and may request that the locks to the dwelling unit be changed. A tenant is not required to provide verification of the domestic violence, sexual assault, or stalking to initiate the changing of the locks.

(c) A landlord who receives a request under subsection (b) of this section shall promptly change the locks to the tenant's dwelling unit at the tenant's expense or give the tenant permission to change the locks. If a landlord fails to promptly act, the tenant may change the locks without the landlord's permission. If the tenant changes the locks, the tenant shall give a key to the new locks to the landlord.

(d) If the perpetrator of the domestic violence, sexual assault, or stalking is a tenant in the same dwelling unit as the victim, the following shall apply:

(1) Before the landlord or tenant changes the locks under this section, the tenant must provide the landlord with a copy of an order issued by a court pursuant to G.S. 50B-3 that orders the perpetrator to move out of the dwelling.

(2) 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 during the time the court order is in effect or after expiration of the court order, or to provide the perpetrator access to the perpetrator's personal property within the dwelling unit. If a landlord complies with this section completely and in good faith, the landlord is not liable to a perpetrator excluded from the dwelling unit.

(3) The perpetrator is jointly liable with any other tenant of the dwelling unit for rent or damages to the dwelling unit incurred before the date the perpetrator was excluded from the dwelling unit. Nothing in this subdivision is intended to limit the perpetrator's liability for damages the perpetrator causes after the perpetrator is excluded from the dwelling unit.

(4) Except as provided in subsection (c) of this section, the landlord shall not require the tenant to pay rent above the agreed upon rent or an additional deposit or fee as a result of the perpetrator's exclusion from the dwelling unit."

SECTION 6. G.S. 157-29(b) is amended by adding the following new subdivision to read:

"(b) In the operation or management of housing projects, or portions of projects, 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 applicants who are homeless or who have been or will be involuntarily displaced because the applicant is a victim of domestic violence, sexual assault, stalking, a natural disaster, or government action. Evidence of domestic violence, sexual assault, or stalking shall include: (i) law enforcement, court, or federal agency records or files; (ii) documentation from a domestic violence or sexual assault program; or (iii) documentation from a religious, medical, or other professional. An authority shall take applications on a continuous basis from persons meeting a preference and shall not close the application process to these persons. This subdivision shall in no way limit an authority from adopting additional local preferences."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 1081

Short Title:	Procedures for Advertising Tax Liens.	(Public)
Sponsors:	Senator Berger of Rockingham.	
Referred to:	Judiciary I.	

March 24, 2005

A BILL TO BE ENTITLED

AN ACT TO AMEND THE PROCEDURES FOR NOTIFYING OWNERS AND ADVERTISING TAX LIENS ON REAL PROPERTY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-369(b1) reads as rewritten:

"(b1) Notice to Owner. – After the governing body orders the tax collector to advertise the tax liens, the tax collector must send a notice to the listing owner and to the record owner of each affected parcel of property, as determined as of December 31 of the fiscal year for which the taxes are due. The notice must be sent to each owner's last known address by first-class mail at least 30 days before the date the advertisement is to be published. The notice must state the principal amount of unpaid taxes that are a lien on the parcel to be advertised and inform the owner that the ~~names of the listing owner and the~~name of the record owner will appear in a newspaper advertisement of delinquent taxes if the taxes are not paid before the publication date. Failure to mail the notice required by this section to the correct listing owner or record owner does not affect the validity of the tax lien or of any foreclosure action.

SECTION 2. G.S. 105-369(c)(1a) reads as rewritten:

"(1a) In the case of property that the listing owner has transferred after January 1 preceding the fiscal year for which the tax liens are advertised, the name of the record owner as of December 31 of each parcel on which the taxing unit has a lien for unpaid taxes, in alphabetical ~~order, followed by a notation that the property was transferred to the record owner and a notation of the name of the listing owner.~~order."

SECTION 3. This act is effective for taxes imposed for taxable years beginning on or after July 1, 2006.

SENATE BILL 1081:
Procedures for Advertising Tax Liens

BILL ANALYSIS

Committee:	Senate Judiciary I	**Date:**	April 28, 2005
Introduced by:	Sen. Berger of Rockingham	**Summary by:**	William R. Gilkeson
Version:	First Edition		Committee Co-Counsel

SUMMARY: The First Edition of Senate Bill 1081 would remove the requirement that the public advertisement of a tax lien on a piece of real property sold during a year must contain the name of the "listing owner" of the property, that is, the owner of the property as of January 1 of the year the property was sold.

CURRENT LAW: Currently, the owner of a piece of real property as of January 1 is the person liable for the taxes for that year on that property. That person is the "listing owner" of the property. If the property taxes for the year are unpaid, the listing owner is liable. If the property is sold during the year, it is common for the sales contract to include the buyer's agreement to pay all the taxes for the year in consideration for the seller's subtracting the amount of the taxes from the sale price. However, if the buyer does not pay the taxes, the seller who owned the property January 1 is still liable for them.

After the year the taxes were due, if any property taxes are delinquent, the county is required to notify both the record owner of the property as of December 31 and the listing owner as of the previous January 1. After this notice, the county must advertise tax liens in a newspaper. In the ad, it must list both the "record owner" of the property and the listing owner.

BILL ANALYSIS: The bill would remove the listing owner's name from the newspaper ad of tax liens. The bill would not change the county's duty to notify the listing owner of the lien (although the notice would no longer tell the listing owner that his/her/its name would appear in the ad). The bill would not change the listing owner's liability for the unpaid taxes. The bill would also not change the enforcement remedies tax collectors have: foreclosure on the real property on which the taxes are unpaid, and levy on the personal property of the listing owner.

EFFECTIVE DATE: Effective for taxes imposed for taxable years beginning on or after July 1, 2006.

BACKGROUND: The situation of unpaid taxes after a sale does not arise in many real estate transactions, since many mortgages include taxes in an escrowed account.

S1081e1-SMRR

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

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SENATE BILL 970
PROPOSED COMMITTEE SUBSTITUTE S970-PCS75321-RR-28

Short Title: Land-Use Permit Appeals. (Public)

Sponsors:

Referred to:

March 24, 2005

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE LAW REGARDING APPEALS OF QUASI-JUDICIAL DECISIONS MADE UNDER ARTICLE 19 OF CHAPTER 160A AND ARTICLE 18 OF CHAPTER 153A OF THE GENERAL STATUTES.

The General Assembly of North Carolina enacts:

SECTION 1.(a) Article 19 of Chapter 160A of the General Statutes is amended by adding a new section to read:

"**§ 160A-393. Appeals in the nature of certiorari.**

(a) Applicability. – This section applies to appeals to superior court by proceedings in the nature of certiorari authorized under the provisions of this Article.

(b) Filing the Petition. – An appeal in the nature of certiorari shall be initiated by filing with the superior court a petition for writ of certiorari. The petition shall state the facts that demonstrate that the petitioner has standing to seek review and shall set forth the grounds upon which the petitioner contends that an error was made as well as the relief the petitioner seeks. The facts in support of allegations that the votes of one or more members of the decision-making body were affected by impermissible bias or conflict of interest shall be set forth with particularity.

(c) Standing. – A petition may be filed under this section only by a person who has standing to challenge the decision being appealed. A person has standing if a reasonable person in the position of the person seeking to challenge the decision could reasonably conclude that the use of the property authorized by the decision would be likely to adversely affect the interests of that person in some real, substantial, and concrete way that is demonstrably different in nature or degree than the manner in which the decision affects members of the general public. Without limiting the generality of the foregoing, the following principles shall apply in determining whether a petitioner has standing:

(1) If the decision being appealed involves a denial of a permit request, a denial of a variance, or a determination that property is being used in

violation of an ordinance adopted under this Article, then any person with an ownership or leasehold interest in the property in question, as well as the applicant for the permit or the variance (if different than the owner), has standing to file a petition.

(2) If the decision being appealed involves the issuance of a permit, the granting of a variance, or a determination that property is being used in conformity with an ordinance adopted under this Article, then the following persons shall have standing to file a petition, so long as they satisfy the general criteria set forth at the beginning of this subsection:

a. Any person who resides or owns property in such close proximity to the property that is the subject of the decision that the use of the property authorized by the decision would adversely affect that person's use or enjoyment of his or her residence or property or would adversely affect the value of that property.

b. Any person whose economic interests are directly threatened by the use authorized by the decision.

c. A property owners, neighborhood, or similar civic association if any of its members would have standing to challenge the decision as an individual, the interests sought to be protected are germane to the association's purpose, and neither the claim asserted nor the relief requested requires the participation of individual members who would have standing.

For purposes of this subsection, the term "person" refers to any legal entity authorized to bring suit in his, her, or its own name, and the term "owner" refers to any person having an ownership interest in property.

(d) Respondent. – The respondent named in the petition shall be the city whose council, board of adjustment, planning board, or other body made the decision that is being appealed. If the petitioner is not the applicant before the council, board of adjustment, or planning board whose decision is being appealed, the petitioner shall name that applicant as a respondent. Any petitioner may, but need not, also name as a respondent any person who participated in the hearing before the council, board of adjustment, or planning board.

(e) Writ of Certiorari. – Upon filing the petition, the petitioner shall present the petition and a proposed writ of certiorari to the clerk of court of the county in which the matter arose. The writ shall direct the respondent city to prepare and certify to the court the record of proceedings below within a specified date. The writ shall also direct that the petitioner shall serve the petition and the writ upon each respondent named therein in the manner provided for service of a complaint under Rule 4j of the Rules of Civil Procedure. No summons shall be issued. The clerk shall issue the writ without notice to the respondent or respondents if the petition has been properly filed and the writ is in proper form. A copy of the executed writ shall be filed with the court.

(f) Answer to the Petition. – The respondent may, but need not, file an answer to the petition, except that, if the respondent contends that any petitioner lacks standing to

bring the appeal, that contention must be set forth in an answer served on all petitioners at least 30 days prior to the hearing on the petition.

(g) Intervention. – Rule 24 of the Rules of Civil Procedure shall govern motions to intervene as a petitioner or respondent in an action initiated under this section, except that:

(1) If the petitioner is not the applicant before the council, board of adjustment, or planning board whose decision is being appealed, and the petitioner fails to name the applicant as a respondent, then the applicant may intervene as a matter of right.

(2) Except as otherwise stated in subdivision (1) of this subsection, an intervenor must demonstrate that a reasonable person in the position of the intervenor could reasonably believe that the outcome of the appeal could adversely affect the interests of that person in some real, substantial, and concrete way that is demonstrably different in nature or degree than the manner in which the decision affects members of the general public.

(h) The Record. – The record shall consist of all documents and exhibits submitted to the council, planning board, or board of adjustment whose decision is challenged, together with the minutes of the meeting or meetings at which the matter appealed was considered. Upon request of any party, the record shall also contain an audio or videotape of the meeting or meetings at which the matter appealed was considered if such a recording was made. Any party may also include in the record a transcript of the proceedings, which shall be prepared at the cost of the party choosing to include it. The parties may agree, or the court may direct, that matters unnecessary to the court's decision be deleted from the record or that matters other than those specified herein be included. The record shall be bound and paginated or otherwise organized for the convenience of the parties and the court. A copy of the record shall be served by the municipal respondent upon all petitioners within three days after it is filed with the court.

(i) Hearing on the Record. – The court shall hear and decide all issues raised by the petition by reviewing the record submitted in accordance with subsection (h) of this section, except that the court may, in its discretion, allow the record to be supplemented with affidavits, testimony of witnesses, or documentary or other evidence if and to the extent that the record is not adequate to allow an appropriate determination of the following issues:

(1) Whether a petitioner or intervenor has standing.

(2) Whether, as a result of bias or conflict of interest, the decision-making body was not sufficiently impartial to comply with due process principles.

(3) Whether the decision-making body erred for the reasons set forth in sub-subdivisions a. and b. of subdivision (1) of subsection (j) of this section.

(j) Scope of Review. –

(1) When reviewing the decision of a city council, board of adjustment, or planning board under the provisions of this section, the trial court shall ensure that the rights of petitioners have not been prejudiced because the decision-making body's findings, inferences, conclusions, or decisions were:

a. In violation of constitutional provisions, including, but not limited to, those protecting procedural due process rights.

b. In excess of the statutory authority conferred upon the municipality or the authority conferred upon the decision-making body by ordinance.

c. Inconsistent with applicable procedures specified by statute or ordinance.

d. Affected by other error of law.

e. Unsupported by substantial competent evidence in view of the entire record.

f. Arbitrary or capricious.

(2) When the issue before the trial court is whether the decision-making body below erred in the interpretation of an ordinance, the trial court may review that issue de novo, provided that the court shall give due consideration to the construction adopted by those entities charged with execution and administration of the ordinance where that construction has been thoroughly considered and consistently applied by those entities.

(3) The term "competent evidence", as used in this subsection, shall not preclude reliance by the decision-making body on evidence that would not be admissible under the rules of evidence as applied in the trial division of the General Court of Justice if (i) the evidence was admitted without objection, or (ii) the evidence appears to be sufficiently trustworthy and was admitted under such circumstances that were reasonable for the decision-making body to rely upon it. Notwithstanding the foregoing, the term "competent evidence" shall not be deemed to include the opinion testimony of lay witnesses (i.e., persons not qualified by reason of specialized knowledge, skill, experience, training, or education to testify as an expert) as to matters about which only expert testimony would generally be admissible under the rules of evidence. By way of illustration without limitation, the term "competent evidence" shall not be deemed to include the opinion of lay witnesses as to whether (i) the use of property in a particular way would affect the value of other property, or (ii) the increase in vehicular traffic resulting from a proposed development would pose a danger to the public safety.

(k) Decision of the Trial Court. – Following its review of the decision-making body in accordance with subsection (j) of this section, the trial court may affirm the decision, reverse the decision and remand the case with appropriate instructions, or

remand the case for further proceedings. If the court does not affirm the decision below in its entirety, then the court shall be guided by the following in determining what relief should be granted to the petitioners.

(1) If the court concludes that the error committed by the decision-making body is procedural only, the court may remand the case for further proceedings to correct the procedural error.

(2) If the court concludes that the decision-making body has erred by failing to make findings of fact such that the court cannot properly perform its function, then the court may remand the case with appropriate instructions so long as the record contains substantial competent evidence that could support the decision below with appropriate findings of fact. However, findings of fact are not necessary when the record sufficiently reveals the basis for the decision below or when the material facts are undisputed and the case presents only an issue of law.

(3) If the court concludes that the decision below is not supported by substantial competent evidence in the record, or is based upon an error of law, then the court may remand the case with an order that directs the council, board of adjustment, or planning board to take whatever action should have been taken had the error not been committed or to take such other action as is necessary to correct the error. Without limiting the generality of the foregoing, (i) if the court concludes that a permit was wrongfully denied because the denial was not based on substantial competent evidence or was otherwise based on an error of law, the court shall remand with instructions that the permit be issued; and (ii) if the court concludes that a permit was wrongfully issued because the issuance was not based on substantial competent evidence or was otherwise based on an error of law, the court shall remand with instructions that the permit be revoked.

(l) Ancillary Injunctive Relief. – Upon motion of a party to a proceeding under this section, and under appropriate circumstances, the trial court may issue an injunctive order requiring any other party to that proceeding to take certain action or refrain from taking action that is consistent with the court's decision on the merits of the appeal. By way of illustration without limitation, if the court affirms the decision of a board of adjustment that a petitioner is in violation of a zoning ordinance, the court may issue an order enjoining the petitioner from continuing the violation."

SECTION 1.(b) Article 18 of Chapter 153A of the General Statutes is amended by adding a new section to read:

"**§ 153A-349. Appeals in the nature of certiorari.**

Whenever appeals to superior court by proceedings in the nature of certiorari are authorized under the provisions of this Article, the provisions of G.S. 160A-393 shall be applicable to those appeals. In this context, the term "city council", as used in G.S. 160A-393, shall be deemed to refer to the "board of commissioners", and the term "city" or "municipality" shall be deemed to refer to the "county"."

SECTION 2.(a) Article 19 of Chapter 160A of the General Statutes is amended by adding a new section to read:

"**§ 160A-377. Appeals of decisions on subdivision plats.**

(a) When a subdivision ordinance adopted under this Part provides that the decision whether to approve or deny a preliminary or final subdivision plat is to be made by a city council or a designated planning board (other than a planning board comprised solely of members of a city planning staff), and the ordinance authorizes the council or planning board to make a quasi-judicial determination in deciding whether to approve the subdivision plat, then the decision of the council or planning board shall be subject to review by the superior court by proceedings in the nature of certiorari. The provisions of G.S. 160A-381(c) and G.S. 160A-393 shall apply to those appeals.

(b) When a subdivision ordinance adopted under this Part provides that a city council, designated planning board, or staff member is authorized to make only an administrative or ministerial determination in deciding whether to approve a preliminary or final subdivision plat, then any party aggrieved by that decision may seek to have the decision reviewed by filing an action in superior court seeking appropriate declaratory or equitable relief. Such an action must be filed within the time frame specified in G.S. 160A-381(c) for petitions in the nature of certiorari.

(c) For purposes of this section, an ordinance shall be deemed to authorize a quasi-judicial determination on a preliminary or final plat application if the ordinance (i) authorizes the council or planning board to decide whether to approve or deny the plat based not only on whether the application complies with the specific requirements set forth in the ordinance, but also whether it complies with one or more generally stated standards requiring a discretionary determination to be made by the council or planning board; or (ii) authorizes the council or planning board to approve the subdivision plat subject to conditions that impose requirements or limitations on the subdivision beyond those set forth in the ordinance."

SECTION 2.(b) Article 18 of Chapter 153A of the General Statutes is amended by adding a new section to read:

"**§ 153A-336. Appeals of decisions on subdivision plats.**

(a) When a subdivision ordinance adopted under this Part provides that the decision whether to approve or deny a preliminary or final subdivision plat is to be made by a board of commissioners or a designated planning board (other than a planning board comprised solely of members of a county planning staff), and the ordinance authorizes the board of commissioners or planning board to make a quasi-judicial determination in deciding whether to approve the subdivision plat, then the decision of the board of commissioners or planning board shall be subject to review by the superior court by proceedings in the nature of certiorari. The provisions of G.S. 153A-340(f) and G.S. 153A-349 shall apply to those appeals.

(b) When a subdivision ordinance adopted under this Part provides that a board of commissioners, planning board, or staff member is authorized to make only an administrative or ministerial determination in deciding whether to approve a preliminary or final subdivision plat, then any party aggrieved by that decision may seek to have the decision reviewed by filing an action in superior court seeking appropriate declaratory

or equitable relief. Such an action must be filed within the time frame specified in G.S. 153A-340(f) for petitions in the nature of certiorari.

(c) For purposes of this section, an ordinance shall be deemed to authorize a quasi-judicial determination on a preliminary or final plat application if the ordinance (i) authorizes the board of commissioners or planning board to decide whether to approve or deny the plat based not only on whether the application complies with the specific requirements set forth in the ordinance, but also whether it complies with one or more generally stated standards requiring a discretionary determination to be made by the board of commissioners or planning board; or (ii) authorizes the board of commissioners or planning board to approve the subdivision plat subject to conditions that impose requirements or limitations on the subdivision beyond those set forth in the ordinance."

SECTION 3. This act becomes effective January 1, 2006, and applies to actions filed on or after that date.

SENATE BILL 970:
Land-Use Permit Appeals

BILL ANALYSIS

Committee:	Senate Judiciary I	**Date:**	May 19, 2005
Introduced by:	Sen. Kinnaird	**Summary by:**	William R. Gilkeson
Version:	PCS to First Edition S970-CSRR-28 [v.5]		Committee Counsel

SUMMARY: This Proposed Committee Substitute for Senate Bill 970 would establish a statutory appeals procedure for quasi-judicial decisions of local governments on land use.

CURRENT LAW: Currently there is little statutory guidance for appeals from the quasi-judicial decisions of local governments concerning land use. Those would include the decisions authorized under Article 19 of Chapter 160A for cities and Article 18 of Chapter 153A for counties to issue subdivision permits, special or conditional use permits, and zoning variances.

BILL ANALYSIS: The PCS establishes in one place a statutory process for appealing quasi-judicial decisions of governing boards, boards of adjustment, and housing code appeals boards in the land use and planning area. The new statutory section, GS 160A-393 *(Section 1 of the bill)* would apply to both cities and counties. The appeals would be to Superior Court. Using language from current statutes and case law, the PCS describes the appeals as "in the nature of certiorari." However, contrary to the usual understanding of writs of certiorari, appeals under the new statute would not be discretionary on the part of the court. The bill would make issuance of these writs of certiorari mandatory if a person with standing filed a petition for one. They would be issued not by a judge but by the clerk of court with whom the petition was filed. *160A-393(e).*

Standing. Only a person with standing could petition for a writ. The PCS, in 160A-393(c) gives the basic test for standing to appeal a quasi-judicial land-use decision: ***"A person has standing if a reasonable person in the position of the person seeking to challenge the decision could reasonably conclude that the use of the property authorized by the decision would be likely to adversely affect the interests of that person in some real, substantial, and concrete way that is demonstrably different than the manner in which the decision affects members of the general public."*** If the decision involves a denial, then any person with an ownership or leasehold interest in the property in question (as well as the applicant for the permit or variance, if different) has standing. If the appeal involves an approval, then those with standing are:

1. Any person who lives or owns property close enough to the property in question that the decision would adversely affect that person's use or enjoyment of their property or would adversely affect the value of their property.
2. Any person whose economic interests or directly threatened by the use authorized by the decision.
3. A property owners association, neighborhood association, or similar civic association, if any of its members have standing as an individual, if the interests sought to be protected are germane to the association's purpose, and neither the claim asserted nor the relief requested requires the participation of individual members who would have standing.

Respondent. The respondent in the appeal is the city or county whose board or agency made the decision. This is a change in law: Currently the board that made the appeal is a necessary party to the appeal. But it was felt that that is as inappropriate as requiring that a Superior Court judge be made a party to the appeal of the judge's ruling. *160A-393(d).*

Intervention. Generally, the right to intervene in an appeal is governed by Rule 24 of the Rules of Civil Procedure. Exceptions are that the applicant for the permit or variance, if not named as a respondent, always has a right to intervene, and any other intervenor must meet the basic test of standing. *160A-393(g).*

Scope of Review. *160A-393(j).* In a hearing on the record, the Superior Court shall ensure that the petitioners rights were not prejudiced because the decision-making body's actions were:

1. Unconstitutional.

2. In excess of authority given it by statute or ordinance. If the issue is interpretation of an ordinance, the Superior Court may review that issue de novo, though the court must give due consideration to the decision-making body below.
3. Inconsistent with what statute or ordinance prescribes as procedure.
4. Affected by other error of law.
5. Unsupported by competent evidence. (The PCS gives detailed parameters of "competent evidence."
6. Arbitrary and capricious.

Decision of the Trial Court. *160A-393(k).* The trial court may affirm or reverse the decision or remand the case to the decision-making body with appropriate instructions or for further proceedings. If it does not completely affirm, the court gets guidance from the bill about what relief to grant:

1. If the court finds the error was only procedural, it may remand for further proceedings to correct the procedural error.
2. If the court finds the error consisted of failing to make findings of fact, the court may remand the case with appropriate instructions so long as the record below contains substantial competent evidence that could support the decision below with appropriate findings of fact.
3. If the court finds the decision below was not based on competent evidence, or was based on error of law, the court may remand with an order to the decision-making body to do what it should have done without the error.

Section 2 of the bill applies the appeals principles of Section 1 to appeals from city and county subdivision plat decisions. It makes the distinction between quasi-judicial plat decisions and administrative ones.

EFFECTIVE DATE: The bill becomes effective January 1, 2006, and applies to actions filed on and after that date.

S0970e1-SMRR-CSRR-28 v5

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

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SENATE BILL 970

Short Title:	Land-Use Permit Appeals.	(Public)
Sponsors:	Senator Kinnaird.	
Referred to:	Judiciary II.	

March 24, 2005

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE LAW REGARDING APPEALS OF QUASI-JUDICIAL DECISIONS MADE UNDER ARTICLE 19 OF CHAPTER 160A AND ARTICLE 18 OF CHAPTER 153A OF THE GENERAL STATUTES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 19 of Chapter 160A of the General Statutes is amended by adding a new section to read:

"**§ 160A-393. Appeals in the nature of certiorari.**

(a) Applicability. – This section applies to appeals to superior court by proceedings in the nature of certiorari authorized under the provisions of this Article.

(b) Filing the Petition. – An appeal in the nature of certiorari shall be initiated by filing with the superior court a petition for writ of certiorari. The petition shall state the facts that demonstrate that the petitioner has standing to seek review and shall set forth the grounds upon which the petitioner contends that an error was made as well as the relief the petitioner seeks. The facts in support of allegations that the votes of one or more members of the decision-making body were affected by impermissible bias or conflict of interest shall be set forth with particularity.

(c) Standing. – A petition may be filed under this section only by a person who has standing to challenge the decision being appealed. A person has standing if a reasonable person in the position of the person seeking to challenge the decision could reasonably conclude that the use of the property authorized by the decision would be likely to adversely affect the interests of the person in some real, substantial, and concrete way that is not speculative, insignificant, or philosophical, or that is demonstrably different in nature or degree than the manner in which the decision affects members of the general public. Without limiting the generality of the foregoing, the following principles shall apply in determining whether a petitioner has standing:

(1) If the decision being appealed involves a denial of a permit request, a denial of a variance, or a determination that property is being used in violation of an ordinance adopted under this Article, then any person

with an ownership or leasehold interest in the property in question, as well as the applicant for the permit or the variance (if different than the owner), has standing to file a petition.

(2) If the decision being appealed involves the issuance of a permit, the granting of a variance, or a determination that property is being used in conformity with an ordinance adopted under this Article, then the following persons shall have standing to file a petition, so long as they satisfy the general criteria set forth at the beginning of this subsection:

a. Any person who resides or owns property in such close proximity to the property that is the subject of the decision that the use of the property authorized by the decision would adversely affect such person's use or enjoyment of his or her residence or property or would adversely affect the value of such property.

b. Any person whose economic interests are directly threatened by the use authorized by the decision.

(3) An incorporated property owners association to which all owners of property in a designated area belong by virtue of their ownership of property in such area shall have standing to challenge the issuance of a permit, the granting of a variance, or a determination that property is being used in conformity with an ordinance adopted under this Part if any of the members of such incorporated property owners association would have standing to challenge the decision as an individual.

(4) For purposes of this subsection, the term "person" refers to any legal entity authorized to bring suit in his, her, or its own name, and the term "owner" refers to any person having an ownership interest in property.

(d) Respondent. – The respondent named in the petition shall be the city whose council, board of adjustment, planning agency, or other body made the decision that is being appealed. If the petitioner is not the applicant before the council, board of adjustment, or planning agency whose decision is being appealed, the petitioner shall name such applicant as a respondent. Any petitioner may, but need not, also name as a respondent any person who participated in the hearing before the council, board of adjustment, or planning agency.

(e) Writ of Certiorari. – Upon filing the petition, the petitioner shall present the petition and a proposed writ of certiorari to the clerk of court of the county in which the matter arose. The writ shall direct the respondent city to prepare and certify to the court the record of proceedings below within a specified date. The writ shall also direct that the petitioner shall serve the petition and the writ upon each respondent named therein in the manner provided for service of a complaint under Rule 4j of the Rules of Civil Procedure. No summons shall be issued. The clerk shall issue the writ without notice to the respondent or respondents if the petition has been properly filed and the writ is in proper form. A copy of the executed writ shall be filed with the court.

(f) Answer to the Petition. – The respondent may, but need not, file an answer to the petition, except that, if the respondent contends that any petitioner lacks standing to

bring the appeal, such contention must be set forth in an answer served on all petitioners at least 30 days prior to the hearing on the petition.

(g) Intervention. – Rule 24 of the Rules of Civil Procedure shall govern motions to intervene as a petitioner or respondent in an action initiated under this section, except that:

(1) If the petitioner is not the applicant before the council, board of adjustment, or planning agency whose decision is being appealed, and the petitioner fails to name such applicant as a respondent, then such applicant may intervene as a matter of right.

(2) Except as otherwise stated in subdivision (1) of this subsection, an intervenor must demonstrate that a reasonable person in the position of the intervenor could reasonably believe that the outcome of the appeal could adversely affect the interests of the person in some real, substantial, and concrete way that is not purely speculative, insignificant, or philosophical or that is demonstrably different in nature or degree than the manner in which the decision affects members of the general public.

(h) The Record. – The record shall consist of all documents and exhibits submitted to the council, planning agency, or board of adjustment whose decision is challenged, together with the minutes of the meeting or meetings at which the matter appealed was considered. Upon request of any party, the record shall also contain an audiotape or videotape of the meeting or meetings at which the matter appealed was considered if such a recording was made. Any party may also include in the record a transcript of such proceedings, which shall be prepared at the cost of the party choosing to include it. The parties may agree, or the court may direct, that matters unnecessary to the court's decision be deleted from the record or that matters other than those specified herein be included. The record shall be bound and paginated or otherwise organized for the convenience of the parties and the court. A copy of the record shall be served by the municipal respondent upon all petitioners within three days after it is filed with the court.

(i) Hearing on the Record. – The court shall hear and decide all issues raised by the petition by reviewing the record submitted in accordance with subsection (h) of this section, except that the court may, in its discretion, allow the record to be supplemented with affidavits, testimony of witnesses, or documentary or other evidence if and to the extent that the record is not adequate to allow an appropriate determination of the following issues:

(1) Whether a petitioner or intervenor has standing.

(2) Whether, as a result of bias or conflict of interest, the decision-making body was not sufficiently impartial to comply with due process principles.

(3) Whether the decision-making body erred for the reasons set forth in subdivision (j)(1)a. or subdivision (j)(1)b. of this section.

(j) Scope of Review.

(1) When reviewing the decision of a city council, board of adjustment, or planning agency under the provisions of this section, the trial court shall ensure that the rights of petitioners have not been prejudiced because the decision-making body's findings, inferences, conclusions, or decisions were:

a. In violation of constitutional provisions, including, but not limited to, those protecting procedural due process rights.

b. In excess of the statutory authority conferred upon the municipality or the authority conferred upon the decision-making body by ordinance.

c. Inconsistent with applicable procedures specified by statute or ordinance.

d. Affected by other error of law.

e. Unsupported by substantial competent evidence in view of the entire record.

f. Arbitrary or capricious.

(2) When the issue before the trial court is whether the decision-making body below erred in interpreting an ordinance, the trial court may review that issue de novo and substitute its own judgment for that of the decision-making body.

(3) The term "competent evidence" as used in this subsection shall not preclude reliance by the decision-making body on evidence that would not be admissible under the rules of evidence as applied in the trial division of the General Court of Justice if (i) the evidence was admitted without objection, or (ii) the evidence appears to be sufficiently trustworthy and was admitted under such circumstances that it was reasonable for the decision-making body to rely upon it. Notwithstanding the foregoing sentence, the term "competent evidence" shall not be deemed to include the opinion testimony of lay witnesses or persons not qualified by reason of specialized knowledge, skill, experience, training, or education to testify as an expert as to matters about which only expert testimony would generally be admissible under the rules of evidence. By way of illustration without limitation, the term "competent evidence" shall not be deemed to include the opinion of lay witnesses as to whether (i) the use of property in a particular way would affect the value of other property, or (ii) the increase in vehicular traffic resulting from a proposed development would pose a danger to the public safety.

(k) Decision of the Trial Court. – Following its review of the decision-making body in accordance with subsection (j) of this section, the trial court may affirm the decision, reverse the decision and remand the case with appropriate instructions, or remand the case for further proceedings. If the court does not affirm the decision below in its entirety, then the court shall be guided by the following in determining what relief should be granted to the petitioners.

(1) If the court concludes that the error committed by the decision-making body is procedural only, the court may remand the case for further proceedings to correct the procedural error.

(2) If the court concludes that the decision-making body has erred by failing to make findings of fact such that the court cannot properly perform its function, then the court may remand the case with appropriate instructions so long as the record contains substantial competent evidence that could support the decision below with appropriate findings of fact. However, findings of fact are not necessary when the record sufficiently reveals the basis for the decision below or when the material facts are undisputed and the case presents only an issue of law.

(3) If the court concludes that the decision below is not supported by substantial competent evidence in the record, or is based upon an error of law, then the court may remand the case with an order that directs the council, board of adjustment, or planning agency to take whatever action should have been taken had the error not been committed or to take such other action as is necessary to correct the error. Without limiting the generality of the foregoing, (i) if the court concludes that a permit was wrongfully denied because the denial was not based on substantial competent evidence or was otherwise based on an error of law, the court shall remand with instructions that the permit be issued; and (ii) if the court concludes that a permit was wrongfully issued because the issuance was not based on substantial competent evidence or was otherwise based on an error of law, the court shall remand with instructions that the permit be revoked.

(l) Ancillary Injunctive Relief. – Upon motion of a party to a proceeding under this section, and under appropriate circumstances, the trial court may issue an injunctive order requiring any other party to such proceeding to take certain action or refrain from taking action that is consistent with the court's decision on the merits of the appeal. By way of illustration without limitation, if the court affirms the decision of a board of adjustment that a petitioner is in violation of a zoning ordinance, the court may issue an order enjoining the petitioner from continuing the violation."

SECTION 2. Article 18 of Chapter 153A of the General Statutes is amended by adding a new section to read:

"**§ 153A-349. Appeals in the nature of certiorari.**

Whenever appeals to superior court by proceedings in the nature of certiorari are authorized under the provisions of this Article, the provisions of G.S. 160A-393 shall be applicable to such appeals. In this context, the term "city council" as used in G.S.160A-393 shall be deemed to refer to the "board of commissioners" and the term "municipality" shall be deemed to refer to the "county"."

SECTION 3. Article 19 of Chapter 160A of the General Statutes is amended by adding a new section to read:

"**§ 160A-377. Appeals of decisions on subdivision plats.**

(a) When a subdivision ordinance adopted under this Part provides that the decision whether to approve or deny a preliminary or final subdivision plat is to be made by a city council or a designated planning agency (other than a planning agency comprising solely members of a city planning staff), and the ordinance authorizes the council or planning agency to make a quasi-judicial determination in deciding whether to approve the subdivision plat, then the decision of the council or planning agency shall be subject to review by the superior court by proceedings in the nature of certiorari. The provisions of G.S. 160A-381(c) and G.S. 160A-393 shall apply to the appeals.

(b) When a subdivision ordinance adopted under this Part provides that a city council, designated planning agency, or staff member is authorized to make only an administrative or ministerial determination in deciding whether to approve a preliminary or final subdivision plat, then any party aggrieved by such decision may seek to have the decision reviewed by filing an action in superior court seeking appropriate declaratory or equitable relief. Such an action must be filed within the time frame specified in G.S. 160A-381(c) for petitions in the nature of certiorari.

(c) For purposes of this section, an ordinance shall be deemed to authorize a quasi-judicial determination on a preliminary or final plat application if the ordinance (i) authorizes the council or planning agency to decide whether to approve or deny the plat based not only on whether the application complies with the specific requirements set forth in the ordinance, but also whether it complies with one or more generally stated standards requiring a discretionary determination to be made by the council or planning agency; or (ii) authorizes the council or planning agency to approve the subdivision plat subject to conditions that impose requirements or limitations on the subdivision beyond those set forth in the ordinance."

SECTION 4. Article 18 of Chapter 153A of the General Statutes is amended by adding a new section to read:

"**§ 153A-377. Appeals of decisions on subdivision plats.**

(a) When a subdivision ordinance adopted under this Part provides that the decision whether to approve or deny a preliminary or final subdivision plat is to be made by a board of commissioners or a designated planning agency (other than a planning agency comprising solely members of a county planning staff), and the ordinance authorizes the board of commissioners or planning agency to make a quasi-judicial determination in deciding whether to approve the subdivision plat, then the decision of the board of commissioners or planning agency shall be subject to review by the superior court by proceedings in the nature of certiorari. The provisions of G.S. 153A-340(f) and G.S. 153A-349 shall apply to such appeals.

(b) When a subdivision ordinance adopted under this Part provides that a board of commissioners, planning agency, or staff member is authorized to make only an administrative or ministerial determination in deciding whether to approve a preliminary or final subdivision plat, then any party aggrieved by such decision may seek to have the decision reviewed by filing an action in superior court seeking appropriate declaratory or equitable relief. Such an action must be filed within the time frame specified in G.S. 153A-340(f) for petitions in the nature of certiorari.

(c) For purposes of this section, an ordinance shall be deemed to authorize a quasi-judicial determination on a preliminary or final plat application if the ordinance (i) authorizes the board of commissioners or planning agency to decide whether to approve or deny the plat based not only on whether the application complies with the specific requirements set forth in the ordinance, but also whether it complies with one or more generally stated standards requiring a discretionary determination to be made by the board of commissioners or planning agency; or (ii) authorizes the board of commissioners or planning agency to approve the subdivision plat subject to conditions that impose requirements or limitations on the subdivision beyond those set forth in the ordinance."

SECTION 5. This act is effective when it becomes law and applies to actions filed on or after that effective date.

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE — 5-26-05 pm

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
Kathleen Edwards	UNC-CH Legis Rep Service
Chad M-hlp	Brooks Pierce et al.
Joe Eason	Nelson Mullins
John Motley	Gov Office
John McMillan	MFAS
Colleen Kochanek	Apt Assn. of NC
Bill Rowe	NC Justice Center
Andrew Dimmery	Atty
MB Loucks Sorrell	NCCADV
Rick Zechini	NC Assoc. of Realtors
R. Paul Wilms	NCHBA

10-11
12-2-08

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE
Name of Committee

5/26/05 PM
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
Karen Johnson	Smith Anderson
Alissa Dolan	NC Conservation Network
JOHN BISSIAN	NC Press Assn
Sheila Talton-DeWitt	JLP Civitas Institute
Greg [illegible]	NMRS
Holly Bryan	NCATL
Bill Wilson	NCATL

Nibben

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Tuesday	May 31, 2005	10:00 to 11:a.m. & 12:00 to 2:00 p.m.	1027 LB

j

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 327	NC State Bar Changes/Fees.	Senator Rand
SB 353	Supreme Court Rule Making.	Senator Clodfelter
SB 523	En Banc Procedure.	Senator Clodfelter
SB 526	Deter Juvenile Auto Larceny.	Senator Clodfelter
SB 832	Tow Trucks and Recovery Vehicles.	Senator Hagan
SB 856	Access to Public Trial Preparation Records.	Senator Clodfelter
SB 917	Personal Representative/Selling Real Property.	Senator Clodfelter
SB 932	Protect Confidential Info of Public Agencies.	Senator Clodfelter
SB 951	Public-Private Solid Waste Collection.	Senator Hoyle
SB 1039	Increase Penalties/2nd Degree Rape.	Senator Jenkins
SB 1044	Undertaking to Stay Money Judgment.	Senator Clodfelter
SB 1070	Balance Fair Sentencing/Structured	Senator Rand

SB 1080	Sentencing. Criminal Changes.	Senator Berger

Senator Daniel G. Clodfelter, Chair

Judiciary 1 Committee

May 31, 2005 a.m.

Minutes

Senator Dan Clodfelter, Chair called the meeting to order at 10:10 a.m. with seventeen members present.

Senator Clodfelter reintroduced SB-1080. The bill had been heard at the previous committee meeting. Senator Jeanne Lucas had a question. Senator Phillip Berger offered an Amendment to the bill on page 4, line 7 (See attached Amendment). Senator Ham Horton moved for adoption of the Amendment. All members voted yes. Motion carried. Senator Richard Stevens moved for a Favorable report as amended. All members voted yes. Motion carried. Senator Clodfelter stated that the bill would be re-referred to the Appropriations Committee.

SB-832 (Tow Trucks and Recovery Vehicles) Committee Substitute was re-introduced. The bill was heard at the previous meeting. Senator Harry Brown moved for adoption of the Committee Substitute. All members voted yes. Motion carried. Staff attorney, Hal Pell explained that the bill would exempt wreckers fro highway weight and size limitations in order to tow disabled vehicles up to 50 miles from the place of disablement. The bill's provision to allow liens on cargo has been deleted. No discussion. Senator Clark Jenkins moved for a Favorable Report. All members voted yes. Motion carried.

SB-523 (En Banc Procedure) Committee Substitute was introduced by Vice Chair, Senator RC Soles. Senator Charlie Albertson moved for adoption of the Committee Substitute. All members voted yes. Motion carried. Senator Clodfelter explained the changes to the bill. (See attached Bill Summary further for information). Senator Phillip Berger moved for a Favorable Report. All members voted yes. Motion carried.

SB-353 (Supreme Court Rule Making) Committee Substitute was introduced by Senator RC Soles, Vice Chair. Senator Janet Cowell moved for adoption of the Committee Substitute. All members voted yes. Motion carried. Bill sponsor, Senator Dan Clodfelter explained the bill would amend the law to authorize the Supreme Court to revise the rules of civil and criminal procedure and the rules of evidence, subject to amendment or veto by the General Assembly. (See attached Bill Summary for further information). Senator Phillip Berger moved for a Favorable Report. All members voted yes. Motion carried.

SB-856 (Access to Public Trial Preparation Records) Committee Substitute was introduced by Vice Chair, RC Soles. Senator Keith Presnell moved for adoption of the Committee Substitute. All members voted yes. Motion carried. Bill sponsor, Senator Dan Clodfelter explained that the bill 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 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. (See attached Bill Summary for further information). Senator Clodfelter offered an Amendment to the bill on page 3, line 19, and moved for adoption of the Amendment. All members voted yes. Motion carried. (See attached Amendment). Mr. Rick Thames, Editor of the Charlotte Observer, Mr. Dan McLawhorn, past Chairman of the NC Bar Association, Ms. Linda Miles, NC Bar Association, Ms. Judith Wegner, Professor of State & Local Government, UNC Law School, Mr. Mark Prak, Attorney, Representing the Press Association in Raleigh, Mr. Jim Blackburn, NC County Commissioners and Mr. Andy Romanet, Jr., League of Municipalities all spoke on the bill. Senator Clodfelter offered a second Amendment, page 2, line 41 and page 3, line 1, and moved for adoption of the Amendment. All members voted yes. Motion carried. (See attached Amendment). Senator Tony Rand offered a third Amendment to the bill on page 3, lines 13 through 28, and moved for adoption of the Amendment. All members voted yes. Motion carried. (See attached Amendment). Senator Rand moved for a Favorable Report as amended. All members voted yes. Motion carried.

Being no further business the meeting adjourned at 10:57 a.m.

Senator Dan Clodfelter, Chair

Wanda Joyner, Committee Assistant

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 832
PROPOSED COMMITTEE SUBSTITUTE S832-PCS65333-RK-27

Short Title: Wreckers/Travel Mileage. (Public)

Sponsors:

Referred to:

March 23, 2005

A BILL TO BE ENTITLED

AN ACT TO ALLOW WRECKERS TO TAKE DISABLED VEHICLES UP TO FIFTY MILES FOR REPAIR, PARKING, OR STORAGE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-118 reads as rewritten:

"**§ 20-118. Weight of vehicles and load.**

(a) For the purposes of this section, the following definitions shall apply:

(1) Single-axle weight. – The gross weight transmitted by all wheels whose centers may be included between two parallel transverse vertical planes 40 inches apart, extending across the full width of the vehicle.

(2) Tandem-axle weight. – The gross weight transmitted to the road by two or more consecutive axles whose centers may be included between parallel vertical planes spaced more than 40 inches and not more than 96 inches apart, extending across the full width of the vehicle.

(3) Axle group. – Any two or more consecutive axles on a vehicle or combination of vehicles.

(4) Gross weight. – The weight of any single axle, tandem axle, or axle group of a vehicle or combination of vehicles plus the weight of any load thereon.

(5) Light-traffic roads. – Any highway on the State Highway System, excepting routes designated I, U.S. or N.C., posted by the Department of Transportation to limit the axle weight below the statutory limits.

(b) The following weight limitations shall apply to vehicles operating on the highways of the State:

(1) The single-axle weight of a vehicle or combination of vehicles shall not exceed 20,000 pounds.

(2) The tandem-axle weight of a vehicle or combination of vehicles shall not exceed 38,000 pounds.

(3) The gross weight imposed upon the highway by any axle group of a vehicle or combination of vehicles shall not exceed the maximum weight given for the respective distance between the first and last axle of the group of axles measured longitudinally to the nearest foot as set forth in the following table:

Distance Between	Maximum Weight in Pounds for any Group of Two or More Consecutive Axles					
Axles*	2 Axles	3 Axles	4 Axles	5 Axles	6 Axles	7 Axles
4	38000					
5	38000					
6	38000					
7	38000					
8 or less	38000	38000				
more than 8	38000	42000				
9	39000	42500				
10	40000	43500				
11		44000				
12		45000	50000			
13		45500	50500			
14		46500	51500			
15		47000	52000			
16		48000	52500	58000		
17		48500	53500	58500		
18		49500	54000	59000		
19		50000	54500	60000		
20		51000	55500	60500	66000	
21		51500	56000	61000	66500	
22		52500	56500	61500	67000	
23		53000	57500	62500	68000	
24		54000	58000	63000	68500	74000
25		54500	58500	63500	69000	74500
26		55500	59500	64000	69500	75000
27		56000	60000	65000	70000	75500
28		57000	60500	65500	71000	76500
29		57500	61500	66000	71500	77000
30		58500	62000	66500	72000	77500
31		59000	62500	67500	72500	78000
32		60000	63500	68000	73000	78500
33			64000	68500	74000	79000
34			64500	69000	74500	80000
35			65500	70000	75000	
36			66000**	70500	75500	

37	66500**	71000	76000
38	67500**	72000	77000
39	68000	72500	77500
40	68500	73000	78000
41	69500	73500	78500
42	70000	74000	79000
43	70500	75000	80000
44	71500	75500	
45	72000	76000	
46	72500	76500	
47	73500	77500	
48	74000	78000	
49	74500	78500	
50	75500	79000	
51	76000	80000	
52	76500		
53	77500		
54	78000		
55	78500		
56	79500		
57	80000		

* Distance in Feet Between the Extremes of any Group of Two or More Consecutive Axles.

** See exception in G.S. 20-118(c)(1).

(4) The Department of Transportation may establish light-traffic roads and further restrict the axle weight limit on such light-traffic roads lower than the statutory limits. The Department of Transportation shall have authority to designate any highway on the State Highway System, excluding routes designated by I, U.S. and N.C., as a light-traffic road when in the opinion of the Department of Transportation, such road is inadequate to carry and will be injuriously affected by vehicles using the said road carrying the maximum axle weight. All such roads so designated shall be conspicuously posted as light-traffic roads and the maximum axle weight authorized shall be displayed on proper signs erected thereon.

(c) Exceptions. – The following exceptions apply to G.S. 20-118(b) and 20-118(e).

...

(7) A wrecker may tow ~~a~~ any disabled truck or other motor vehicle or combination of vehicles ~~in an emergency~~ to a place for repairs, ~~the nearest feasible point for parking~~ parking, or storage within 50 miles from the point that the vehicle was disabled and may tow a truck, tractor, or other replacement vehicle to the site of the disabled vehicle without being in violation of G.S. 20-118 provided that the wrecker

and towed vehicle or combination of vehicles otherwise meet all requirements of this section.

...."

SECTION 2. G.S. 20-116(e) reads as rewritten:

"(e) Except as provided by G.S. 20-115.1, no combination of vehicles coupled together shall consist of more than two units and no such combination of vehicles shall exceed a total length of 60 feet inclusive of front and rear bumpers, subject to the following exceptions: Said length limitation shall not apply to vehicles operated in the daytime when transporting poles, pipe, machinery or other objects of a structural nature which cannot readily be dismembered, nor to such vehicles transporting such objects operated at nighttime by a public utility when required for emergency repair of public service facilities or properties, but in respect to such night transportation every such vehicle and the load thereon shall be equipped with a sufficient number of clearance lamps on both sides and marker lamps upon the extreme ends of said projecting load to clearly mark the dimensions of such load: Provided that vehicles designed and used exclusively for the transportation of motor vehicles shall be permitted an overhang tolerance front or rear not to exceed five feet. Provided, that wreckers ~~in an emergency~~ may tow a truck, combination tractor and ~~trailer~~ trailer, trailer, or any other disabled vehicle or combination of vehicles to a place for ~~to the nearest feasible point for repair and/or storage:~~ repair, parking, or storage within 50 miles of the point where the vehicle was disabled and may tow a truck, tractor, or other replacement vehicle to the site of the disabled vehicle. Provided, however, that a combination of a house trailer used as a mobile home, together with its towing vehicle, shall not exceed a total length of 55 feet exclusive of front and rear bumpers. Provided further, that the said limitation that no combination of vehicles coupled together shall consist of more than two units shall not apply to trailers not exceeding three in number drawn by a motor vehicle used by municipalities for the removal of domestic and commercial refuse and street rubbish, but such combination of vehicles shall not exceed a total length of 50 feet inclusive of front and rear bumpers. Provided further, that the said limitation that no combination of vehicles coupled together shall consist of more than two units shall not apply to a combination of vehicles coupled together by a saddle mount device used to transport motor vehicles in a driveway service when no more than three saddle mounts are used and provided further, that equipment used in said combination is approved by the safety regulations of the Federal Highway Administration and the safety rules of the Department of Crime Control and Public Safety."

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

SENATE BILL 832 PCS: Wreckers/Travel Mileage.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Date:**	May 31, 2005
Introduced by:	Sen. Hagan	**Summary by:**	Hal Pell
Version:	First Edition		Committee Co-Counsel
	PCS S832-CSRK-27		

SUMMARY: ***The proposed committee substitute would exempt wreckers from highway weight and size limitations in order to tow disabled vehicles up to 50 miles from the place of disablement. The bill's provision to allow liens on cargo has been deleted. The act is effective when it becomes law.***

BILL ANALYSIS:

Section 1: Current law excepts wreckers, in an emergency, from weight limitations while operating on State highways. However, a wrecker may only tow a disabled vehicle to the "nearest feasible point" for parking or storage. The bill would amend the law to allow a wrecker, under any circumstance, to tow any disabled vehicle, or combination of vehicles, up to 50 miles from the point that the vehicle was disabled.

Section 2: Current law excepts wreckers, in an emergency, from size limitations while operating on State highways. However, a wrecker may only tow a disabled vehicle to the "nearest feasible point" for parking or storage. The bill would amend the law to allow a wrecker, under any circumstance, to tow any disabled vehicle, or combination of vehicles, up to 50 miles from the point that the vehicle was disabled.

The act is effective when it becomes law.

S832-smrk-csrk-001

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 832

Short Title:	Tow Trucks and Recovery Vehicles.	(Public)
Sponsors:	Senator Hagan.	
Referred to:	Judiciary I.	

March 23, 2005

A BILL TO BE ENTITLED

AN ACT RELATING TO THE WEIGHTS OF TOW TRUCKS AND RECOVERY VEHICLES AND TO STATUTORY LIENS ON CARGO CONTAINED IN TOWED VEHICLES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 44A-1 reads as rewritten:

"**§ 44A-1. Definitions.**

As used in this Article:

(1) "Cargo" means property that is transported in the nonpassenger area of a vehicle or combination of vehicles with a GVWR of 10,001 lbs. or more.

~~(1)~~(1a) "Legal possessor" means

a. Any person entrusted with possession of personal property by an owner thereof, or

b. Any person in possession of personal property and entitled thereto by operation of law.

(2) "Lienor" means any person entitled to a lien under this Article.

(2a) "Motor Vehicle" has the meaning provided in G.S. 20-4.01.

(3) "Owner" means

a. Any person having legal title to the property, or

b. A lessee of the person having legal title, or

c. A debtor entrusted with possession of the property by a secured party, or

d. A secured party entitled to possession, or

e. Any person entrusted with possession of the property by his employer or principal who is an owner under any of the above.

(4) "Secured party" means a person holding a security interest.

(5) "Security interest" means any interest in personal property ~~which interest~~ that is subject to the provisions of Article 9 of the Uniform

Commercial Code, or any other interest intended to create security in real or personal property.

(6) "Vessel" has the meaning provided in G.S. 75A-2."

SECTION 2. G.S. 44A-2(d) reads as rewritten:

"(d) Any person who repairs, services, tows, or stores motor vehicles in the ordinary course of the person's business pursuant to an express or implied contract with an owner or legal possessor of the motor vehicle, except for a motor vehicle seized pursuant to G.S. 20-28.3, has a lien upon the motor vehicle and any cargo being transported by the motor vehicle for reasonable charges for ~~such~~ the repairs, servicing, towing, storing, or for the rental of one or more substitute vehicles provided during the repair, servicing, or storage. This lien shall have priority over perfected and unperfected security interests. Payment for towing and storing a motor vehicle seized pursuant to G.S. 20-28.3 shall be as provided for in G.S. 20-28.2 through G.S. 20-28.5."

SECTION 3. G.S. 20-118(c) reads as rewritten:

"(c) Exceptions. – The following exceptions apply to G.S. 20-118(b) and 20-118(e).

...

(7) A wrecker may tow ~~a~~ any disabled vehicle or combination of vehicles ~~in an emergency~~ to a place for repairs, ~~the nearest feasible point for parking~~ parking, or storage within 50 miles from the point that the vehicle was disabled and may tow a truck tractor or other replacement vehicle to the site of the disabled vehicle without being in violation of G.S. 20-118 provided that the wrecker and towed vehicle or combination of vehicles otherwise meet all requirements of this section."

SECTION 4. G.S. 20-116(e) reads as rewritten:

"(e) Except as provided by G.S. 20-115.1, no combination of vehicles coupled together shall consist of more than two units and no such combination of vehicles shall exceed a total length of 60 feet inclusive of front and rear bumpers, subject to the following exceptions: Said length limitation shall not apply to vehicles operated in the daytime when transporting poles, pipe, machinery or other objects of a structural nature which cannot readily be dismembered, nor to such vehicles transporting such objects operated at nighttime by a public utility when required for emergency repair of public service facilities or properties, but in respect to such night transportation every such vehicle and the load thereon shall be equipped with a sufficient number of clearance lamps on both sides and marker lamps upon the extreme ends of said projecting load to clearly mark the dimensions of such load: Provided that vehicles designed and used exclusively for the transportation of motor vehicles shall be permitted an overhang tolerance front or rear not to exceed five feet. Provided, that wreckers ~~in an emergency~~ may tow ~~a combination tractor and trailer~~ any disabled vehicle or combination of vehicles to a place for ~~to the nearest feasible point for repair and/or storage:~~ repair, parking, or storage within 50 miles of the point where the vehicle was disabled and may tow a truck tractor or other replacement vehicle to the site of the disabled vehicle. Provided, however, that a combination of a house trailer used as a mobile home,

together with its towing vehicle, shall not exceed a total length of 55 feet exclusive of front and rear bumpers. Provided further, that the said limitation that no combination of vehicles coupled together shall consist of more than two units shall not apply to trailers not exceeding three in number drawn by a motor vehicle used by municipalities for the removal of domestic and commercial refuse and street rubbish, but such combination of vehicles shall not exceed a total length of 50 feet inclusive of front and rear bumpers. Provided further, that the said limitation that no combination of vehicles coupled together shall consist of more than two units shall not apply to a combination of vehicles coupled together by a saddle mount device used to transport motor vehicles in a driveway service when no more than three saddle mounts are used and provided further, that equipment used in said combination is approved by the safety regulations of the Federal Highway Administration and the safety rules of the Department of Crime Control and Public Safety."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 523
PROPOSED COMMITTEE SUBSTITUTE S523-PCS35231-RR-36

Short Title: Correcting Statutory Reference. (Public)

Sponsors:

Referred to:

March 15, 2005

A BILL TO BE ENTITLED

AN ACT TO CORRECT A STATUTORY REFERENCE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-775 reads as rewritten:

"**§ 7A-775. Sentencing services board.**

(a) Each sentencing services program shall establish a sentencing services board to provide direction and assistance to the sentencing services program in the implementation and evaluation of the plan. Sentencing services boards may be organized as nonprofit corporations under Chapter 55A of the General Statutes. The sentencing services board shall consist of not less than 12 members, and shall include, insofar as possible, judges, district attorneys, attorneys, social workers, law-enforcement officers, probation officers, and other interested persons. The sentencing services board shall meet on a regular basis, and its duties include, but are not limited to, the following:

(1) Preparation and submission of the sentencing services program plan to the senior resident superior court judge and the Director annually, as provided in G.S. ~~7A-772(a);~~7A-772(a).

(1a) Development of an annual budget for the ~~program;~~program.

(2) Hiring, firing, and evaluation of program ~~personnel;~~personnel.

(3) Selection of board ~~members;~~members.

(4) Arranging for an annual audit, in accordance with G.S. ~~143-6.1;~~143-6.2.

(5) Development of procedures for contracting for services.

(b) If the board serves as an advisory board to a sentencing services program located in a local or State agency, the board's duties do not include budgeting and personnel decisions."

SECTION 2. This act becomes effective July 1, 2005.

SENATE BILL 523:
Correcting Statutory Reference

BILL ANALYSIS

Committee:	Senate Judiciary I	**Date:**	May 27, 2005
Introduced by:	Sen. Clodfelter	**Summary by:**	William R. Gilkeson
Version:	PCS to First Edition S523-CSRR-36[v.3]		Committee Counsel

SUMMARY: This Proposed Committee Substitute for Senate Bill 523 updates a citation in GS 7A-775, which is about the Sentencing Services Board. The citation is to GS 143-6.1, which deals with reporting about non-State agencies and their use of State funds. In 2004 the General Assembly repealed GS 143-6.1 and replaced it with GS 143-6.2, effective July 1, 2005. This PCS changes the citation in GS 7A-775, effective July 1, 2005.

BILL ANALYSIS: GS 7A-775 requires that every sentencing services program create a sentencing services board to provide direction to the sentencing services program in the implementation and evaluation of the comprehensive sentencing services plan.

One of the duties of the board is to arrange for an annual audit. The statute says the audit shall be in accordance with GS 143-6.1. That statute, in the Executive Budget Act, deals with non-State agencies and their use of State funds. In 2004, the General Assembly repealed GS 143-6.1, effective July 1, 2005, and enacted GS 143-6.2. The new statute tightens the controls on those agencies and moves the monitoring of use of non-State funds from the granting agency to the Office of State Budget and Management.

The 2004 bill that repealed 143-6.1 and enacted 143-6.2 made some conforming changes to citations in other statutes, but it missed 7A-775. This PCS remedies that oversight.

EFFECTIVE DATE: Effective July 1, 2005.

BACKGROUND: As introduced, SB 523 would have provided for en banc procedure on the Court of Appeals.

S0523e1-SMRR-CSRR-

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 523

Short Title:	En Banc Procedure.	(Public)
Sponsors:	Senators Clodfelter; and Rand.	
Referred to:	Judiciary I.	

March 15, 2005

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE NORTH CAROLINA COURT OF APPEALS TO CONDUCT EN BANC PROCEEDINGS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-16 reads as rewritten:

"**§ 7A-16. Creation and organization.**

The Court of Appeals is created effective January 1, 1967. It shall consist initially of six judges, elected by the qualified voters of the State for terms of eight years. The Chief Justice of the Supreme Court shall designate one of the judges as Chief Judge, to serve in such capacity at the pleasure of the Chief Justice. Before entering upon the duties of his office, a judge of the Court of Appeals shall take the oath of office prescribed for a judge of the General Court of Justice.

The Governor on or after July 1, 1967, shall make temporary appointments to the six initial judgeships. The appointees shall serve until January 1, 1969. Their successors shall be elected at the general election for members of the General Assembly in November, 1968, and shall take office on January 1, 1969, to serve for the remainder of the unexpired term which began on January 1, 1967.

Upon the appointment of at least five judges, and the designation of a Chief Judge, the court is authorized to convene, organize, and promulgate, subject to the approval of the Supreme Court, such supplementary rules as it deems necessary and appropriate for the discharge of the judicial business lawfully assigned to it.

Effective January 1, 1969, the number of judges is increased to nine, and the Governor, on or after March 1, 1969, shall make temporary appointments to the additional judgeships thus created. The appointees shall serve until January 1, 1971. Their successors shall be elected at the general election for members of the General Assembly in November, 1970, and shall take office on January 1, 1971, to serve for the remainder of the unexpired term which began on January 1, 1969.

Effective January 1, 1977, the number of judges is increased to 12; and the Governor, on or after July 1, 1977, shall make temporary appointments to the additional

judgeships thus created. The appointees shall serve until January 1, 1979. Their successors shall be elected at the general election for members of the General Assembly in November, 1978, and shall take office on January 1, 1979, to serve the remainder of the unexpired term which began on January 1, 1977.

On or after December 15, 2000, the Governor shall appoint three additional judges to increase the number of judges to 15.

The Court of Appeals shall sit in panels of three judges ~~each.~~ each and may also sit en banc upon a vote of a majority of the judges of the court. The Chief Judge insofar as practicable shall assign the members to panels in such fashion that each member sits a substantially equal number of times with each other member. He shall preside over the panel of which he is a member, and shall designate the presiding judge of the other panel or panels.

~~Three judges shall constitute a quorum for the transaction of the business of the court, except as may be provided in § 7A-32.~~ Except as may be provided in G.S. 7A-32, three judges shall constitute a quorum for the transaction of the business of the court when sitting in panels of three judges, and a majority of the then sitting judges on the Court of Appeals shall constitute a quorum for the transaction of the business of the court when sitting en banc.

In the event the Chief Judge is unable, on account of absence or temporary incapacity, to perform the duties placed upon him as Chief Judge, the Chief Justice shall appoint an acting Chief Judge from the other judges of the Court, to temporarily discharge the duties of Chief Judge."

SECTION 2. G.S. 7A-30 reads as rewritten:

"**§ 7A-30. Appeals of right from certain decisions of the Court of Appeals.**

Except as provided in G.S. 7A-28, an appeal lies of right to the Supreme Court from any decision of the Court of Appeals rendered in a case:

(1) Which directly involves a substantial question arising under the Constitution of the United States or of this State, or

(2) In which there is a ~~dissent.~~ dissent when the Court of Appeals is sitting in a panel of three judges."

SECTION 3. G.S. 7A-31(a) reads as rewritten:

"(a) In any cause in which appeal is taken to the Court of ~~Appeals,~~ Appeals including any cause heard while the Court of Appeals was sitting en banc, except a cause appealed from the North Carolina Industrial Commission, the North Carolina State Bar pursuant to G.S. 84-28, the Property Tax Commission pursuant to G.S. 105-345, the Board of State Contract Appeals pursuant to G.S. 143-135.9, or the Commissioner of Insurance pursuant to G.S. 58-2-80, or a motion for appropriate relief or valuation of exempt property pursuant to G.S. 7A-28, the Supreme Court may, in its discretion, on motion of any party to the cause or on its own motion, certify the cause for review by the Supreme Court, either before or after it has been determined by the Court of Appeals. A cause appealed to the Court of Appeals from any of the administrative bodies listed in the preceding sentence may be certified in similar fashion, but only after determination of the cause in the Court of Appeals. The effect of such certification is to transfer the cause from the Court of Appeals to the Supreme

Court for review by the Supreme Court. If the cause is certified for transfer to the Supreme Court before its determination in the Court of Appeals, review is not had in the Court of Appeals but the cause is forthwith transferred for review in the first instance by the Supreme Court. If the cause is certified for transfer to the Supreme Court after its determination by the Court of Appeals, the Supreme Court reviews the decision of the Court of Appeals.

Except in motions within the purview of G.S. 7A-28, the State may move for certification for review of any criminal cause, but only after determination of the cause by the Court of Appeals."

SECTION 4. The Supreme Court, in consultation with the Court of Appeals, is respectfully requested to adopt rules of procedure for en banc proceedings in the Court of Appeals.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 353
PROPOSED COMMITTEE SUBSTITUTE S353-PCS75328-RU-47

Short Title: Supreme Court Rule Making. (Public)

Sponsors:

Referred to:

March 3, 2005

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THE SUPREME COURT WITH THE AUTHORITY TO REVISE THE RULES OF CIVIL AND CRIMINAL PROCEDURE AND THE RULES OF EVIDENCE, SUBJECT TO AMENDMENT OR VETO BY THE GENERAL ASSEMBLY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-34 reads as rewritten:

"**§ 7A-34. Rules of practice and procedure in trial courts.**

(a) The Supreme Court is hereby authorized to prescribe rules of practice and procedure for the superior and district courts supplementary to, and not inconsistent with, acts of the General Assembly. Pursuant to the authority granted it under Article IV, Section 13 of the North Carolina Constitution, and as limited by this section, the General Assembly delegates authority to the Supreme Court to adopt and amend the rules of civil and criminal procedure and rules of evidence for the trial divisions.

Except as provided in subsection (b) of this section, each new rule or amended rule shall be published in the North Carolina Register and shall become effective on January 1 next following a regular session of the General Assembly when the rule could be amended or vetoed as set forth in subsection (b) of this section.

(b) The General Assembly may amend or veto any proposed new rule or amended rule. A rule prescribed pursuant to this section shall not become effective unless the rule is published at least 25 days prior to the convening of a regular session of the General Assembly and no bill to amend or veto a new rule or amended rule is enacted before that regular session of the General Assembly adjourns. For purposes of this section, "session of the General Assembly adjourns" means (i) in a regular session held in an odd-numbered year, adjournment by joint resolution for more than 10 days; and (ii) in a regular session held in an even-numbered year, adjournment sine die.

(c) The Chief Justice may appoint advisory committees of up to eight members each to advise the Supreme Court on the adoption and amendment of the Rules of Civil

Procedure, the Rules of Criminal Procedure, and the Rules of Evidence. Each advisory committee shall consist of trial and appellate judges and members of the North Carolina State Bar. In making recommendations under this subsection, an advisory committee making a recommendation shall provide a proposed rule, an explanatory note on the rule, and a written report explaining the advisory committee's action, including any minority or other separate views. Members of each advisory committee who are not officers or employees of the State shall receive compensation and reimbursement for travel and subsistence expenses at the rates specified in G.S. 138-5. Members of each advisory committee who are officers or employees of the State shall receive reimbursement for travel and subsistence expenses at the rate set out in G.S. 138-6. Members of each advisory committee who are legislators shall be reimbursed for subsistence and travel expenses at the rates set out in G.S. 120-3.1.

(d) All meetings of an advisory committee appointed pursuant to subsection (b) of this section shall be subject to the provisions of Article 33C of Chapter 143 of the General Statutes, and all records of an advisory committee shall be considered public records under Chapter 132 of the General Statutes.

(e) Rules of civil procedure, including the Rules of Civil Procedure as set forth in Chapter 1A of the General Statutes, rules of evidence, including the Rules of Evidence as set forth in Chapter 8C of the General Statutes, and rules of criminal procedure, including the Rules of Criminal Procedure as set forth in Chapter 15A of the General Statutes, in effect on January 1, 2006, are deemed adopted by the Supreme Court until modified by the Supreme Court pursuant to this section. Upon adoption of a new rule or amended rule, the Supreme Court shall notify the General Assembly and the Revisor of Statutes of the need to repeal or amend the General Statutes to reflect the change. Upon the effective date of any rule adopted or amended, the Revisor of Statutes shall codify in the General Statutes all rules of civil and criminal procedure and rules of evidence for the trial divisions adopted or amended in accordance with this section."

SECTION 2. The Judicial Department shall implement this act using funds appropriated to the Department for travel and subsistence to reimburse members of the advisory committees on the rules of civil procedure, criminal procedure, and evidence authorized by G.S. 7A-34(c). This act shall not be construed to obligate the General Assembly to make any additional appropriation to implement the provisions of this act.

SECTION 3. This act becomes effective January 1, 2006.

SENATE BILL 353:
Supreme Court Rule Making

BILL ANALYSIS

Committee:	Senate Judiciary I	**Date:**	May 31, 2005
Introduced by:	Sen. Clodfelter	**Summary by:**	O. Walker Reagan
Version:	PCS to First Edition S353-CSRU-47		Committee Co-Counsel

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 353 would amend the law to authorize the Supreme Court to revise the rules of civil and criminal procedure and the rules of evidence, subject to amendment or veto by the General Assembly.***

CURRENT LAW: The Supreme Court has the authority to adopt rules of practice and procedure for the superior and district courts by statute and the rules of appellate procedure for the Court of Appeals and the Supreme Court under the NC Constitution. Section 13 of Article IV of the NC Constitution authorizes the General Assembly to delegate its authority to Supreme Court but retain the authority to alter, amend or repeal any rule of procedure or practice adopted by the Supreme Court for the district or superior courts.

BILL ANALYSIS:

Section 1 of the bill amends G.S. 7A-34 to authorize the Supreme Court to adopt and amend the rules of civil and criminal procedure and the rules of evidence. Rules adopted or amended by the Supreme Court are subject to amendment or veto by the General Assembly and do not become effective until the General Assembly has had an opportunity to act on the Supreme Court's proposed action.

The proposed new or amended rule is to be published in the North Carolina Register at least 25 days prior to the convening of the General Assembly session that may consider the rule change. Rules not veto and proposed rules amended by the General Assembly are codified in the General Statutes when they become effective.

The Supreme Court may appoint separate eight-person advisory committees consisting of judges and lawyers to advise the Court on proposed rule changes. Meetings of the advisory committees are to be open to the public and held upon prior notice. Minutes and records of the advisory committees are public. Recommendations from advisory committees shall include the proposed rule, an explanatory note and a written report explaining the action taken.

Section 2 directs the Supreme Court to use existing funds in the Judicial Department to cover the costs of this process.

EFFECTIVE DATE: This act becomes effective January 1, 2006.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 353

Short Title:	Supreme Court Rule Making.	(Public)
Sponsors:	Senators Clodfelter; and Snow.	
Referred to:	Judiciary I.	

March 3, 2005

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THE SUPREME COURT WITH THE AUTHORITY TO REVISE THE RULES OF CIVIL AND CRIMINAL PROCEDURE AND THE RULES OF EVIDENCE, SUBJECT TO AMENDMENT OR VETO BY THE GENERAL ASSEMBLY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-34 reads as rewritten:

"**§ 7A-34. Rules of practice and procedure in trial courts.**

(a) The Supreme Court is hereby authorized to prescribe rules of practice and procedure for the superior and district courts supplementary to, and not inconsistent with, acts of the General Assembly. Pursuant to the authority granted it under Article IV, Section 13 of the North Carolina Constitution, the General Assembly delegates authority to the Supreme Court to adopt and amend the rules of civil and criminal procedure and rules of evidence for the trial divisions.

Except as provided in subsection (b) of this section, each new rule or amended rule shall be published in the North Carolina Register and shall become effective on January 1 next following a regular session of the General Assembly when the rule could be amended or vetoed as set forth in subsection (b) of this section.

(b) The General Assembly may amend or veto any proposed new rule or amended rule. A rule prescribed pursuant to this section shall not become effective unless the rule is published at least 25 days prior to the convening of a regular session of the General Assembly and no bill to amend or veto a new rule or amended rule is enacted before that regular session of the General Assembly adjourns. For purposes of this section, "session of the General Assembly adjourns" means (i) in a regular session held in an odd-numbered year, adjournment by joint resolution for more than 10 days; and (ii) in a regular session held in an even-numbered year, adjournment sine die.

(c) The Chief Justice may appoint advisory committees of up to eight members each to advise the Supreme Court on the adoption and amendment of the Rules of Civil Procedure, the Rules of Criminal Procedure, and the Rules of Evidence. Members of

each advisory committee who are not officers or employees of the State shall receive compensation and reimbursement for travel and subsistence expenses at the rates specified in G.S. 138-5. Members of each advisory committee who are officers or employees of the State shall receive reimbursement for travel and subsistence expenses at the rate set out in G.S. 138-6. Members of each advisory committee who are legislators shall be reimbursed for subsistence and travel expenses at the rates set out in G.S. 120-3.1.

(d) The Rules of Civil Procedure, as set forth in Chapter 1A and elsewhere in the General Statutes, the Rules of Evidence, as set forth in Chapter 8C and elsewhere in the General Statutes, and the Rules of Criminal Procedure, as set forth in Chapter 15A and elsewhere in the General Statutes, are deemed adopted by the Supreme Court until modified by the Supreme Court pursuant to this section. Upon adoption of a new rule or amended rule, the Supreme Court shall notify the General Assembly and the Revisor of Statutes of the need to repeal or amend the General Statutes to reflect the change. The Revisor of Statutes shall codify in the General Statutes all rules of civil and criminal procedure and rules of evidence for the trial divisions adopted or amended in accordance with this section."

SECTION 2. The Judicial Department shall implement this act using funds appropriated to the Department for travel and subsistence to reimburse members of the advisory committees on the rules of civil procedure, criminal procedure, and evidence authorized by G.S. 7A-34(c). This act shall not be construed to obligate the General Assembly to make any additional appropriation to implement the provisions of this act.

SECTION 3. This act becomes effective January 1, 2006.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 856
PROPOSED COMMITTEE SUBSTITUTE S856-PCS55245-RU-45

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.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 5-31-05

S. B. No. 856 Amendment No. #1
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE S856-CSRU-45[v.3]

Rep.) Sen.) CLODFELTER

1 moves to amend the bill on page 3, line 19

2 ( ) WHICH CHANGES THE TITLE

3 by DELETING THE WORD "~~SPECIAL~~" AND SUBSTITUTING THE

4 WORD "SPECIAL".

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SIGNED _____

ADOPTED X FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 5-31-05

S. B. No. 856 Amendment No. #2
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE S856-CSRV-45 [v.3]

Rep.)
Sen.) CLODFELTER

moves to amend the bill on page 2, line 41

( ) WHICH CHANGES THE TITLE

by DELETING THE WORDS "OR CRIMINAL ~~PROCEDURE~~"; AND

ON PAGE 3, LINE 1, BY REWRITING THE LINE TO READ

"STATUTES OR THE FEDERAL RULES OF CIVIL PROCEDURE."

SIGNED _____

ADOPTED X FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 856

AMENDMENT NO. #3
(to be filled in by Principal Clerk)

S856-ARU-33 [v.2]

Date 5/31 ,2005

Comm. Sub. [YES]
Amends Title [NO]
S856-CSRU-45

Senator RAND

moves to amend the bill on page 3, lines 13 through 28, by rewriting the lines to read:

"(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

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 856

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

S856-ARU-33 [v.2]

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."

SIGNED Tony Lada
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED X FAILED _____ TABLED _____

SENATE BILL 856:
Access to Public Trial Preparation Records

BILL ANALYSIS

Committee:	Senate Judiciary I	**Date:**	May 31, 2005
Introduced by:	Sen. Clodfelter	**Summary by:**	O. Walker Reagan
Version:	PCS to First Edition S856-CSRU-45		Committee Co-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.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 856

Short Title:	Access to Public Trial Preparation Records.	(Public)
Sponsors:	Senators Clodfelter; and Rand.	
Referred to:	Judiciary I.	

March 23, 2005

A BILL TO BE ENTITLED

AN ACT REGARDING ACCESS TO A PUBLIC RECORD THAT IS ALSO A TRIAL PREPARATION RECORD.

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 records.**

(a) Scope. – A request to inspect, examine, or copy a public record that is also a trial preparation record 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 provided otherwise in this section, a custodian may deny access to a public record that is also a trial preparation record. If the denial is based on an assertion that the public record is a trial preparation record 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) Preceding a Legal Proceeding. – Any person who is denied access to a public record that is also a trial preparation record that was prepared in anticipation of a legal proceeding that has not commenced may petition the court pursuant to G.S. 132-9 for determination as to whether the public record is a trial preparation record 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 appeal, who is denied access to a public record that is also a trial preparation record that pertains to the pending proceeding may seek access to such record only through the pending legal proceeding and pursuant to the procedural substantive standards of the rules of civil procedure that

apply to that proceeding. A party to the pending legal proceeding may not directly or indirectly petition the court for such record pursuant to G.S. 132-9.

(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 appeal, who is denied access to a public record that is also a trial preparation record that pertains to the pending legal proceeding may petition the court pursuant to G.S. 132-9. In determining whether to require the custodian to provide access to all or any portion of the record, the court shall apply the substantive standards of G.S. 1A-1, Rule 26(b)(3).

(3) Any person who is denied access to a public record that is also a trial preparation record and who is not a party to the pending legal proceeding, including any appeal, to which the trial preparation record pertains, and who is not acting in concert with or as an agent for a 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 a trial preparation record.

(e) Following a Legal Proceeding. – Upon the conclusion of a legal proceeding, including the completion of all appeals, or if a legal proceeding has not been commenced, upon the running of all applicable statutes of limitations, the custodian of a public record that is also a trial preparation record 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 a trial preparation record, 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 work-product privilege as to any other trial preparation document.

(g) Trial Preparation Records That are Not Public. – This section does not require disclosure, or authorize a court to require disclosure, of a trial preparation record that is not also a public record or that is otherwise 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. – Litigation in federal or State court. Legal proceeding includes any federal, State, or local government administrative or quasi-judicial proceeding not subject to federal or State rules of civil procedure.

(2) Trial preparation record. – 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 agreement."

SECTION 2. This act becomes effective October 1, 2005.

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE — 5/31/05 pm

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
Lisa Bateman	DJJDP
Judy Emken	CMPD - Charlotte
Boyd Cansler	City of Charlotte
Karina Grace	CMPD -
Brenda Jones	CMPD
Lisa Kinsaugh	NCCPTA
Kary Esselhour	Sen. P. Berger's office
Gayle Wilson	Orange County
Bobby Disher	TRPNC
Hal Miller	NCACCT
Joseph Carter	Waste Industries, USA Inc.

VISITOR REGISTRATION SHEET

5/31/05 AM

JUDICIARY 1 COMMITTEE
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
Ron Vaughan	Attorney -
Jon Guajardo	N.C. STATE BAR
Kathleen Edwards	UNC-CH Legis Reporting Service
Luann Shemwell	Union Power Cooperative
L. L. Sorensen	Union power Coop
Tony Harris	Union Power Cooperative
Jeff Edwards	Albemarle EMC
Bradley Watkins	Albemarle EMC
Chris Ford	Albemarle EMC
Dave Nunn	S.A.

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE
Name of Committee

5/31/05 AM
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
CHRIS HENDERSON	JONES LD. CLERK
ARCHIE SMITH	CLERKS OF S.C. ASSOC
[signature]	✓
Barbara Hunter	Smith Moore
Charlie Diehl	NC Trucking Assn.
Whit Gibson	Clerk of Court - Scotland Co.
Alastair Macaulay	NC Home Builders
[illegible]	KCCH
LINDA ASHENDORF	BFI/Allied Waste
Betty Tarence	Bank of America
Jeannette Overby	Energy United Coop - Statesville

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE — 5/31/05 AM

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
Lu-Ann Cor	CFSA
Anita Watkins	NCLM
Steve Bowman	Towing & Recovery of NC
Rob Stone	NCDOT
[signature]	AOC
Erik Kinney	NC Conservation Network
Allison Dolan	NC Conservation Network

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Tuesday	May 31, 2005	10:00 to 11:a.m. & 12:00 to 2:00 p.m.	1027 LB

j

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 327	NC State Bar Changes/Fees.	Senator Rand
SB 353	Supreme Court Rule Making.	Senator Clodfelter
SB 523	En Banc Procedure.	Senator Clodfelter
SB 526	Deter Juvenile Auto Larceny.	Senator Clodfelter
SB 832	Tow Trucks and Recovery Vehicles.	Senator Hagan
SB 856	Access to Public Trial Preparation Records.	Senator Clodfelter
SB 917	Personal Representative/Selling Real Property.	Senator Clodfelter
SB 932	Protect Confidential Info of Public Agencies.	Senator Clodfelter
SB 951	Public-Private Solid Waste Collection.	Senator Hoyle
SB 1039	Increase Penalties/2nd Degree Rape.	Senator Jenkins
SB 1044	Undertaking to Stay Money Judgment.	Senator Clodfelter
SB 1070	Balance Fair Sentencing/Structured	Senator Rand

Sentencing.

SB 1080 Criminal Changes. Senator Berger

Senator Daniel G. Clodfelter, Chair

Judiciary 1 Committee

May 31, 2005 p.m.

Minutes

Senator Dan Clodfelter called the meeting to order at 12:11 p.m. with eighteen members present.

SB-951 (Public-Private Solid Waste Collection) Committee Substitute was introduced by Senator Clodfelter. Senator Jeanne Lucas moved for adoption of the Committee Substitute. All members voted yes. Motion carried. Bill sponsor Senator David Hoyle explained that the bill would require local governments that displace private companies that provide solid waste collection services to residents within the local government's jurisdiction to give notice of its intent to do so and to provide for compensation to the companies that are being displaced. Staff attorney, Walker Reagan explained the changes to the bill. (See attached Bill Summary for further information). Senator's Charlie Albertson, Ham Horton, Jeanne Lucas, Tony Rand and Janet Cowell had questions. Mr. Andy Romanet, General Counsel for League of Municipalities, Mr. Paul Meyer, County Commissioners Association and Mr. Jimmy Jones, Chairman for Solid Waste Committee for Wake County and Mr. Gill Wilson, Director, Solid Waste Services in Orange County spoke on the and answered questions. Senator Hoyle offered an Amendment to the bill on page 2, line 27, page 3, line 19, page 3, line 20 and page 5, line 6. (See attached Amendment), and asked for adoption of the Amendment. All members voted yes. Motion carried. He then offered a second Amendment to the bill on page 5, line 40 and asked for adoption of the Amendment. All members voted yes. Motion carried. Senator Clodfelter stated that the bill would be displaced and rescheduled for a future meeting.

SB-832 (Tow Trucks and Recovery Vehicles) Committee Substitute was introduced by Senator Clodfelter. Senator RC Soles moved for adoption of the Committee Substitute. All members voted yes. Motion carried. Bill sponsor, Senator Kay Hagen explained that the bill would exempt wreckers from highway weight and size limitations in order to tow disabled vehicles up to 50 miles from the place of disablement. The bill's provision to allow liens on cargo has been deleted. Senator's Tony Rand, Ham Horton, RC Soles and Jerry Tillman had questions. Mr. Steve Bowman, Engineer with Towing Association of Raleigh and Staff Attorney, Mr. Hal Pell spoke on the bill and answered questions. Senator Clark Jenkins moved for a Favorable Report. All members voted yes. Motion carried.

SB-932 (Protect Confidential Info Of Public Agencies) Committee Substitute was introduced by Vice Chair, Senator RC Soles and he moved for adoption of the Committee Substitute. All members voted yes. Motion carried. Bill sponsor,

Senator Dan Clodfelter explained changes to the bill. No discussion. Senator Tony Rand moved for a Favorable Report. All members voted yes> Motion carried.

SB-917 (Personal Representative/Selling Real Property) Committee Substitute was introduced by Vice Chair, Senator RC Soles and he moved for adoption of the Committee Substitute. All members voted yes. Motion carried. Bill sponsor, Senator Clodfelter explained changes to the bill. Senator's Rand, Soles, Hoyle and Jenkins had questions. Mr. Graham Holding, NC Bar Association Trust Attorney from Charlotte and Mr. James Stafford, Orange County Clerk of Court spoke on the bill and answered questions. Senator Clodfelter moved for a Favorable Report. Majority of members voted No. Senator Soles stated that the bill would be displaced and heard again at a future meeting.

Sb-1039 (Increase Penalties/2nd Degree Rape) Committee Substitute was introduced by Senator Clodfelter. Senator Charlie Albertson moved for adoption of the Committee Substitute. All members voted yes. Motion carried. Bill sponsor, senator Clark Jenkins explained that the bill would increase the penalties for second-degree rape and second-degree sexual offense. It would also amend the first-degree rape and first-degree sexual offense statutes to provide that persons who are mentally disabled, mentally incapacitated, or physically helpless may be victims under the statutes' provisions. Senator's Vernon Malone, Tony Rand and Jeanne Lucas had questions. Senator Jenkins answered the questions. Senator Lucas moved for a Favorable Report. All members voted yes. Motion carried. Senator Clodfelter stated that the bill would be re-referred to the Appropriations Committee.

SB-1080 (Criminal Changes) Committee Substitute was introduced by Senator Clodfelter. Senator Phillip Berger moved for adoption of the Committee Substitute. All members voted yes. Motion carried. Bill sponsor, Senator Berger explained that this bill enhances the penalty for a person who possesses, sells, or delivers from two pounds up to ten pounds of marijuana. The bill also makes changes to the Sex Offender Registry, including notification by the courts to the agency responsible for the registry; restrictions on the activities of sex offenders; and a requirement that sex offenders include their status on the application for a drivers' license or permit. Senator's Ham Horton, and Martin Nesbitt had questions. Staff attorney, Hal Pell answered the questions. Senator Phillip Berger offered an Amendment to the bill on page 4, line 7 and moved for adoption of the Amendment. All members voted yes. Amendment was adopted. (See attached Amendment). Senator Clodfelter stated the bill would be displaced and heard at a future meeting.

Being no further business the meeting adjourned at 1:52 p.m.

Senator Dan Clodfelter, Chair

Wanda Joyner, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Daniel G. Clodfelter, Chair

Tuesday, May 31, 2005

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

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

S.B. **951** Public-Private Solid Waste Collection.

Draft Number:	PCS85264
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

S.B. **1039** Increase Penalties/2nd Degree Rape.

Draft Number:	PCS85263
Sequential Referral:	None
Recommended Referral:	Appropriations/Base Budget
Long Title Amended:	Yes

TOTAL REPORTED: 2

Committee Clerk Comments:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Daniel G. Clodfelter, Chair

Tuesday, May 31, 2005

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

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

S.B. **353** Supreme Court Rule Making.

Draft Number:	PCS75328
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

S.B. **832** Tow Trucks and Recovery Vehicles.

Draft Number:	PCS65333
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

S.B. **856** Access to Public Trial Preparation Records.

Draft Number:	PCS55245
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

S.B. **932** Protect Confidential Info of Public Agencies.

Draft Number:	PCS35235
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 4

Committee Clerk Comments:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Daniel G. Clodfelter, Chair

Tuesday, May 31, 2005

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

FAVORABLE

S.B. **1081** Procedures for Advertising Tax Liens.
Sequential Referral: None
Recommended Referral: None

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

S.B. **523** En Banc Procedure.
Draft Number: PCS35231
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

TOTAL REPORTED: 2

Committee Clerk Comments:

SENATE COMMITTEE SUBSTITUTE

GENERAL ASSEMBLY OF NORTH CAROLINA MAY 31 2005

SESSION 2005

ADOPTED

S

SENATE BILL 951
PROPOSED COMMITTEE SUBSTITUTE S951-PCS85264-RY-5

Short Title: Public-Private Solid Waste Collection. (Public)

Sponsors:

Referred to:

March 24, 2005

A BILL TO BE ENTITLED

AN ACT TO REQUIRE A UNIT OF LOCAL GOVERNMENT THAT DISPLACES A PRIVATE COMPANY THAT IS PROVIDING COLLECTION SERVICES FOR SOLID WASTE OR RECOVERED MATERIALS TO GIVE NOTICE OF ITS INTENT TO DO SO AND TO PROVIDE COMPENSATION TO THE DISPLACED PRIVATE COMPANY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 160A-37.3 and G.S. 160A-324 are repealed.

SECTION 2. G.S. 160A-49.3 reads as rewritten:

"**§ 160A-49.3. Contract with private solid waste collection ~~firm(s).~~firms.**

~~(a) If the area to be annexed described in a resolution of intent passed under G.S. 160A-49(a) includes an area where a private solid waste collection firm or firms:~~

~~(1) On the ninetieth day preceding the date of adoption of the resolution of intent in accordance with G.S. 160A-49(j) or~~

~~(2) On the ninetieth day preceding the date of adoption of the resolution of consideration in accordance with G.S. 160A-49(i)~~

~~was providing solid waste collection services in the area to be annexed, and is still providing such services on the date of adoption of the resolution of intent, and:~~

~~(3) By reason of such annexation any franchise with a county or arrangements with third parties for solid waste collection will be terminated, and~~

~~(4) During the 90 day period preceding the date of adoption of the resolution of intent or resolution of consideration provided by subdivisions (1) or (2) of this subsection, the firm had in such area an average of 50 or more residential customers or a monthly average revenue from nonresidential customers in such area of five hundred dollars ($500.00) or more; provided that customers shall be included in such calculation only if policies of the city will provide solid waste

~~collection to those customers such that arrangements between the solid waste firm and the customers will be terminated, and~~

~~(5) If such firm makes a written request that it wishes to contract, signed by an officer or owner of the firm, and delivered to the city clerk at least 10 days before the public hearing,~~

~~unless other arrangements satisfactory to the private solid waste collection firm or firms have been made, the city shall either:~~

~~(6) Contract with such solid waste collection firm(s) for a period of two years after the effective date of the annexation ordinance to allow the solid waste collection firm(s) to provide collection services to the city in the area to be annexed for sums determined under subsection (d) of this section, or~~

~~(7) Pay to the solid waste collection firm(s) in lieu of a contract a sum equal to the economic loss determined under subsection (f) of this section.~~

(a) If the area to be annexed described in a resolution of intent passed under G.S. 160A-37(a) or G.S. 160A-49(a), or an act of the General Assembly, includes an area where a firm, on the ninetieth day preceding the date of adoption of the resolution of intent in accordance with G.S. 160A-37(i) or (j), or G.S. 160A-49(i) or (j), or the date of introduction in the House of Representatives or the Senate of the bill which became the act making the annexation, as applicable, was providing solid waste collection services in the area to be annexed on the date of adoption of the resolution of intent or the introduction of the bill making the annexation, and by reason of the annexation the firm's franchise with a county or arrangements with third parties for solid waste collection will be terminated, a firm that meets the requirements of subsection (a1) of this section, shall be entitled to choose one of the following options:

(1) Contract with the city for a period of two years after the effective date of the annexation ordinance to allow the firm to provide collection services to the city in the area to be annexed for sums determined under subsection (d) of this section.

(2) Be paid by the city for the firm's economic loss, with one-third of the economic loss to be paid within 30 days of the termination and the balance paid in five equal monthly installments during the next succeeding five months.

(3) Make other arrangements satisfactory to the firm.

(a1) To qualify for the options set forth in subsection (a) of this section, a firm must have done one of the following:

(1) Subsequent to receiving notice of the annexation in accordance with subsection (b) of this section, filed with the city clerk at least 10 days prior to the public hearing a written request to contract with the city to provided solid waste collection services containing a certification, signed by an officer or owner of the firm, that the firm serves at least 50 customers within the county at that time.

(2) Contacted the city clerk pursuant to public notice published by the city, pursuant to G.S. 160A-49(b), at least 10 days before the hearing and provide to the city clerk a written request to contract with the city to provide solid waste collection services. The request must contain a certification signed by an officer or owner of the firm that the firm serves at least 50 customers within the county at that time.

Notices required under this subsection must be filed in accordance with subsection (a2) of this section.

(a2) Notice of provision of solid waste collection service shall be filed with the city clerk of all cities located in the firm's collection area or within five miles thereof.

(b) ~~The city shall make a good faith effort to provide at least 20 days before the public hearing a copy of the resolution of intent to each private firm providing solid waste collection services in the area to be annexed.~~ At least four weeks prior to the date of the informational meeting, the city shall provide written notice of the resolution of intent to all firms serving the area to be annexed. The notice shall be sent to all firms that filed notice in accordance with subsection (a2) of this section by certified mail, return receipt requested, to the address provided by the firm under subsection (a2) of this section.

(c) The city may require that the contract contain:

(1) A requirement that the ~~private~~ firm post a performance bond and maintain public liability insurance coverage;

(2) A requirement that the ~~private~~ firm agree to service customers in the annexed area that were not served by that firm on the effective date of annexation;

(3) A provision that divides the annexed area into service areas if there were more than one firm being contracted within the area, such that the entire area is served by the ~~private~~ firms, or by the city as to customers not served by the ~~private~~ firms;

(4) A provision that the city may serve customers not served by the firm on the effective date of annexation;

(5) A provision that the contract can be cancelled in writing, delivered by certified mail to the firm in question with 30 days to cure ~~for~~ substantial violations of the contract, but no contract may be cancelled on these grounds unless the Local Government Commission finds that substantial violations have occurred, except that the city may suspend the contract for up to 30 days if it finds substantial violation of health laws;

(6) Performance standards, not exceeding city ~~standards,~~standards existing at the time of notice published pursuant to G.S. 160A-49(b) with provision that the contract may be cancelled for substantial violations of those standards, but no contract may be cancelled on those grounds unless the Local Government Commission finds that substantial violations have occurred;

(7) A provision for monetary damages if there are violations of the contract or of performance standards.

(d) If the services to be provided to the city by reason of the annexation are substantially the same as rendered under the franchise with the county or arrangements with the parties, the amount paid by the city shall be at least ninety percent (90%) of the amount paid or required under the existing franchise or arrangements. If such services are required to be adjusted to conform to city standards or as a result of changes in the number of customers and as a result there are changes in disposal costs (including mileage and landfill charges), requirements for storage capacity (dumpsters and/or residential carts), and/or frequency of collection, the amount paid by the city for the service shall be increased or decreased to reflect the value of such adjusted services as if computed under the existing franchise or arrangements. In the event agreement cannot be reached between the city and the ~~private~~ firm under this subsection, ~~such~~ the matters shall be determined by the Local Government Commission.

~~(e) The city may, at any time after one year's operation thereunder, terminate a contract made with the solid waste collection firm under subsection (a) of this section upon payment to said firm of an amount equal to the economic loss determined in subsection (f) of this section, but discounted by the percentage of the contract which has elapsed prior to the effective date of the termination.~~

~~(f) As used in this section, "economic loss" is 12 times the average monthly revenue for the three months prior to the passage of the resolution of intent or resolution of consideration, as applicable under subsection (a) of this section, collected or due the private firm for residential, commercial, and industrial collection service in the area annexed or to be annexed.~~

(g) The ~~private~~ firm may, if it contends that no contract has been offered, appeal to the Local Government Commission within 30 days following passage of an annexation ordinance. The ~~private~~ firm may appeal to the Local Government Commission for an order staying the operation of the annexation ordinance pending the outcome of the review. The Commission may grant or deny the stay upon such terms as it deems proper. If the Local Government Commission finds that the city has not made an offer which complies with this section, it shall remand the ordinance to the municipal governing board for further proceedings, and the ordinance shall not become effective until the Local Government Commission finds that such an offer has been made. Either the ~~private~~ firm or the city may obtain judicial review in accordance with Chapter 150B of the General Statutes.

(h) A firm which has given notice under subsection (a) of this section that it desires to contract, and any firm that the city believes is eligible to give such notice, shall make available to the city not later than ~~10~~30 business days following a written request of the city, sent by certified mail return receipt requested, all information in its possession or control, including but not limited to operational, financial and budgetary information, necessary for the city to determine if the firm qualifies for the benefits of this section and to determine the nature and scope of the potential contract and/or economic loss. The firm forfeits its rights under this section if it fails to make a good faith response within ~~10~~30 business days following receipt of the written request for

information from the city, provided that the city's written request so states by specific reference to this section.

(i) As used in this section, the following terms mean:

(1) Economic loss. – A sum equal to 15 times the average gross monthly revenue for the three months prior to the passage of the resolution of intent or resolution of consideration, as applicable under subsection (a) of this section, collected or due the firm for residential, commercial, and industrial collection service in the area annexed or to be annexed.

(2) Firm. – A private solid waste collection firm."

SECTION 3. Part 1 of Article 16 of Chapter 160A of the General Statutes is amended by adding a new section to read:

"**§ 160A-327. Displacement of private solid waste collection services.**

(a) A unit of local government shall not displace a private company that is providing collection services for solid waste or recovered materials, or both, except as provided for in this section.

(b) Prior to displacing a private company, the unit of local government shall provide public notice of its intent to consider an action that will displace a private company by publishing notice of intent once a week for at least four consecutive weeks in at least one newspaper of general circulation in the area in which the unit of local government and the proposed displacement area are located. The first public notice shall be given 30 days prior to the displacement issues being placed on the agenda for discussion or action at an official business meeting of the governing body of the unit of local government. The notice shall specify each area in which the local government proposes to change the solid waste collection services that would result in the displacement of a private company. In addition, the unit of local government shall send written notice by certified mail, return receipt requested, to all companies that have filed notice with the unit of local government clerk pursuant to the provisions of subsection (g) of this section. The unit of local government shall deposit notice in the U.S. mail at least 30 days prior to the displacement issues being placed on the agenda for discussion or action at an official business meeting of the governing body of the unit of local government.

(c) Following the public notice required by subsection (b) of the section, but in no event later than six months after the date of the first publication of the public notice pursuant to subsection (b) of this section, the unit of local government may proceed to take action to displace a private company. The unit of local government or other public or private entity selected by the unit of local government may not commence the actual provision of these services for a period of 18 months from the date of the vote by the governing body of the unit of local government awarding a contract or exclusive franchise to a private firm, or approving the final plan for the unit of local government to deliver solid waste collection services, unless the unit of local government provides compensation to the displaced private company as follows:

(1) Subject to subdivision (3) of this subsection, if the private company has provided collection services in the displacement area prior to announcement of the displacement action, the unit of local government

shall provide compensation to the displaced private company in an amount equal to the total gross receipts for collection services provided in the displacement area for the 12 months prior to the initial public notice required under subsection (b) of this section.

(2) Subject to subdivision (3) of this subsection, if the displaced private company has provided collection services in the displacement area for less than 12 months, the unit of local government shall provide compensation to the displaced private company in an amount equal to the total gross receipts for the period of time that the private company provided such services in the displacement area.

(3) If the displaced private company purchased an existing operation of another private company providing such services, compensation shall be for 12 months based on the monthly average of the immediate preceding three month's total gross revenue.

(d) The amount due from the unit of local government to the displaced company shall be paid as follows: one-third of the economic loss to be paid within 30 days of the displacement and the balance paid in five equal monthly installments during the next succeeding five months.

(e) If the unit of local government fails to change the provision of solid waste services as described in the notices required under subsection (b) of this section within six months of the date of the first publication of public notice, the unit of local government shall not take action to displace without complying again with the provisions of subsection (b) of this section.

(f) As used in this section, the following terms mean:

(1) Displacement. – Any action by a unit of local government that prohibits or has the effect of prohibiting a private company from providing all or a portion of the collection services for solid waste, recovered materials, or recyclables that the company is providing in the affected area at least 90 days prior to the date of the first publication of notice required by subsection (b) of this section. Displacement also means an action by a unit of local government to use an availability fee, nonoptional fee, or taxes to fund competing collection services for solid waste, recovered materials, or recyclables that the private company is providing at the time that the first public notice required under subsection (b) of this section is given. Displacement does not include any of the following actions:

a. Failure to renew a franchise agreement or contract with a private company.

b. Taking action against a private company because the private company's operations present an imminent and substantial threat to human health and safety or are causing a substantial public nuisance.

c. Taking action against a private company because the private company has materially breached its franchise agreement or the terms of a contract with the local government.

d. Terminating an existing contract or franchise in accordance with the provisions of the contract or franchise agreement.

e. Providing temporary collection services under a declared state of emergency.

Displacement does not include circumstances when the local government contracts with the private solid waste collection company to continue service for a period of two years following the action that would otherwise displace the company in accordance with G.S. 160A-49.3(a)(1).

(2) Unit of local government. – A county, municipality, authority, or political subdivision that is authorized by law to provide for collection of solid waste or recovered materials, or both.

(g) Notice of the provision of solid waste collection service shall be filed with the unit of local government clerk of all cities located in the private company's collection area or within five miles thereof.

(h) This section shall not apply when a private company is displaced as the result of an annexation under Article 4A of Chapter 160A of the General Statutes or an annexation by an act of the General Assembly. The provisions of G.S. 160A-49.3 shall apply.

(i) If a unit of local government intends to provide compensation under subsection (c) of this section to a private company that has given notice under subsection (b) of this section, the private company shall make available to the unit of local government not later than 30 business days following a written request of the unit of local government, sent by certified mail, return receipt requested, all information in its possession or control, including operational, financial, and budgetary information necessary for the unit of local government to determine if the private company qualifies for the benefits of this section and to determine any potential compensation. The private company forfeits its rights under this section if it fails to make a good faith response within 30 business days following receipt of the written request for information from the unit of local government provided that the unit of local government's written request so states by specific reference to this section."

SECTION 4. This act becomes effective July 1, 2006, and applies to annexations initiated and all actions taken on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 5/31/05

S. B. No. 951 Amendment No. 1 (to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE S951-CSR4-5[v.8]

Rep.) HOYLE

(Sen.)

moves to amend the bill on page 2, line 27

( ) WHICH CHANGES THE TITLE

by deleting the word "three" and substituting the word "two", and;

on page 3 line 19 by deleting the following "Failure to File shall not limit a Firm's ability to be provided displacement", and;

on page 3 line 20 by deleting that line, and;

on page 5 line 6 by deleting the word "eighteen (18)" and substituting the word "fifteen (15)"; AND

SIGNED

ADOPTED ✓ FAILED TABLED

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

PAGE 2

EDITION No. _____

H. B. No. _____ DATE 5/31/05

S. B. No. 951 Amendment No. ~~1~~ 2

(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE S951-CSRH-5 [v.8]

Rep.) Hoyle
)
Sen.)

1 ~~moves to amend the bill~~ on page 5, line 40

2 ( ) WHICH CHANGES THE TITLE

3 by

4 deleting the words "twenty-four

5

6 (24)" and substituting the

7

8 word "eighteen (18)".

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SIGNED

ADOPTED ✓ FAILED TABLED

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 951

Short Title:	Public-Private Solid Waste Collection.	(Public)
Sponsors:	Senators Hoyle; and Apodaca.	
Referred to:	Judiciary I.	

March 24, 2005

A BILL TO BE ENTITLED

AN ACT TO REQUIRE A UNIT OF LOCAL GOVERNMENT THAT DISPLACES A PRIVATE COMPANY THAT IS PROVIDING COLLECTION SERVICES FOR SOLID WASTE OR RECOVERED MATERIALS TO GIVE NOTICE OF ITS INTENT TO DO SO AND TO PROVIDE COMPENSATION TO THE DISPLACED PRIVATE COMPANY.

The General Assembly of North Carolina enacts:

SECTION 1. Part 2A of Article 9 of Chapter 130A of the General Statutes is amended by adding a new section to read:

"**§ 130A-309.09E. Limit on units of local government regarding certain collection services.**

(a) Notwithstanding any other provision of law, a unit of local government shall not displace a private company that is providing collection services for solid waste or recovered materials, or both, unless the unit of local government complies with the requirements of this section.

(b) Prior to displacing a private company, the unit of local government shall provide public notice of its intent to take an action that will displace a private company by publishing notice of such intent once a week for at least four consecutive weeks in at least one newspaper of general circulation in the area in which the unit of local government and the proposed displacement area are located. The first public notice shall be given 30 days prior to the first vote by the governing body of the unit of local government on approval of the action to displace a private company. The notice shall specify each area in which a private company would be displaced. The unit of local government shall also provide written notice to all collection companies that may be displaced at least 90 days prior to the first vote by the governing body of the unit of local government on approval of the action to displace a private company.

(c) Following the public notice required by subsection (b) of this section, but in no event longer than six months after the first public notice pursuant to subsection (b) of this section, the unit of local government may proceed to take measures necessary to

provide collection services for solid waste or recovered materials or both. The unit of local government or other public or private entity selected by the unit of local government may not commence the actual provision of these services, unless the unit of local government provides two years' notice from the date of the first public notice under subsection (b) of this section or the unit of local government provides compensation to the displaced private company as follows:

(1) Subject to subdivision (3) of this subsection, if the private company has provided collection services in the displacement area for 18 months or longer, the unit of local government shall provide compensation to the displaced private company in an amount equal to the gross receipts for collection services provided in the displacement area for the 18 months previous to the initial public notice required under subsection (b) of this section.

(2) Subject to subdivision (3) of this subsection, if the displaced private company has provided collection services in the displacement area for less than 18 months, the unit of local government shall provide compensation to the displaced private company in an amount equal to the gross receipts for the period of time that the private company provided such services in the displacement area.

(3) If the displaced private company purchased an existing operation of another private company providing such services, compensation shall be based on the sum of the periods of time that the displaced private company and the previous company provided such services, up to a maximum of 18 months.

(d) The unit of local government shall pay the displaced private company in full within 30 days of the displacement or, if the displacement occurs in phases, within 30 days of the initial phase of the displacement.

(e) If the unit of local government fails to give final approval to the action described in the notices required under subsection (b) of this section within six months of the date of the first public notice, the unit of local government shall issue new public notices pursuant to subsection (b) of this section before it may proceed to displace a private company in accordance with the requirements under subsection (c) and subsection (d) of this section.

(f) The following definitions apply to this section:

(1) 'Displace' means any action by a unit of local government that prohibits or has the effect of prohibiting a private company from providing all or a portion of the collection services for solid waste, recovered materials, or recyclables that the company is providing at the time that the first public notice required by subsection (b) of this section is given. Displace also means an action by a unit of local government to use nonoptional fees or taxes to fund competing collection services for solid waste, recovered materials, or recyclables that the private company is providing at the time that the first public

notice required under subsection (b) of this section is given. 'Displace' does not include any of the following actions:

a. At the end of a franchise agreement or contract with a private company, the unit of local government does not renew the franchise agreement or contract and, following a competitive procurement process, either awards the contract to another private company or public entity or decides to provide these collection services itself.

b. A unit of local government takes action against a private company because the private company's operations present an imminent and substantial threat to human health and safety or are causing a substantial public nuisance.

c. A unit of local government takes action against a private company because the private company has materially breached its franchise agreement or contract with the local government.

d. A unit of local government legally terminates an existing contract or franchise in accordance with the provisions of that contract or franchise agreement.

e. A unit of local government takes action against a private company that refuses to continue operations under the terms and conditions of its existing franchise agreement or contract with the local government during the remaining term of that franchise agreement or contract.

(2) 'Unit of local government' means a county, municipality, authority, or political subdivision that is authorized by law to provide for collection of solid waste or recovered materials, or both."

SECTION 2. This act becomes effective October 1, 2005, and applies to contracts entered on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 832
PROPOSED COMMITTEE SUBSTITUTE S832-CSRK-27 [v.2]

5/31/2005 11:41:38 AM

Short Title: Wreckers/Travel mileage. (Public)

Sponsors:

Referred to:

March 23, 2005

A BILL TO BE ENTITLED

AN ACT TO ALLOW WRECKERS TO TAKE DISABLED VEHICLES UP TO 50 MILES FOR REPAIR, PARKING, OR STORAGE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-118 reads as rewritten:

"**§ 20-118. Weight of vehicles and load.**

(a) For the purposes of this section, the following definitions shall apply:

(1) Single-axle weight. – The gross weight transmitted by all wheels whose centers may be included between two parallel transverse vertical planes 40 inches apart, extending across the full width of the vehicle.

(2) Tandem-axle weight. – The gross weight transmitted to the road by two or more consecutive axles whose centers may be included between parallel vertical planes spaced more than 40 inches and not more than 96 inches apart, extending across the full width of the vehicle.

(3) Axle group. – Any two or more consecutive axles on a vehicle or combination of vehicles.

(4) Gross weight. – The weight of any single axle, tandem axle, or axle group of a vehicle or combination of vehicles plus the weight of any load thereon.

(5) Light-traffic roads. – Any highway on the State Highway System, excepting routes designated I, U.S. or N.C., posted by the Department of Transportation to limit the axle weight below the statutory limits.

(b) The following weight limitations shall apply to vehicles operating on the highways of the State:

(1) The single-axle weight of a vehicle or combination of vehicles shall not exceed 20,000 pounds.

(2) The tandem-axle weight of a vehicle or combination of vehicles shall not exceed 38,000 pounds.

(3) The gross weight imposed upon the highway by any axle group of a vehicle or combination of vehicles shall not exceed the maximum weight given for the respective distance between the first and last axle of the group of axles measured longitudinally to the nearest foot as set forth in the following table:

Distance Between	Maximum Weight in Pounds for any Group of Two or More Consecutive Axles					
Axles*	2 Axles	3 Axles	4 Axles	5 Axles	6 Axles	7 Axles
4	38000					
5	38000					
6	38000					
7	38000					
8 or less	38000	38000				
more than 8	38000	42000				
9	39000	42500				
10	40000	43500				
11		44000				
12		45000	50000			
13		45500	50500			
14		46500	51500			
15		47000	52000			
16		48000	52500	58000		
17		48500	53500	58500		
18		49500	54000	59000		
19		50000	54500	60000		
20		51000	55500	60500	66000	
21		51500	56000	61000	66500	
22		52500	56500	61500	67000	
23		53000	57500	62500	68000	
24		54000	58000	63000	68500	74000
25		54500	58500	63500	69000	74500
26		55500	59500	64000	69500	75000
27		56000	60000	65000	70000	75500
28		57000	60500	65500	71000	76500
29		57500	61500	66000	71500	77000
30		58500	62000	66500	72000	77500
31		59000	62500	67500	72500	78000
32		60000	63500	68000	73000	78500
33			64000	68500	74000	79000
34			64500	69000	74500	80000
35			65500	70000	75000	
36			66000**	70500	75500	

37	66500**	71000	76000
38	67500**	72000	77000
39	68000	72500	77500
40	68500	73000	78000
41	69500	73500	78500
42	70000	74000	79000
43	70500	75000	80000
44	71500	75500	
45	72000	76000	
46	72500	76500	
47	73500	77500	
48	74000	78000	
49	74500	78500	
50	75500	79000	
51	76000	80000	
52	76500		
53	77500		
54	78000		
55	78500		
56	79500		
57	80000		

* Distance in Feet Between the Extremes of any Group of Two or More Consecutive Axles.

** See exception in G.S. 20-118(c)(1).

(4) The Department of Transportation may establish light-traffic roads and further restrict the axle weight limit on such light-traffic roads lower than the statutory limits. The Department of Transportation shall have authority to designate any highway on the State Highway System, excluding routes designated by I, U.S. and N.C., as a light-traffic road when in the opinion of the Department of Transportation, such road is inadequate to carry and will be injuriously affected by vehicles using the said road carrying the maximum axle weight. All such roads so designated shall be conspicuously posted as light-traffic roads and the maximum axle weight authorized shall be displayed on proper signs erected thereon.

(c) Exceptions. – The following exceptions apply to G.S. 20-118(b) and 20-118(e).

...

(7) A wrecker may tow ~~a~~ any disabled truck, or other motor vehicle or combination of vehicles ~~in an emergency~~ to a place for repairs, ~~the nearest feasible point for parking~~ parking, or storage within 50 miles from the point that the vehicle was disabled and may tow a truck tractor or other replacement vehicle to the site of the disabled vehicle without being in violation of G.S. 20-118 provided that the wrecker

and towed vehicle or combination of vehicles otherwise meet all requirements of this section.

. . . . ."

SECTION 2. G.S. 20-116(e) reads as rewritten:

"(e) Except as provided by G.S. 20-115.1, no combination of vehicles coupled together shall consist of more than two units and no such combination of vehicles shall exceed a total length of 60 feet inclusive of front and rear bumpers, subject to the following exceptions: Said length limitation shall not apply to vehicles operated in the daytime when transporting poles, pipe, machinery or other objects of a structural nature which cannot readily be dismembered, nor to such vehicles transporting such objects operated at nighttime by a public utility when required for emergency repair of public service facilities or properties, but in respect to such night transportation every such vehicle and the load thereon shall be equipped with a sufficient number of clearance lamps on both sides and marker lamps upon the extreme ends of said projecting load to clearly mark the dimensions of such load: Provided that vehicles designed and used exclusively for the transportation of motor vehicles shall be permitted an overhang tolerance front or rear not to exceed five feet. Provided, that wreckers ~~in an emergency~~ may tow a truck, combination tractor and ~~trailer~~ trailer, trailer, or any other disabled vehicle or combination of vehicles to a place for ~~to the nearest feasible point for repair and/or storage:~~ repair, parking, or storage within 50 miles of the point where the vehicle was disabled and may tow a truck tractor or other replacement vehicle to the site of the disabled vehicle. Provided, however, that a combination of a house trailer used as a mobile home, together with its towing vehicle, shall not exceed a total length of 55 feet exclusive of front and rear bumpers. Provided further, that the said limitation that no combination of vehicles coupled together shall consist of more than two units shall not apply to trailers not exceeding three in number drawn by a motor vehicle used by municipalities for the removal of domestic and commercial refuse and street rubbish, but such combination of vehicles shall not exceed a total length of 50 feet inclusive of front and rear bumpers. Provided further, that the said limitation that no combination of vehicles coupled together shall consist of more than two units shall not apply to a combination of vehicles coupled together by a saddle mount device used to transport motor vehicles in a driveway service when no more than three saddle mounts are used and provided further, that equipment used in said combination is approved by the safety regulations of the Federal Highway Administration and the safety rules of the Department of Crime Control and Public Safety."

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

SENATE BILL 832 PCS: Wreckers/Travel Mileage.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Date:**	May 31, 2005
Introduced by:	Sen. Hagan	**Summary by:**	Hal Pell
Version:	First Edition		Committee Co-Counsel
	PCS S832-CSRK-27		

SUMMARY: ***The proposed committee substitute would exempt wreckers from highway weight and size limitations in order to tow disabled vehicles up to 50 miles from the place of disablement. The bill's provision to allow liens on cargo has been deleted. The act is effective when it becomes law.***

BILL ANALYSIS:

Section 1: Current law excepts wreckers, in an emergency, from weight limitations while operating on State highways. However, a wrecker may only tow a disabled vehicle to the "nearest feasible point" for parking or storage. The bill would amend the law to allow a wrecker, under any circumstance, to tow any disabled vehicle, or combination of vehicles, up to 50 miles from the point that the vehicle was disabled.

Section 2: Current law excepts wreckers, in an emergency, from size limitations while operating on State highways. However, a wrecker may only tow a disabled vehicle to the "nearest feasible point" for parking or storage. The bill would amend the law to allow a wrecker, under any circumstance, to tow any disabled vehicle, or combination of vehicles, up to 50 miles from the point that the vehicle was disabled.

The act is effective when it becomes law.

S832-smrk-csrk-001

SENATE
COMMITTEE SUBSTITUTE

GENERAL ASSEMBLY OF NORTH CAROLINA
MAY 31 2005
SESSION 2005

S

ADOPTED

SENATE BILL 932
PROPOSED COMMITTEE SUBSTITUTE S932-PCS35235-RU-44

Short Title: Public Records Act Amendments. (Public)

Sponsors:

Referred to:

March 24, 2005

A BILL TO BE ENTITLED

AN ACT TO PROTECT CONFIDENTIAL INFORMATION OF PUBLIC AGENCIES AND SUBDIVISIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 132-1.2 is amended by adding the following new subdivisions to read:

"(5) Reveals the social security number or bank account number of a donor of a gift or contribution made to a public agency, unless the donor gives permission for disclosure.

(6) Reveals the home or private cellular telephone number of any employee of a public agency without the consent of the employee, provided the home or cellular telephone number was not furnished by or paid for by the public agency."

SECTION 2. G.S. 132-6.2 is amended by adding a new subsection to read:

"(f) Notwithstanding subsection (a) of this section, a public agency shall not be required to provide a list of e-mail addresses in electronic or other form so long as the e-mail addresses on the list are available in a publicly accessible directory."

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

SENATE BILL 932:
Protect Confidential Info of Public Agencies

BILL ANALYSIS

Committee:	Senate Judiciary I	**Date:**	May 31, 2005
Introduced by:	Sen. Clodfelter	**Summary by:**	O. Walker Reagan Committee Co-Counsel
Version:	PCS to First Edition S932-CSRU-44		

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 932 would amend the public records law to protect certain confidential information held by public agencies.***

CURRENT LAW: G.S. 132-1 defines public records to include, unless specifically excluded, all documents, papers, letters, maps, books, photographs, films, sound recordings, magnetic or other tapes, electronic data-processing records, artifacts, or other documentary material, regardless of physical form or characteristics, made or received pursuant to law or ordinance in connection with the transaction of public business by any agency of North Carolina government or its subdivisions. Agency of North Carolina government or its subdivisions shall mean and include every public office, public officer or official (State or local, elected or appointed), institution, board, commission, bureau, council, department, authority or other unit of government of the State or of any county, unit, special district or other political subdivision of government.

BILL ANALYSIS:

Section 1 of the bill amends the definition of confidential information that is held by a public agency but that does not have to be made available as a public record, to include information that reveals:

- The social security number or bank account number of a donor of a gift or contribution made to a public agency, unless the donor gives permission for the disclosure.
- The home or private cellular telephone number of an employee of a public agency without the employee's consent except when the telephone number is furnished or paid for by the public agency.

Section 2 amends the portion of the public records law that requires a public agency to furnish copies of public records in whatever medium the record is normally kept, by providing an exception for a list of email addresses in electronic form if the addresses on the list are available in a publicly accessible directory.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 932

Short Title:	Protect Confidential Info of Public Agencies.	(Public)
Sponsors:	Senator Clodfelter.	
Referred to:	Judiciary I.	

March 24, 2005

A BILL TO BE ENTITLED

AN ACT TO PROTECT CONFIDENTIAL INFORMATION OF PUBLIC AGENCIES AND SUBDIVISIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 132-1 is amended by adding a new subsection to read:

"(c) A document, paper, letter, map, book, photograph, film, sound recording, magnetic or other tape, electronic data-processing record, artifact, or other documentary material, regardless of physical form or characteristics, is not a public record within the meaning of this section if it is in draft form, has been retained solely by its author and not distributed to anyone else other than the author's clerical support staff."

SECTION 2. G.S. 132-1.1(a) reads as rewritten:

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

Attorney-Client Privilege. – The attorney-client privilege applies to agencies of the State and its subdivisions to the same extent it applies to private parties. All communications within the privilege, whether to or from employee, individual officials,

or public bodies of such agencies or subdivisions are not public records as defined in G.S. 132-1."

SECTION 3. G.S. 132-1.2 is amended by adding the following new subdivisions to read:

"(5) Reveals the identity, social security number, address, phone number, bank account, or employer of a donor of a gift or contribution made to a public agency unless the donor gives permission for disclosure.

(6) Reveals the identity of or contact information for a juvenile enrolled in a recreational program operated by an agency of the State or one of its subdivisions.

(7) Reveals the home or private cellular telephone number of any employee of a public agency without the consent of the employee."

SECTION 4. Chapter 132 of the General Statutes is amended by adding a new section to read:

"**§ 132-1.8. Volunteer records.**

(a) The records comprising a volunteer file of an agency or subdivision of the State are not public records as provided in this Chapter. These records shall be open for inspection only to the following individuals:

(1) With the exception of letters or other materials of reference, the volunteer, former volunteer, individual who applied to be a volunteer, or that individual's properly authorized agent who may examine the individual's file in its entirety at any reasonable time.

(2) The volunteer's supervisory personnel.

(3) A party to a lawsuit, by authority of a subpoena or proper court order, only to the extent authorized by and in accordance with the subpoena or court order.

(b) An agency or subdivision may also release or permit the inspection of a volunteer file, except as prohibited by State or federal law if, prior to the release of the information or inspection of the file, both the following apply:

(1) The department head of an agency or chief executive officer of a subdivision determines that release of the information or inspection of the file is essential to maintaining either:

a. Public confidence in the administration of city services.

b. The level or quality of services provided by the city.

(2) The department head of an agency or chief executive officer of a subdivision determines that there is a substantial showing of the criteria set forth in subdivision (1) of this subsection. The written finding shall be a public record.

(c) A volunteer shall be notified at the time the individual applies to volunteer that the agency or subdivision may maintain a volunteer file on the individual, and that information in that file may be open to inspection in accordance with this section.

(d) This section shall not be construed to require an agency or subdivision to maintain records on volunteers, former volunteers, or individuals applying to be volunteers.

(e) As used in this section, the following terms mean:

(1) Chief executive. – The city manager of a municipality, or the mayor of a municipality that does not have a city manager, and the county manager of a county.

(2) Volunteer. – An individual who provides services to an agency or subdivision of the State without expectation of compensation and with the understanding that the agency or subdivision of the State is under no obligation to continue accepting those services or to compensate the volunteer for them.

(3) Volunteer file. – Any information collected by an agency or subdivision of the State regarding volunteers, former volunteers, and individuals applying to be volunteers that relates to the individual's application, selection or nonselection, performance, disciplinary action, or termination, whenever that information is located or in whatever form it is maintained."

SECTION 5. G.S. 132-6.2 is amended by adding a new subsection to read:

"(f) Notwithstanding subsection (a) of this section, a public agency shall not be required to provide a list of e-mail addresses in electronic or other form so long as the e-mail addresses on the list are available in a publicly accessible directory."

SECTION 6. Chapter 116 of the General Statutes is amended by adding a new Article to read:

"Article 33.

"Research Subject Identities, Data, and Analysis Protection.

"**§ 116-270. Confidential information.**

(a) Release of Research Records. – Public records as defined in G.S. 132-1 shall not include a record, other than a financial or administrative record, that is produced or collected by or for faculty, staff, or students of a constituent institution of The University of North Carolina in the conduct of or result of study, research, analysis, or creative work on an educational, commercial, scientific, technical, artistic, literary, pedagogical, aesthetic, or scholarly issue, regardless of whether the study, research, or work was sponsored by the institution alone or in coordination with a separate governmental body or private entity, until a reasonable opportunity is provided for the record to be published, protected under the laws applicable to intellectual property, or publicly released in a timely manner, in a forum intended to convey the information to the academic community or the intended audience. Research, data, analysis, or other work will be released pursuant to the policies of the Board of Governors of The University of North Carolina.

(b) Research Subject Identity. – Public records as defined in G.S. 132-1 shall not include a record containing the identity of participants in or subjects of studies, research, or analysis on an educational, commercial, scientific, technical, artistic, or scholarly issue that is produced or collected by or for faculty, staff, or students of a constitute institution of The University of North Carolina."

SECTION 7. G.S. 143-318.11(a)(5) reads as rewritten:

"(5) To establish, or to instruct the public body's staff or negotiating agents concerning the position to be taken by or on behalf of the public body in negotiating (i) the price and other material terms of a contract or proposed contract for the acquisition of real property by purchase, option, exchange, or lease; or (ii) the amount of compensation and other material terms of an employment contract or proposed employment contract. As used in this subdivision, "other material terms" includes the location or locations of the property to be acquired, the identity of the owner or owners of the property to be acquired, and the intended use or uses of the property to be acquired."

SECTION 8. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 1039
PROPOSED COMMITTEE SUBSTITUTE S1039-PCS85263-RK-28

Short Title: Increase Rape Penalties/Helpless Victims. (Public)

Sponsors:

Referred to:

March 24, 2005

A BILL TO BE ENTITLED

AN ACT TO STRENGTHEN PENALTIES FOR COMMITTING SECOND-DEGREE RAPE OR SECOND-DEGREE SEXUAL OFFENSE AND TO MAKE FIRST-DEGREE RAPE AND FIRST-DEGREE SEX OFFENSES APPLICABLE WHERE THE VICTIM IS MENTALLY DISABLED, MENTALLY INCAPACITATED, OR PHYSICALLY HELPLESS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-27.3 reads as rewritten:

"**§ 14-27.3. Second-degree rape.**

(a) A person is guilty of rape in the second degree if the person engages in vaginal intercourse with another person:

(1) By force and against the will of the other person; or

(2) Who is mentally disabled, mentally incapacitated, or physically helpless, and the person performing the act knows or should reasonably know the other person is mentally disabled, mentally incapacitated, or physically helpless.

(b) Any person who commits the offense defined in this section is guilty of a Class ~~C~~ B2 felony.

(c) Upon conviction, a person convicted under this section has no rights to custody of or rights of inheritance from any child conceived during the commission of the rape, nor shall the person have any rights related to the child under Chapter 48 or Subchapter 1 of Chapter 7B of the General Statutes."

SECTION 2. G.S. 14-27.5 reads as rewritten:

"**§ 14-27.5. Second-degree sexual offense.**

(a) A person is guilty of a sexual offense in the second degree if the person engages in a sexual act with another person:

(1) By force and against the will of the other person; or

(2) Who is mentally disabled, mentally incapacitated, or physically helpless, and the person performing the act knows or should reasonably know that the other person is mentally disabled, mentally incapacitated, or physically helpless.

(b) Any person who commits the offense defined in this section is guilty of a Class ~~C~~ B2 felony."

SECTION 3. G.S. 14-27.2 reads as rewritten:

"**§ 14-27.2. First-degree rape.**

(a) A person is guilty of rape in the first degree if the person engages in vaginal intercourse:

(1) With a victim who is a child under the age of 13 years and the defendant is at least 12 years old and is at least four years older than the victim; or

(2) With another person by force and against the will of the other ~~person, and:~~person; or

(3) With a person who is mentally disabled, mentally incapacitated, or physically helpless, and the person performing the act knows or should reasonably know the other person is mentally disabled, mentally incapacitated, or physically helpless, and:

a. Employs or displays a dangerous or deadly weapon or an article which the other person reasonably believes to be a dangerous or deadly weapon; or

b. Inflicts serious personal injury upon the victim or another person; or

c. The person commits the offense aided and abetted by one or more other persons.

(b) Any person who commits an offense defined in this section is guilty of a Class B1 felony.

(c) Upon conviction, a person convicted under this section has no rights to custody of or rights of inheritance from any child born as a result of the commission of the rape, nor shall the person have any rights related to the child under Chapter 48 or Subchapter 1 of Chapter 7B of the General Statutes."

SECTION 4. G.S. 14-27.4 reads as rewritten:

"**§ 14-27.4. First-degree sexual offense.**

(a) A person is guilty of a sexual offense in the first degree if the person engages in a sexual act:

(1) With a victim who is a child under the age of 13 years and the defendant is at least 12 years old and is at least four years older than the victim; or

(2) With another person by force and against the will of the other ~~person, and:~~person; or

(3) With a person who is mentally disabled, mentally incapacitated, or physically helpless, and the person performing the act knows or should

reasonably know the other person is mentally disabled, mentally incapacitated, or physically helpless, and:

a. Employs or displays a dangerous or deadly weapon or an article which the other person reasonably believes to be a dangerous or deadly weapon; or

b. Inflicts serious personal injury upon the victim or another person; or

c. The person commits the offense aided and abetted by one or more other persons.

(b) Any person who commits an offense defined in this section is guilty of a Class B1 felony."

SECTION 5. This act becomes effective December 1, 2005, and applies to offenses committed on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.

SENATE BILL 1039 PCS:
Increase Rape Penalties/Helpless Victims.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Date:**	May 31, 2005
Introduced by:	Sen. Jenkins	**Summary by:**	Hal Pell
Version:	PCS to First Edition S1039-CSRK-28		Committee Counsel

SUMMARY: ***The proposed committee substitute would increase the penalties for second-degree rape and second-degree sexual offense. It would also amend the first-degree rape and first-degree sexual offense statutes to provide that persons who are mentally disabled, mentally incapacitated, or physically helpless may be victims under the statutes' provisions. This act becomes effective December 1, 2005, and applies to offenses committed on or after that date.***

BACKGROUND: First-degree rape was a B felony, and second-degree rape was a C felony—one level lower—prior to the split of the B classification into B1 and B2. The category was split so that the penalty for first-degree rape (and sex offense) could be increased. The resulting schedule left second-degree rape and sex offense 2 levels lower, instead of one.

CURRENT LAW: Second-degree rape and second-degree sexual offense provide that a violation occurs when the sexual act is by force and against the will of the victim or if the perpetrator commits the act against someone who is are mentally disabled, mentally incapacitated, or physically helpless. The statutes on first-degree rape and first-degree sexual offense do contain the former provision, but not the latter.

BILL ANALYSIS:

Sections 1 and 2: Currently, first-degree rape and first-degree sexual offense are Class B1 felonies, and second-degree rape and second-degree sexual offense are Class C felonies. The bill would amend the second-degree offenses to B2 felonies--one level lower than the first-degree offenses.

Sections 3 and 4: Amends the first-degree rape and sex offense statutes to provide a perpetrator who commits an offense against someone who is mentally disabled, mentally incapacitated, or physically helpless (knows or should know of the condition), may be convicted of the offense.

EFFECTIVE DATE: This act becomes effective December 1, 2005, and applies to offenses committed on or after that date.

S1039e1-SMRK-CSRK-1039

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 1039

Short Title:	Increase Penalties/2nd Degree Rape.	(Public)
Sponsors:	Senators Jenkins; and Brock.	
Referred to:	Judiciary I.	

March 24, 2005

A BILL TO BE ENTITLED

AN ACT TO STRENGTHEN PENALTIES FOR COMMITTING SECOND-DEGREE RAPE OR SECOND-DEGREE SEXUAL OFFENSE.

Whereas, according to the 2000 Status of Women in North Carolina, first-degree rape carries a mandatory sentence and requires that the prosecutor show that the victim suffered serious injury or that a weapon was involved; and

Whereas, also according to the 2000 Status of Women in North Carolina, second-degree rape carries a sentence of 12 to 14 years and requires the State to provide that sex was forced and without consent; and

Whereas, according to the State Bureau of Investigation, in almost 80 percent of reported cases in both 1997 and 1998 the offender used hands, feet, and/or fists as means of force; and

Whereas, according to North Carolina law, lack of consent is not sufficient grounds for conviction; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-27.3 reads as rewritten:

"**§ 14-27.3. Second-degree rape.**

(a) A person is guilty of rape in the second degree if the person engages in vaginal intercourse with another person:

(1) ~~By force and against~~ Against the will of the other person; or

(2) Who is mentally disabled, mentally incapacitated, or physically helpless, and the person performing the act knows or should reasonably know the other person is mentally disabled, mentally incapacitated, or physically helpless.

(b) Any person who commits the offense defined in this section is guilty of a Class ~~C~~ B2 felony.

(c) Upon conviction, a person convicted under this section has no rights to custody of or rights of inheritance from any child conceived during the commission of

the rape, nor shall the person have any rights related to the child under Chapter 48 or Subchapter 1 of Chapter 7B of the General Statutes."

SECTION 2. G.S. 14-27.5 reads as rewritten:

"**§ 14-27.5. Second-degree sexual offense.**

(a) A person is guilty of a sexual offense in the second degree if the person engages in a sexual act with another person:

(1) ~~By force and against~~Against the will of the other person; or

(2) Who is mentally disabled, mentally incapacitated, or physically helpless, and the person performing the act knows or should reasonably know that the other person is mentally disabled, mentally incapacitated, or physically helpless.

(b) Any person who commits the offense defined in this section is guilty of a Class ~~C~~ B2 felony."

SECTION 3. Part 2 of Article 81B of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 15A-1340.16E. Enhanced if defendant is convicted of rape or sexual offense and the defendant used "date rape drugs" in the commission of the crime.**

(a) If a person is convicted of an offense under G.S. 14-27.2, 14-27.3, or 14-27.4, or 14-27.5, and it is found as provided in this section that: (i) the person committed the felony by using "date rape drugs", then the person shall have the minimum term of imprisonment to which the person is sentenced for that felony increased by 60 months. The maximum term of imprisonment shall be the maximum term that corresponds to the minimum term after it is increased by 60 months, as specified in G.S. 15A-1340.17(e) and (e1).

(b) An indictment or information for the violation of G.S. 14-27.2, 14-27.3, or 14-27.4 shall allege in that indictment or information the facts set out in subsection (a) of this section. The pleading is sufficient if it alleges that the defendant committed the felony by using "date rape drugs." One pleading is sufficient for all violations of G.S. 14-27.2, 14-27.3, or 14-27.4 that are tried at a single trial.

(c) The State shall prove the issues set out in subsection (a) of this section beyond a reasonable doubt during the same trial in which the defendant is tried for the felony unless the defendant pleads guilty or no contest to the issues. If the defendant pleads guilty or no contest to the felony but pleads not guilty to the issues set out in subsection (a) of this section, then a jury shall be impaneled to determine the issues.

(d) Subsection (a) of this section does not apply if the evidence of the use of the "date rape drug" is needed to prove an element of the felony or if the person is not sentenced to an active term of imprisonment. Subsection (a) of this section does not apply if the evidence of the use of the "date rape drug" is needed to prove an element of the felony or if the person is not sentenced to an active term of imprisonment.

SECTION 4. 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 1080
PROPOSED COMMITTEE SUBSTITUTE S1080-PCS55244-RK-21

Short Title: Sex Offender Registry/Criminal Law Changes. (Public)

Sponsors:

Referred to:

March 24, 2005

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE PENALTY FOR POSSESSION, SALE, OR DELIVERY OF LARGE AMOUNTS OF MARIJUANA AND TO ENHANCE REGULATORY PROVISIONS RELATING TO REGISTERED SEX OFFENDERS.

The General Assembly of North Carolina enacts:

PART I. AGGRAVATE PENALTY FOR LARGE AMOUNTS OF MARIJUANA

SECTION 1. G.S. 90-95 is amended by adding a new subdivision to read:

"(b1) Notwithstanding any other provision of law, any person who sells, delivers, or possesses two pounds but less than 10 pounds of a substance classified in Schedule VI shall be punished as a Class H felon and shall be sentenced to a minimum term of 20 months and a maximum term of 24 months in the State's prison, and shall be fined not less than one thousand dollars ($1,000) or more than five thousand dollars ($5,000)."

SECTION 2. G.S. 90-95(b) reads as rewritten:

"(b) Except as provided in subsections (b1), (h) and (i) of this section, any person who violates G.S. 90-95(a)(1) with respect to:

...."

SECTION 3. G.S. 90-95(d) reads as rewritten:

"(d) Except as provided in subsections (b1), (h) and (i) of this section, any person who violates G.S. 90-95(a)(3) with respect to:

...."

PART II. ENHANCE SEXUAL OFFENDER REGISTRATION LAWS

SECTION 4. G.S. 14-208.5 reads as rewritten:

"**§ 14-208.5. Purpose.**

The General Assembly recognizes that sex offenders often pose a high risk of engaging in sex offenses even after being released from incarceration or commitment and that protection of the public from sex offenders is of paramount governmental interest.

The General Assembly also recognizes that persons who commit certain other types of offenses against minors, such as kidnapping, pose significant and unacceptable threats to the public safety and welfare of the children in this State and that the protection of those children is of great governmental interest. Further, the General Assembly recognizes that law enforcement officers' efforts to protect communities, conduct investigations, and quickly apprehend offenders who commit sex offenses or certain offenses against minors are impaired by the lack of information available to law enforcement agencies about convicted offenders who live within the agency's jurisdiction. Release of information about these offenders will further the governmental interests of public safety so long as the information released is rationally related to the furtherance of those goals.

Therefore, it is the purpose of this Article to assist law enforcement agencies' efforts to protect communities by requiring persons who are convicted of sex offenses or of certain other offenses committed against minors to register with law enforcement agencies, to require the exchange of relevant information about those offenders among law enforcement agencies, to ensure to the extent possible that the citizens of this State are aware of those offenders that often pose a high risk of engaging in sex offenses even after being released from incarceration, and to authorize the access to necessary and relevant information about those offenders to others as provided in this Article."

SECTION 5. G.S. 14-208.7 reads as rewritten:

"**§ 14-208.7. Registration.**

(a) A person who is a State resident and who has a reportable conviction shall be required to maintain registration with the sheriff of the county where the person resides. If the person moves to North Carolina from outside this State, the person shall register within 10 days of establishing residence in this State, or whenever the person has been present in the State for 15 days, whichever comes first. If the person is a current resident of North Carolina, the person shall register:

(1) Within 10 days of release from a penal institution or arrival in a county to live outside a penal institution; or

(2) Immediately upon conviction for a reportable offense where an active term of imprisonment was not imposed.

Registration shall be maintained for a period of 10 years following release from a penal institution. If no active term of imprisonment was imposed, registration shall be maintained for a period of 10 years following each conviction for a reportable offense.

(a1) A person who is a nonresident student or a nonresident worker and who has a reportable conviction, or is required to register in the person's state of residency, is required to maintain registration with the sheriff of the county where the person works or attends school. In addition to the information required under subsection (b) of this section, the person shall also provide information regarding the person's school or place of employment as appropriate and the person's address in his or her state of residence.

(a2) If a person is a resident of this State, and is convicted of an offense which is a reportable conviction, the clerk of court for the court with jurisdiction shall notify the Division, no later than five days following the entry of the conviction, with the information set forth in subdivisions (b)(1) and (b)(2) of this section.

(b) The Division shall provide each sheriff with forms for registering persons as required by this Article. The registration form shall require:

(1) The person's full name, each alias, date of birth, sex, race, height, weight, eye color, hair color, drivers license number, and home address;

(2) The type of offense for which the person was convicted, the date of conviction, and the sentence imposed;

(3) A current photograph;

(4) The person's fingerprints;

(5) A statement indicating whether the person is a student or expects to enroll as a student within a year of registering. If the person is a student or expects to enroll as a student within a year of registration, then the registration form shall also require the name and address of the educational institution at which the person is a student or expects to enroll as a student; and

(6) A statement indicating whether the person is employed or expects to be employed at an institution of higher education within a year of registering. If the person is employed or expects to be employed at an institution of higher education within a year of registration, then the registration form shall also require the name and address of the educational institution at which the person is or expects to be employed.

The sheriff shall photograph the individual at the time of registration and take fingerprints from the individual at the time of registration both of which will be kept as part of the registration form. The registrant will not be required to pay any fees for the photograph or fingerprints taken at the time of registration.

(c) When a person registers, the sheriff with whom the person registered shall immediately send the registration information to the Division in a manner determined by the Division. The sheriff shall retain the original registration form and other information collected and shall compile the information that is a public record under this Part into a county registry. (1995, c. 545, s. 1; 1997-516, s. 1; 2001-373, s. 4; 2002-147, s. 17.)"

SECTION 6. G.S. 14-208.11 reads as rewritten:

"**§ 14-208.11. Failure to register; falsification of verification notice; failure to return verification form; restricted activities; order for arrest.**

(a) A person required by this Article to register who does any of the following is guilty of a Class F felony:

(1) Fails to register.

(2) Fails to notify the last registering sheriff of a change of address.

(3) Fails to return a verification notice as required under G.S. 14-208.9A.

(4) Forges or submits under false pretenses the information or verification notices required under this Article.

(5) Fails to inform the registering sheriff of enrollment or termination of enrollment as a student.

(6) Fails to inform the registering sheriff of employment at an institution of higher education or termination of employment at an institution of higher education.

(7) If registered because of an offense involving sexual abuse of a minor,

a. Communicates with, is in the presence of, or is found in or on the premises of the victim of the offense, or

b. Holds employment, or works as a volunteer, in any position that involves daily or regular supervision, contact, or association with minors.

(a1) If a person commits a violation of subsection (a) of this section, the probation officer, parole officer, or any other law enforcement officer who is aware of the violation shall immediately arrest the person in accordance with G.S. 15A-401, or seek an order for the person's arrest in accordance with G.S. 15A-305.

(b) Before a person convicted of a violation of this Article is due to be released from a penal institution, an official of the penal institution shall conduct the prerelease notification procedures specified under G.S. 14-208.8(a)(2) and (3). If upon a conviction for a violation of this Article, no active term of imprisonment is imposed, the court pronouncing sentence shall, at the time of sentencing, conduct the notification procedures specified under G.S. 14-208.8(a)(2) and (3)."

SECTION 7. G.S. 20-7(b1) reads as rewritten:

"(b1) Application. – To obtain an identification card, learners permit, or drivers license from the Division, a person shall complete an application form provided by the Division, present at least two forms of identification approved by the Commissioner, be a resident of this State, and, except for an identification card, demonstrate his or her physical and mental ability to drive safely a motor vehicle included in the class of license for which the person has applied. At least one of the forms of identification shall indicate the applicant's residence address. The Division may copy the identification presented or hold it for a brief period of time to verify its authenticity. To obtain an endorsement, a person shall demonstrate his or her physical and mental ability to drive safely the type of motor vehicle for which the endorsement is required.

The application form shall request all of the following information, and it shall contain the disclosures concerning the request for an applicant's social security number required by section 7 of the federal Privacy Act of 1974, Pub. L. No. 93-579:

(1) The applicant's full name.

(2) The applicant's mailing address and residence address.

(3) A physical description of the applicant, including the applicant's sex, height, eye color, and hair color.

(4) The applicant's date of birth.

(5) The applicant's valid social security number.

(6) The applicant's signature.

(7) Whether the applicant is subject to registration under the State Sex Offender and Public Protection Registration Program.

The application form, or such other form that shall be provided to every applicant, shall provide notice of the requirements to register under the State Sex Offender and Public

Protection Registration Program, Article 27A of Chapter 14 of the General Statutes. The telephone number of the local sheriff's office shall be included on the form so that an applicant can make any necessary inquiry. If the application indicates that the applicant is subject to registration, the Department will confirm with the sheriff's office that the applicant is currently registered.

If an applicant does not have a valid social security number and is ineligible to obtain one, the applicant shall swear to or affirm that fact under penalty of perjury. In such case, the applicant may provide a valid Individual Taxpayer Identification Number issued by the Internal Revenue Service to that person.

The Division shall not issue an identification card, learners permit, or drivers license to an applicant who (i) fails to provide either the applicant's valid social security number or the applicant's valid Individual Taxpayer Identification ~~Number.~~Number, or (ii) has stated on their application that they are subject to registration but are not registered under the State Sex Offender and Public Protection Registration Program."

SECTION 8. G.S. 20-7(n) reads as rewritten:

"(n) Format. – A drivers license issued by the Division must be tamperproof and must contain all of the following information:

(1) An identification of this State as the issuer of the license.
(2) The license holder's full name.
(3) The license holder's residence address.
(4) A color photograph of the license holder, taken by the Division.
(5) A physical description of the license holder, including sex, height, eye color, and hair color.
(6) The license holder's date of birth.
(7) An identifying number for the license holder assigned by the Division. The identifying number may not be the license holder's social security number.
(8) Each class of motor vehicle the license holder is authorized to drive and any endorsements or restrictions that apply.
(9) The license holder's signature.
(10) The date the license was issued and the date the license expires.
(11) If applicable, an annotation that the license holder is registered under the State Sex Offender and Public Protection Registration Program.

The Commissioner may waive the requirement of a color photograph on a license if the license holder proves to the satisfaction of the Commissioner that taking the photograph would violate the license holder's religious convictions. In taking photographs of license holders, the Division must distinguish between license holders who are less than 21 years old and license holders who are at least 21 years old by using different color backgrounds or borders for each group. The Division shall determine the different colors to be used.

At the request of an applicant for a drivers license, a license issued to the applicant must contain the applicant's race."

SECTION 9. This act becomes effective December 1, 2005, and applies to offenses committed on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1080

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

S1080-ARK-11 [v.1]

Date 5-31 ,2005

Comm. Sub. [YES]
Amends Title [NO]

Senator Berger of Rockingham

moves to amend the bill on page 4, line 7, by deleting the line.

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED X FAILED _____ TABLED _____

SENATE BILL 1080:
Sex Offender Registry/Criminal Law Changes.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Date:**	May 31, 2005
Introduced by:	Sen. Berger of Rockingham	**Summary by:**	Hal Pell
Version:	PCS to First Edition S1080-CSRK-21		Committee Counsel

SUMMARY: ***The act enhances the penalty for a person who possesses, sells, or delivers from two pounds up to 10 pounds of marijuana. The bill also makes changes to the Sex Offender Registry, including notification by the courts to the agency responsible for the registry; restrictions on the activities of sex offenders; and a requirement that sex offenders include their status on the application for a drivers' license or permit. The act is effective on December 1, 2005, and applies to offenses occurring on or after that date.***

CURRENT LAW:

Possession of more than 1.5 ounces of marijuana is a Class I felony. If no prior convictions, the only authorized punishment is community service.

Selling or delivering marijuana is a Class H felony. If no prior convictions, the penalty is either community service, intermediate punishment, or active punishment. The presumptive active minimum time would be 5-6 months.

Possessing more than 10 pounds of marijuana is a Class H felony, with a penalty of 25 to 30 months in prison, and a fine of up to $5,000.

BILL ANALYSIS:

Section 1: The act would enhance the penalty for a person who possesses, sells, or delivers at least two pounds, but less than 10 pounds. The offense would be a Class H felony, with a minimum sentence of 12 months in prison, and a maximum of 24 months. A fine from $1,000 to $5,000 is authorized.

Sections 2 and 3: Conforming amendments to the statutes to provide for the penalty in Section 1.

Section 4: Amends the statement of purpose for the Sex Offender Registry Program.

Section 5: Directs the clerk of court to notify the Division of Statistics, State Bureau of Investigation, when a person is convicted of an offense that requires registration. The person's name, date of birth, and other information contained in the referenced subdivisions would be included in the notification. At present, only offenders provide information to the sheriff of the county in which they reside. If serving an active sentence, the information is provided following release.

Section 6: The bill would include restrictions for offenders convicted of the sexual abuse of a minor. The offender could not communicate or be in the presence of the victim; reside in a household with any minor; or hold employment or other positions that require daily or regular contact with minors. A violation any of the provisions would be a Class F felony.

Section 7: The bill would require that the application for a drivers' license request whether the applicant is subject to registration. The DMV is directed to provide applicants with notification of the Sex Offender Registry Program, and requires the Department to confirm that an applicant who states that they are subject to the registration requirement are, in fact, registered. A person who is subject to registration, and who is not registered, would be ineligible for a license.

Section 8: The drivers' license of a person who is registered would be annotated to reflect the registration.

EFFECTIVE DATE: The act is effective on December 1, 2005, and applies to offenses occurring on or after that date.

S1080e1-SMRK-CSRK-001

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 1080

Short Title:	Criminal Changes.	(Public)
Sponsors:	Senator Berger of Rockingham.	
Referred to:	Judiciary I.	

March 24, 2005

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE PENALTY FOR DISCHARGING A FIREARM INTO A MOVING VEHICLE, TO CREATE THE OFFENSE OF AGGRAVATED ASSAULT ON A FEMALE, TO AMEND THE FALSE REPORT OF A BOMB STATUTE, TO INCREASE THE PENALTY FOR SALE OR DELIVERY OF TWO POUNDS OR MORE OF MARIJUANA, AND TO INCREASE REGULATORY PROVISIONS RELATING TO REGISTERED SEX OFFENDERS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-34.1 reads as rewritten:

"**§ 14-34.1. Discharging certain barreled weapons or a firearm into occupied property.**

(a) ~~Any~~ Except as provided in subsection (b) or (c) of this section, any person who willfully or wantonly discharges or attempts to discharge:

(1) Any barreled weapon capable of discharging shot, bullets, pellets, or other missiles at a muzzle velocity of at least 600 feet per second; or

(2) A firearm into any building, structure, vehicle, aircraft, watercraft, or other conveyance, device, equipment, erection, or enclosure while it is occupied is guilty of a Class E felony.

(b) Any person who violates subsection (a) of this section by discharging a described weapon into a vehicle, aircraft, watercraft, or other conveyance that is traveling upon the public streets or highways of this State, in a public vehicular area, is traveling upon any waterway, or is traveling in any airspace within this State, shall be guilty of a Class D felony.

(c) Any person who violates subsection (b) of this section and causes serious injury to any person shall be guilty of a Class B2 felony."

SECTION 2. Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-34.7A. Aggravated assault on a female.**

Unless covered under some other provision of law providing greater punishment, any male person, who is at least 18 years of age, that assaults a female person and inflicts serious injury shall be guilty of a Class F felony."

SECTION 3. G.S. 14-69.1 reads as rewritten:

"**§ 14-69.1. Making a false report concerning destructive device.**

(a) Except as provided in subsection (c) of this section, any person who, by any means of communication to any person or group of persons, makes a report, knowing or having reason to know the report is false, that there is located ~~in~~ in, or in sufficient proximity to cause damage to, any building, house or other structure whatsoever or any vehicle, aircraft, vessel or boat any device designed to destroy or damage the building, house or structure or vehicle, aircraft, vessel or boat by explosion, blasting or burning, is guilty of a Class H felony.

(b) Repealed by S.L. 1997-443, s. 19.25(cc).

(c) Any person who, by any means of communication to any person or groups of persons, makes a report, knowing or having reason to know the report is false, that there is located ~~in~~ in, or in sufficient proximity to cause damage to, any public building any device designed to destroy or damage the public building by explosion, blasting, or burning, is guilty of a Class H felony. Any person who receives a second conviction for a violation of this subsection within five years of the first conviction for violation of this subsection is guilty of a Class G felony. For purposes of this subsection, "public building" means educational property as defined in G.S. 14-269.2(a)(1), a hospital as defined in G.S. 131E-76(3), a building housing only State, federal, or local government offices, or the offices of State, federal, or local government located in a building that is not exclusively occupied by the State, federal, or local government.

(d) The court may order a person convicted under this section to pay restitution, including costs and consequential damages resulting from the disruption of the normal activity that would have otherwise occurred on the premises but for the false report, pursuant to Article 81C of Chapter 15A of the General Statutes.

(e) For purposes of this section, the term "report" shall include making accessible to another person by computer."

SECTION 4. G.S. 90-95(b) reads as rewritten:

"(b) Except as provided in subsections (h) and (i) of this section, any person who violates G.S. 90-95(a)(1) with respect to:

(1) A controlled substance classified in Schedule I or II shall be punished as a Class H felon, except as follows: (i) the sale of a controlled substance classified in Schedule I or II shall be punished as a Class G felony, and (ii) the manufacture of methamphetamine shall be punished as provided by subdivision (1a) of this subsection.

(1a) The manufacture of methamphetamine shall be punished as a Class C felony unless the offense was one of the following: packaging or repackaging methamphetamine, or labeling or relabeling the methamphetamine container. The offense of packaging or repackaging methamphetamine, or labeling or relabeling the methamphetamine container shall be punished as a Class H felony.

(2) A controlled substance classified in Schedule III, IV, V, or VI shall be punished as a Class I felon, except that the sale of a controlled substance classified in Schedule III, IV, V, or VI shall be punished as a Class H felon. The transfer of less than 5 grams of marijuana for no remuneration shall not constitute a delivery in violation of G.S. 90-95(a)(1).

(3) Notwithstanding subdivision (2) of this subsection, the sale or delivery, or possession with intent to sell or deliver, of more than two pounds, but less than 50 pounds, of marijuana shall be punished as provided in subsection (h) of this section."

SECTION 5. Regulatory provisions relating to registered sex offenders.

SECTION 6. This act becomes effective December 1, 2005, and applies to offenses committed on or after that date.

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE — 5-31-05 PM

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
Lynette G. Collins	Moratorium on Executions
FRAN PRESTON	NCPMA
John Blackburn	NC Association of County Commissioners
C Cave	BPMHL
[illegible]	[illegible]
Blair Carr	City of Greensboro
Alissa Dolan	NC Conservation Network
Teri Saylor	NC Press Association
Dan McLawhorn	Raleigh City Atty Office
[illegible]	AAA Carolinas
S. Katzenelson	Sentencing Comm.

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE
Name of Committee

5/31/05 PM
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
MARK J. PRAK	PRESS ASSN
Rick Thames	Charlotte Observer
Martha Ann McConnell	Carolinas Healthcare
Barbara Conklin	NFES
Lenahan Helding	Robinson, Bradshaw & Hinson
Doug Heron	NC BAR ASSOC
Sheila Tatton-DeWitt	JWP Civitas Institute
Suzanne Buckley	GAYS OFFICE
Donn Harcrove	DJJDP
LARRY DIX	DJJDP
Veronica Beddick	Advocate for the Moratorium on Executions for the State

VISITOR REGISTRATION SHEET

J-1 — Name of Committee

5-31-05 AM — Date

VISITORS:. PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
John Madler	NC Sentencing Commission
Troy Page	" " "
Kathleen Edwards	UNC-CH Legis Reporting Service
Boyd Cauble	City of Charlotte
Judy Emken	City of Charlotte – Char-Meck Police
Brenda Jones	CMPD
Katrina Grace	Charlotte-Mecklenburg Police
R Powell	ABC
Judith Wegner	UNC School of Law
Jeffrey Walstad	DOA-YAIO
Hollis Bryan	NCATL
Bill Furth	NCATL
Dick Taylor	NCATL
Judy Stephens	DJJDP
Michael Helms	DJJDP
Alastair Maccaulay	NCHBA
Whit Gibson	Clerk of Court - Scotland
[illegible]	[illegible]
Molly Tyson	NCSBA
Andy Romenet	NCLM
James C. Stanford	Clerk of Superior Ct. - Orange
Betty Turner	Bank of America
Paul Stock	NCBA
Mike Meares	NCSWMA
MIKE HUFF	NCSWMA
J Kumar Wiseman	NCSWMA

VISITOR REGISTRATION SHEET

J-1 — Name of Committee

5/31/05 — Date

VISITORS:. PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

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Jim Reynolds	Wake County
Dan McLawhorn	City Attorney's Office - Raleigh
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Blair Carr	City of Greensboro
Melissa Midgett	Senator Hagan's Office
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Mark J. Prak	BPMHL
Cam Cowan	BPMHL
Kim Hibbard	NCLM
Susan Valauri	Northrop Grumman
Courtney Holding	Alliance for Behavioral Healthcare
Bob Lamm	HHS
Dana Cassidy	NCSTA
Dan Blau	ACLU-NC
L-5 Schofield	NC Justice Center

Box 13 Contents
2005-06 Standing Committee Minutes

2005 Senate Judiciary I (June 1 – end)
2006 Senate Judiciary I
2005-06 Senate Judiciary II

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Wednesday	June 1, 2005	8:30 AM	1027 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 393	Economic Development - Public Records.	Senator Hoyle
SB 1044	Undertaking to Stay Money Judgment.	Senator Clodfelter

Senator Daniel G. Clodfelter, Chair

Judiciary 1 Committee

June 1, 2005

Minutes

Senator Dan Clodfelter, Chair called the meeting to order at 8:37 a.m. with twelve members present. He introduced Pages, Nicholas Sipes from Greensboro, NC, Ben Pope from Crouse, NC, and Justin Allen and Jay Weaver, both from Goldsboro, NC.

SB 393 (Economic Development – Public Records) Committee Substitute was introduced by Senator Clodfelter. Senator Jeanne Lucas moved for adoption of the Committee Substitute. All members voted yes. Motion carried. Bill sponsor, Senator David Hoyle explained the bill would amend the public records law to specify a time when public records related to an economic development project can be released and how soon after they are released do they have to be made available to the public. (See Bill Summary for more information). Mr. Jim Fain, Secretary, NC Department of Commerce, Mr. John Bussian, NC Press Association and Mr. Don Hobart, NC Department of Commerce spoke on the bill. Senator's Jerry Tillman and Vernon Malone had questions. Senator Hoyle and Senator Clodfelter answered the questions. Senator Charlie Albertson spoke in favor of the bill and moved for a Favorable Report. All members voted yes. Motion carried.

Being no further Business the meeting adjourned at 8:50 a.m.

Daniel G Clodfelter

Senator Dan Clodfelter, Chair

Wanda Joyner

Wanda Joyner, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Daniel G. Clodfelter, Chair

Wednesday, June 01, 2005

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

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

S.B. **393** Economic Development - Public Records.

Draft Number:	PCS55248
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

S.B. **1080** Criminal Changes.

Draft Number:	PCS55244
Sequential Referral:	None
Recommended Referral:	Appropriations/Base Budget
Long Title Amended:	Yes

TOTAL REPORTED: 2

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 393*
PROPOSED COMMITTEE SUBSTITUTE S393-PCS55248-RU-48

Short Title: Economic Development - Public Records. (Public)

Sponsors:

Referred to:

March 7, 2005

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE PUBLIC RECORDS LAWS WITH RESPECT TO ECONOMIC DEVELOPMENT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 132-6(d) reads as rewritten:

"(d) Notwithstanding the provisions of subsections (a) and (b) of this section, public records relating to the proposed expansion or location of specific business or industrial projects in the State may be withheld so long as their inspection, examination or copying would frustrate the purpose for which such public records were ~~created; provided, however, that nothing herein~~ created. Once a State or local government agency announces that a business has made a final decision to expand or locate in the State, all of that agency's public records related to that announcement not otherwise made confidential by law must be released within 15 business days of the date of the request for the public records or the date of the announcement, whichever is later. In the event an agency is unable to produce all public records requested within 15 business days, the agency shall contact the person making the request, release those public records that may properly be produced at that time, and provide a date by which the remaining public records will be released. Nothing shall be construed to permit the withholding of public records relating to general economic development policies or activities."

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

SENATE BILL 393:
Economic Development - Public Records

BILL ANALYSIS

Committee:	Senate Judiciary I	**Date:**	June 1, 2005
Introduced by:	Sen. Hoyle	**Summary by:**	O. Walker Reagan
Version:	PCS to First Edition S393-CSRU-48		Committee Co-Counsel

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 393 would amend the public records law to specify a time when public records related to an economic development project can be released and how soon after the public records can be release they have to be made available to the public.***

CURRENT LAW: G.S. 132-6(d) provides that public records related to the expansion or location of a specific business or industrial project in the State may be withheld so long as their inspection, examination or copying would frustrate the purpose for which the public records were created.

BILL ANALYSIS: The bill would specifically require all public records relating to the expansion or location of a business or industrial project in the State that are not otherwise confidential (See G.S. 132-1.2 attached), must be made available to the public within 15 business days of the date the project is announced by the governmental agency or the date the records are requested, whichever is later. If the agency cannot produce all the records within 15 business days, the agency is to notify the person requesting the records when the records, not otherwise delivered, will be available.

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

§ 132-1.2. Confidential information.

Nothing in this Chapter shall be construed to require or authorize a public agency or its subdivision to disclose any information that:

(1) Meets all of the following conditions:
  a. Constitutes a "trade secret" as defined in G.S. 66-152(3).
  b. Is the property of a private "person" as defined in G.S. 66-152(2).
  c. Is disclosed or furnished to the public agency in connection with the owner's performance of a public contract or in connection with a bid, application, proposal, industrial development project, or in compliance with laws, regulations, rules, or ordinances of the United States, the State, or political subdivisions of the State.
  d. Is designated or indicated as "confidential" or as a "trade secret" at the time of its initial disclosure to the public agency.

(2) Reveals an account number for electronic payment as defined in G.S. 147-86.20 and obtained pursuant to Articles 6A or 6B of Chapter 147 of the General Statutes or G.S. 159-32.1.

(3) Reveals a document, file number, password, or any other information maintained by the Secretary of State pursuant to Article 21 of Chapter 130A of the General Statutes.

(4) **(Effective until June 1, 2005)** Reveals the electronically captured image of an individual's signature, drivers license number, or a portion of an individual's social security number if the agency has those items because they are on a voter registration document.

(4) **(Effective June 1, 2005)** Reveals the electronically captured image of an individual's signature, date of birth, drivers license number, or a portion of an individual's social security number if the agency has those items because they are on a voter registration document.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 393*

Short Title:	Economic Development - Public Records.	(Public)
Sponsors:	Senators Hoyle; Jenkins, Pittenger, Stevens, and Weinstein.	
Referred to:	Judiciary I.	

March 7, 2005

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE PUBLIC RECORDS LAWS WITH RESPECT TO ECONOMIC DEVELOPMENT AND TO REQUIRE THE DEPARTMENT OF REVENUE TO PUBLISH ANNUAL REPORTS REGARDING USE OF ECONOMIC DEVELOPMENT TAX INCENTIVES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 132-6(d) reads as rewritten:

"(d) Notwithstanding the provisions of subsections (a) and (b) of this section, public records relating to the proposed expansion or location of specific business or industrial projects ~~in the State~~ may be withheld so long as their inspection, examination or copying would frustrate the purpose for which such public records were created; provided, however, that nothing herein shall be construed to permit the withholding of public records relating to general economic development policies or activities. Once the proposed expansion or location of a specific business or industrial project has been announced by the State, a local government, or the specific business, the provisions of this subsection allowing public records to be withheld no longer apply."

SECTION 2. G.S. 105-129.19 reads as rewritten:

"**§ 105-129.19. Reports.**

The Department of Revenue must ~~report to the Revenue Laws Study Committee and to the Fiscal Research Division of the General Assembly~~ publish by May 1 of each year the following information itemized by taxpayer for the 12-month period ending the preceding April 1:

(1) The number of taxpayers that claimed the credits allowed in this Article.

(2) The cost of business property and renewable energy property with respect to which credits were claimed.

(2a) Repealed by Session Laws 2002-87, s. 6, effective August 22, 2002.

(3) The total cost to the General Fund of the credits claimed."

SECTION 3. G.S.105-129.26(e) reads as rewritten:

(e) Reports. – The Department of Commerce and the Department of Revenue shall ~~report to the Fiscal Research Division of the General Assembly~~jointly publish by May 1 of each year the following information itemized by taxpayer for the 12-month period ending the preceding April 1:

(1) The number and location of large and major recycling facilities qualified under this Article.

(2) The number of new jobs created by each recycling facility.

(3) The amount of investment in each recycling facility.

(4) The amount of ~~reinvestment credit refunded to each major recycling facility~~ credits claimed under ~~G.S. 105-129.28.~~this Article."

SECTION 4. Article 3D of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-129.38. Reports.**

The Department of Revenue must publish by May 1 of each year the following information itemized by taxpayer for the 12-month period ending the preceding April 1:

(1) The number of taxpayers that claimed the credits allowed in this Article.

(2) The amount of rehabilitation expenditures with respect to which credits were claimed.

(3) The total cost to the General Fund of the credits claimed."

SECTION 5. G.S. 105-129.44 reads as rewritten:

"**§ 105-129.44. (See Editor's note for repeal) Report.**

The Department of Revenue must ~~report to the Revenue Laws Study Committee and the Fiscal Research Division of the General Assembly~~ publish by May 1 of each year the following information itemized by taxpayer for the 12-month period ending the preceding April 1:

(1) The number of taxpayers that claimed the credit allowed in this Article.

(2) The location of each qualified North Carolina low-income building or housing development for which a credit was claimed.

(3) The total cost to the General Fund of the credits claimed."

SECTION 6. G.S. 105-129.54 reads as rewritten:

"**§ 105-129.54. Reports.**

The Department of Revenue must ~~report to the Revenue Laws Study Committee and to the Fiscal Research Division of the General Assembly~~publish by May 1 of each year the following information itemized by taxpayer for the 12-month period ending the preceding December 31:

(1) The number of taxpayers that claimed a credit allowed in this Article, itemized by the categories of small business, low-tier, other, and university research.

(2) The amount of each credit claimed in each category.

(3) The total cost to the General Fund of the credits claimed."

SECTION 7. Article 3G of Chapter 105 of the General Statutes is amended by adding a new section to read:

"§ 105-129.65A. Reports.

The Department of Revenue shall publish by May 1 of each year the following information itemized by taxpayer for the 12-month period ending the preceding December 31:

(1) The number of taxpayers claiming a credit allowed in this Article.

(2) The number of new jobs created with respect to which credits were claimed.

(3) The amount of investment in real property and machinery and equipment with respect to which credits were claimed.

(4) The total cost to the General Fund of the credits claimed."

SECTION 8. G.S. 105-130.25 is amended by adding a new subsection to read:

"(f) Report. – The Department of Revenue shall publish by May 1 of each year the following information itemized by taxpayer for the 12-month period ending the preceding December 31:

(1) The number of taxpayers claiming a credit allowed in this section.

(2) The total costs paid with respect to which credits were claimed.

(3) The total cost to the General Fund of the credits claimed."

SECTION 9. G.S. 105-130.28 is amended by adding a new subsection to read:

"(e) Report. – The Department of Revenue shall publish by May 1 of each year the following information itemized by taxpayer for the 12-month period ending the preceding December 31:

(1) The number of taxpayers claiming a credit allowed in this section.

(2) The total costs of construction with respect to which credits were claimed.

(3) The total cost to the General Fund of the credits claimed."

SECTION 10. G.S. 105-130.41 is amended by adding a new subsection to read:

"(c1) Report. – The Department of Revenue shall publish by May 1 of each year the following information itemized by taxpayer for the 12-month period ending the preceding December 31:

(1) The number of taxpayers claiming a credit allowed in this section.

(2) The total amount of charges with respect to which credits were claimed.

(3) The total cost to the General Fund of the credits claimed."

SECTION 11. G.S. 105-130.45 is amended by adding a new subsection to read:

"(f) Report. – The Department of Revenue shall publish by May 1 of each year the following information itemized by taxpayer for the 12-month period ending the preceding December 31:

(1) The number of taxpayers claiming a credit allowed in this section.

(2) The total amount of exports with respect to which credits were claimed.

(3) The total cost to the General Fund of the credits claimed."

SECTION 12. G.S. 105-151.22 is amended by adding a new subsection to read:

"(c1) Report. – The Department of Revenue shall publish by May 1 of each year the following information itemized by taxpayer for the 12-month period ending the preceding December 31:

(1) The number of taxpayers claiming a credit allowed in this section.

(2) The total amount of charges with respect to which credits were claimed.

(3) The total cost to the General Fund of the credits claimed."

SECTION 13. G.S. 105-164.14(j) is amended by adding a new subsection to read:

"(k) Reports. – The Department of Revenue shall publish by May 1 of each year the following information itemized by taxpayer for the 12-month period ending the preceding July 31:

(1) The number of taxpayers claiming a refund allowed in subsections (g), (h), (i), and (j) of this section.

(2) The total amount of sales with respect to which refunds were claimed.

(3) The total cost to the General Fund of the refunds claimed."

SECTION 14. G.S. 105-259(b)(26) reads as rewritten:

"(b) Disclosure Prohibited. – An officer, an employee, or an agent of the State who has access to tax information in the course of service to or employment by the State may not disclose the information to any other person unless the disclosure is made for one of the following purposes:

(27) To publish the information required under G.S. ~~105-129.6.~~105-129.6, 105-129.19, 105-129.26, 105-129.38, 105-129.44, 105-129.65A, 105-130.25, 105-130.28, 105-130.41, 105-130.45, 105-151.22, and 105-164.14."

SECTION 15. Sections 2 through 14 of this act become effective January 1, 2006. The remainder of this act is effective when it becomes law.

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE — Name of Committee

6-1-05 AM — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
M. J. Lewis	ECU - Greenville, NC
KH Wetherington	ECU-Greenville, NC
Mark Deaton	Capitol Group
Lane Wharton	Bode, Call & Stroupe, Raleigh
Alice Garland	NC DOC
John McCall	NFOS
Steve Ware	NLMA
Jim Fain	NC DOC
John Bussian	NC Press Assn
Mark J. Prak	Press Assn
Jim Bode	Bode Call & Stroupe
Kathy Hawkins	Progress Energy

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE — 6-1-05 PM

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
Rob Buzzard	NCASI
Andy Romanet	NCLM
Jim Blackburn	NC Association of County Commissioners
R. Paul Wilms	NCHBA
Ken Melton	D.O.R.
Betty Tarver	BAC
Karl Knapp	DOR
William L Spencer	DOR
Terri Saylor	NC Press
John McKay	Geo Omics
Suzanne Bradley	Gov Office

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE — 6-1-05 AM

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
Holly Bryan	NCATL
Lennie Collins	DOR
Jessica Sage	NCFPC
John McAlister	Duke Energy
Chris Kukla	Self-Help
Al Mirley	NC Justice Ctr.

Wanda Joyner (Sen. Clodfelter)

From: Wanda Joyner (Sen. Clodfelter)
Sent: Tuesday, June 07, 2005 1:45 PM
To: Rep. Cary Allred; Rep. Grier Martin; Rep. Paul Stam; Rep. Phillip Haire; Rep. Melanie Goodwin
Subject: 06-09-2005 J-1 Comm Notice

Principal Clerk _____
Reading Clerk _____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

Thursday	June 9, 2005	10:00 AM	1027 LB

REVISED NOTICE

HB-888 AND SB-1069 HAVE BEEN REMOVED FROM AGENDA

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 327	NC State Bar Changes/Fees.	Senator Rand
HB 510	Enforcement of Power of Attorney.	Representative Martin, III Representative Stam
HB 532	Adjust Adoption Procedure.-AB	Representative Goodwin Representative Stam
HB 896	State Bar/Appeal/Fee.	Representative Haire
HB 1102	Early Prep for One-Stop Count.	Representative Allred

Senator Daniel G. Clodfelter, Chair

Judiciary 1 Committee

June 9, 2005

Minutes

Senator Dan Clodfelter, Chair called the meeting to order at 10:08 a.m. with thirteen members present. He introduced pages Brittney Parker from Gastonia, NC, Kelly Berry from Greensboro, NC, Josh Sparks from Fayetteville, NC, Lauren Rea from Plymouth, NC, Stephanie Holton from Columbia, NC and George Horton from Pinehurst, NC.

HB-1102 was introduced by Senator Clodfelter. Bill sponsor, Representative Allred explained the bill. A Judiciary 1 Subcommittee appointed by Senator Clodfelter, and chaired by Senator Julia Boseman had reviewed the bill, and Senator Boseman stated that the subcommittee supports the bill. Bill sponsor, Representative Cary Allred explained that the bill would allow a county board of elections to count one-stop (early voting) ballots electronically at the same time as other absentee ballots are counted, at 2 p.m. on election day, rather than having to wait till the polls close. In addition, the bill would allow the board to take preparatory steps toward counting one-stop votes and mail absentee ballots earlier than 2:00 p.m. as long as the preparatory steps do not reveal results to any person. The bill leaves in place the law that says no results may be made public until the polls close. Senator's Tony Rand and Phillip Berger had questions. Senator Rand offered an Amendment to the bill on page 2, line 11 (See attached Amendment), and asked for adoption of the Amendment. All members voted yes. Motion carried. Senator Rand moved for a Favorable Report. All members voted yes. Motion carried.

HB-532 (Adjust Adoption Procedure, -AB) Committee Substitute was introduced by Senator Clodfelter. Senator Phillip Berger moved for adoption of the Committee Substitute. All members voted yes. Motion carried. Representative Paul Stam explained that the bill would amend various adoption statutes to clarify that an uninvolved biological father cannot halt or unnecessarily delay and adoption proceeding; allow the clerk to waive notice on certain circumstances; and require an explanation by the parties of any failure to comply with the Interstate Compact on Placement of Children. Representative Melanie Goodwin explained parts of the bill. Senator Clodfelter asked for questions. Senator's Ham Horton, Clark Jenkins, Harry Brown and Martin Nesbitt had questions. Representative Stam answered the questions. Senator Ham Horton offered an Amendment to the bill on page 1, line 8 (See attached Amendment). Senator Tony Rand moved for adoption of the

Amendment. All members voted yes. Motion carried. Senator Rand moved for a Favorable Report as amended. All members voted yes. Motion carried.

HB-896 (State Bar/Appeal/Fee.) was introduced by Senator Clodfelter. Bill sponsor, Representative Phillip Haire explained the bill. Senator's Harry Brown, Phillip Berger and Charlie Albertson had questions. Representative Haire, Staff attorney, Walker Reagan and Mr. John McMillan, NC Bar association answered the questions. Senator Tony Rand moved for a Favorable Report. All members voted yes. Motion carried. Senator Clodfelter stated the bill would be referred to the Finance Committee.

SB-327 (NC State Bar Changes/Fees) Committee Substitute was introduced by Senator Clodfelter. Senator Tony Rand moved for adoption of the Committee Substitute. All members voted yes. Motion carried. Bill sponsor, Senator Rand explained changes to the bill that would authorize the imposition of a late fee for district bar dues and an additional $25 fee for out-of-state attorneys practicing in NC. It would also give explicit authority to the State Bar to impose several other charges that it now collects under the assumption its general authority empowers it to collect. Senator's Clodfelter, Martin Nesbitt, Charlie Albertson and RC Soles had questions. Staff attorney, Bill Gilkeson, Mr. John McMillan, NC Bar Association and Ms. Carolyn Blackwell, Assistant Director, NC State Bar Association, answered the questions. Senator Nesbitt offered an Amendment to the bill, and moved for adoption of the Amendment. All members voted yes. Motion carried. Senator Ham Horton had a question. Senator Clodfelter answered the question. Senator RC Soles offered a second Amendment to the bill, and moved for adoption of the Amendment. All members voted yes. Motion carried. Senator Clodfelter stated that the bill would be referred to the Finance Committee.

HB-510 (Enforcement of Power of Attorney) Committee Substitute was introduced by Senator Clodfelter. Senator Charlie Albertson moved for adoption of the Committee Substitute. All Members voted yes. Motion carried. Bill sponsor, Representative Grier Martin explained that Proposed Committee Substitute adds a new article, Enforcement of Powers of Attorney, to Chapter 32A, Powers of Attorney, that creates a remedy for attorneys-in-fact when the power attorney is unreasonably refused by a third party; and provides assurances for the third party who relied on the power of attorney in good faith. Representative Paul Stam explained points of the bill. Senator Clodfelter stated that due to lack of time, the bill would be carried over to the next J-1 Committee meeting.

Being no further business the meeting adjourned at 1057 a.m.

Senator Dan Clodfelter, Chair

Wanda Joyner, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Daniel G. Clodfelter, Chair

Thursday, June 09, 2005

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

FAVORABLE

H.B. **896** State Bar/Appeal/Fee.
Sequential Referral: Finance
Recommended Referral: None

TOTAL REPORTED: 1

Committee Clerk Comments:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Daniel G. Clodfelter, Chair

Tuesday, June 14, 2005

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

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

H.B. **532** Adjust Adoption Procedure.-AB

Draft Number:	PCS10366
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 1102
PROPOSED SENATE COMMITTEE SUBSTITUTE H1102-PCS60492-RR-40

Short Title: Early Prep for One-Stop Count. (Public)

Sponsors:

Referred to:

April 4, 2005

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE COUNTY BOARDS OF ELECTIONS TO COUNT ONE-STOP BALLOTS AT THE SAME TIME AS OTHER ABSENTEE BALLOTS AND TO ALLOW THOSE BOARDS TO TAKE PREPARATORY STEPS FOR COUNTING ONE-STOP AND OTHER ABSENTEE VOTES EARLIER THAN TWO O'CLOCK P.M.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 163-234(2) reads as rewritten:

"(2) The county board of elections shall meet at 5:00 p.m. on election day in the board office or other public location in the county courthouse for the purpose of counting all absentee ballots except those which have been challenged before 5:00 p.m. on election day. Any elector of the county shall be permitted to attend the meeting and allowed to observe the counting process, provided the elector shall not in any manner interfere with the election officials in the discharge of their duties.

Provided, that the county board of elections is authorized to begin counting absentee ballots between the hours of 2:00 p.m. and 5:00 p.m. upon the adoption of a resolution at least two weeks prior to the election wherein the hour and place of counting absentee ballots shall be stated. A copy of the resolutions shall be published once a week for two weeks prior to the election, in a newspaper having general circulation in the county. Notice may additionally be made on a radio or television station or both, but such notice shall be in addition to the newspaper and other required notice. The count shall be continuous until completed and the members shall not separate or leave the counting place except for unavoidable necessity, except that if the count has been completed prior to the time the polls close, it shall be suspended until that time pending receipt of any additional ~~ballots, and~~

~~except that one-stop ballots under G.S. 163-227.2 counted electronically shall not be counted until the polls close; provided, however, that if there are outstack ballots in the counting device, they may be counted at the same time as other ballots are counted under this subdivision. The county board of elections may begin putting them in the tabulator at the same time as other ballots are counted under this subdivision if the system for counting one-stop ballots requires them to be put in a tabulator but the process has the voter place them in a ballot box.~~ ballots. Nothing in this section shall prohibit a county board of elections from taking preparatory steps for the count earlier than the times specified in this section, as long as the preparatory steps do not reveal to any individual not engaged in the actual count election results before the times specified in this subdivision for the count to begin. By way of illustration and not limitation, a preparatory step for the count would be the entry of tally cards from direct record electronic voting units into a computer for processing. The board shall not announce the result of the count before 7:30 p.m."

SECTION 2. This act is effective when it becomes law and applies to all elections held on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 1102 DATE 6-9-05

S. B. No. _____ Amendment No. #1

COMMITTEE SUBSTITUTE _____ (to be filled in by Principal Clerk)

Rep.) RAND

Sen.)

moves to amend the bill on page 2, line 11

( ) WHICH CHANGES THE TITLE

by inserting after the term "individual" the term "not engaged in the actual count" and by deleting the term "in understandable form"

SIGNED Tim Rand

ADOPTED X FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

HOUSE BILL 1102:
Early Prep for One-Stop Count

BILL ANALYSIS

Committee:	Senate Judiciary I	**Date:**	June 9, 2005
Introduced by:	Rep. Allred	**Summary by:**	William R. Gilkeson
Version:	First Edition		Committee Co-Counsel

SUMMARY: The First Edition of House Bill 1102 would allow a county board of elections to count one-stop (early voting) ballots electronically at the same time as other absentee ballots are counted, that is, at 2 p.m. on election day, rather than having to wait till the polls close. In addition, the bill would allow the board to take preparatory steps toward counting one-stop votes and mail absentee ballots earlier than 2 p.m., as long as the preparatory steps do not reveal results understandably to any human being. The bill leaves in place the law that says no results may be made public until the polls close.

CURRENT LAW: Currently, NC has somewhat elaborate statutes for the counting of one-stop (early-voting) ballots and mail absentee ballots:

- The default provision for counting mail absentee ballots is that the board may begin counting them at 5 p.m. on election day. All mail absentee ballots are necessarily paper.
- If the board resolves 2 weeks before the election to do so, it may begin the mail absentee count at 2 p.m. on election day, rather than 5 p.m.
- A provision in the one-stop statute allows counties to use optical scan and direct-record-electronic equipment for one-stop, rather than the paper ballots in envelopes required for mailed absentee ballots, if the voting system provides for retrievable ballots. A county using such a voting system must present a plan for its use in one-stop to the State Board of Elections. The State Board allows counties using optical scan equipment to let one-stop voters insert their ballots into tabulators, on the theory that the tabulator is analogous to an envelope, as long as no one presses the button on the tabulators that print a tape showing the results. That printing of results constitutes counting, and it may not be done till election day.
- If one-stop ballots are counted manually, they would be treated like other absentee ballots. If they are counted electronically, the statute says the counting must not begin until the polls close. The exception is ballots that optical scan tabulators throw into an "outstack" -- the paper ballots the tabulator can't read. Those may be counted at 5 p.m. or 2 p.m. with the other ballots.

BILL ANALYSIS: The bill would remove the requirement that one-stop ballots counted electronically may not be counted until the polls close. They could be counted at 5 p.m. or 2 p.m. like other absentee ballots.

In addition, the bill would allow preparatory steps toward counting to occur earlier, as long as those steps do not reveal results to anyone before the count begins. The bill gives as an example the entry of tally cards in a direct-record-electronic voting system into a computer for processing. This part of the bill generalizes what optical scan counties may do to counties that use other voting systems, including direct record electronic, as well.

EFFECTIVE DATE: Effective when it becomes law and applies to primaries and elections on and after that date.

BACKGROUND: Earlier this session, the House passed HB 128 and the Senate passed SB 226. Those bills, with identical provisions, were recommended by the Joint Select Committee on Electronic Voting Systems. They were short-titled "Early Prep for Absentee Count." They address only the counting of mail absentee ballots, saying that a county board that uses a tabulator to count mail absentee ballots may begin the preparation for that count at each meeting it holds before election day to approve absentee applications. At those meetings, they may remove approved absentee ballots from their application envelopes and feed them into the tabulator, not printing the totals tape until election day. Thus those bills would allow optical scan counties to do with mail absentee ballots what they can do with one-stop absentee ballots. HB 1102 applies the same "early prep" principle to all voting systems, and to both mail absentee and one-stop ballots.

H1102e1-SMRR

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

H 1

HOUSE BILL 1102

Short Title:	Early Prep for One-Stop Count.	(Public)
Sponsors:	Representative Allred.	
Referred to:	Election Law and Campaign Finance Reform.	

April 4, 2005

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE COUNTY BOARDS OF ELECTIONS TO COUNT ONE-STOP BALLOTS AT THE SAME TIME AS OTHER ABSENTEE BALLOTS, AND TO ALLOW THOSE BOARDS TO TAKE PREPARATORY STEPS FOR COUNTING ONE-STOP AND OTHER ABSENTEE VOTES EARLIER THAN TWO O'CLOCK P.M.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 163-234(2) reads as rewritten:

"(2) The county board of elections shall meet at 5:00 p.m. on election day in the board office or other public location in the county courthouse for the purpose of counting all absentee ballots except those which have been challenged before 5:00 p.m. on election day. Any elector of the county shall be permitted to attend the meeting and allowed to observe the counting process, provided the elector shall not in any manner interfere with the election officials in the discharge of their duties.

Provided, that the county board of elections is authorized to begin counting absentee ballots between the hours of 2:00 p.m. and 5:00 p.m. upon the adoption of a resolution at least two weeks prior to the election wherein the hour and place of counting absentee ballots shall be stated. A copy of the resolutions shall be published once a week for two weeks prior to the election, in a newspaper having general circulation in the county. Notice may additionally be made on a radio or television station or both, but such notice shall be in addition to the newspaper and other required notice. The count shall be continuous until completed and the members shall not separate or leave the counting place except for unavoidable necessity, except that if the count has been completed prior to the time the polls close, it shall be suspended until that time pending receipt of any additional ~~ballots, and except that one-stop ballots under G.S. 163-227.2 counted~~

~~electronically shall not be counted until the polls close; provided, however, that if there are outstack ballots in the counting device, they may be counted at the same time as other ballots are counted under this subdivision. The county board of elections may begin putting them in the tabulator at the same time as other ballots are counted under this subdivision if the system for counting one-stop ballots requires them to be put in a tabulator but the process has the voter place them in a ballot box.~~ ballots. Nothing in this section shall prohibit a county board of elections from taking preparatory steps for the count earlier than the times specified in this section, as long as the preparatory steps do not reveal to any individual in understandable form election results before the times specified in this subdivision for the count to begin. By way of illustration and not limitation, a preparatory step for the count would be the entry of tally cards from direct record electronic voting units into a computer for processing. The board shall not announce the result of the count before 7:30 p.m."

SECTION 2. This act is effective when it becomes law and applies to all elections held on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 532
PROPOSED SENATE COMMITTEE SUBSTITUTE H532-PCS10366-RU-54

Short Title: Adjust Adoption Procedure.-AB (Public)

Sponsors:

Referred to:

March 9, 2005

A BILL TO BE ENTITLED

AN ACT TO STREAMLINE ADOPTION PROCEDURES BY REQUIRING CONSENT FROM THOSE PERSONS WHOSE PARENTAL STATUS HAS BEEN DETERMINED.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 48-2-206 reads as rewritten:

"**§ 48-2-206. Prebirth determination of right to consent.**

(a) ~~Anytime~~ At any time after six months from the date of conception as reasonably determined by a physician, the biological mother, agency, or adoptive parents chosen by the biological mother may file a special proceeding with the clerk requesting the court to determine whether consent of the biological father is required. The biological father shall be served with notice of the intent of the biological mother to place the child for adoption, allowing the biological father 15 days after service to assert a claim that his consent is required.

(b) The notice required under subsection (a) of this section shall contain the special proceeding case caption and file number and shall be substantially similar to the following language:

"[Name of the biological mother], the biological mother, is expected to give birth to a child on or about [birth due date]. You have been identified as the biological father. It is the intention of the biological mother to place the child for adoption. It is her belief that your consent to the adoption is not required. If you believe your consent to the adoption of this child is required pursuant to G.S. 48-3-601, you must notify the court in writing no later than 15 days from the date you received this notice that you believe your consent is required. A copy of your notice to the court must also be sent to the person or agency that sent you this notice. If you fail to notify the court within 15 days that you believe your consent is required, the court will rule that your consent is not required."

(c) If the biological father fails to respond within the time required, the court shall enter an order that the biological father's consent is not required for the adoption. A biological father who fails to respond within the time required under this section is not entitled to notice under G.S. 48-2-401(c) of an adoption petition filed within three months of the birth of the ~~minor.~~minor or to participate in the adoption proceeding.

(d) If the biological father notifies the court within 15 days of his receipt of the notice required by subsection (a) of this section that he believes his consent to the adoption is required, on motion of the petitioner, the court shall hold a hearing to determine whether the consent of the biological father is required. Promptly on receipt of the petitioner's motion, the court shall set a date for the hearing no earlier than 60 days nor later than 70 days after the biological father received the notice required by subsection (a) of this section and shall notify the petitioner and the biological father of the date, time, and place of the hearing. The notice of hearing to the biological father shall include a statement substantially similar to the following:

"To the biological father named above: You have told the court that you believe your consent is necessary for the adoption of the child described in the notice sent to you earlier. This hearing is being held to decide whether your consent is in fact necessary. Before the date of the hearing, you must have taken steps under G.S. 48-3-601 to establish that your consent is necessary or this court will decide that your consent is not necessary and the child can be adopted without it."

During the hearing, the court may take such evidence as necessary and enter an order determining whether or not the consent of the biological father is necessary. If the court determines that the consent of the biological father is not required, that individual is not entitled to receive notice under G.S. 48-2-401(c) of an adoption petition filed within three months of the birth of the minor or to participate in the adoption proceeding.

(e) The manner of service under this section shall be the same as set forth in G.S. 48-2-402.

(f) The jurisdiction provisions of Article 6A of Chapter 1 of the General Statutes and the venue provisions of Article 7 of Chapter 1 of the General Statutes rather than the provisions of Part 1 of this Article apply to proceedings under this section.

(g) Computation of periods of time provided for in this section shall be calculated as set forth in G.S. 1A-1, Rule 6.

(h) Transfer under G.S. 1-301.2 and appeal under G.S. 1-279.1 shall be as for an adoption proceeding.

(i) A determination by the court under this section that the consent of the biological father is not required shall only apply to an adoption petition filed within three months of the birth of the minor."

SECTION 2. Part 2 of Article 2 of Chapter 48 of the General Statutes is amended by adding a new section to read:

"**§ 48-2-207. Necessity of consent post-petition.**

(a) If any individual described in G.S. 48-2-401(c)(3) is served with notice of the filing of the petition in accordance with G.S. 48-2-402 and fails to respond within the time specified in the notice, the court, upon motion by the petitioner, shall enter an order under G.S. 48-3-603(a)(7) that the individual's consent is not required for the adoption.

(b) The court shall hold a hearing to take evidence and determine whether an individual's consent to an adoption is required if any of the following:

(1) Any individual described in G.S. 48-2-401(c)(3) who has been served with notice of the filing of the petition in accordance with G.S. 48-2-402 notifies the court within the time specified in the notice that he believes his consent to the adoption is required.

(2) Any individual who has not been served with the notice of the filing of the petition intervenes in the adoption proceeding alleging that his or her consent to the adoption is required.

(c) If the court determines that the consent of any individual is required, the adoption cannot proceed until such individual's consent is obtained or such individual's parental rights are terminated. If the individual whose consent is required did not have physical custody of the minor immediately prior to the placement of the minor with the prospective adoptive parents, a finding that such individual's consent is required does not entitle such individual to physical custody of the minor.

(d) If the court determines that the consent of any individual described in G.S. 48-2-401(c)(3) is not required, such individual shall not be entitled to receive notice of, or to participate in, further proceedings in the adoption."

SECTION 3. G.S. 48-2-304(c) reads as rewritten:

"(c) A petition to adopt a minor under Article 3 of this Chapter shall also ~~state:~~state all of the following:

(1) A description of the source of placement and the date of placement of the adoptee with the ~~petitioner; and~~petitioner.

(2) That the provisions of the Interstate Compact on the Placement of Children, Article 38 of Chapter 7B of the General Statutes, were followed if the adoptee was brought into this State from another state for purposes of ~~adoption.~~ adoption, or that a statement is attached describing the circumstances of any noncompliance."

SECTION 4. G.S. 48-2-305(7) reads as rewritten:

"**§ 48-2-305. Petition for adoption; additional documents.**

At the time the petition is filed, the petitioner shall file or cause to be filed the following documents:

(1) Any required affidavit of parentage executed under G.S. 48-3-206.

(2) Any required consent or relinquishment that has been executed.

(3) A certified copy of any court order terminating the rights and duties of a parent or a guardian of the adoptee.

(4) A certified copy of any court order or pleading in a pending proceeding concerning custody of or visitation with the adoptee.

(5) A copy of any required preplacement assessment certified by the agency that prepared it and any certificate of service required by G.S. 48-3-307 or an affidavit from the petitioner stating why the assessment is not available.

(6) A copy of any document containing the information required under G.S. 48-3-205 concerning the health, social, educational, and genetic

history of the adoptee and the adoptee's original family which the petitioner received before the placement or at any later time, certified by the person who prepared it, or if this document is not available, an affidavit stating the reason why it is not available.

(7) Any signed copy of the form required by the Interstate Compact on the Placement of Children, Article 38 of Chapter 7B of the General Statutes, authorizing a minor to come into this ~~State.~~State, or any statement required by G.S. 48-2-304(c) describing the circumstances of any noncompliance.

(8) A writing that states the name of any individual whose consent is or may be required, but who has not executed a consent or a relinquishment or whose parental rights have not been legally terminated, and any fact or circumstance that may excuse the lack of consent or relinquishment.

(9) In an adoption pursuant to Article 4 of this Chapter, a copy of any agreement to release past-due child support payments.

(10) Any consent to an agency by a placing parent and adopting parents to release identifying information under G.S. 48-9-109.

The petitioner may also file any other document necessary or helpful to the court's determination."

SECTION 5. G.S. 48-2-401 reads as rewritten:

"**§ 48-2-401. Notice by petitioner.**

(a) No later than 30 days after a petition for adoption is filed pursuant to Part 3 of this Article, the petitioner shall serve notice of the filing on the persons required to receive notice under subsections (b), (c), and (d) of this section.

(b) In all adoptions, the petitioner shall serve notice of the filing ~~on:~~on each of the following:

(1) Any individual whose consent to the adoption is required but has not been obtained, has been revoked in accord with this Chapter, or has become void as provided in this ~~Chapter;~~Chapter.

(2) The spouse of the petitioner if that spouse is required to join in the petition and petitioner is requesting that the joinder requirement be ~~waived;~~waived, provided the court for cause may waive this notice requirement.

(3) Any individual who has executed a consent or relinquishment, but who the petitioner has actually been informed has filed an action to set it aside for fraud or ~~duress; and~~duress.

(4) Any other person designated by the court who can provide information relevant to the proposed adoption.

(c) In the adoption of a minor, the petitioner shall also serve notice of the filing ~~on:~~on each of the following:

(1) A minor whose consent is dispensed with under ~~G.S. 48-3-603(b)(2);~~ G.S. 48-3-603(b)(2).

(2) Any agency that placed the ~~adoptee;~~adoptee.

(3) A man who to the actual knowledge of the petitioner claims to be or is named as the biological or possible biological father of the minor, and any biological or possible biological fathers who are unknown or whose whereabouts are unknown, but notice need not be served upon a man who has executed a consent, a relinquishment, or a notarized statement denying paternity or disclaiming any interest in the minor, ~~or~~ a man whose parental rights have been legally terminated or who has been judicially determined not to be the minor's ~~parent; and~~parent, or, provided the petition is filed within three months of the birth of the minor, a man whose consent to the adoption has been determined not to be required under G.S. 48-2-206.

(4) Any individual who the petitioner has been actually informed has legal or physical custody of the minor or who has a right of visitation or communication with the minor under an existing court order issued by a court in this State or another state.

(d) In the adoption of an adult, the petitioner shall also serve notice of the filing on any adult children of the prospective adoptive parent and any parent, spouse, or adult child of the adoptee who are listed in the petition to adopt; provided the court for cause may waive the requirement of notice to a parent of an adult adoptee.

(e) Only those persons identified in subsections (b), (c), and (d) of this section are entitled to notice of the proceeding.

(f) A notice required under this section must state that the person served must file a response to the petition within 30 days after service in order to participate in and to receive further notice of the proceeding, including notice of the time and place of any hearing."

SECTION 6. G.S. 48-2-405 reads as rewritten:

"**§ 48-2-405. Rights of persons entitled to notice.**

~~A~~Except as provided in G.S. 48-2-206(c), 48-2-206(d), and 48-2-207(d), a person entitled to notice whose consent is not required may appear and present evidence only as to whether the adoption is in the best interest of the adoptee."

SECTION 7. This act becomes effective October 1, 2005, and applies to actions filed on or after that date.

HOUSE BILL 532:
Adjust Adoption Procedure.-AB

BILL ANALYSIS

Committee:	Senate Judiciary I	**Date:**	June 9, 2005
Introduced by:	Reps. Stam, Goodwin	**Summary by:**	Walker Reagan
Version:	PCS to First Edition H532-CSRU-54		Committee Counsel

SUMMARY: ***The Proposed Senate Committee Substitute for House Bill 532 would amend various adoption statutes to clarify that an uninvolved biological father cannot halt or unnecessarily delay an adoption proceeding; allow the clerk to waive notice in certain circumstances; and require an explanation by the parties of any failure to comply with the Interstate Compact on Placement of Children.***

BILL ANALYSIS:

Sections 1, 2, and 5. The bill provides that if a court determines that consent to adopt is not needed from man the petitioner claims to be or is named as the biological or possible biological father of the minor, and any biological or possible biological fathers who are unknown or whose whereabouts are unknown, that father does not get notice of an adoption petition filed within three months of the child's birth and cannot participate in that adoption. The sections apply the same to pre-petition determinations and post petition determinations. Section 5 makes a conforming change to the statute setting forth the notice requirements.

Sections 3 and 4. The bill requires that an adoption petition would be accompanied by a statement explaining any failures to comply with the Interstate Compact on the Placement of Children, if there are any non-compliances.

Section 6. Spouses are required to adopt together unless the clerk waives that requirement, and notice is given to the non-adopting spouse. The bill allows the court to waive, for cause, the need for notice to the non-adopting spouse when the other spouse has filed an adoption petition.

EFFECTIVE DATE: This act becomes effective October 1, 2005 and applies to actions filed on or after that date.

Erika Churchill, counsel to the House Judiciary I Committee, substantially contributed to this summary.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 532 DATE 6-9-05

S. B. No. _____ Amendment No. #1
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE H532-CSRV-54

Rep.)
Sen.) HORTON

1 moves to amend the bill on page 1, line 8

2 ( ) WHICH CHANGES THE TITLE

3 by DELETING THE WORD "~~ANYTIME~~" AND SUBSTITUTING THE

4 WORDS "AT ANY TIME".

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SIGNED _____

ADOPTED X FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

HOUSE BILL 532

Short Title:	Adjust Adoption Procedure.-AB	(Public)
Sponsors:	Representatives Stam, Goodwin (Primary Sponsors); Barnhart, Farmer-Butterfield, Insko, and Sauls.	
Referred to:	Judiciary I.	

March 9, 2005

A BILL TO BE ENTITLED

AN ACT TO STREAMLINE ADOPTION PROCEDURES BY REQUIRING CONSENT FROM THOSE PERSONS WHOSE PARENTAL STATUS HAS BEEN DETERMINED.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 48-2-206 reads as rewritten:

"**§ 48-2-206. Prebirth determination of right to consent.**

(a) Anytime after six months from the date of conception as reasonably determined by a physician, the biological mother, agency, or adoptive parents chosen by the biological mother may file a special proceeding with the clerk requesting the court to determine whether consent of the biological father is required. The biological father shall be served with notice of the intent of the biological mother to place the child for adoption, allowing the biological father 15 days after service to assert a claim that his consent is required.

(b) The notice required under subsection (a) of this section shall contain the special proceeding case caption and file number and shall be substantially similar to the following language:

> "[Name of the biological mother], the biological mother, is expected to give birth to a child on or about [birth due date]. You have been identified as the biological father. It is the intention of the biological mother to place the child for adoption. It is her belief that your consent to the adoption is not required. If you believe your consent to the adoption of this child is required pursuant to G.S. 48-3-601, you must notify the court in writing no later than 15 days from the date you received this notice that you believe your consent is required. A copy of your notice to the court must also be sent to the person or agency that sent you this notice. If you fail to notify the court within 15 days that you believe your consent is required, the court will rule that your consent is not required."

(c) If the biological father fails to respond within the time required, the court shall enter an order that the biological father's consent is not required for the adoption. A biological father who fails to respond within the time required under this section is not entitled to notice under G.S. 48-2-401(c) of an adoption petition filed within three months of the birth of the ~~minor.~~minor or to participate in the adoption proceeding.

(d) If the biological father notifies the court within 15 days of his receipt of the notice required by subsection (a) of this section that he believes his consent to the adoption is required, on motion of the petitioner, the court shall hold a hearing to determine whether the consent of the biological father is required. Promptly on receipt of the petitioner's motion, the court shall set a date for the hearing no earlier than 60 days nor later than 70 days after the biological father received the notice required by subsection (a) of this section and shall notify the petitioner and the biological father of the date, time, and place of the hearing. The notice of hearing to the biological father shall include a statement substantially similar to the following:

> "To the biological father named above: You have told the court that you believe your consent is necessary for the adoption of the child described in the notice sent to you earlier. This hearing is being held to decide whether your consent is in fact necessary. Before the date of the hearing, you must have taken steps under G.S. 48-3-601 to establish that your consent is necessary or this court will decide that your consent is not necessary and the child can be adopted without it."

During the hearing, the court may take such evidence as necessary and enter an order determining whether or not the consent of the biological father is necessary. If the court determines that the consent of the biological father is not required, that individual is not entitled to receive notice under G.S. 48-2-401(c) of an adoption petition filed within three months of the birth of the minor or to participate in the adoption proceeding.

(e) The manner of service under this section shall be the same as set forth in G.S. 48-2-402.

(f) The jurisdiction provisions of Article 6A of Chapter 1 of the General Statutes and the venue provisions of Article 7 of Chapter 1 of the General Statutes rather than the provisions of Part 1 of this Article apply to proceedings under this section.

(g) Computation of periods of time provided for in this section shall be calculated as set forth in G.S. 1A-1, Rule 6.

(h) Transfer under G.S. 1-301.2 and appeal under G.S. 1-279.1 shall be as for an adoption proceeding.

(i) A determination by the court under this section that the consent of the biological father is not required shall only apply to an adoption petition filed within three months of the birth of the minor."

SECTION 2. Part 2 of Article 2 of Chapter 48 of the General Statutes is amended by adding a new section to read:

"**§ 48-2-207. Necessity of consent post-petition.**

(a) If any individual described in G.S. 48-2-401(c)(3) is served with notice of the filing of the petition in accordance with G.S. 48-2-402 and fails to respond within the time specified in the notice, the court, upon motion by the petitioner, shall enter an order under G.S. 48-3-603(a)(7) that the individual's consent is not required for the adoption.

(b) The court shall hold a hearing to take evidence and determine whether an individual's consent to an adoption is required if any of the following:

(1) Any individual described in G.S. 48-2-401(c)(3) who has been served with notice of the filing of the petition in accordance with G.S. 48-2-402 notifies the court within the time specified in the notice that he believes his consent to the adoption is required.

(2) Any individual who has not been served with the notice of the filing of the petition intervenes in the adoption proceeding alleging that his or her consent to the adoption is required.

(c) If the court determines that the consent of any individual is required, the adoption cannot proceed until such individual's consent is obtained or such individual's parental rights are terminated. If the individual whose consent is required did not have physical custody of the minor immediately prior to the placement of the minor with the prospective adoptive parents, a finding that such individual's consent is required does not entitle such individual to physical custody of the minor.

(d) If the court determines that the consent of any individual described in G.S. 48-2-401(c)(3) is not required, such individual shall not be entitled to receive notice of, or to participate in, further proceedings in the adoption."

SECTION 3. G.S. 48-2-304(c) reads as rewritten:

"(c) A petition to adopt a minor under Article 3 of this Chapter shall also ~~state:~~state all of the following:

(1) A description of the source of placement and the date of placement of the adoptee with the ~~petitioner; and~~petitioner.

(2) That the provisions of the Interstate Compact on the Placement of Children, Article 38 of Chapter 7B of the General Statutes, were followed if the adoptee was brought into this State from another state for purposes of ~~adoption."~~adoption, or that a statement is attached describing the circumstances of any noncompliance."

SECTION 4. G.S. 48-2-305(7) reads as rewritten:

"**§ 48-2-305. Petition for adoption; additional documents.**

At the time the petition is filed, the petitioner shall file or cause to be filed the following documents:

(1) Any required affidavit of parentage executed under G.S. 48-3-206.

(2) Any required consent or relinquishment that has been executed.

(3) A certified copy of any court order terminating the rights and duties of a parent or a guardian of the adoptee.

(4) A certified copy of any court order or pleading in a pending proceeding concerning custody of or visitation with the adoptee.

(5) A copy of any required preplacement assessment certified by the agency that prepared it and any certificate of service required by G.S. 48-3-307 or an affidavit from the petitioner stating why the assessment is not available.

(6) A copy of any document containing the information required under G.S. 48-3-205 concerning the health, social, educational, and genetic

history of the adoptee and the adoptee's original family which the petitioner received before the placement or at any later time, certified by the person who prepared it, or if this document is not available, an affidavit stating the reason why it is not available.

(7) Any signed copy of the form required by the Interstate Compact on the Placement of Children, Article 38 of Chapter 7B of the General Statutes, authorizing a minor to come into this ~~State.~~State, or any statement required by G.S. 48-2-304(c) describing the circumstances of any noncompliance.

(8) A writing that states the name of any individual whose consent is or may be required, but who has not executed a consent or a relinquishment or whose parental rights have not been legally terminated, and any fact or circumstance that may excuse the lack of consent or relinquishment.

(9) In an adoption pursuant to Article 4 of this Chapter, a copy of any agreement to release past-due child support payments.

(10) Any consent to an agency by a placing parent and adopting parents to release identifying information under G.S. 48-9-109.

The petitioner may also file any other document necessary or helpful to the court's determination."

SECTION 5. G.S. 48-2-401 reads as rewritten:

"**§ 48-2-401. Notice by petitioner.**

(a) No later than 30 days after a petition for adoption is filed pursuant to Part 3 of this Article, the petitioner shall serve notice of the filing on the persons required to receive notice under subsections (b), (c), and (d) of this section.

(b) In all adoptions, the petitioner shall serve notice of the filing ~~on:~~on each of the following:

(1) Any individual whose consent to the adoption is required but has not been obtained, has been revoked in accord with this Chapter, or has become void as provided in this ~~Chapter;~~Chapter.

(2) The spouse of the petitioner if that spouse is required to join in the petition and petitioner is requesting that the joinder requirement be ~~waived;~~waived, provided the court for cause may waive this notice requirement.

(3) Any individual who has executed a consent or relinquishment, but who the petitioner has actually been informed has filed an action to set it aside for fraud or ~~duress; and~~duress.

(4) Any other person designated by the court who can provide information relevant to the proposed adoption.

(c) In the adoption of a minor, the petitioner shall also serve notice of the filing ~~on:~~on each of the following:

(1) A minor whose consent is dispensed with under ~~G.S. 48-3-603(b)(2);~~ G.S. 48-3-603(b)(2).

(2) Any agency that placed the ~~adoptee;~~adoptee.

(3) A man who to the actual knowledge of the petitioner claims to be or is named as the biological or possible biological father of the minor, and any biological or possible biological fathers who are unknown or whose whereabouts are unknown, but notice need not be served upon a man who has executed a consent, a relinquishment, or a notarized statement denying paternity or disclaiming any interest in the minor, or a man whose parental rights have been legally terminated or who has been judicially determined not to be the minor's ~~parent; and~~parent, or provided the petition is filed within three months of the birth of the minor, a man whose consent to the adoption has been determined not to be required under G.S. 48-2-206.

(4) Any individual who the petitioner has been actually informed has legal or physical custody of the minor or who has a right of visitation or communication with the minor under an existing court order issued by a court in this State or another state.

(d) In the adoption of an adult, the petitioner shall also serve notice of the filing on any adult children of the prospective adoptive parent and any parent, spouse, or adult child of the adoptee who are listed in the petition to adopt; provided the court for cause may waive the requirement of notice to a parent of an adult adoptee.

(e) Only those persons identified in subsections (b), (c), and (d) of this section are entitled to notice of the proceeding.

(f) A notice required under this section must state that the person served must file a response to the petition within 30 days after service in order to participate in and to receive further notice of the proceeding, including notice of the time and place of any hearing."

SECTION 6. G.S. 48-2-405 reads as rewritten:

"**§ 48-2-405. Rights of persons entitled to notice.**

~~A~~Except as provided in G.S. 48-2-206(c), 48-2-206(d), and 48-2-207(d), a person entitled to notice whose consent is not required may appear and present evidence only as to whether the adoption is in the best interest of the adoptee."

SECTION 7. This act becomes effective October 1, 2005, and applies to actions filed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

HOUSE BILL 896

Short Title:	State Bar/Appeal/Fee.	(Public)
Sponsors:	Representative Haire.	
Referred to:	Finance.	

March 24, 2005

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THE STATE BAR WITH AN APPEAL OF RIGHT FROM FINAL ORDERS OF THE DISCIPLINARY HEARING COMMISSION AND TO INCREASE THE MAXIMUM AMOUNT OF THE ANNUAL MEMBERSHIP FEES FOR MEMBERS OF THE STATE BAR.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 84-28(h) reads as rewritten:

"(h) There shall be an appeal of right by either party from any final order of the Disciplinary Hearing Commission ~~imposing admonition, reprimand, censure, suspension, stayed suspension, or disbarment upon an attorney, or involuntarily transferring a member of the North Carolina State Bar to disability inactive status~~ to the North Carolina Court of Appeals. Review by the appellate division shall be upon matters of law or legal inference. The procedures governing any appeal shall be as provided by statute or court rule for appeals in civil cases. A final order which imposes disbarment or suspension for 18 months or more shall not be stayed except upon application, under the rules of the Court of Appeals, for a writ of supersedeas. A final order imposing suspension for less than 18 months or any other discipline except disbarment shall be stayed pending determination of any appeal of right."

SECTION 2. G.S. 84-34 reads as rewritten:

"**§ 84-34. Membership fees and list of members.**

Every active member of the North Carolina State Bar shall, prior to the first day of July of each year, pay to the secretary-treasurer an annual membership fee in an amount determined by the Council but not to exceed ~~two hundred dollars ($200.00),~~ three hundred dollars ($300.00), and every member shall notify the secretary-treasurer of the member's correct mailing address. Any member who fails to pay the required dues by the last day of June of each year shall be subject to a late fee in an amount determined by the Council but not to exceed thirty dollars ($30.00). All dues for prior years shall be as were set forth in the General Statutes then in effect. The membership fee shall be regarded as a service charge for the maintenance of the several services authorized by

this Article, and shall be in addition to all fees required in connection with admissions to practice, and in addition to all license taxes required by law. The fee shall not be prorated: Provided, that no fee shall be required of an attorney licensed after this Article shall have gone into effect until the first day of January of the calendar year following that in which the attorney was licensed; but this proviso shall not apply to attorneys from other states admitted on certificate. The fees shall be disbursed by the secretary-treasurer on the order of the Council. The secretary-treasurer shall annually, at a time and in a law magazine or daily newspaper to be prescribed by the Council, publish an account of the financial transactions of the Council in a form to be prescribed by it. The secretary-treasurer shall compile and keep currently correct from the names and mailing addresses forwarded to the secretary-treasurer and from any other available sources of information a list of members of the North Carolina State Bar and furnish to the clerk of the superior court in each county, not later than the first day of October in each year, a list showing the name and address of each attorney for that county who has not complied with the provisions of this Article. The name of each of the active members who are in arrears in the payment of membership fees shall be furnished to the presiding judge at the next term of the superior court after the first day of October of each year, by the clerk of the superior court of each county wherein the member or members reside, and the court shall thereupon take action that is necessary and proper. The names and addresses of attorneys so certified shall be kept available to the public. The Secretary of Revenue is hereby directed to supply the secretary-treasurer, from records of license tax payments, with any information for which the secretary-treasurer may call in order to enable the secretary-treasurer to comply with this requirement.

The list submitted to several clerks of the superior court shall also be submitted to the Council at its October meeting of each year and it shall take the action thereon that is necessary and proper."

SECTION 3. Section 2 of this act becomes effective July 1, 2005. The remainder of this act is effective when it becomes law and applies to final orders of the Disciplinary Hearing Commission issued on or after that date.

HOUSE BILL 896:
State Bar/Appeal/Fee

BILL ANALYSIS

Committee:	Senate Ref to Judiciary I. If fav, re-ref to Finance	**Date:**	June 9, 2005
Introduced by:	Rep. Haire	**Summary by:**	O. Walker Reagan
Version:	First Edition		Committee Co-Counsel

SUMMARY: House Bill 896 amends the laws governing the North Carolina State Bar by providing the N.C. State Bar an appeal of right from any final order of the Disciplinary Hearing Commission to the Court of Appeals and increases the annual membership fee from an amount not to exceed $200 to an amount not to exceed $300.

CURRENT LAW: The N.C. State Bar is an agency of the State with statutory authority to regulate the professional conduct of licensed attorneys. Governance of the State Bar is vested in a Council composed of 55 councilors (active members of the State Bar) and three public members not licensed to practice law. The Council has the power to take actions to ensure the competence of lawyers, adopt rules of professional ethics and conduct, investigate and prosecute matters of professional misconduct, grant or deny petitions of reinstatement, arbitrate disputes concerning legal fees, certify legal specialists, and determine whether a member is disabled.

The Disciplinary Hearing Commission of the State Bar is authorized to hold hearings in discipline, incapacity and disability matters, to make findings of fact and conclusions of law after the hearings, and to enter orders necessary to carry out the duties delegated to it by the Council. The Commission is composed of 20 members. Twelve of these members are members of the State Bar appointed by the Council and eight are laypersons (four appointed by the Governor and four appointed by the General Assembly).

BILL ANALYSIS:

Section 1 of the bill provides that either party may appeal the final order of the Disciplinary Hearing Commission to the N.C. Court of Appeals. This appeal of right would apply to both the State Bar and the attorney who is a party to the disciplinary action. Under current law, the statute provides "an appeal of right from any final order imposing admonition, reprimand, censure, suspension, stayed suspension, or disbarment upon an attorney, or involuntarily transferring a member of the North Carolina State Bar to disability inactive status." In a 2003 decision, the North Carolina Court of Appeals ruled that the language in the current statute provided no appeal from a final order that did not impose discipline. *State Bar v. Rudisill, 583.S.E. 2d 413,discretionary review denied, 589 S.E.2d 127 (2003).* In this case, the Disciplinary Hearing Commission granted summary judgment in favor of the attorney. The N.C. State Bar appealed the Commission's decision to the North Carolina Court of Appeals. The appellate court dismissed the State Bar's appeal on grounds that its jurisdiction was limited to that provided by the General Assembly, and the statute in question did not provide an appeal of right from a final order that does not impose discipline. This bill would allow the State Bar to appeal from a final order where no discipline is imposed.

Section 2 increases the annual membership fee from an amount not to exceed $200 to an amount not to exceed $300. The State Bar last requested a dues increase in 1995. Currently the State Bar is assessing dues at the $200 statutory maximum. Every lawyer desiring to practice in North Carolina, including judges and district attorneys, is required to pay dues. This fee is regarded as a service charge for the

maintenance of the services authorized by the State Bar. These services include administering professional discipline, assisting members of the public who have problems with lawyers and the legal system, mediating fee disputes between lawyers and their clients, giving lawyers ethics advice, randomly auditing attorney trust accounts, reimbursing victims of dishonest lawyers, assisting lawyers suffering from addiction and mental illness, and making grants to support the provision of legal services to poor people.

EFFECTIVE DATE: Section 2 of the bill becomes effective July 1, 2005. The remainder is effective when it becomes law and applies to final orders of the Commission issued on or after that date.

Martha Walston, counsel to House Finance Committee, substantially contributed to this summary.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 327
PROPOSED COMMITTEE SUBSTITUTE S327-PCS85268-RR-39

Short Title: NC State Bar Changes/Fees. (Public)

Sponsors:

Referred to:

March 3, 2005

A BILL TO BE ENTITLED

AN ACT TO MAKE CHANGES TO THE STATUTES REGARDING THE NORTH CAROLINA STATE BAR AND TO PROVIDE THE STATE BAR WITH EXPLICIT STATUTORY AUTHORITY TO IMPOSE FEES TO SUPPORT ITS WORK.

The General Assembly of North Carolina enacts:

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

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

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

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

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

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

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

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

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

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

(7) A fee in the amount of ~~one hundred dollars ($100.00) for support of the General Court of Justice to be remitted to the State Treasurer.~~ one hundred twenty-five dollars ($125.00), of which one hundred dollars ($100.00) shall be remitted to the State Treasurer for support of the General Court of Justice and twenty-five dollars ($25.00) shall be transmitted to the North Carolina State Bar to regulate the practice of out-of-state attorneys as provided in this section.

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

SECTION 2. G.S. 84-18.1(b) reads as rewritten:

"(b) Any district bar may from time to time by a majority vote of the members present at a duly called meeting prescribe an annual membership fee to be paid by its active members as a service charge to promote and maintain its administration, activities and programs. The fee shall be in addition to, but shall not exceed, the amount of the membership fee prescribed by G.S. 84-34 for active members of the North Carolina State Bar. The district bar may also charge a late fee, which shall not exceed fifteen dollars ($15.00), for the failure to pay judicial district bar dues on time. The district bar shall mail a written notice to every active member of the district bar at least 30 days before any meeting at which an election is held to impose or increase mandatory district bar dues. Every active member of a district bar which has prescribed an annual membership fee shall keep its secretary-treasurer notified of his correct mailing address and shall pay the prescribed fee at the time and place set forth in the demand for payment mailed to him by its secretary-treasurer. The name of each active member of a district bar who is more than 12 full calendar months in arrears in the payment of any fee shall be furnished by the secretary-treasurer of the district bar to the Council. In the exercise of its powers as set forth in G.S. 84-23, the Council shall

thereupon take disciplinary or other action with reference to the delinquent as it considers necessary and proper."

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

"(b) The disciplinary hearing commission of the North Carolina State Bar, or any ~~committee thereof,~~ committee of the disciplinary hearing commission, ~~is authorized to~~ may hold hearings in discipline, incapacity and disability matters, ~~to~~ make findings of fact and conclusions of law after ~~such~~ these hearings, ~~and to~~ enter orders necessary to carry out the duties delegated to it by the ~~council.~~ Council, and tax the costs to an attorney who is disciplined or is found to be incapacitated or disabled."

SECTION 4. G.S. 84-23(a) reads as rewritten:

"(a) The Council is vested, as an agency of the State, with the authority to regulate the professional conduct of licensed lawyers and State Bar certified paralegals. Among other powers, the Council shall administer this Article; take actions that are necessary to ensure the competence of lawyers and State Bar certified paralegals; formulate and adopt rules of professional ethics and conduct; investigate and prosecute matters of professional misconduct; grant or deny petitions for reinstatement; resolve questions pertaining to membership status; arbitrate disputes concerning legal fees; certify legal specialists and paralegals and charge fees to applicants and participants necessary to administer these certification programs; determine whether a member is disabled; maintain an annual registry of interstate and international law firms doing business in this State; and formulate and adopt procedures for accomplishing these purposes. The Council may do all things necessary in the furtherance of the purposes of this Article that are not otherwise prohibited by law."

SECTION 5. G.S. 84-23.1(b1) reads as rewritten:

"(b1) All organizations offering prepaid legal services plans shall register those plans with the North Carolina State Bar Council on forms provided by the Council. Each plan shall be registered prior to its implementation or operation in this ~~State.~~State and shall renew its registration with the State Bar annually."

SECTION 6. G.S. 84-23.1 is amended by adding a new subsection to read:

"(b2) Every plan shall pay an administrative fee to the Council for the initial registration and an annual renewal fee in amounts determined by the Council."

SECTION 7. Article 4 of Chapter 84 of the General Statutes is amended by adding a new section to read:

"**§ 84-34.2. Specific statutory authority for certain fees.**

In addition to fees the Council is elsewhere authorized to charge and collect, the Council may charge and collect the following fees in amounts determined by the Council:

(1) A reinstatement fee for any attorney seeking reinstatement from inactive status, administrative suspension, or suspension for failure to comply with the annual continuing legal education requirements.

(2) A registration fee and annual renewal fee for an interstate or international law firm.

(3) An attendance fee for continuing legal education programs that may include a fee to support the Chief Justice's Commission on Professionalism.

(4) A late fee for failing to file timely the continuing legal education annual report form, for failure to pay attendance fees, or failure to complete the annual continuing legal education requirements.

(5) An administrative fee for any attorney against whom discipline has been imposed."

SECTION 8. This act becomes effective July 1, 2005.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE June 9, 2005

S. B. No. 327 Amendment No. 1
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
) Nesbitt
Sen.)

moves to amend the bill on page 2, line 33

( ) WHICH CHANGES THE TITLE

by deleting the WORDS:

"thirty dollars ($30.00),"

and substituting the words:

"fifteen dollars ($15.00)".

SIGNED _____

ADOPTED ✓ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 6-9-05

S. B. No. 327 Amendment No. #2
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.) SALES
Sen.)

moves to amend the bill on page 2, lines 18-23

( ) WHICH CHANGES THE TITLE

by rewriting those lines to read:

"(7) A fee in the amount of ~~one hundred twenty-five dollars ($125.00)~~ one hundred twenty-five dollars ($125.00) of which one hundred dollars ($100.00) shall be remitted to the ~~State~~ State Treasurer for support of the General Court of Justice and twenty-five dollars ($25.00) shall be ~~remitted~~ transmitted to the State Bar to regulate the practice of out-of-state attorneys as provided in this section.

SIGNED _____

ADOPTED X FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

SENATE BILL 327:
NC State Bar Changes/Fees

BILL ANALYSIS

Committee:	Senate Ref to Judiciary I. If fav, re-ref to Finance	**Date:**	June 9, 2005
Introduced by:	Sen. Rand	**Summary by:**	William R. Gilkeson
Version:	First Edition -- S327-PCS75325-RR-38		Committee Co-Counsel

SUMMARY: This Proposed Committee Substitute for Senate Bill 327 would authorize the imposition of a late fee for district bar dues and an additional $25 fee for out-of-state attorneys practicing in NC. The PCS would also give explicit authority to the State Bar to impose several other charges that it now collects under the assumption its general authority empowers it to collect. It also makes some other changes to the statutes concerning attorneys. Effective 7-1-05.

Section 1 – Out of State Attorneys. This section would add a $25 fee for out-of-state attorneys who seek to represent a client in a proceeding in NC. That $25 would be remitted to the Administrative Office of the Courts to be transmitted to the State Bar for its regulation of out-of-state attorneys. This $25 fee would be in addition to a $100 fee an out-of-state attorney must pay to support the courts generally. The $25 is not now being collected.

Section 2 – Late Fees for District Bar Dues. Currently a judicial district bar may assess an annual membership fee if a majority of the members present at the annual meeting vote to do so. The district bar fee may not be in addition to the membership fee the lawyer must pay to the State Bar, but it cannot be higher. This section would authorize the district bar to charge a late fee, not to exceed $30. Late fees are not now being collected.

Section 3 – Costs for Disciplinary Hearing Commission. This section authorizes the Bar's disciplinary hearing commission, or one of its committees, to tax costs to an attorney who is disciplined or is found to be incapacitated or disabled.

Section 4 – Registry of Interstate and International Law Firms. This section authorizes the State Bar Council to maintain an annual registry of interstate and international law firms doing business in NC. The State Bar already does this under the assumption it has general authority to do so.

Section 5 – Annual Renewal of Registration by Prepaid Legal Services Plans. Current law requires a prepaid legal services plan to register with the State Bar Council. This section would require the plan to renew its registration annually.

Section 6 – Fee for Prepaid Legal Services Plans. This section requires every prepaid legal services plan to pay an administrative fee to the State Bar Council for its initial registration and for each annual renewal. The Council is given the authority to set the amount.

Section 7 –Explicit Authority for Other Fees. This gives explicit statutory authority to the State Bar to charge 5 kinds of fees beyond basic membership fee. The Bar is already collecting the fees under the assumption it has general authority to do so. The fees are as follows:

1. Reinstatement fee for any attorney seeking to be reinstated from inactive status, administrative suspension, or suspension for failure to meet the continuing legal education (CLE) requirement.
2. Registration fee and annual renewal fee for an interstate or international law firm.
3. Attendance fee for CLE, including a fee to support the Commission on Professionalism.
4. Late fee for filing the CLE report form late, or failure to complete CLE requirements.
5. Administrative fee for any attorney against whom discipline has been imposed.

EFFECTIVE DATE: Effective July 1, 2005.

BACKGROUND: As introduced, the bill would also have increased from $200 to $300 the cap on the annual member fee for attorneys and would have allowed appeals of right from all final decisions of the Bar's disciplinary hearing commission. Those two changes, however, are contained in HB 896, which has passed the House and is in Senate Judiciary I.

S0327e1-SMRR

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 327

Short Title:	NC State Bar Changes/Fees.	(Public)
Sponsors:	Senators Rand; Berger of Franklin, Boseman, Clodfelter, Hartsell, Horton, Kerr, Smith, Snow, Soles, Stevens, and Thomas.	
Referred to:	Judiciary I.	

March 3, 2005

A BILL TO BE ENTITLED

AN ACT TO MAKE CHANGES TO THE STATUTES REGARDING THE NORTH CAROLINA STATE BAR AND TO PROVIDE THE STATE BAR WITH EXPLICIT STATUTORY AUTHORITY TO IMPOSE FEES TO SUPPORT ITS WORK.

The General Assembly of North Carolina enacts:

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

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

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

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

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

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

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

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

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

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

(7) A fee in the amount of one hundred dollars ($100.00) for support of the General Court of Justice to be remitted to the State Treasurer.

(8) A fee in the amount of twenty-five dollars ($25.00) to be remitted to the Administrative Office of the Courts for transmission to the North Carolina State Bar to regulate the practice of out-of-state attorneys as provided in this section.

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

SECTION 2. G.S. 84-18.1(b) reads as rewritten:

"(b) Any district bar may from time to time by a majority vote of the members present at a duly called meeting prescribe an annual membership fee to be paid by its active members as a service charge to promote and maintain its administration, activities and programs. The fee shall be in addition to, but shall not exceed, the amount of the membership fee prescribed by G.S. 84-34 for active members of the North Carolina State Bar. The district bar may also charge a late fee, which shall not exceed thirty dollars ($30.00), for the failure to pay judicial district bar dues on time. The district bar shall mail a written notice to every active member of the district bar at least 30 days before any meeting at which an election is held to impose or increase mandatory district bar dues. Every active member of a district bar which has prescribed an annual membership fee shall keep its secretary-treasurer notified of his correct mailing address and shall pay the prescribed fee at the time and place set forth in the demand for payment mailed to him by its secretary-treasurer. The name of each active member of a district bar who is more than 12 full calendar months in arrears in the payment of any fee shall be furnished by the secretary-treasurer of the district bar to the Council. In the exercise of its powers as set forth in G.S. 84-23, the Council shall thereupon take disciplinary or other action with reference to the delinquent as it considers necessary and proper."

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

"(b) The disciplinary hearing commission of the North Carolina State Bar, or any ~~committee thereof,~~ committee of the disciplinary hearing commission, ~~is authorized to~~ may hold hearings in discipline, incapacity and disability matters, ~~to~~ make findings of fact and conclusions of law after ~~such~~ these hearings, ~~and to~~ enter orders necessary to carry out the duties delegated to it by the ~~council.~~ Council, and tax the costs to an attorney who is disciplined or is found to be incapacitated or disabled."

SECTION 4. G.S. 84-23(a) reads as rewritten:

"(a) The Council is vested, as an agency of the State, with the authority to regulate the professional conduct of licensed lawyers and State Bar certified paralegals. Among other powers, the Council shall administer this Article; take actions that are necessary to ensure the competence of lawyers and State Bar certified paralegals; formulate and adopt rules of professional ethics and conduct; investigate and prosecute matters of professional misconduct; grant or deny petitions for reinstatement; resolve questions pertaining to membership status; arbitrate disputes concerning legal fees; certify legal specialists and paralegals and charge fees to applicants and participants necessary to administer these certification programs; determine whether a member is disabled; maintain an annual registry of interstate and international law firms doing business in this State; and formulate and adopt procedures for accomplishing these purposes. The Council may do all things necessary in the furtherance of the purposes of this Article that are not otherwise prohibited by law."

SECTION 5. G.S. 84-23.1(b1) reads as rewritten:

"(b1) All organizations offering prepaid legal services plans shall register those plans with the North Carolina State Bar Council on forms provided by the Council. Each plan shall be registered prior to its implementation or operation in this ~~State.~~State and shall renew its registration with the State Bar annually."

SECTION 6. G.S. 84-23.1 is amended by adding a new subsection to read:

"(b2) Every plan shall pay an administrative fee to the Council for the initial registration and an annual renewal fee in amounts determined by the Council."

SECTION 7. G.S. 84-28(h) reads as rewritten:

"(h) There shall be an appeal of right to the North Carolina Court of Appeals by either party from any final order of the Disciplinary Hearing Commission and from any final order of the Council in a reinstatement case. ~~imposing admonition, reprimand, censure, suspension, stayed suspension, or disbarment upon an attorney, or involuntarily transferring a member of the North Carolina State Bar to disability inactive status to the North Carolina Court of Appeals.~~ Review by the appellate division shall be upon matters of law or legal inference. The procedures governing any appeal shall be as provided by statute or court rule for appeals in civil cases. A final order ~~which~~ that imposes disbarment or suspension for 18 months or more shall not be stayed except upon application, under the rules of the Court of Appeals, for a writ of supersedeas. A final order imposing suspension for less than 18 months or any other discipline except disbarment shall be stayed pending determination of any appeal of right."

SECTION 8. G.S. 84-34 reads as rewritten:

"**§ 84-34. ~~Membership fees~~ Fees and list of members.**

(a) Every active member of the North Carolina State Bar shall, prior to the first day of July of each year, pay to the secretary-treasurer an annual membership fee in an amount determined by the Council but not to exceed ~~two~~ three hundred dollars ~~($200.00);~~ ($300.00), and every member shall notify the secretary-treasurer of the member's correct mailing address. Any member who fails to pay the required dues by the last day of June of each year shall be subject to a late fee in an amount determined by the Council but not to exceed thirty dollars ($30.00). ~~All dues for prior years shall be as were set forth in the General Statutes then in effect.~~ The membership fee shall be regarded as a service charge for the maintenance of the several services authorized by this Article, and shall be in addition to all fees required in connection with admissions to practice, and in addition to all license taxes required by law. The fee shall not be ~~prorated: Provided, that no~~ prorated. No fee shall be required of an attorney licensed after this Article shall have gone into effect until the first day of January of the calendar year following that in which the attorney was licensed; but this proviso shall not apply to attorneys from other states admitted on certificate. The fees shall be disbursed by the secretary-treasurer on the order of the Council.

(b) The Council may charge and collect the following additional fees in amounts determined by the Council:

(1) A reinstatement fee for any attorney seeking reinstatement from inactive status, administrative suspension, or suspension for failure to comply with the annual continuing legal education requirements.

(2) A registration fee and annual renewal fee for an interstate or international law firm.

(3) An attendance fee for continuing legal education programs that may include a fee to support the Chief Justice's Commission on Professionalism.

(4) A late fee for failing to file timely the continuing legal education annual report form, for failure to pay attendance fees, or failure to complete the annual continuing legal education requirements.

(5) An administrative fee for any attorney against whom discipline has been imposed.

(c) The secretary-treasurer shall annually, at a time and in a law magazine or daily newspaper to be prescribed by the Council, publish an account of the financial transactions of the Council in a form to be prescribed by it. The secretary-treasurer shall compile and keep currently correct from the names and mailing addresses forwarded to the secretary-treasurer and from any other available sources of information a list of members of the North Carolina State Bar and furnish to the clerk of the superior court in each county, not later than the first day of October in each year, a list showing the name and address of each attorney for that county who has not complied with the provisions of this Article. The name of each of the active members who are in arrears in the payment of membership fees shall be furnished to the presiding judge at the next term of the superior court after the first day of October of each year, by the clerk of the superior court of each county wherein the member or members reside, and the court shall thereupon take action that is necessary and proper. The names and addresses of

attorneys so certified shall be kept available to the public. The Secretary of Revenue ~~is hereby directed to~~ shall supply the secretary-treasurer, from records of license tax payments, with any information for which the secretary-treasurer may call in order to enable the secretary-treasurer to comply with this requirement.

The list submitted to several clerks of the superior court shall also be submitted to the Council at its October meeting of each year and it shall take the action thereon that is necessary and proper."

SECTION 9. This act becomes effective July 1, 2005.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 510

Committee Substitute Favorable 4/4/05

PROPOSED SENATE COMMITTEE SUBSTITUTE H510-CSRU-53 [v.2]

6/7/2005 4:09:12 PM

Short Title: Enforcement of Power of Attorney. (Public)

Sponsors:

Referred to:

March 7, 2005

A BILL TO BE ENTITLED

AN ACT TO ENCOURAGE PERSONS TO ACCEPT THE AUTHORITY GRANTED UNDER POWERS OF ATTORNEY.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 32A of the General Statutes is amended by adding a new Article to read:

"Article 5.

"Enforcement of Power of Attorney.

"**§ 32A-35. Reliance on power of attorney.**

(a) A person who in good faith relies on a writing that on its face is duly signed, acknowledged and otherwise regular, that purports to confer a power of attorney, durable or otherwise, shall be protected to the full extent of the powers that reasonably appear to be granted in the writing, unless the person has actual knowledge that the writing is not a valid power of attorney, whether or not the person demands or receives an affidavit under subsection (b) of this section. A person who conducts activities through employees or other agents has actual knowledge of a fact involving a power of attorney only from the time the information was received by an employee or agent having the authority to approve the power of attorney presented. No person so dealing in good faith with a person named as an attorney-in-fact in the writing that purports to confer a power of attorney shall be held responsible for any breach of fiduciary duty, including the misapplication of any money or other property paid or transferred as directed by the attorney-in-fact and pursuant to the writing that purports to confer a power of attorney.

(b) A person may, prior to acceptance of the authority of the attorney-in-fact or at any other time, request an affidavit executed by the attorney-in-fact to the effect that the attorney-in-fact did not have, at the time of the presentation to the person of the writing purporting to confer a power of attorney, actual knowledge of either (i) the revocation

of the power of attorney, or (ii) facts that would cause the attorney-in-fact to question the authenticity or validity of the power of attorney. An affidavit meeting the requirements of this subsection shall be sufficient proof to the requesting person, as of the date of the affidavit, of (i) the nonrevocation of the power of attorney, and (ii) the authenticity and validity of the power of attorney. If the exercise of the power of attorney requires execution and delivery of an instrument that is recordable, the affidavit shall be prepared so as to be recordable. An affidavit prepared under this subsection may also be used as an affidavit under G.S. 32A-13(c). An affidavit in the form described in subsection (d) of this section shall be deemed to meet the requirements of this subsection but shall not be the sole means of meeting those requirements.

(c) This section does not affect any provision in a power of attorney for its termination by expiration of time or occurrence of an event other than an express revocation or a change in the principal's capacity.

(d) Example of Affidavit of Attorney-in-Fact.

STATE OF _____

COUNTY OF _____

The undersigned does hereby state and affirm the following:

(1) The undersigned is the person named as Attorney-in-Fact in the Power of Attorney executed by _____ ("Principal") on [date] _____, ____ (the "Power of Attorney").

(2) The Power of Attorney is currently exercisable by the undersigned.

(3) The undersigned has no actual knowledge of any of the following:

a. The Principal is deceased.

b. The Power of Attorney has been revoked or terminated, partially or otherwise.

c. The Principal lacked the understanding and capacity to make and communicate decisions regarding his estate and person at the time the Power of Attorney was executed.

d. The Power of Attorney was not properly executed and is not a legal, valid power of attorney.

(4) The undersigned agrees not to exercise any powers granted under the Power of Attorney if the undersigned becomes aware that the Principal is deceased or has revoked such powers.

This is the ___ day of ____.

_____

[Signature]

[Acknowledgement]

"**§ 32A-36. Penalty for unreasonable refusal to recognize power.**

(a) A person dealing with an attorney-in-fact who unreasonably refuses to accept a power of attorney shall be subject to all of the following:

(1) Liability for reasonable attorney fees and costs incurred in any action or proceeding necessary to confirm the validity of a power of attorney or to implement a power of attorney.

(2) An order of the court requiring acceptance of the valid power of attorney.

(3) Any other remedy available under applicable law.

(b) Acceptance of a power of attorney shall mean (i) acknowledging the validity and authenticity of the document, and (ii) allowing the attorney-in-fact to conduct business in accordance with the powers that reasonably appear to be granted in the document.

"**§ 32A-37. Protection for third parties.**

(a) A person is not required to honor the attorney-in-fact's authority or to conduct business with the attorney-in-fact if the person is not otherwise required to conduct business with the principal in the same circumstances.

(b) Without limiting the generality of subsection (a) of this section, nothing in this Article requires a person to do any of the following:

(1) Engage in any transaction with an attorney-in-fact if the attorney-in-fact has previously breached any agreement with the person, whether in an individual or fiduciary capacity.

(2) Open an account for a principal at the request of an attorney-in-fact if the principal is not currently a customer of the person.

(3) Make a loan to the principal at the request of the attorney-in-fact.

(c) A person who is presented with a power of attorney shall not be deemed to have unreasonably refused to accept the power of attorney solely on the basis of failure to accept the power of attorney within seven business days.

(d) A person who has reasonable cause to question the authenticity or validity of a power of attorney may refuse to accept the authority granted by that document.

(e) A person who promptly requests, and does not within a reasonable time receive, an affidavit as described in G.S. 32A-35(b), is not deemed under G.S. 32A-36 to have unreasonably refused to accept a power of attorney.

(f) The principal, the attorney-in-fact, or a person presented with a power of attorney may initiate a special proceeding in accordance with the procedures of Article 33 of Chapter 1 of the General Statutes to request a determination of the validity of the power of attorney. If the decision in that special proceeding is that reasonable cause to refuse to accept the power of attorney existed, and that the attorney-in-fact willfully misrepresented the authenticity or validity of the power of attorney, the attorney-in-fact, and not the principal, is liable for reasonable attorney fees and costs incurred in that action.

(g) Nothing in this Article requires a person who accepts a power of attorney to permit an attorney-in-fact to conduct business not authorized by the terms of the power of attorney.

(h) Nothing in this Article amends or modifies the rights of banks and other depository institutions to terminate any deposit account in accordance with applicable law.

"**§ 32A-38. Scope of Article.**

This Article shall apply to all or any portion of a document executed under Article 1, Article 2, or Article 2A of this Chapter."

SECTION 2. This act becomes effective October 1, 2005, and applies to powers of attorney created before, on, or after that date.

HOUSE BILL 510:
Enforcement of Power of Attorney

BILL ANALYSIS

Committee:	Senate Judiciary I	**Date:**	June 9, 2005
Introduced by:	Reps. Stam, Martin	**Summary by:**	O. Walker Reagan
Version:	PCS to Second Edition H510-CSRU-53		Committee Co-Counsel

SUMMARY: The Proposed Senate Committee Substitute for House Bill 510 adds a new article, Enforcement of Powers of Attorney, to Chapter 32A, Powers of Attorney, that creates a remedy for attorneys-in-fact when the power of attorney is unreasonably refused by a third party; and provides assurances for the third party who relied on the power of attorney in good faith.

BILL ANALYSIS:

Reliance on Power of Attorney. (G.S. 32A-35) - A person that acts in good-faith reliance based on a writing that purports to confer a power of attorney is protected to the full extent of powers granted, unless the person has actual knowledge the power of attorney is not valid. The person is not responsible for any breach of a fiduciary duty, including misappropriation of any money or other property paid or transferred as directed by the attorney-in-fact and pursuant to the power of attorney.

The person can request the attorney-in-fact to execute an affidavit to the effect that the attorney-in-fact did not have actual knowledge at the time of action by the attorney-in-fact of either: (1) that the power of attorney had been revoked, or (2) facts that would cause the attorney-in-fact to question the authenticity or validity of the power of attorney. This affidavit is deemed sufficient proof as the non-revocation of the power and the authenticity and validity of the power of attorney as of the date of the affidavit.

Penalty for Unreasonable Refusal to Recognize Power. (G.S. 32A-36) - A person who unreasonably refuses to accept a power of attorney can be subject to any of the following:

- Liability for reasonable attorney fees and costs incurred in any action or proceeding to enforce the power of attorney.
- An injunction requiring acceptance of the valid power of attorney.
- Any other remedy available under applicable law.

Protection for Third Parties. (G.S. 32A-37) - The following protections for third parties apply:

- The person is not required to honor the attorney-in-facts authority or conduct business with the attorney-in-fact if the person is not required to conduct business with the principal under the same circumstances.
- The person is not required to (1) engage in any transaction with an attorney-in-fact if the attorney-in-fact has previously breached any agreement with the person, whether in an individual or fiduciary capacity, (2) open any account for a principal at the request of an attorney-in-fact if the principal is not already a customer of the person, (3) make a loan to the principal at the request of the attorney-in-fact.
- The person has a seven day "safe harbor" to determine whether to accept the power of attorney.

- Any person that has reasonable cause to question the legitimacy of the power of attorney is not required to honor the power of attorney.
- Any party may initiate a special proceeding to request a determination of the validity of the power of attorney.
- A bank or other depository institution retains the rights to terminate any deposit account in accordance with applicable law.

Scope of Article. (G.S. 32A-38) - The new Article applies only to documents, or that portion of a document, adopted under Articles 1(Statutory Short Form Power of Attorney), 2(Durable Power of Attorney), and Article 2A(Authority of Attorney-In-Fact to Make Gifts) of Chapter 32A of the General Statutes.

EFFECTIVE DATE: The bill becomes effective October 1, 2005 and applies to powers of attorney created before, on or after that date.

Erika Churchill, counsel to House Judiciary I Committee, substantially contributed to this summary.

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE — 6-9-05

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
Janet McMillan	NC State Bar
John McMillan	NFIB
Bill Kratt	NC Bar Association
Mayzie Joyce	visitor
Bill Scoggin	KCCH
Charlie Diehl	NC Trucking Assoc
John McKay	COU office
Betsy Bailey	NCPTA
Kim Crawford	TTA
Barbara Cansler	BSGR
Andy Ellen	NCRMA

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE
Name of Committee

6-9-05
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
Guy Rollins	Allbritton & Co.
Cadye Payne	Ellington & Webb
Adrian Dellinger	Intern
Melissa Barbour	SBOE
Kim Strach	SBOE
Catherine Kimberly	Smith Anderson
Silpa Mynemi	Smith Anderson
Dana Simpson	Smith Anderson
Jason Brege	Smith Anderson
Jane Smith	NCDHHS
David Barnes	Poyner + Spruill
Jack Cozort	Parker Poe

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE — 6-9-05

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
Stella McKenney	NC DHHS
Esther High	NCDHHS/DSS
Paul Stock	NC Bankers Assn
[illegible]	[illegible]
Colleen Kochanek	Holt York McDarris & High
Suzanne Buckley	GOVERNOR'S OFFICE
[illegible]	JAIO-DOA
Katie Lewis	[illegible]
Susan Valauri	National
Bob Hall	Democracy North Carolina
Carolin Bakewell	NC State Bar

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE — 6-9-05

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
Melissa Beard	NCSS
Joe McClees	McClees Consulting, Inc
Henri McClees	" "
Patrick O'Connor	HMW
[illegible]	NCHA
John Bowdish	AAA

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Tuesday	June 14, 2005	10:00 AM	1027 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 510	Enforcement of Power of Attorney.	Representative Martin, III Representative Stam
HB 664	Crime to Falsify Highway Inspection Reports.-AB	Representative Cole
HB 666	HOV Lane Penalties.-AB	Representative Cole
HB 1054	Swift Creek Mgt. Plan/Standing to Enforce.	Representative Ross Representative Dollar Representative Stam
HB 1086	General Assembly Police Jurisdiction.	Representative Culpepper, III
HB 1503	Regional Public Transportation Liability.	Representative Martin, III

Senator Daniel G. Clodfelter, Chair

Judiciary 1 Committee

June 14, 2005

Minutes

Senator Dan Clodfelter, Chair called the meeting to order at 10:18 a.m. with fourteen members present. He introduced Pages Will Patterson from Raleigh, NC, Xan Law, III from Charlotte, NC, Christopher LaFargue from New Bern, NC and Nathan Glover from Apex, NC.

HB-1054 (Swift Creek Mgt. Plan/Standing to Enforce) was introduced by Senator Clodfelter. As one of the sponsors of the bill, Representative Deborah Ross explained that the bill grants local governments that are a party to the Swift Creek Management Plan and certain citizens of those local governments standing to enforce the Plan. (See Attached Bill Summary for further information). Senator Richard Stevens moved for Favorable Report. Senator's Clodfelter, RC Soles, and Charlie Albertson had questions. Representative Paul Stam, George Givens, from the Research Division, Representative Nelson Dollar, also a sponsor of the bill, spoke on the bill and answered questions. Senator Clodfelter called for a vote on the motion made by Senator Stevens. All members voted yes. Motion carried for a Favorable Report.

HB-510 (Enforcement of Power of Attorney) Committee Substitute was re-introduced by Senator Clodfelter. Senator Charlie Albertson moved for adoption of the Committee Substitute. All members voted yes. Motion carried. Co-sponsor, Representative Paul Stam explained that the bill adds a new article, Enforcement of Powers of Attorney, the Chapter 32A, Powers of Attorney, that creates a remedy for attorneys-in-fact when the power of attorney is unreasonably refused by a third party; and provides assurances for the third party who relied on the power of attorney in good faith. (See Attached Bill Summary for further information). Senator's Ham Horton, Harry Brown and Tony Rand had questions. Staff attorney, Walker Reagan explained an Amendment that was made to the bill at the previous June 9th meeting. Staff attorney, Hal Pell and Rep. Stam answered questions. Senator Richard Stevens moved for a Favorable Report. Al members voted yes. Motion carried.

HB-1503 (Regional Public Transportation Liability) was introduced by Senator Clodfelter. Bill sponsor, Representative Grier Martin explained the bill. Senator's Phillip Berger, Tony Rand and RC Soles had questions. Mr. Sandy Sands,

representative for TTA, answered the questions. Senator Clodfelter stated that the bill would be displaced at this time, and heard at the next committee meeting.

HB-664 (Crime to Falsify Highway Inspection Reports.-AB) was introduced by Senator Clodfelter. Bill sponsor Representative Nelson Cole explained that the bill would make it unlawful for any person to falsify or direct another person to falsify, a highway construction inspection report or test report that is required by the State Dept. of Transportation. Senator's Ham Horton, Tony Rand and RC Soles had questions. Staff attorney, Hal Pell and Senator Clodfelter answered the questions. Senator Rand moved for a Favorable Report. All members voted yes. Motion carried.

HB-666 (HOV Lane Penalties.-AB) Committee Substitute was introduced by Senator Clodfelter. Senator Clark Jenkins moved for adoption of the Committee Substitute. All members voted yes. Motion carried. Bill sponsor Representative Nelson Cole explained that the proposed committee substitute amends the statutes that authorize the designation of HOV and transit-way lanes by providing penalties for violations. (See attached Bill Summary for further information). Senator Jenkins discussed the Senate companion bill. Senator's Tiny Rand, Phillip Berger, RC Soles, Janet Cowell and Ham Horton had questions. Rep. Cole answered the questions. Senator Jenkins moved for a Favorable Report. All members voted yes. Motion carried.

Being no further business the meeting adjourned at 10:40 a.m.

Senator Dan Clodfelter, Chair

Wanda Joyner, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Daniel G. Clodfelter, Chair

Wednesday, June 15, 2005

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

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **510** Enforcement of Power of Attorney.

Draft Number:	PCS60498
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **666** HOV Lane Penalties.-AB

Draft Number:	PCS70517
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 2

Committee Clerk Comments:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Daniel G. Clodfelter, Chair

Tuesday, June 14, 2005

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

FAVORABLE

H.B.(CS #1) **664** Crime to Falsify Highway Inspection Reports.-AB
Sequential Referral: None
Recommended Referral: None

H.B. **1054** Swift Creek Mgt. Plan/Standing to Enforce.
Sequential Referral: None
Recommended Referral: None

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

S.B. **327** NC State Bar Changes/Fees.
Draft Number: PCS85268
Sequential Referral: Finance
Recommended Referral: None
Long Title Amended: No

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

H.B. **1102** Early Prep for One-Stop Count.
Draft Number: PCS60492
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

TOTAL REPORTED: 4

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

HOUSE BILL 1054

Short Title:	Swift Creek Mgt. Plan/Standing to Enforce.	(Local)
Sponsors:	Representatives Stam, Ross, Dollar (Primary Sponsors); and Weiss.	
Referred to:	Judiciary I.	

March 31, 2005

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT LOCAL GOVERNMENTS THAT ARE A PARTY TO THE SWIFT CREEK MANAGEMENT PLAN AND CERTAIN CITIZENS OF THOSE LOCAL GOVERNMENTS HAVE STANDING TO ENFORCE THE PROVISIONS OF S.L. 1998-192.

Whereas, in 1988, representatives of the County of Wake, the City of Raleigh, and the Towns of Apex, Cary, and Garner developed the Swift Creek Management Plan, a coordinated land-use plan for the Swift Creek watershed; and

Whereas, the local governments having jurisdiction over the area approved the Swift Creek Management Plan through appropriate action of their respective governing bodies; and

Whereas, in 1998, the General Assembly found that it was in the best interest of the citizens of the Swift Creek area and those local governments to maintain the Swift Creek Management Plan as agreed to by those local governments; and

Whereas, in order to maintain the Swift Creek Management Plan, the General Assembly enacted S.L. 1998-192, which provides that the local governments that are parties to the Swift Creek Management Plan shall not adopt, amend, or repeal any ordinance authorized by Article 18 of Chapter 153A of the General Statutes, Article 19 of Chapter 160A of the General Statutes, or under any local act or charter provision relating to the subject of those Articles, nor grant any permit or approval pursuant to those ordinances, that would be inconsistent with the standards and provisions of the Swift Creek Management Plan; and

Whereas, the General Assembly finds that it is in the best interests of the citizens of the Swift Creek area and the local governments that have agreed to maintain the Swift Creek Management Plan that the standing of these local governments and certain citizens of the Swift Creek area to enforce the provisions of S.L. 1998-192 be clarified; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1.(a) The provisions of Sections 1 through 3 of S.L. 1998-192 may be enforced as provided in this section.

SECTION 1.(b) Any local government that is a party to the Swift Creek Management Plan shall have standing to contest an action of another party to the Swift Creek Management Plan that the local government believes is inconsistent with the standards and provisions of the Swift Creek Management Plan in violation of the provisions of Sections 1 through 3 of S.L. 1998-192.

SECTION 1.(c) Any person who resides in the jurisdiction of a local government that is a party to the Swift Creek Management Plan and who also resides in the Swift Creek watershed shall have standing to contest an action of any party to the Swift Creek Management Plan that the person believes is inconsistent with the standards and provisions of the Swift Creek Management Plan in violation of the provisions of Sections 1 through 3 of S.L. 1998-192, provided that the person has a specific personal or legal interest in the action and is adversely affected thereby.

SECTION 1.(d) A local government or person who has standing under subsection (b) or (c) of this section may file a petition in the superior court of Wake County seeking review of the action of a local government that the local government or person believes to be inconsistent with the standards and provisions of the Swift Creek Management Plan in violation of the provisions of Sections 1 through 3 of S.L. 1998-192. A petition under this section shall be filed no later than 60 days after the adoption, amendment, or repeal of the ordinance, the grant of the permit or approval, an extension of any utility, or other action the local government or person believes to be inconsistent with the standards and provisions of the Swift Creek Management Plan in violation of the provisions of Sections 1 through 3 of S.L. 1998-192.

SECTION 1.(e) A petition filed under this section shall state with specificity what exceptions are taken to the action of the respondent local government and what relief the petitioner seeks. Within 15 days after receipt of the copy of the petition for review, or within such additional time as the court may allow, the respondent local government shall transmit to the court a copy of the ordinance, permit, or approval and any other minutes or documents that constitute the record of the challenged action.

SECTION 1.(f) The court may hear oral arguments, receive written briefs, and take evidence on the question of whether or not there has been a violation of Sections 1 through 3 of S.L. 1998-192.

SECTION 1.(g) If the court determines that there has been a violation of Sections 1 through 3 of S.L. 1998-192, it shall declare the ordinance, permit, approval, or other action void and may order any additional relief that appears appropriate.

SECTION 2. This act shall not be construed to preclude a judicial determination, based on common-law principles, statutory provisions, or other law, that standing exists in a particular case for a person to bring an action to challenge an alleged violation of the Swift Creek Management Plan and the provisions of Sections 1 through 3 of S.L. 1998-192.

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

HOUSE BILL 1054:
Swift Creek Mgt. Plan/Standing to Enforce

BILL ANALYSIS

Committee:	Senate Judiciary I	**Date:**	June 14, 2005
Introduced by:	Reps. Stam, Ross, Dollar	**Summary by:**	O. Walker Reagan
Version:	First Edition		Committee Co-Counsel

SUMMARY: ***House Bill 1054 grants local governments that are a party to the Swift Creek Management Plan (Plan) and certain citizens of those local governments standing to enforce the Plan***

BILL ANALYSIS: House Bill 1054 grants standing to certain parties to enforce the Swift Creek Management Plan (Plan). The standing will allow those parties to contest an action of any party to the Plan that the party believes is inconsistent with the standards and provisions of the Plan.

Standing is granted to any local government that is a party to the Plan. Standing is also granted to any person who resides in the jurisdiction of a local government that is a party to the Plan and who has a personal or legal interest in the action being taken and is adversely affected by the action.

An action may be filed by petition in the superior court of Wake County seeking review of the action of a local government that the petitioning party believes to be inconsistent with the standards and provisions of the Plan. The petition must be filed within 60 days of the action the petitioner believes to be inconsistent. The petitioner must state the specifically the exceptions taken and the relief the petitioner seeks.

Within 15 days of receipt of the complaint by the local government, or longer if the court allows, the local government must send a copy to the court of any documents related to the action taken.

The court may hear oral arguments, receive written briefs, and take evidence on the question of whether or not there has been a violation of S.L. 1998-192. If the court finds the action violates S.L. 1998-192, the court may declare the action of the legal government void.

This bill is effective when it becomes law.

BACKGROUND: In 1988, representative so Wake County, Raleigh, Apex, Cary, and Garner developed the Plan, a coordinated land-use plan for the Swift Creek watershed.

In 1998, the General Assembly enacted S.L. 1998-192, which provides that the local governments that are parties to the Plan shall not adopt, amend, or repeal any ordinance, nor grant any permit or approval that would be inconsistent with the standards and provisions of the Plan.

Susan Sitze, counsel to House Judiciary I Committee, substantially contributed to this summary.

H1054e1-SMRU

SESSION LAW 1998-192

AN ACT PROVIDING THAT CERTAIN LOCAL GOVERNMENTS MAINTAIN THE SWIFT CREEK MANAGEMENT PLAN AS AGREED TO BY THOSE JURISDICTIONS.

Whereas, in January 1988, the late Mayor Avery Upchurch of Raleigh invited chief elected officials of the Swift Creek area to meet to discuss the development of a coordinated land-use plan for the area; and

Whereas, the able efforts of elected officials and technical staff of the County of Wake, the City of Raleigh, and the Towns of Apex, Cary, and Garner resulted in the development of the Swift Creek Management Plan in September 1988; and

Whereas, the various local governments having jurisdiction over the area have approved the Swift Creek Management Plan through appropriate action of their respective governing bodies; and

Whereas, the General Assembly finds that it is in the best interest of the citizens of the Swift Creek area and the various local governments to maintain the Swift Creek Management Plan as agreed to by those jurisdictions; Now, therefore,

Section 1. (a) A jurisdiction affected by this act shall not adopt any ordinance authorized by Article 18 of Chapter 153A of the General Statutes, Article 19 of Chapter 160A of the General Statutes, or under any local act or charter provision relating to the subject of those Articles, nor grant any permit or approval pursuant to those ordinances, that would be inconsistent with the standards and provisions of the Swift Creek Management Plan.

(b) This act applies to any zoning map amendment and to any other zoning amendment, modification, repeal, or change in zoning regulations and restrictions or zone boundaries relating to the area set forth in the Swift Creek Management Plan, but shall not be construed to prevent any jurisdiction subject to its provisions from adopting zoning ordinance text changes.

(c) This act shall not affect any valid and unexpired vested right of any landowner arising by law pursuant to G.S. 153A-344.1 or G.S. 160A-385.1, nor shall this act affect the right of any person to protest zoning changes or otherwise appeal planning, subdivision, or zoning actions as provided by Article 18 of Chapter 153A of the General Statutes, or Article 19 of Chapter 160A of the General Statutes, or by local ordinance.

Section 2. If a jurisdiction affected by this act has an ordinance to effectuate the recommended minimum performance standards for the Swift Creek watershed and the other specific features set forth in the Swift Creek Management Plan, then the jurisdiction may modify its zoning ordinance to further meet or exceed the requirements of the Swift Creek Management Plan. The Swift Creek Management Plan may be modified by interlocal agreement pursuant to Article 20 of Chapter 160A of the General Statutes entered into by all of the affected jurisdictions.

Section 3. The jurisdictions affected by this act may extend utilities unilaterally to any portion of their respective jurisdictions subject to the Swift Creek Management Plan provided that, prior to the effective date of this act, the municipalities zoned or rezoned the subject area in anticipation of providing utilities to the area.

Section 4. (a) The qualified resident voters of the area described in the Swift Creek Management Plan shall be given the opportunity to vote in a nonbinding advisory referendum on incorporation of the Swift Creek area as a municipality. The question to be used in the voting systems and ballots shall be:

"[ ] FOR [ ] AGAINST

Incorporation of the Swift Creek area as a municipality, along with the payment of additional property taxes which the proposed municipality may levy."

(b) Registration for the election shall be conducted in accordance with G.S. 163-288.2. The referendum shall be conducted on November 7, 2000.

Section 5. This act applies only to the County of Wake, the City of Raleigh, and the Towns of Apex, Cary, and Garner.

Section 6. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 22nd day of October, 1998.

SENATE
COMMITTEE SUBSTITUTE

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

JUN 15 2005

H

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ADOPTED

HOUSE BILL 510

Committee Substitute Favorable 4/4/05

PROPOSED SENATE COMMITTEE SUBSTITUTE H510-PCS60498-RU-53

Short Title: Enforcement of Power of Attorney. (Public)

Sponsors:

Referred to:

March 7, 2005

A BILL TO BE ENTITLED

AN ACT TO ENCOURAGE PERSONS TO ACCEPT THE AUTHORITY GRANTED UNDER POWERS OF ATTORNEY.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 32A of the General Statutes is amended by adding a new Article to read:

"Article 5.

"Enforcement of Power of Attorney.

"**§ 32A-35. Reliance on power of attorney.**

(a) Unless (i) a person has actual knowledge that a writing is not a valid power of attorney, or (ii) the action taken or to be taken by a person named as attorney-in-fact in a writing that purports to confer a power of attorney is beyond the apparent power or authority of that named attorney-in-fact as granted in that writing, a person who in good faith relies on a writing that on its face is duly signed, acknowledged, and otherwise appears regular, and that purports to confer a power of attorney, durable or otherwise, shall be protected to the full extent of the powers and authority that reasonably appear to be granted to the attorney-in-fact designated in that writing, and no person so dealing in good faith with that named attorney-in-fact shall be held responsible for any breach of fiduciary duty by that attorney-in-fact, including any breach of loyalty, any act of self-dealing, or any misapplication of money or other property paid or transferred as directed by that attorney-in-fact. This subsection applies without regard to whether or not the person dealing with the attorney-in-fact demands or receives an affidavit under subsection (b) of this section. A person who conducts activities through employees or other agents has actual knowledge of a fact involving a power of attorney only from the time the information was received by an employee or agent having the authority to approve the power of attorney presented.

(b) A person may, prior to acceptance of the authority of the attorney-in-fact or at any other time, request an affidavit executed by the attorney-in-fact to the effect that the attorney-in-fact did not have, at the time of the presentation to the person of the writing purporting to confer a power of attorney, actual knowledge of either (i) the revocation of the power of attorney, or (ii) facts that would cause the attorney-in-fact to question the authenticity or validity of the power of attorney. An affidavit meeting the requirements of this subsection shall be sufficient proof to the requesting person, as of the date of the affidavit, of (i) the nonrevocation of the power of attorney, and (ii) the authenticity and validity of the power of attorney. If the exercise of the power of attorney requires execution and delivery of an instrument that is recordable, the affidavit shall be prepared so as to be recordable. An affidavit prepared under this subsection may also be used as an affidavit under G.S. 32A-13(c). An affidavit in the form described in subsection (d) of this section shall be deemed to meet the requirements of this subsection but shall not be the sole means of meeting those requirements.

(c) This section does not affect any provision in a power of attorney for its termination by expiration of time or occurrence of an event other than an express revocation or a change in the principal's capacity.

(d) Example of Affidavit of Attorney-in-Fact.

STATE OF _____

COUNTY OF _____

The undersigned does hereby state and affirm the following:

(1) The undersigned is the person named as Attorney-in-Fact in the Power of Attorney executed by _____ ("Principal") on [date] _____, ____ (the "Power of Attorney").

(2) The Power of Attorney is currently exercisable by the undersigned.

(3) The undersigned has no actual knowledge of any of the following:

a. The Principal is deceased.

b. The Power of Attorney has been revoked or terminated, partially or otherwise.

c. The Principal lacked the understanding and capacity to make and communicate decisions regarding his estate and person at the time the Power of Attorney was executed.

d. The Power of Attorney was not properly executed and is not a legal, valid power of attorney.

(4) The undersigned agrees not to exercise any powers granted under the Power of Attorney if the undersigned becomes aware that the Principal is deceased or has revoked such powers.

This is the ___ day of ____.

_____

[Signature]

[Acknowledgement]

"**§ 32A-36. Penalty for unreasonable refusal to recognize power.**

(a) A person dealing with an attorney-in-fact who unreasonably refuses to accept a power of attorney shall be subject to all of the following:

(1) Liability for reasonable attorneys' fees and costs incurred in any action or proceeding necessary to confirm the validity of a power of attorney or to implement a power of attorney.

(2) An order of the court requiring acceptance of the valid power of attorney.

(3) Any other remedy available under applicable law.

(b) Acceptance of a power of attorney shall mean (i) acknowledging the validity and authenticity of the document, and (ii) allowing the attorney-in-fact to conduct business in accordance with the powers that reasonably appear to be granted in the document.

"**§ 32A-37. Protection for third parties.**

(a) A person is not required to honor the attorney-in-fact's authority or to conduct business with the attorney-in-fact if the person is not otherwise required to conduct business with the principal in the same circumstances.

(b) Without limiting the generality of subsection (a) of this section, nothing in this Article requires a person to do any of the following:

(1) Engage in any transaction with an attorney-in-fact if the attorney-in-fact has previously breached any agreement with the person, whether in an individual or fiduciary capacity.

(2) Open an account for a principal at the request of an attorney-in-fact if the principal is not currently a customer of the person.

(3) Make a loan to the principal at the request of the attorney-in-fact.

(c) A person who is presented with a power of attorney shall not be deemed to have unreasonably refused to accept the power of attorney solely on the basis of failure to accept the power of attorney within seven business days.

(d) A person who has reasonable cause to question the authenticity or validity of a power of attorney may refuse to accept the authority granted by that document.

(e) A person who promptly requests, and does not within a reasonable time receive, an affidavit as described in G.S. 32A-35(b), is not deemed under G.S. 32A-36 to have unreasonably refused to accept a power of attorney.

(f) The principal, the attorney-in-fact, or a person presented with a power of attorney may initiate a special proceeding in accordance with the procedures of Article 33 of Chapter 1 of the General Statutes to request a determination of the validity of the power of attorney. If the decision in that special proceeding is that reasonable cause to refuse to accept the power of attorney existed, and that the attorney-in-fact willfully misrepresented the authenticity or validity of the power of attorney, the attorney-in-fact, and not the principal, is liable for reasonable attorneys' fees and costs incurred in that action.

(g) Nothing in this Article requires a person who accepts a power of attorney to permit an attorney-in-fact to conduct business not authorized by the terms of the power of attorney.

(h) Nothing in this Article amends or modifies the rights of banks and other depository institutions to terminate any deposit account in accordance with applicable law.

"**§ 32A-38. Scope of Article.**

This Article shall apply to all or any portion of a document executed under Article 1, Article 2, or Article 2A of this Chapter."

SECTION 2. This act becomes effective October 1, 2005, and applies to powers of attorney created before, on, or after that date.

HOUSE BILL 510:
Enforcement of Power of Attorney

BILL ANALYSIS

Committee:	Senate Judiciary I	**Date:**	June 14, 2005
Introduced by:	Reps. Stam, Martin	**Summary by:**	O. Walker Reagan
Version:	PCS to Second Edition H510-CSRU-53		Committee Co-Counsel

SUMMARY: The Proposed Senate Committee Substitute for House Bill 510 adds a new article, Enforcement of Powers of Attorney, to Chapter 32A, Powers of Attorney, that creates a remedy for attorneys-in-fact when the power of attorney is unreasonably refused by a third party; and provides assurances for the third party who relied on the power of attorney in good faith.

BILL ANALYSIS:

Reliance on Power of Attorney. (G.S. 32A-35) - A person that acts in good-faith reliance based on a writing that purports to confer a power of attorney is protected to the full extent of powers granted, unless the person has actual knowledge the power of attorney is not valid. The person is not responsible for any breach of a fiduciary duty, including misappropriation of any money or other property paid or transferred as directed by the attorney-in-fact and pursuant to the power of attorney.

The person can request the attorney-in-fact to execute an affidavit to the effect that the attorney-in-fact did not have actual knowledge at the time of action by the attorney-in-fact of either: (1) that the power of attorney had been revoked, or (2) facts that would cause the attorney-in-fact to question the authenticity or validity of the power of attorney. This affidavit is deemed sufficient proof as the non-revocation of the power and the authenticity and validity of the power of attorney as of the date of the affidavit.

Penalty for Unreasonable Refusal to Recognize Power. (G.S. 32A-36) - A person who unreasonably refuses to accept a power of attorney can be subject to any of the following:

- Liability for reasonable attorney fees and costs incurred in any action or proceeding to enforce the power of attorney.
- An injunction requiring acceptance of the valid power of attorney.
- Any other remedy available under applicable law.

Protection for Third Parties. (G.S. 32A-37) - The following protections for third parties apply:

- The person is not required to honor the attorney-in-facts authority or conduct business with the attorney-in-fact if the person is not required to conduct business with the principal under the same circumstances.
- The person is not required to (1) engage in any transaction with an attorney-in-fact if the attorney-in-fact has previously breached any agreement with the person, whether in an individual or fiduciary capacity, (2) open any account for a principal at the request of an attorney-in-fact if the principal is not already a customer of the person, (3) make a loan to the principal at the request of the attorney-in-fact.
- The person has a seven day "safe harbor" to determine whether to accept the power of attorney.

- Any person that has reasonable cause to question the legitimacy of the power of attorney is not required to honor the power of attorney.
- Any party may initiate a special proceeding to request a determination of the validity of the power of attorney.
- A bank or other depository institution retains the rights to terminate any deposit account in accordance with applicable law.

Scope of Article. (G.S. 32A-38) - The new Article applies only to documents, or that portion of a document, adopted under Articles 1(Statutory Short Form Power of Attorney), 2(Durable Power of Attorney), and Article 2A(Authority of Attorney-In-Fact to Make Gifts) of Chapter 32A of the General Statutes.

EFFECTIVE DATE: The bill becomes effective October 1, 2005 and applies to powers of attorney created before, on or after that date.

Erika Churchill, counsel to House Judiciary I Committee, substantially contributed to this summary.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 2

HOUSE BILL 510

Committee Substitute Favorable 4/4/05

Short Title: Enforcement of Power of Attorney. (Public)

Sponsors:

Referred to:

March 7, 2005

A BILL TO BE ENTITLED

AN ACT TO ENCOURAGE PERSONS TO ACCEPT THE AUTHORITY GRANTED UNDER POWERS OF ATTORNEY.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 32A of the General Statutes is amended by adding a new Article to read:

"Article 5.

"Enforcement of Power of Attorney.

"**§ 32A-35. Reliance on power of attorney.**

(a) A person who in good faith relies on a writing that on its face is duly signed and acknowledged and otherwise regular, and that purports to confer a power of attorney, durable or otherwise, shall be protected to the full extent of the powers granted in the writing that purports to confer a power of attorney, unless the person has actual knowledge that the writing is not a valid power of attorney, whether or not the person demands or receives an affidavit under subsection (b) of this section. A person who conducts activities through employees or other agents has actual knowledge of a fact involving a power of attorney only from the time the information was received by an employee or agent having the authority to approve the power of attorney presented. No person so dealing with a person named as an attorney-in-fact in the writing that purports to confer a power of attorney is responsible for the misapplication of any money or other property paid or transferred as directed by the attorney-in-fact and pursuant to the writing that purports to confer a power of attorney.

(b) A person may, prior to acceptance of the authority of the attorney-in-fact or at any other time, request an affidavit executed by the attorney-in-fact to the effect that the attorney-in-fact did not have, at the time of the presentation to the person of the writing purporting to confer a power of attorney, actual knowledge of either (i) the revocation of the power of attorney; or (ii) facts that would cause the attorney-in-fact to question the authenticity or validity of the power of attorney. An affidavit meeting the requirements of this subsection shall be sufficient proof to the requesting person, as of

the date of the affidavit, of (i) the nonrevocation of the power of attorney; and (ii) the authenticity and validity of the power of attorney. If the exercise of the power of attorney requires execution and delivery of an instrument that is recordable, the affidavit shall be prepared so as to be recordable. An affidavit prepared under this subsection may also be used as an affidavit under G.S. 32A-13(c). An affidavit in the form described in subsection (d) of this section shall be deemed to meet the requirements of this subsection but shall not be the sole means of meeting those requirements.

(c) This section does not affect any provision in a power of attorney for its termination by expiration of time or occurrence of an event other than an express revocation or a change in the principal's capacity.

(d) Example of Affidavit of Attorney-in-Fact.

STATE OF _____

COUNTY OF _____

The undersigned does hereby state and affirm the following:

(1) The undersigned is the person named as Attorney-in-Fact in the Power of Attorney executed by _____ ("Principal") on [date] _____, ____ (the "Power of Attorney").

(2) The Power of Attorney is currently exercisable by the undersigned.

(3) The undersigned has no actual knowledge of any of the following:

a. The Principal is deceased.

b. The Power of Attorney has been revoked or terminated, partially or otherwise.

c. The Principal lacked the understanding and capacity to make and communicate decisions regarding his estate and person at the time the Power of Attorney was executed.

d. The Power of Attorney was not properly executed and is not a legal, valid power of attorney.

(4) The undersigned agrees not to exercise any powers granted under the Power of Attorney if the undersigned becomes aware that the Principal is deceased or has revoked such powers.

This is the ___ day of ____.

_____

[Signature]

[Acknowledgement]

"**§ 32A-36. Penalty for unreasonable refusal to recognize power.**

(a) A person dealing with an attorney-in-fact who unreasonably refuses to accept a power of attorney shall be subject to all of the following:

(1) Liable for reasonable attorney fees and costs incurred in any action or proceeding necessary to confirm the validity of a power of attorney or to implement a power of attorney.

(2) Subject to an order of the court requiring acceptance of the valid power of attorney.

(3) Subject to any other remedy available under applicable law.

(b) Acceptance of a power of attorney shall mean (i) acknowledging the validity and authenticity of the document; and (ii) allowing the attorney-in-fact to conduct business in accordance with the terms of the document.

"**§ 32A-37. Protection for third parties.**

(a) A person is not required to honor the attorney-in-fact's authority or to conduct business with the attorney-in-fact if the person is not otherwise required to conduct business with the principal in the same circumstances.

(b) Without limiting the generality of subsection (a) of this section, nothing in this Article requires a person to do any of the following:

(1) Engage in any transaction with an attorney-in-fact if the attorney-in-fact has previously breached any agreement with the person, whether in an individual or fiduciary capacity.

(2) Open an account for a principal at the request of an attorney-in-fact if the principal is not currently a customer of the person.

(3) Make a loan to the principal at the request of the attorney-in-fact.

(c) A person who is presented with a power of attorney shall not be deemed to have unreasonably refused to accept the power of attorney solely on the basis of failure to accept the power of attorney within five business days.

(d) A person who has reasonable cause to question the authenticity or validity of a power of attorney may refuse to accept the authority granted by that document.

(e) A person who promptly requests, and does not within a reasonable time receive, an affidavit as described in G.S. 32A-35(b), is not deemed under G.S. 32A-36 to have unreasonably refused to accept a power of attorney.

(f) The principal, the attorney-in-fact, or a person presented with a power of attorney may initiate a special proceeding in accordance with the procedures of Article 33 of Chapter 1 of the General Statutes to request a determination of the validity of the power of attorney. If the decision in that special proceeding is that reasonable cause to refuse to accept the power of attorney existed, and that the attorney-in-fact willfully misrepresented the authenticity or validity of the power of attorney, the attorney-in-fact, and not the principal, is liable for reasonable attorney fees and costs incurred in that action.

(g) Nothing in this Article requires a person who accepts a power of attorney to permit an attorney-in-fact to conduct business not authorized by the terms of the power of attorney."

"**§ 32A-38. Scope of Article.**

This Article shall apply to all or any portion of a document executed under Article 1, Article 2, or Article 2A of this Chapter."

SECTION 2. This act becomes effective October 1, 2005, and applies to powers of attorney created before and after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 3

HOUSE BILL 1503

Committee Substitute Favorable 5/4/05

Third Edition Engrossed 5/24/05

Short Title: Regional Public Transportation Liability. (Public)

Sponsors:

Referred to:

April 21, 2005

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT REGIONAL PUBLIC TRANSPORTATION AUTHORITIES ARE TREATED AS CITIES FOR PURPOSES OF CIVIL LIABILITY.

The General Assembly of North Carolina enacts:

SECTION 1. Article 26 of Chapter 160A of the General Statutes is amended by adding a new section to read:

"**§ 160A-627. Civil liability.**

Subject to the provisions of G.S. 160A-626, the Authority shall be treated as a city for purposes of civil liability pursuant to G.S. 160A-485, provided that the Authority maintain a minimum of twenty million dollars ($20,000,000) of liability insurance. Participation in a local government risk pool pursuant to Article 23 of General Statute Chapter 58 shall be deemed to be the purchase of insurance for the purpose of this section."

SECTION 2. This act is effective when it becomes law and applies to claims arising on or after that date.

HOUSE BILL 1503:
Regional Public Transportation Liability

BILL ANALYSIS

Committee:	Senate Judiciary I	**Date:**	June 14, 2005
Introduced by:	Rep. Martin	**Summary by:**	O. Walker Reagan
Version:	Third Edition		Committee Co-Counsel

SUMMARY: House Bill 1503 provides that regional public transportation authorities will be treated as cities for purposes of civil liability provided the authority maintains at least $20,000,000 of liability insurance.

CURRENT LAW: With the exception of certain rail facilities, the law applicable to the civil liability of a regional public transportation authority is unclear. State agencies come under the State Tort Claims Act, which means that liability claims must be brought before the State Industrial Commission and are subject to a limit of $500,000 for claims arising from injuries to one person. Cities and counties are immune from civil liability except to extent they purchase liability insurance. It is not clear where regional public transportation authorities fall.

BILL ANALYSIS: House Bill 1503 would provide that a regional public transportation authority would be treated as a city for purposes of civil liability, provided that the Authority maintains liability insurance of at least $20 million. The Authority would be immune from liability except to the extent it purchases insurance. Participation in a local government risk pool will be considered the same as purchasing insurance under this statute.

EFFECTIVE DATE: The act is effective when it becomes law and applies to claims arising on or after that date.

Steve Rose, counsel to the House Judiciary IV Committee, substantially contributed to this summary.

H1503e3-SMRU

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 2

HOUSE BILL 664*

Committee Substitute Favorable 3/31/05

Short Title: Crime to Falsify Highway Inspection Reports.-AB (Public)

Sponsors:

Referred to:

March 16, 2005

A BILL TO BE ENTITLED

AN ACT TO MAKE IT UNLAWFUL FOR ANY PERSON TO FALSIFY, OR DIRECT ANOTHER TO FALSIFY, A HIGHWAY CONSTRUCTION INSPECTION REPORT OR TEST REPORT REQUIRED BY THE DEPARTMENT OF TRANSPORTATION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 136-13.2 reads as rewritten:

"**§ 136-13.2. Falsifying highway inspection reports.**

(a) Any ~~employee or agent employed by the Department of Transportation or by an engineering or consulting firm engaged by the Department of Transportation,~~ person who knowingly falsifies any inspection report or test report required by the Department of Transportation in connection with the construction of highways, shall be guilty of a Class H felony.

(b) Any ~~employee, supervisor, or officer of the Department of Transportation~~ person who directs a subordinate under his direct or indirect supervision to falsify an inspection report or test report required by the Department of Transportation in connection with the construction of highways, shall be guilty of a Class H felony.

(c) Repealed by Session Laws 1979, c. 786, s. 2, effective May 8, 1979."

SECTION 2. This act becomes effective December 1, 2005, and applies to offenses committed on or after that date.

HOUSE BILL 664:
Crime to Falsify Highway Inspection Reports.-AB

BILL ANALYSIS

Committee:	Senate Judiciary I	**Date:**	June 14, 2005
Introduced by:	Rep. Cole	**Summary by:**	Hal Pell
Version:	Second Edition		Committee Co-Counsel

SUMMARY: This bill would make it unlawful for any person to falsify, or to direct another person to falsify, a highway construction inspection report or test report that is required by the State Dept. of Transportation. This act becomes effective December 1, 2005, and applies to offenses committed on or after that date.

[NOTE: This bill is identical to S600, 2nd ed., which passed through this committee on April 11, 2005, and is currently in the House Rules Committee].

CURRENT LAW: Current law specifies individuals by employment (either DOT employees, or agents or employees) that may be held criminally responsible for the described acts.

BILL ANALYSIS: The bill eliminates the classification of individuals by employment that may be held criminally responsible for filing, or directing the filing, of false reports, and substitutes "any person."

EFFECTIVE DATE: This act becomes effective December 1, 2005, and applies to offenses committed on or after that date.

H0664e2-SMRK-001

SENATE COMMITTEE SUBSTITUTE

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

JUN 15 2005

H

ADOPTED D

HOUSE BILL 666*

Committee Substitute Favorable 4/13/05

PROPOSED SENATE COMMITTEE SUBSTITUTE H666-PCS70517-RK-31

Short Title: HOV Lane Penalties.-AB (Public)

Sponsors:

Referred to:

March 16, 2005

A BILL TO BE ENTITLED

AN ACT TO AMEND THE PENALTIES FOR VIOLATION OF HIGH OCCUPANCY VEHICLE LANE RESTRICTIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-146.2 reads as rewritten:

"**§ 20-146.2. Rush hour traffic lanes authorized.**

(a) HOV Lanes. – The Department of Transportation may designate one or more travel lanes as high occupancy vehicle (HOV) lanes on streets and highways on the State Highway System and cities may designate one or more travel lanes as high occupancy vehicle (HOV) lanes on streets on the Municipal Street System. HOV lanes shall be reserved for vehicles with a specified number of passengers as determined by the Department of Transportation or the city having jurisdiction over the street or highway. When HOV lanes have been designated, and have been appropriately marked with signs or other markers, they shall be reserved for privately or publicly operated buses, and automobiles or other vehicles containing the specified number of persons. Where access restrictions are applied on HOV lanes through designated signing and pavement markings, vehicles shall only cross into or out of an HOV lane at designated openings. A motor vehicle shall not travel in a designated HOV lane if the motor vehicle has more than three axles, regardless of the number of occupants. HOV lane restrictions shall not apply to motorcycles or vehicles designed to transport 15 or more passengers, regardless of the actual number of occupants. HOV lane restrictions shall not apply to emergency vehicles. As used in this subsection, the term "emergency vehicle" means any law enforcement, fire, police, or other government vehicle, and any public and privately owned ambulance or emergency service vehicle, when responding to an emergency.

(a1) Transitway Lanes. – The Department of Transportation may designate one or more travel lanes as a transitway on streets and highways on the State Highway System

and cities may designate one or more travel lanes as a transitway on streets on the Municipal Street System. Transitways shall be reserved for public transportation vehicles as determined by the Department of Transportation or the city having jurisdiction over the street or highway. When transitways have been designated, and they have been appropriately marked with signs or other markers, they shall be reserved for privately or publicly operated transportation vehicles as determined by the Department or the city having jurisdiction.

(b) Temporary Peak Traffic Shoulder Lanes. – The Department of Transportation may modify, upgrade, and designate shoulders of controlled access facilities and partially controlled access facilities as temporary travel lanes during peak traffic periods. When these shoulders have been appropriately marked, it shall be unlawful to use these shoulders for stopping or emergency parking. Emergency parking areas shall be designated at other appropriate areas, off these shoulders, when available.

(c) Directional Flow Peak Traffic Lanes. – The Department of Transportation may designate travel lanes for the directional flow of peak traffic on streets and highways on the State Highway System and cities may designate travel lanes for the directional flow of peak traffic on streets on the Municipal Street System. These travel lanes may be designated for time periods by the agency controlling the streets and highways.

(d) Violation of designated HOV and transitway lane restrictions as provided in subsection (a) or (a1) of this section is an infraction punishable by a penalty of one hundred dollars ($100.00) and two drivers license points."

SECTION 2. G.S. 20-16 reads as rewritten:

"...

Schedule of Point Values

...

Speeding in a school zone in excess of the posted school zone speed limit	3
Failure to properly restrain a child in a restraint or seat belt	2
Violation of designated HOV and transitway lanes pursuant to G.S. 20-146.2(a), (a1)	2
All other moving violations	2
Littering pursuant to G.S. 14-399 when the littering involves the use of a motor vehicle	1

..."

SECTION 3. This act becomes effective December 1, 2005, and applies to offenses committed on or after that date.

HOUSE BILL 666 PCS: HOV Lane Penalties.-AB

BILL ANALYSIS

Committee:	Senate Judiciary I	**Date:**	June 14, 2005
Introduced by:	Rep. Cole	**Summary by:**	Hal Pell
Version:	PCS to Second Edition H666-CSRK-31		Committee Co-Counsel

SUMMARY: ***This proposed committee substitute amends the statutes that authorize the designation of HOV and transitway lanes by providing penalties for violations. This act becomes effective December 1, 2005, and applies to offenses committed on or after that date.***

[NOTE: Senate Bill 610 amends the same statutes by providing a penalty of $100 and two drivers license points. This House bill, First Edition, had the same two drivers license points provision, but it was deleted in the Second Edition. This PCS amends the House bill so that it provides the same penalties as the Senate bill and the First Edition of the House bill.]

BILL ANALYSIS:

The Department of Transportation is authorized to designate one or more travel lanes on streets and highways as High Occupancy Vehicle (HOV) lanes. The lanes are reserved for vehicles with a specified number of passengers. The Department may also designate Transitway lanes, which are reserved for specified public transportation vehicles.

The authorizing statutes do not have a specified penalty for violation of the provisions. The bill would make a violation an infraction, with a penalty of $100 and two drivers license points.

EFFECTIVE DATE: This act becomes effective December 1, 2005, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 2

HOUSE BILL 666*

Committee Substitute Favorable 4/13/05

Short Title: HOV Lane Penalties.-AB (Public)

Sponsors:

Referred to:

March 16, 2005

A BILL TO BE ENTITLED

AN ACT TO AMEND THE PENALTIES FOR VIOLATION OF HIGH OCCUPANCY VEHICLE LANE RESTRICTIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-146.2 reads as rewritten:

"**§ 20-146.2. Rush hour traffic lanes authorized.**

(a) HOV Lanes. – The Department of Transportation may designate one or more travel lanes as high occupancy vehicle (HOV) lanes on streets and highways on the State Highway System and cities may designate one or more travel lanes as high occupancy vehicle (HOV) lanes on streets on the Municipal Street System. HOV lanes shall be reserved for vehicles with a specified number of passengers as determined by the Department of Transportation or the city having jurisdiction over the street or highway. When HOV lanes have been designated, and have been appropriately marked with signs or other markers, they shall be reserved for privately or publicly operated buses, and automobiles or other vehicles containing the specified number of persons. Where access restrictions are applied on HOV lanes through designated signing and pavement markings, vehicles shall only cross into or out of an HOV lane at designated openings. A motor vehicle shall not travel in a designated HOV lane if the motor vehicle has more than three axles, regardless of the number of occupants. HOV lane restrictions shall not apply to motorcycles or vehicles designed to transport 15 or more passengers, regardless of the actual number of occupants. HOV lane restrictions shall not apply to emergency vehicles. As used in this subsection, the term "emergency vehicle" means any law enforcement, fire, police, or other government vehicle, and any public and privately owned ambulance or emergency service vehicle, when responding to an emergency.

(a1) Transitway Lanes. – The Department of Transportation may designate one or more travel lanes as a transitway on streets and highways on the State Highway System and cities may designate one or more travel lanes as a transitway on streets on the Municipal Street System. Transitways shall be reserved for public transportation

vehicles as determined by the Department of Transportation or the city having jurisdiction over the street or highway. When transitways have been designated, and they have been appropriately marked with signs or other markers, they shall be reserved for privately or publicly operated transportation vehicles as determined by the Department or the city having jurisdiction.

(b) Temporary Peak Traffic Shoulder Lanes. – The Department of Transportation may modify, upgrade, and designate shoulders of controlled access facilities and partially controlled access facilities as temporary travel lanes during peak traffic periods. When these shoulders have been appropriately marked, it shall be unlawful to use these shoulders for stopping or emergency parking. Emergency parking areas shall be designated at other appropriate areas, off these shoulders, when available.

(c) Directional Flow Peak Traffic Lanes. – The Department of Transportation may designate travel lanes for the directional flow of peak traffic on streets and highways on the State Highway System and cities may designate travel lanes for the directional flow of peak traffic on streets on the Municipal Street System. These travel lanes may be designated for time periods by the agency controlling the streets and highways.

(d) Violation of designated HOV and transitway lane restrictions as provided in subsection (a) or (a1) of this section is an infraction punishable by a penalty of one hundred dollars ($100.00). No drivers license or insurance points shall be assessed for violation of subsection (a) or (a1) of this section."

SECTION 2. This act becomes effective December 1, 2005, and applies to offenses committed on or after that date.

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE
Name of Committee

6-14-05
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
Bill Katt	NC Bar Assoc/ Wyrick Robbins
Courtney Denning	NC Bar Association
LAURA F. BARNES	Extension + Community Assoc. Wilson County, NC
Jean Anderson	" " "
ROSE PERFIRA	✓ ✓ ✓
ELEANOR WATSON	✓ ✓ ✓
Ann Baker	" " "
Candace Murray	" " "
Betty Lou Jones	" "
Virginia Harper	✓ ✓ ✓
Kathleen H. Hall	✓ ✓ ✓

Jessica Langolf	Meetes Consulting
[illegible]	[illegible]
Roz Smith	NC CUC
David Bowman	RE Investor } ENERGIA
Judy Bowman	RE Investor }
Andy Romcuist	NCLM
Anji Hamm	Maupin Taylor
[illegible]	Gov Office
Gardner Payne	Edmisten Webb
Jane Pinsley	AAA Carolinas
Kathleen Edwards	UNC-CH Legis. Reporting Service
James Andrews	NC State AFL-CIO

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE — 6-14-05

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
Ann Mitchem	Extension to Community Assoc. Wilson County, N.C.
Maria [illegible]	" "
Paul Hoglan	[illegible] Inc.
Knox Brown	Ward and Smith, PA
[illegible]	[illegible]
Tripp Melton	Sen. Stevens Office
Joanne Kasko	ECA of Wilson Co.
[illegible]	Wilson, Co.
Margie Pittman	ECA of Wilson Co.
Nancy F. Lomm	ECA of Wilson Co., Wilson NC
Kim Crawford	TTA

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE
Name of Committee

6-14-05
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
Betsy Bailey	NCPIRG
Kevin Leonard	DCSR
Sandy Sands	DCSR
Erin Kinney	NC Conservation Network
Alissa Dolan	NC conservation network
Colleen Kochanek	Holt York
Martha Lamb	Bank of America
Betty Turner	Bank of America
John Holton	Rep. Cole
Kevin Lacy	NCDOT
Ellis Powell	NCDOT

VISITOR REGISTRATION SHEET

6-14-05

JUDICIARY 1 COMMITTEE
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
John Cyrus	NCS Grange
Rissa Matta	NC Home Builders Assoc.
Stephanie Dorko	Charlotte Chamber
Lee Hodge	KCLH
John Phelps	NCLM
Dick Daugh	NCATA
R Paul Wilms	NCHBA
Katie Long	Intern
Steve Woodson	NC Farm Bureau
Charlie Diehl	NC Trucking Assoc.
Henry Hultquist	N.C. S.D.A.

PAGES - Senate Judiciary I - 06/14/05

1. Will Patterson
   Raleigh
   Senator Malone

2. Xan Law, III
   Charlotte
   Senator Pittenger

3. Christophe Lafargue
   New Bern
   Senator Rand

4. Nathan Glover
   Apex
   Senator Hunt

Principal Clerk
Reading Clerk

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Tuesday	June 14, 2005	10:00 AM	1027 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 510	Enforcement of Power of Attorney.	Representative Martin, III Representative Stam
HB 664	Crime to Falsify Highway Inspection Reports.-AB	Representative Cole
HB 666	HOV Lane Penalties.-AB	Representative Cole
HB 1054	Swift Creek Mgt. Plan/Standing to Enforce.	Representative Ross Representative Dollar Representative Stam
HB 1086	General Assembly Police Jurisdiction.	Representative Culpepper, III
HB 1503	Regional Public Transportation Liability.	Representative Martin, III

Senator Daniel G. Clodfelter, Chair

Principal Clerk _____
Reading Clerk _____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Thursday	June 16, 2005	10:00 AM	1027 LB

REVISED NOTICE

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 702	Personal Watercraft Changes.	Representative Crawford, Jr.
HB 740	Transit Drug Testing.	Representative Cole Representative Coates
HB 822	Blakely Decision/Conform State Law.	Representative Ross Representative Stam Representative Glazier Representative Haire
HB 1086	General Assembly Police Jurisdiction.	Representative Culpepper, III
HB 1209	Sexual Battery/Sex Offender Registry	Representative Vinson Representative Brubaker Representative Sauls Representative Goodwin
HB 1503	Regional Public Transportation Liability.	Representative Martin, III

Senator Daniel G. Clodfelter, Chair

Judiciary 1 Committee

June 16, 2005

Minutes

Senator Dan Clodfelter, Chair called the meeting to order at10:07 a.m. with thirteen members present. He introduced Pages Walker Sigmon from Conover, NC, Katherine West and Igov Pediaditakis from Raleigh, NC, Jonathan Noble from Lumberton, NC, Emily Wong from Gastonia, NC, Elizabeth Lewis from Fairmont, NC, Allen Stanton from Nashville, NC and Amber Denton from Louisburg, NC.

HB-1503 (Regional Public Transportation Liability) Committee Substitute was introduced by Senator Clodfelter. Senator Phillip Berger moved for adoption of the Committee Substitute. All members voted yes. Motion carried. Bill sponsor, Representative Grier Martin explained that the bill provides that regional public transportation authorities will be treated as cities for purposes of civil liability but the authority must maintain at least $20,000.000 of liability insurance. (See attached Bill Summary for further information). Senator Berger moved for a Favorable Report. All members voted yes. Motion carried.

HB-822 (Blakely Decision/Conform State Law) was introduced by Senator Clodfelter. One of the bill sponsors, Representative Rick Glazier explained the bill. (See attached Bill Summary for further information). Senator Clark Jenkins moved for a Favorable Report. All members voted yes. Motion carried.

HB-740 (Transit Drug Testing) was introduced by Senator Clodfelter. Co-sponsor, Representative Lorene Coates explained the bill. (See attached Bill Summary for further information). Senator's Clark Jenkins Ham Horton, and Andrew Brock had questions. Ms. Betsy Bailey, Former Director, NC Public Transportation Association, spoke on the bill and answered questions. Senator Jenkins moved for a Favorable Report. All members voted yes. Motion carried.

HB-702 (Personal Watercraft Changes) Committee Substitute was introduced by Senator Clodfelter. Senator Charlie Albertson moved for adoption of the Committee Substitute. All members voted yes. Motion carried. Senator Richard Stevens explained that the bill increases the minimum age for persons who may operate personal watercraft in North Carolina. (See attached Bill Summary for further information). Senator's Phillip Berger had a question. Staff attorney, Hal Pell answered the question. Mr. Chris Gallanti, Personal Water Craft Industry,

spoke on the bill. Senator Albertson moved for a Favorable Report. All members voted yes. Motion carried.

Senator Clodfelter stated that HB-1086 would not be heard due to the absence of bill sponsor, Representative Bill Culpepper.

HB-1209 (Sexual Battery/Sex Offender Registry) was introduced by Senator Clodfelter. Bill sponsor Representative Melanie Wade Goodwin explained that the bill amends the sec offender registration program to include sexual battery as a reportable offense, and adds sexual battery to the offenses requiring a DNA sample. (See attached Bill Summary for further information). Senator's Charlie Albertson, Ham Horton and Jerry Tillman had questions. Staff attorney, Hal Pell answered the questions. Mr., Dan Blough, American Civil Liberties Union, and Monica Johnson Hostetler, NC Committee on Sexual Assault spoke on the bill. Senator Clark Jenkins moved for a Favorable Report. All members voted yes. Motion carried.

Being no further business the meeting ~~the meeting~~ was adjourned at 10:27 a.m.

Senator Dan Clodfelter, Chair

Wanda Joyner, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Daniel G. Clodfelter, Chair

Monday, June 20, 2005

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

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **702** Personal Watercraft Changes.

Draft Number:	PCS70520
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **1503** Regional Public Transportation Liability.

Draft Number:	PCS80430
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 2

Committee Clerk Comments:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Daniel G. Clodfelter, Chair

Thursday, June 16, 2005

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

FAVORABLE

H.B. **740**	Transit Drug Testing.	
	Sequential Referral:	None
	Recommended Referral:	None
H.B.(CS #1) **822**	Blakely Decision/Conform State Law.	
	Sequential Referral:	None
	Recommended Referral:	None
H.B.(CS #1) **1209**	Sexual Battery/Sex Offender Registry	
	Sequential Referral:	None
	Recommended Referral:	None

TOTAL REPORTED: 3

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 1503
Committee Substitute Favorable 5/4/05
Third Edition Engrossed 5/24/05
PROPOSED SENATE COMMITTEE SUBSTITUTE H1503-PCS80430-RU-57

Short Title: Regional Public Transportation Liability. (Public)

Sponsors:

Referred to:

April 21, 2005

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT REGIONAL PUBLIC TRANSPORTATION AUTHORITIES ARE TREATED AS CITIES FOR PURPOSES OF CIVIL LIABILITY.

The General Assembly of North Carolina enacts:

SECTION 1. Article 26 of Chapter 160A of the General Statutes is amended by adding a new section to read:

"**§ 160A-627. Civil liability.**

Except as provided in G.S. 160A-626, the Authority shall be deemed a city for purposes of civil liability pursuant to G.S. 160A-485. Governmental immunity of the Authority is waived to a minimum of twenty million dollars ($20,000,000) per single accident or incident. The Authority shall maintain a minimum of twenty million dollars ($20,000,000) per single accident or incident of liability insurance. Participation in a local government risk pool pursuant to Article 23 of Chapter 58 of the General Statutes shall be deemed to be the purchase of insurance for the purpose of this section."

SECTION 2. This act is effective when it becomes law and applies to claims arising on or after that date.

HOUSE BILL 1503:
Regional Public Transportation Liability

BILL ANALYSIS

Committee:	Senate Judiciary I	**Date:**	June 16, 2005
Introduced by:	Rep. Martin	**Summary by:**	O. Walker Reagan
Version:	PCS to Third Edition H1503-CSRU-57		Committee Co-Counsel

SUMMARY: The Proposed Senate Committee Substitute for House Bill 1503 provides that regional public transportation authorities will be treated as cities for purposes of civil liability but the authority must maintain at least $20,000,000 of liability insurance.

CURRENT LAW: With the exception of certain rail facilities, the law applicable to the civil liability of a regional public transportation authority is unclear. State agencies come under the State Tort Claims Act, which means that liability claims must be brought before the State Industrial Commission and are subject to a limit of $500,000 for claims arising from injuries to one person. Cities and counties are immune from civil liability except to extent they purchase liability insurance. It is not clear where regional public transportation authorities fall.

BILL ANALYSIS: The Proposed Senate Committee Substitute for House Bill 1503 would provide that a regional public transportation authority would be treated as a city for purposes of civil liability. Governmental immunity would be waived to a minimum of $20 million per single accident or incident. The Authority would be required to maintain liability insurance of at least $20 million per single accident or incident. The Authority would be immune from liability except to the extent it purchases insurance over and above $20 million. Participation in a local government risk pool will be considered the same as purchasing insurance under this statute.

EFFECTIVE DATE: The act is effective when it becomes law and applies to claims arising on or after that date.

Steve Rose, counsel to the House Judiciary IV Committee, substantially contributed to this summary.

H1503e3-SMRU-CSRU-57

§ 160A-485. Waiver of immunity through insurance purchase.

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

(b) An insurance contract purchased pursuant to this section may cover such torts and such officials, employees, and agents of the city as the governing board may determine. The city may purchase one or more insurance contracts, each covering different torts or different officials, employees, or agents of the city. An insurer who issues a contract of insurance to a city pursuant to this section thereby waives any defense based upon the governmental immunity of the city, and any defense based upon lack of authority for the city to enter into the contract. Each city is authorized to pay the lawful premiums for insurance purchased pursuant to this section.

(c) Any plaintiff may maintain a tort claim against a city insured under this section in any court of competent jurisdiction. As to any such claim, to the extent that the city is insured against such claim pursuant to this section, governmental immunity shall be no defense. Except as expressly provided herein, nothing in this section shall be construed to deprive any city of any defense to any tort claim lodged against it, or to restrict, limit, or otherwise affect any defense that the city may have at common law or by virtue of any statute. Nothing in this section shall relieve a plaintiff from any duty to give notice of his claim to the city, or to commence his action within the applicable period of time limited by statute. No judgment may be entered against a city in excess of its insurance policy limits on any tort claim for which it would have been immune but for the purchase of liability insurance pursuant to this section. No judgment may be entered against a city on any tort claim for which it would have been immune but for the purchase of liability insurance pursuant to this section except a claim arising at a time when the city is insured under an insurance contract purchased and issued pursuant to this section. If, in the trial of any tort claim against a city for which it would have been immune but for the purchase of liability insurance pursuant to this section, a verdict is returned awarding damages to the plaintiff in excess of the insurance limits, the presiding judge shall reduce the award to the maximum policy limits before entering judgment.

(d) Except as otherwise provided in this section, tort claims against a city shall be governed by the North Carolina Rules of Civil Procedure. No document or exhibit which relates to or alleges facts as to the city's insurance against liability shall be read, exhibited, or mentioned in the presence of the trial jury in the trial of any claim brought pursuant to this section, nor shall the plaintiff, his counsel, or anyone testifying in his behalf directly or indirectly convey to the jury any inference that the city's potential liability is covered by insurance. No judgment may be entered against the city unless the plaintiff waives his right to a jury trial on all issues of law or fact relating to insurance coverage. All issues relating to insurance coverage shall be heard and determined by the judge without resort to a jury. The jury shall be absent during all motions, arguments, testimony, or announcement of findings of fact or conclusions of law with respect to insurance coverage. The city may waive its right to have issues concerning insurance coverage determined by the judge without a jury, and may request a jury trial on these issues.

(e) Nothing in this section shall apply to any claim in tort against a city for which the city is not immune from liability under the statutes or common law of this State.

§ 160A-626. Limitations on rail transportation liability.

(a) As used in this section:

(1) "Claim" means a claim, action, suit, or request for damages, whether compensatory, punitive, or otherwise, made by any person or entity against:

a. The Authority, a railroad, or an operating rights railroad; or

b. An officer, director, trustee, employee, parent, subsidiary, or affiliated corporation as defined in G.S. 105-130.6, or agent of: the Authority, a railroad, or an operating rights railroad.

(2) "Operating rights railroad" means a railroad corporation or railroad company that, prior to January 1, 2001, was granted operating rights by a State-Owned Railroad Company or operated over the property of a State-Owned Railroad Company under a claim of right over or adjacent to facilities used by or on behalf of the Authority.

(3) "Passenger rail services" means the transportation of rail passengers by or on behalf of the Authority and all services performed by a railroad pursuant to a contract with the Authority in connection with the transportation of rail passengers, including, but not limited to, the operation of trains; the use of right of way, trackage, public or private roadway and rail

crossings, equipment, or station areas or appurtenant facilities; the design, construction, reconstruction, operation, or maintenance of rail related equipment, tracks, and any appurtenant facilities; or the provision of access rights over or adjacent to lines owned by the Authority or a railroad, or otherwise occupied by the Authority or a railroad, pursuant to charter grant, fee simple deed, lease, easement, license, trackage rights, or other form of ownership or authorized use.

(4) "Railroad" means a railroad corporation or railroad company, including a State-Owned Railroad Company as defined in G.S. 124-11, that has entered into any contracts or operating agreements of any kind with the Authority concerning passenger rail services.

(b) Contracts Allocating Financial Responsibility Authorized. – The Authority may contract with any railroad to allocate financial responsibility for passenger rail services claims, including, but not limited to, the execution of indemnity agreements, notwithstanding any other statutory, common law, public policy, or other prohibition against same, and regardless of the nature of the claim or the conduct giving rise to such claim.

(c) Insurance Required. –

(1) If the Authority enters into any contract authorized by subsection (b) of this section, the contract shall require the Authority to secure and maintain, upon and after the commencement of the operation of trains by or on behalf of the Authority, a liability insurance policy covering the liability of the parties to the contract, a State-Owned Railroad Company as defined in G.S. 124-11 that owns or claims an interest in any real property subject to the contract, and any operating rights railroad for all claims for property damage, personal injury, bodily injury, and death arising out of or related to passenger rail services. The policy shall name the parties to the contract, a State-Owned Railroad Company as defined in G.S. 124-11 that owns or claims an interest in any real property subject to the contract, and any operating rights railroad as named insureds and shall have policy limits of not less than two hundred million dollars ($200,000,000) per single accident or incident, and may include a self insured retention in an amount of not more than five million dollars ($5,000,000).

(2) If the Authority does not enter into any contract authorized by subsection (b) of this section, upon and after the commencement of the operation of trains by or on behalf of the Authority, the Authority shall secure and maintain a liability insurance policy, with policy limits and a self-insured retention consistent with subdivision (1) of this subsection, for all claims for property damage, personal injury, bodily injury, and death arising out of or related to passenger rail services.

(d) Liability Limit. – The aggregate liability of the Authority, the parties to the contract or contracts authorized by subsection (b) of this section, a State-Owned Railroad Company as defined in G.S. 124-11, and any operating rights railroad for all claims arising from a single accident or incident related to passenger rail services for property damage, personal injury, bodily injury, and death is limited to two hundred million dollars ($200,000,000) per single accident or incident or to any proceeds available under any insurance policy secured pursuant to subsection (c) of this section, whichever is greater.

(e) Effect on Other Laws. – This section shall not affect the damages that may be recovered under the Federal Employers' Liability Act, 45 U.S.C. § 51, et seq., (1908); or under Article 1 of Chapter 97 of the General Statutes.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 3

HOUSE BILL 1503

Committee Substitute Favorable 5/4/05

Third Edition Engrossed 5/24/05

Short Title: Regional Public Transportation Liability. (Public)

Sponsors:

Referred to:

April 21, 2005

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT REGIONAL PUBLIC TRANSPORTATION AUTHORITIES ARE TREATED AS CITIES FOR PURPOSES OF CIVIL LIABILITY.

The General Assembly of North Carolina enacts:

SECTION 1. Article 26 of Chapter 160A of the General Statutes is amended by adding a new section to read:

"**§ 160A-627. Civil liability.**

Subject to the provisions of G.S. 160A-626, the Authority shall be treated as a city for purposes of civil liability pursuant to G.S. 160A-485, provided that the Authority maintain a minimum of twenty million dollars ($20,000,000) of liability insurance. Participation in a local government risk pool pursuant to Article 23 of General Statute Chapter 58 shall be deemed to be the purchase of insurance for the purpose of this section."

SECTION 2. This act is effective when it becomes law and applies to claims arising on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 2

HOUSE BILL 822
Committee Substitute Favorable 4/6/05

Short Title: Blakely Decision/Conform State Law. (Public)

Sponsors:

Referred to:

March 21, 2005

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.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-1340.16 reads as rewritten:

"**§ 15A-1340.16. Aggravated and mitigated sentences.**

(a) Generally, Burden of Proof. – The court shall consider evidence of aggravating or mitigating factors present in the offense that make an aggravated or mitigated sentence appropriate, but the decision to depart from the presumptive range is in the discretion of the court. The State bears the burden of proving ~~by a preponderance of the evidence~~ 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.

(a1) Jury to Determine Aggravating Factors; Jury Procedure if Trial Bifurcated. – 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 subsection. Admissions of the existence of an aggravating factor must be consistent with the provisions of G.S. 15A-1022.1. If the defendant does not so admit, only a jury may determine if an aggravating factor is present in an offense. The jury impaneled for the trial of the felony 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. 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. 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) Procedure if Defendant Admits Aggravating Factor Only. – If the defendant admits that an aggravating factor exists, but pleads not guilty to the underlying felony, a jury shall be impaneled to dispose of the felony charge. In that case, evidence that relates solely to the establishment of an aggravating factor shall not be admitted in the felony trial.

(a3) Procedure if Defendant Pleads Guilty to the Felony Only. – If the defendant pleads guilty to the felony, but contests the existence of one or more aggravating factors, a jury shall be impaneled to determine if the aggravating factor or factors exist.

(a4) Pleading of Aggravating Factors. – Aggravating factors set forth in subsection (d) of this section need not be included in an indictment or other charging instrument. Any aggravating factor alleged under subdivision (d)(20) of this section shall be included in an indictment or other charging instrument, as specified in G.S. 15A-924.

(a5) Procedure to Determine Prior Record Level Points Not Involving Prior Convictions. – If the State seeks to establish the existence of a prior record level point under G.S. 15A-1340.14(b)(7), the jury shall determine whether the point should be assessed using the procedures specified in subsections (a1) through (a3) of this section. The State need not allege in an indictment or other pleading that it intends to establish the point.

(a6) Notice of Intent to Use Aggravating Factors or Prior Record Level Points. – The State must provide a defendant with written notice of its intent to prove the existence of one or more aggravating factors under subsection (d) of this section or a prior record level point under G.S. 15A-1340.14(b)(7) at least 30 days before trial or the entry of a guilty or no contest plea. A defendant may waive the right to receive such notice. The notice shall list all the aggravating factors the State seeks to establish.

(b) When Aggravated or Mitigated Sentence Allowed. – If the ~~court~~ jury, or with respect to an aggravating factor under G.S. 15A-1340.16(d)(18a), the court, finds that aggravating factors exist or the court finds that mitigating factors exist, ~~it~~ the court may depart from the presumptive range of sentences specified in G.S. 15A-1340.17(c)(2). If ~~the court finds that~~ aggravating factors are present and the court determines they are sufficient to outweigh any mitigating factors that are present, it may impose a sentence that is permitted by the aggravated range described in G.S. 15A-1340.17(c)(4). If the court finds that mitigating factors are present and are sufficient to outweigh any aggravating factors that are present, it may impose a sentence that is permitted by the mitigated range described in G.S. 15A-1340.17(c)(3).

(c) Written Findings; When Required. – The court shall make findings of the aggravating and mitigating factors present in the offense only if, in its discretion, it

departs from the presumptive range of sentences specified in G.S. 15A-1340.17(c)(2). 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. The requirement to make findings in order to depart from the presumptive range applies regardless of whether the sentence of imprisonment is activated or suspended.

(d) Aggravating Factors. – The following are aggravating factors:

(1) The defendant induced others to participate in the commission of the offense or occupied a position of leadership or dominance of other participants.

(2) The defendant joined with more than one other person in committing the offense and was not charged with committing a conspiracy.

(2a) The offense was committed for the benefit of, or at the direction of, any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, and the defendant was not charged with committing a conspiracy. A "criminal street gang" means any ongoing organization, association, or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of felony or violent misdemeanor offenses, or delinquent acts that would be felonies or violent misdemeanors if committed by an adult, and having a common name or common identifying sign, colors, or symbols.

(3) The offense was committed for the purpose of avoiding or preventing a lawful arrest or effecting an escape from custody.

(4) The defendant was hired or paid to commit the offense.

(5) The offense was committed to disrupt or hinder the lawful exercise of any governmental function or the enforcement of laws.

(6) The offense was committed against or proximately caused serious injury to a present or former law enforcement officer, employee of the Department of Correction, jailer, fireman, emergency medical technician, ambulance attendant, justice or judge, clerk or assistant or deputy clerk of court, magistrate, prosecutor, juror, or witness against the defendant, while engaged in the performance of that person's official duties or because of the exercise of that person's official duties.

(7) The offense was especially heinous, atrocious, or cruel.

(8) The defendant knowingly created a great risk of death to more than one person by means of a weapon or device which would normally be hazardous to the lives of more than one person.

(9) The defendant held public office at the time of the offense and the offense related to the conduct of the office.

(10) The defendant was armed with or used a deadly weapon at the time of the crime.

(11) The victim was very young, or very old, or mentally or physically infirm, or handicapped.

(12) The defendant committed the offense while on pretrial release on another charge.
(13) The defendant involved a person under the age of 16 in the commission of the crime.
(14) The offense involved an attempted or actual taking of property of great monetary value or damage causing great monetary loss, or the offense involved an unusually large quantity of contraband.
(15) The defendant took advantage of a position of trust or confidence, including a domestic relationship, to commit the offense.
(16) The offense involved the sale or delivery of a controlled substance to a minor.
(16a) The offense is the manufacture of methamphetamine and was committed where a person under the age of 18 lives, was present, or was otherwise endangered by exposure to the drug, its ingredients, its by-products, or its waste.
(17) The offense for which the defendant stands convicted was committed against a victim because of the victim's race, color, religion, nationality, or country of origin.
(18) The defendant does not support the defendant's family.
(18a) The defendant has previously been adjudicated delinquent for an offense that would be a Class A, B1, B2, C, D, or E felony if committed by an adult.
(19) The serious injury inflicted upon the victim is permanent and debilitating.
(20) Any other aggravating factor reasonably related to the purposes of sentencing.

Evidence necessary to prove an element of the offense shall not be used to prove any factor in aggravation, and the same item of evidence shall not be used to prove more than one factor in aggravation. Evidence necessary to establish that an enhanced sentence is required under G.S. 15A-1340.16A may not be used to prove any factor in aggravation.

The judge shall not consider as an aggravating factor the fact that the defendant exercised the right to a jury trial.

Notwithstanding the provisions of subsection (a1) of this section, the determination that an aggravating factor under G.S. 15A-1340.16(d)(18a) is present in a case shall be made by the court, and not by the jury. That determination shall be made in the sentencing hearing.

(e) Mitigating Factors. – The following are mitigating factors:
(1) The defendant committed the offense under duress, coercion, threat, or compulsion that was insufficient to constitute a defense but significantly reduced the defendant's culpability.
(2) The defendant was a passive participant or played a minor role in the commission of the offense.

(3) The defendant was suffering from a mental or physical condition that was insufficient to constitute a defense but significantly reduced the defendant's culpability for the offense.
(4) The defendant's age, immaturity, or limited mental capacity at the time of commission of the offense significantly reduced the defendant's culpability for the offense.
(5) The defendant has made substantial or full restitution to the victim.
(6) The victim was more than 16 years of age and was a voluntary participant in the defendant's conduct or consented to it.
(7) The defendant aided in the apprehension of another felon or testified truthfully on behalf of the prosecution in another prosecution of a felony.
(8) The defendant acted under strong provocation, or the relationship between the defendant and the victim was otherwise extenuating.
(9) The defendant could not reasonably foresee that the defendant's conduct would cause or threaten serious bodily harm or fear, or the defendant exercised caution to avoid such consequences.
(10) The defendant reasonably believed that the defendant's conduct was legal.
(11) Prior to arrest or at an early stage of the criminal process, the defendant voluntarily acknowledged wrongdoing in connection with the offense to a law enforcement officer.
(12) The defendant has been a person of good character or has had a good reputation in the community in which the defendant lives.
(13) The defendant is a minor and has reliable supervision available.
(14) The defendant has been honorably discharged from the United States armed services.
(15) The defendant has accepted responsibility for the defendant's criminal conduct.
(16) The defendant has entered and is currently involved in or has successfully completed a drug treatment program or an alcohol treatment program subsequent to arrest and prior to trial.
(17) The defendant supports the defendant's family.
(18) The defendant has a support system in the community.
(19) The defendant has a positive employment history or is gainfully employed.
(20) The defendant has a good treatment prognosis, and a workable treatment plan is available.
(21) Any other mitigating factor reasonably related to the purposes of sentences."

SECTION 2. G.S. 15A-1340.14 reads as rewritten:

"**§ 15A-1340.14. Prior record level for felony sentencing.**

(a) Generally. – The prior record level of a felony offender is determined by calculating the sum of the points assigned to each of the offender's prior convictions that

the court, or with respect to subdivision (b)(7) of this section, the jury, finds to have been proved in accordance with this section.

(b) Points. – Points are assigned as follows:

(1) For each prior felony Class A conviction, 10 points.

(1a) For each prior felony Class B1 conviction, 9 points.

(2) For each prior felony Class B2, C, or D conviction, 6 points.

(3) For each prior felony Class E, F, or G conviction, 4 points.

(4) For each prior felony Class H or I conviction, 2 points.

(5) For each prior misdemeanor conviction as defined in this subsection, 1 point. For purposes of this subsection, misdemeanor is defined as any Class A1 and Class 1 nontraffic misdemeanor offense, impaired driving (G.S. 20-138.1), impaired driving in a commercial vehicle (G.S. 20-138.2), and misdemeanor death by vehicle (G.S. 20-141.4(a2)), but not any other misdemeanor traffic offense under Chapter 20 of the General Statutes.

(6) If all the elements of the present offense are included in any prior offense for which the offender was convicted, whether or not the prior offense or offenses were used in determining prior record level, 1 point.

(7) If the offense was committed while the offender was on supervised or unsupervised probation, parole, or post-release supervision, or while the offender was serving a sentence of imprisonment, or while the offender was on escape from a correctional institution while serving a sentence of imprisonment, 1 point.

For purposes of determining prior record points under this subsection, a conviction for a first degree rape or a first degree sexual offense committed prior to the effective date of this subsection shall be treated as a felony Class B1 conviction, and a conviction for any other felony Class B offense committed prior to the effective date of this subsection shall be treated as a felony Class B2 conviction. G.S. 15A-1340.16(a5) specifies the procedure to be used to determine if a point exists under subdivision (7) of this subsection. The State must provide a defendant with written notice of its intent to prove the existence of the prior record point under subdivision (7) of this subsection as required by G.S. 15A-1340.16(a6).

(c) Prior Record Levels for Felony Sentencing. – The prior record levels for felony sentencing are:

(1) Level I – 0 points.

(2) Level II – At least 1, but not more than 4 points.

(3) Level III – At least 5, but not more than 8 points.

(4) Level IV – At least 9, but not more than 14 points.

(5) Level V – At least 15, but not more than 18 points.

(6) Level VI – At least 19 points.

In determining the prior record level, the classification of a prior offense is the classification assigned to that offense at the time the offense for which the offender is being sentenced is committed.

(d) Multiple Prior Convictions Obtained in One Court Week. – For purposes of determining the prior record level, if an offender is convicted of more than one offense in a single superior court during one calendar week, only the conviction for the offense with the highest point total is used. If an offender is convicted of more than one offense in a single session of district court, only one of the convictions is used.

(e) Classification of Prior Convictions From Other Jurisdictions. – Except as otherwise provided in this subsection, a conviction occurring in a jurisdiction other than North Carolina is classified as a Class I felony if the jurisdiction in which the offense occurred classifies the offense as a felony, or is classified as a Class 3 misdemeanor if the jurisdiction in which the offense occurred classifies the offense as a misdemeanor. If the offender proves by the preponderance of the evidence that an offense classified as a felony in the other jurisdiction is substantially similar to an offense that is a misdemeanor in North Carolina, the conviction is treated as that class of misdemeanor for assigning prior record level points. If the State proves by the preponderance of the evidence that an offense classified as either a misdemeanor or a felony in the other jurisdiction is substantially similar to an offense in North Carolina that is classified as a Class I felony or higher, the conviction is treated as that class of felony for assigning prior record level points. If the State proves by the preponderance of the evidence that an offense classified as a misdemeanor in the other jurisdiction is substantially similar to an offense classified as a Class A1 or Class 1 misdemeanor in North Carolina, the conviction is treated as a Class A1 or Class 1 misdemeanor for assigning prior record level points.

(f) Proof of Prior Convictions. – A prior conviction shall be proved by any of the following methods:

(1) Stipulation of the parties.

(2) An original or copy of the court record of the prior conviction.

(3) A copy of records maintained by the Division of Criminal Information, the Division of Motor Vehicles, or of the Administrative Office of the Courts.

(4) Any other method found by the court to be reliable.

The State bears the burden of proving, by a preponderance of the evidence, that a prior conviction exists and that the offender before the court is the same person as the offender named in the prior conviction. The original or a copy of the court records or a copy of the records maintained by the Division of Criminal Information, the Division of Motor Vehicles, or of the Administrative Office of the Courts, bearing the same name as that by which the offender is charged, is prima facie evidence that the offender named is the same person as the offender before the court, and that the facts set out in the record are true. For purposes of this subsection, "a copy" includes a paper writing containing a reproduction of a record maintained electronically on a computer or other data processing equipment, and a document produced by a facsimile machine. The prosecutor shall make all feasible efforts to obtain and present to the court the offender's full record. Evidence presented by either party at trial may be utilized to prove prior convictions. Suppression of prior convictions is pursuant to G.S. 15A-980. If a motion is made pursuant to that section during the sentencing stage of the criminal action, the

court may grant a continuance of the sentencing hearing. If asked by the defendant in compliance with G.S. 15A-903, the prosecutor shall furnish the defendant's prior criminal record to the defendant within a reasonable time sufficient to allow the defendant to determine if the record available to the prosecutor is accurate. Upon request of a sentencing services program established pursuant to Article 61 of Chapter 7A of the General Statutes, the district attorney shall provide any information the district attorney has about the criminal record of a person for whom the program has been requested to provide a sentencing plan pursuant to G.S. 7A-773.1."

SECTION 3. G.S. 15A-924(a) is amended by adding a new subdivision to read:

"(a) A criminal pleading must contain:

(1) The name or other identification of the defendant but the name of the defendant need not be repeated in each count unless required for clarity.

(2) A separate count addressed to each offense charged, but allegations in one count may be incorporated by reference in another count.

(3) A statement or cross reference in each count indicating that the offense charged therein was committed in a designated county.

(4) A statement or cross reference in each count indicating that the offense charged was committed on, or on or about, a designated date, or during a designated period of time. Error as to a date or its omission is not ground for dismissal of the charges or for reversal of a conviction if time was not of the essence with respect to the charge and the error or omission did not mislead the defendant to his prejudice.

(5) A plain and concise factual statement in each count which, without allegations of an evidentiary nature, asserts facts supporting every element of a criminal offense and the defendant's commission thereof with sufficient precision clearly to apprise the defendant or defendants of the conduct which is the subject of the accusation. When the pleading is a criminal summons, warrant for arrest, or magistrate's order, or statement of charges based thereon, both the statement of the crime and any information showing probable cause which was considered by the judicial official and which has been furnished to the defendant must be used in determining whether the pleading is sufficient to meet the foregoing requirement.

(6) For each count a citation of any applicable statute, rule, regulation, ordinance, or other provision of law alleged therein to have been violated. Error in the citation or its omission is not ground for dismissal of the charges or for reversal of a conviction.

(7) A statement that the State intends to use one or more aggravating factors under G.S. 15A-1340.16(d)(20), with a plain and concise factual statement indicating the factor or factors it intends to use under the authority of that subdivision."

SECTION 4. Article 58 of Chapter 15A of the General Statutes is amended by adding a new section to read:

"**§ 15A-1022.1. Procedure in accepting admissions of the existence of aggravating factors in felonies.**

(a) Before accepting a plea of guilty or no contest to a felony, the court shall determine whether the State intends to seek a sentence in the aggravated range. If the State does intend to seek an aggravated sentence, the court shall determine which factors the State seeks to establish. The court shall determine whether the State seeks a finding that a prior record level point should be found under G.S. 15A-1340.14(b)(7). The court shall also determine whether the State has provided the notice to the defendant required by G.S. 15A-1340.16(a6) or whether the defendant has waived his or her right to such notice.

(b) In all cases in which a defendant admits to the existence of an aggravating factor or to a finding that a prior record level point should be found under G.S. 15A-1340.14(b)(7), the court shall comply with the provisions of G.S. 15A-1022(a). In addition, the court shall address the defendant personally and advise the defendant that:

(1) He or she is entitled to have a jury determine the existence of any aggravating factors or points under G.S. 15A-1340.14(b)(7); and

(2) He or she has the right to prove the existence of any mitigating factors at a sentencing hearing before the sentencing judge.

(c) Before accepting an admission to the existence of an aggravating factor or a prior record level point under G.S. 15A-1340.14(b)(7), the court shall determine that there is a factual basis for the admission, and that the admission is the result of an informed choice by the defendant. The court may base its determination on the factors specified in G.S. 15A-1022(c), as well as any other appropriate information.

(d) A defendant may admit to the existence of an aggravating factor or to the existence of a prior record level point under G.S. 15A-1340.14(b)(7) before or after the trial of the underlying felony.

(e) The procedures specified in this Article for the handling of pleas of guilty are applicable to the handling of admissions to aggravating factors and prior record points under G.S. 15A-1340.14(b)(7), unless the context clearly indicates that they are inappropriate."

SECTION 5. This act is effective when it becomes law. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.

HOUSE BILL 822:
Blakely Decision/Conform State Law

BILL ANALYSIS

Committee:	Senate Judiciary I	**Date:**	June 16, 2005
Introduced by:	Reps. Glazier, Haire, Ross, Stam	**Summary by:**	Hal Pell
Version:	Second Edition		Committee Co-Counsel

[Senate Bill 542, currently in the House Rules Committee, is identical to H822, except for the provision in Section 1, at page 2, lines 27-32].

SUMMARY: BACKGROUND AND SUMMARY:

In *Blakely v. Washington*, decided by the United States Supreme Court in June 2004, the Court held that the facts supporting the imposition of a sentence longer than the statutory maximum must be found by a jury beyond a reasonable doubt, or be admitted by the defendant. In *State v. Allen*, the North Carolina Court of Appeals, in applying *Blakely* under North Carolina's Structured Sentencing Act, held that the existence of aggravating factors that will increase a felony sentence beyond that which is permitted under the presumptive range must be found by a jury beyond a reasonable doubt, or be admitted by the defendant.

H822 provides the procedure for determining the existence of aggravating factors that will comply with the decisions in *Blakely* and *Allen*. New procedures in the act include: notice to the defendant of intent to prove aggravating factors; jury trials or the admission of aggravating factors by a defendant; and, where applicable, an inquiry by the court to insure that a defendant knowingly and intelligently waives any rights to a hearing and jury determination. The act is effective when it becomes law.

CURRENT LAW:

Under the Structured Sentencing Act, the judge may impose a sentence for conviction of a felony offense from the presumptive range, the aggravated range, or the mitigated range. In order to impose a sentence from the aggravated range, the State must prove by a preponderance of the evidence that an aggravating factor exists. The defendant bears the burden of proving by a preponderance of the evidence that a mitigating factor exists. The judge has the discretion to sentence from the aggravated range, if the judge finds one or more aggravating factors, and that the aggravating factors outweigh any mitigating factors.

BILL ANALYSIS:

Section 1. Amends G.S. 15A-1340.16, the current aggravated and mitigated sentencing statute, to add new procedural steps for the jury to find aggravating factors.

Subsection (a). Raises the standard of proof for finding aggravating factors from "a preponderance of the evidence" to "beyond a reasonable doubt." The standard for mitigating factors remains a preponderance of the evidence.

Subsection (a1). Provides that only the jury may determine if an aggravating factor is present, unless the defendant admits to its existence. The jury may make this determination at the time of trial. If the judge finds that the interests of justice require a separate sentencing proceeding, it may be held after the guilty verdict is returned.

Subsection (a2). Allows the defendant to plead guilty to the aggravating factor, but still have a jury trial on the underlying felony. The evidence of the aggravating factor would be excluded from the trial.

Subsection (a3). Allows the defendant to plead guilty to the underlying felony, but have a jury trial on the aggravating factor.

- Subsection (a4). Requires the State to include non-statutory aggravating factors [under subdivision (d)(20)] in the indictment or other charging instrument. Aggravating factors under subdivision (d)(20) are factors not specifically denominated in subsection (d) that are reasonably related to the purposes of sentencing.

  Statutory aggravating factors do not have to be included in the indictment or other charging instrument but the defendant must receive written notice. [See subsection (a6) below.]

- Subsection (a5). Requires the State to follow the procedures in subdivisions (a1) through (a3) (jury trial and proof beyond a reasonable doubt, or admission by defendant) if it seeks to establish a prior record level point under G.S. 15A-1340.14(b)(7). [The offense was committed while the offender was on supervised or unsupervised probation, parole, or post-release supervision, or while the offender was serving a sentence of imprisonment, or while the offender was on escape from a correctional institution while serving a sentence of imprisonment.]

- Subsection (a6). Requires the State to provide notice to the defendant of its intent to prove the existence of one or more aggravating factors or prior record level point under G.S. 15A-1340.14(b)(7). The notice must list all of the aggravating factors the State seeks to establish and the defendant may waive his right to receive notice.

  The notice must be given at least 30 days before trial or the entry of a not guilty or no contest plea.

  [Senate version required notice 10 days after receipt of information if discovery requested, or no later than 20 days prior to trial, not guilty or no contest plea is no discovery]

- Subsection (b). Conforming change. States that the jury determines whether aggravating factors exist. The judge continues to find mitigating factors and to weigh the aggravating and mitigating factors to determine the appropriate sentence range.

- Subsection (c). Requires the judge to enter the jury's finding of aggravating factors on the appropriate judgment form.

- Subsection (d). States that the judge finds whether an aggravating factor under subdivision (18a) exists. This factor relates to prior juvenile adjudications. [The finding of prior convictions was expressly excluded from the Blakely decision.]

Section 2. Amends G.S. 15A-1340.14 by requiring that a prior record level point under subdivision (b)(7) must be found by a jury. [See description under subsection (a5) above.] Makes other conforming changes.

Section 3. Adds the requirement that the State must set out in the indictment that it intends to use one or more non-statutory aggravating factors [G.S. 15A-1340.16(d)(20)] and a factual statement indicating the factors it intends to use. This is a conforming change.

Section 4. Adds a new statute that establishes the procedure for the judge to accept the defendant's admission of the existence of one or more aggravating factors or the prior record level point.

- Subsection (a). Requires the judge to determine whether the State intends to seek a sentence in the aggravated range or the prior record level point before he or she accepts a plea of guilty or no contest. If the State does intend to seek aggravating factors, the judge must determine which factors the State will seek to establish and whether the State has provided the written notice required by law.

- Subsection (b). Requires the judge, in all cases where a defendant admits to the existence of an aggravating factor or a prior record level point, to advise the defendant that he or she has the right to have a jury determine the existence of the aggravating factor or prior record level point and that he or she has the right to prove the existence of any mitigating factors.

- Subsection (c). Requires the judge, before accepting an admission to the existence of an aggravating factor or prior record level point, to determine that there is a factual basis for the admission and that the admission is the result of an informed choice by the defendant.

- Subsection (d). Allows the defendant to admit an aggravating factor or the prior record level point before or after the trial of the underlying felony.

- Subsection (e). Applies the procedures for handling guilty pleas (Article 58 of Chapter 15A of the North Carolina General Statutes) to the handling of admissions to aggravating factors and prior record points.

Section 5. Provides that the act is effective when it becomes law and applies to offenses committed on or after that date.

*Summary Contribution by Steve Rose, Staff Attorney

*John Madler, Associate Director for Policy and Staff Attorney for the North Carolina Sentencing and Policy Advisory Commission, substantially contributed to the preparation of this summary. His assistance is gratefully acknowledged.

H0822e2-SMRK-001

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

HOUSE BILL 740

Short Title:	Transit Drug Testing.	(Public)
Sponsors:	Representatives Coates and Cole (Primary Sponsors).	
Referred to:	Transportation.	

March 17, 2005

A BILL TO BE ENTITLED

AN ACT TO REQUIRE PUBLIC TRANSIT OPERATORS AND OTHER EMPLOYERS OF PERSONS WHO OPERATE COMMERCIAL MOTOR VEHICLES WHO ARE SUBJECT TO FEDERAL DRUG AND ALCOHOL TESTING TO REPORT TO THE DIVISION OF MOTOR VEHICLES ANY FEDERALLY REQUIRED POSITIVE DRUG AND ALCOHOL TEST RESULT, AND TO DISQUALIFY THOSE PERSONS FROM OPERATING A COMMERCIAL MOTOR VEHICLE OR OTHER PUBLIC TRANSIT VEHICLES UNTIL SUCCESSFUL COMPLETION OF TREATMENT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-37.19 reads as rewritten:

"**§ 20-37.19. Employer responsibilities.**

(a) Each employer shall require the applicant to provide the information specified in G.S. 20-37.18(c).

(b) No employer shall knowingly allow, permit, or authorize a driver to drive a commercial motor vehicle during any period:

(1) In which the driver has had his commercial driver license suspended, revoked, or cancelled by any state, is currently disqualified from driving a commercial vehicle, or is subject to an out-of-service order in any state; or

(2) In which the driver has more than one driver license.

(c) The employer of any employee who tests positive in a drug or alcohol test required under 49 C.F.R. Part 382 and 49 C.F.R. Part 655 shall notify the Division of Motor Vehicles in writing within five business days following the employer's receipt of confirmation of a positive drug test. The notification shall include the driver's name, address, drivers license number, social security number, and results of the drug or alcohol test."

SECTION 2. G.S. 20-17.4 is amended by adding a new subsection to read:

"(l) Disqualification for Testing Positive in a Drug or Alcohol Test. – Upon receipt of notice of a positive drug or alcohol test, pursuant to G.S. 20-37.19(c), the Division shall disqualify a driver from operating a commercial motor vehicle until receipt of proof of successful completion of assessment and treatment by a substance abuse professional in accordance with 49 C.F.R. § 382.503."

SECTION 3. Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-37.20A. Driving record notation for testing positive in a drug or alcohol test.**

Upon receipt of notice pursuant to G.S. 20-37.19(c) of positive result in an alcohol or drug test of a person holding a commercial drivers license, and subject to any appeal of the disqualification pursuant to G.S. 20-37.20B, the Division shall place a notation on the driving record of the driver. A notation of a disqualification pursuant to G.S. 20-17.4(l) shall be retained on the record of a person for a period of two years following the end of any disqualification of that person."

SECTION 4. Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-37.20B. Appeal of disqualification for testing positive in a drug or alcohol test.**

Following receipt of notice pursuant to G.S. 20-37.19(c) of a positive test in an alcohol or drug test, the Division shall notify the driver of the pending disqualification of the driver to operate a commercial vehicle and the driver's right to a hearing if requested within 20 days of the date of the notice. If the Division receives no request for a hearing, the disqualification shall become effective at the end of the 20-day period. If the driver requests a hearing, the disqualification shall be stayed pending outcome of the hearing. The hearing shall take place at the offices of the Division of Motor Vehicles in Raleigh. The hearing shall be limited to issues of testing procedure and protocol. A copy of a positive test result accompanied by certification by the testing officer of the accuracy of the laboratory protocols that resulted in the test result shall be prima facie evidence of a confirmed positive test result. The decision of the Division hearing officer may be appealed in accordance with the procedure of G.S. 20-19(c6)."

SECTION 5. This act becomes effective December 1, 2005.

HOUSE BILL 740:
Transit Drug Testing

BILL ANALYSIS

Committee:	Senate Judiciary I	**Date:**	June 16, 2005
Introduced by:	Reps. Coates, Cole	**Summary by:**	Hal Pell
Version:	First Edition [Identical to S302]		Committee Co-Counsel

SUMMARY: House Bill 740 requires:

- ***Employers of commercial truck drivers and transit employees in safety sensitive positions to report to DMV all positive federally required drug or alcohol tests.***
- ***DMV to disqualify those drivers, following an opportunity to appeal, from operating commercial motor vehicles until completion of treatment.***
- ***DMV to retain a notation of the disqualification in its records for two years following the end of the disqualification.***

BILL ANALYSIS:

Section 1 requires employers to report any positive drug tests of truck drivers and transit employees to DMV within five business days. The notification must include the driver's name, address, drivers license number, social security number, and the drug or alcohol test results.

A violation of this section would constitute an infraction under G.S. 20-37.21(c), with a penalty of $500-$1000.

Section 2 requires the DMV, upon receipt of notice of a federally required positive drug or alcohol test result, to disqualify the driver from operating a commercial motor vehicle. The disqualification is in place until receipt of proof of successful completion of assessment and treatment by a qualified substance abuse professional, in accordance with federal regulations.

Section 3 requires the DMV, upon receipt of a notice of a federally required positive drug or alcohol test result, to place a notation of disqualification to operate a commercial motor vehicle on the driving record of the person, and retain the notation for two years following the end of any disqualification.

Section 4 of the bill:

- requires DMV to notify any person disqualified from operating a commercial motor vehicle of the disqualification, and the driver's right to a hearing if requested within 20 days;
- provides that if the driver requests a hearing, the disqualification would be stayed pending the outcome of the hearing;
- provides that the hearing would be conducted by a DMV hearing officer, and limited to the issues of testing procedure and protocol;
- provides that a copy of the positive test result accompanied by certification by the testing officer shall be prima facie evidence of a confirmed positive test result; and
- provides that the decision of the DMV hearing officer could be appealed to Superior Court.

Section 5 of the bill provides that if would become effective December 1, 2005.

Summary contribution by Giles Perry, Staff Attorney

H0740e1-smrk-001

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 702*

Committee Substitute Favorable 3/31/05

PROPOSED SENATE COMMITTEE SUBSTITUTE H702-PCS70520-RK-33

Short Title: Personal Watercraft Changes. (Public)

Sponsors:

Referred to:

March 17, 2005

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE MINIMUM AGE FOR PERSONS WHO MAY OPERATE PERSONAL WATERCRAFT IN THE STATE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 75A-13.3(b) reads as rewritten:

"(b) Except as otherwise provided in this subsection, no person under 16 years of age shall operate a personal watercraft on the waters of this State, and it is unlawful for the owner of a personal watercraft or a person who has temporary or permanent responsibility for a person under the age of 16 to knowingly allow that person to operate a personal watercraft. A person of at least ~~12~~ 14 years of age but under 16 years of age may operate a personal watercraft on the waters of this State if:

(1) The person is accompanied by a person of at least 18 years of age who physically occupies the watercraft; or

(2) The person (i) possesses on his or her person while operating the watercraft, identification showing proof of age and a boater safety certification card issued by the Wildlife Resources Commission or proof of other satisfactory completion of a boating safety education course approved by the National Association of State Boating Law Administrators (NASBLA); and (ii) produces that identification and certification card upon the request of an officer of the Wildlife Resources Commission or local law enforcement agency."

SECTION 2. This act becomes effective November 1, 2005. The age requirement of 14 years of age in this act does not apply to persons who are 12 years of age or older prior to November 1, 2005.

HOUSE BILL 702:
Personal Watercraft Changes

BILL ANALYSIS

Committee:	Senate Judiciary I	**Date:**	June 16, 2005
Introduced by:	Rep. Crawford	**Summary by:**	Hal Pell
Version:	PCS to Second Edition H702-CSRK-33		Committee Co-Counsel

SUMMARY: ***The proposed committee substitute to House Bill 702 increases the minimum age for persons who may operate personal watercraft in North Carolina. This act becomes effective November 1, 2005.***

[Note: Senate bill 397 is identical to the first edition of this House bill—both had an effective date of January 1, 2006. The House changed the effective date to September 1, 2005. The PCS would change the date to November 1, 2005]

CURRENT LAW: A person who is at least 12, but under 16, may operate a personal watercraft if

- they are accompanied by someone 18 or older who is actually on the watercraft with them, or
- they have proof of age and proof of completion of a boating safety education course on their person while operating the watercraft and produce them upon request.

Violation of this provision is an infraction.

Persons 16 or older may operate a personal watercraft without such restrictions.

BILL ANALYSIS: The PCS to House Bill 702 would increase the minimum age allowed to operate a personal watercraft from 12 years old to 14 years old.

EFFECTIVE DATE: This act becomes effective November 1, 2005. Persons who are 12 years old by November 1, 2005, would be exempted from this change.

Summary contribution by Susan Sitze, Staff Attorney.

H0702e2-SMRK-CSRK-33

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 2

HOUSE BILL 702*
Committee Substitute Favorable 3/31/05

Short Title: Personal Watercraft Changes. (Public)

Sponsors:

Referred to:

March 17, 2005

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE MINIMUM AGE FOR PERSONS WHO MAY OPERATE PERSONAL WATERCRAFT IN THE STATE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 75A-13.3(b) reads as rewritten:

"(b) Except as otherwise provided in this subsection, no person under 16 years of age shall operate a personal watercraft on the waters of this State, and it is unlawful for the owner of a personal watercraft or a person who has temporary or permanent responsibility for a person under the age of 16 to knowingly allow that person to operate a personal watercraft. A person of at least ~~12~~ 14 years of age but under 16 years of age may operate a personal watercraft on the waters of this State if:

(1) The person is accompanied by a person of at least 18 years of age who physically occupies the watercraft; or

(2) The person (i) possesses on his or her person while operating the watercraft, identification showing proof of age and a boater safety certification card issued by the Wildlife Resources Commission or proof of other satisfactory completion of a boating safety education course approved by the National Association of State Boating Law Administrators (NASBLA); and (ii) produces that identification and certification card upon the request of an officer of the Wildlife Resources Commission or local law enforcement agency."

SECTION 2. This act becomes effective September 1, 2005. The age requirement of 14 years of age in this act does not apply to persons who are 12 years of age or older prior to September 1, 2005.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 2

HOUSE BILL 1209

Committee Substitute Favorable 5/25/05

Short Title: Sexual Battery/Sex Offender Registry/DNA. (Public)

Sponsors:

Referred to:

April 13, 2005

A BILL TO BE ENTITLED

AN ACT TO AMEND THE SEX OFFENDER REGISTRATION PROGRAM TO INCLUDE SEXUAL BATTERY AS A REPORTABLE OFFENSE, AND ADD SEXUAL BATTERY TO THE OFFENSES REQUIRING A DNA SAMPLE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-208.6(5) reads as rewritten:

(5) "Sexually violent offense" means a violation of G.S. 14-27.2 (first degree rape), G.S. 14-27.3 (second degree rape), G.S. 14-27.4 (first degree sexual offense), G.S. 14-27.5 (second degree sexual offense), G.S. 14-27.5A (sexual battery), G.S. 14-27.6 (attempted rape or sexual offense), G.S. 14-27.7 (intercourse and sexual offense with certain victims), G.S. 14-178 (incest between near relatives), G.S. 14-190.6 (employing or permitting minor to assist in offenses against public morality and decency), G.S. 14-190.16 (first degree sexual exploitation of a minor), G.S. 14-190.17 (second degree sexual exploitation of a minor), G.S. 14-190.17A (third degree sexual exploitation of a minor), G.S. 14-190.18 (promoting prostitution of a minor), G.S. 14-190.19 (participating in the prostitution of a minor), or G.S. 14-202.1 (taking indecent liberties with children). The term also includes the following: a solicitation or conspiracy to commit any of these offenses; aiding and abetting any of these offenses."

SECTION 2. G.S. 15A-266.4 reads as rewritten:

"**§ 15A-266.4. Blood sample required for DNA analysis upon conviction or finding of not guilty by reason of insanity.**

(a) Unless a DNA sample has previously been obtained by lawful process and stored in the State DNA database, and that sample has not been expunged pursuant to G.S. 15A-148, on or after December 1, 2003, a person who is convicted of any of the crimes listed in subsection (b) of this section or who is found not guilty of any of these crimes by reason of insanity and committed to a mental health facility in accordance

with G.S. 15A-1321 shall have a DNA sample drawn upon intake to jail, prison, or the mental health facility. In addition, every person convicted on or after December 1, 2003, of any of these crimes, but who is not sentenced to a term of confinement, shall provide a DNA sample as a condition of the sentence. A person who has been convicted and incarcerated as a result of a conviction of one or more of these crimes prior to December 1, 2003, or who was found not guilty of any of these crimes by reason of insanity and committed to a mental health facility in accordance with G.S. 15A-1321 before December 1, 2003, shall have a DNA sample drawn before parole or release from the penal system or before release from the mental health facility.

(b) Crimes covered by this Article include all of the following:

(1) All felonies.

(2) G.S. 14-32.1 – Assaults on handicapped persons.

(3) G.S. 14-277.3 – Stalking.

(4) G.S. 14-27.5A – Sexual battery."

SECTION 3. This act becomes effective December 1, 2005, and applies to offenses committed on or after that date.

HOUSE BILL 1209:
Sexual Battery/Sex Offender Registry/DNA

BILL ANALYSIS

Committee:	Senate Judiciary I	**Date:**	June 16, 2005
Introduced by:	Rep. Goodwin	**Summary by:**	Hal Pell
Version:	Second Edition		Committee Co-Counsel

SUMMARY: House 1209 amends the sex offender registration program to include sexual battery as a reportable offense, and adds sexual battery to the offenses requiring a DNA sample.

BILL ANALYSIS:

Section 1 of the bill adds G.S. 14-27.5A, sexual battery, to the list of reportable offenses for sex offender registration. A person who, for the purpose of sexual arousal, sexual gratification, or sexual abuse, engages in sexual contact (i) by force and against the will of another person, or (ii) against someone who is mentally or physically helpless, is guilty of sexual battery. Sexual battery is a Class A1 misdemeanor.

Section 2 of the bill adds sexual battery to the list of offenses for which a convicted offender must provide a DNA sample.

EFFECTIVE DATE: This act becomes effective December 1, 2005, and applies to offenses committed on or after that date.

Summary contribution by Susan Sitze, Staff Attorney.

H1209e2-SMRK-oo1

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE — 6-16-05

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
Daniel Blau	ACLU-NC
Maegan Lowry	Guilford Co. - Greensboro
Mara St. Aubin	Cabarrus County
Bonnie L. Pearl	Charlotte, NC
Melissa Holt	Benson, NC
LaBreeska Smith	Asheboro, NC
Russ Dubitsky	CCPS
Ryan Pusley	Intern - Rep. Glazier
Mitchell Rivenbark	Mint Hill N.C.
Sally Sechler	WCSR
Robert Farley	NCPTA

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE — 6-16-05

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
Kim Crawford	TTA
Lisa Kimborough	NCCASA
Monika Johnson Hostler	NCCASA
Mark Osborne	AOC
John Madler	NC Sentencing Commission
Tony Goldman	NC GA
Jeff Weaver	NC GA
Tripp Melton	Sen. Stevens Office
Kathleen Edwards	UNC-CH Legis. Reporting Service
Mildred Spearman	NCCCC
Charlie Diehl	NCTA

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE — 6-16-05

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
Jeff Hogwalstron	DOA-YAIO
	NCAEC
Jim Blackburn	NC Association of County Commissioners
John Phelps	NC League of Municipalities
Lorie Oldford	New Hanover
Holly Bryan	NCATL
Cam Cruz	BPMHL
Vallary Jefferson	Parent
David Humphrey	Sen. Apodaca's office
	AP
David Hall	NCSA

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE — 6-16-05

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
Chris Heagarty	NCCUE
Mike Stein	NC State AFL-CIO
Bob Weiss	NCATL
Ellie [illegible]	NC Nurses Assn
[illegible]	NCNW
[illegible]	ACLU
[illegible]	[illegible]
Ruth Reynolds	Reynolds Professional Services Charlotte NC
[illegible]	NCLH
[illegible]	[illegible]
Julie Osborne	Partners - Apex NC
Eric S. Hall	NC Partners in Policymaking Cary NC
Caroline T. Burie	Partners in Policymaking Raleigh NC

Name	Firm or Agency and Address
Estherine Davis	Electricities
Colleen Kochanek	Holt York McDarris & Fish
Monica Graham	Robeson County Lumberton NC
Cathy R. Pigott	Pitt County Greenville NC
[illegible]	[illegible]
[illegible]	NC DHHS
[illegible]	[illegible]
Andy Ellen	
Paul Pully	

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Tuesday	June 21, 2005	10:00 AM	1027 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 1146	Foreclosure Reform.	Representative Michaux, Jr.
HB 1163	Hold Harmless/Motor Carrier Contracts.	Representative Cole
HB 1295	New Motor Vehicles Warranties.	Representative Martin, III Representative Weiss Representative Luebke Representative Harrison
HB 1491	Insurance for School Social Workers.	Representative Glazier
SB 1013	Gen. Contractors/Fees/Civil Penalties.	Senator Hoyle

Senator Daniel G. Clodfelter, Chair

Judiciary 1 Committee

June 21, 2005

Minutes

Senator Dan Clodfelter, Chair called the meeting to order at 10:08 a.m. with fifteen members present. He introduced Pages Hannah Kate Mitchell from New Bern, NC, Jonnsie Bauguess from Gibsonville, NC, Alex Huffman and Emily Mann from Burlington, NC, and Aaron Mintz from Wendell, NC.

HB-1163 (Hold Harmless/Motor Carrier Contracts) Committee Substitute was introduced by Senator Clodfelter. Senator Ham Horton moved for adoption of the Committee Substitute. All members voted yes. Motion carried. Bill sponsor, Nelson Cole explained that the bill makes hold harmless agreements in motor carrier transportation contracts that run in favor of the shipper void as being against public policy. (See attached Bill Summary for further information). Staff attorney, Walker Reagan explained changes to the bill. Senator's Ham Horton and Dan Clodfelter had questions. Mr. Charlie Deal, President, NC Trucking Association, spoke on the bill and answered questions. Senator Horton moved for a Favorable Report. All members voted yes. Motion carried.

SB-1013 (Gen. Contractors/Fees/Civil Penalties) Committee Substitute was introduced by Senator Clodfelter. Senator David Hoyle moved for adoption of the Committee Substitute. All members voted yes. Motion carried. Bill sponsor, Senator Hoyle explained that the bill would authorize the State Licensing Board for General Contractors to increase its licensing fees and to recover its reasonable administrative costs associated with the investigation and prosecution of certain violations of the general contractors' licensing laws. (See attached Bill Summary for further information). Staff attorney, Walker Reagan explained changes to the bill. Mr. Warren Savage, Executive Director, NC General Contractors Licensing Board spoke on the bill. Senator's Jeanne Lucas, Ham Horton, and RC Soles, had questions. Senator Clodfelter and Senator Hoyle answered the questions. Mr. Mark self, Legal Counsel for the NC Licensing Board, Mr. Paul Wilms, NC Home Builders Association, spoke on the bill. Senator Jerry Tillman moved for a Favorable Report. All members voted yes. Motion carried. Bill will be referred to the Finance Committee.

HB-1295 (New Motor Vehicles Warranties) was introduced by Senator Clodfelter. He stated that the bill was introduced for discussion only. It would not be voted on

at this time. One of the bill sponsors, Representative Mary "Pricey" Harrison explained the bill. Senator's David Hoyle, Harry Brown, Jeanne Lucas, Tony Rand, David Hoyle, Janet Cowell, and Vernon Malone had questions. Mr. Brad Lamb, NC Consumers Council, Mr. John Camps, NC Auto Dealers Association and Mr. Henry Jones, NC Auto Manufacturing Association spoke on the bill and answered questions. Senator Clodfelter stated the bill would be displaced at this time to allow some changes to be made to the text. It will be heard again at a later date.

HB-1491 (Insurance for School Social Workers) was introduced by Senator Clodfelter. Bill Sponsor, Representative Rick Glazier explained that the bill would allow local boards to require a school social worker to transport students so long as this requirement is part of a written job description or local board policy. The bill also would allow a local board to require this social worker to increase the liability limits or add a business use rider, or both, on the employee's personal automobile liability insurance policy. If the board imposes this requirement, the board must reimburse the employee for any additional premium charges as a result. Senator Richard Stevens and Jeanne Lucas had questions. Rep. Glazier answered the questions. Senator Clodfelter stated that the bill would be displaced at this time, and would be heard at a future meeting.

Being no further business the meeting adjourned at 10:52 a.m.

Senator Dan Clodfelter, Chair

Wanda Joyner, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Daniel G. Clodfelter, Chair

Wednesday, June 22, 2005

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

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

S.B. **1013** Gen. Contractors/Fees/Civil Penalties.

Draft Number:	PCS75336
Sequential Referral:	Finance
Recommended Referral:	None
Long Title Amended:	Yes

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **1163** Hold Harmless/Motor Carrier Contracts.

Draft Number:	PCS50467
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 2

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

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HOUSE BILL 1163

Committee Substitute Favorable 6/1/05

PROPOSED SENATE COMMITTEE SUBSTITUTE H1163-PCS50467-RU-60

Short Title: Hold Harmless/Motor Carrier Contracts. (Public)

Sponsors:

Referred to:

April 11, 2005

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT PROVISIONS IN MOTOR CARRIER FREIGHT TRANSPORTATION CONTRACTS THAT HOLD HARMLESS THE SHIPPER FOR THE SHIPPER'S NEGLIGENCE OR INTENTIONAL ACTS ARE VOID.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 62 of the General Statutes is amended by adding a new section to read:

"**§ 62-212. Indemnity agreements in motor carrier transportation contracts.**

(a) A provision, clause, covenant, or agreement contained in, collateral to, or affecting a motor carrier transportation contract that purports to indemnify, defend, or hold harmless, or has the effect of indemnifying, defending, or holding harmless the promisee from or against any liability for loss or damage resulting from the negligence or intentional acts or omission of the promisee is against the public policy of this State and is void and unenforceable.

(b) The following definitions apply in this section:

(1) Motor carrier transportation contract. – A contract, agreement, or understanding covering at least one of the following:

a. The transportation of property for compensation or hire by the motor carrier.

b. Entrance on property by the motor carrier for the purpose of loading, unloading, or transporting property for compensation or hire.

c. A service incidental to activity described in sub-subdivision a. or b. of this subdivision, including storage of property.

(2) Promisee. – The person with whom the motor carrier enters into a motor carrier transportation contract and any agents, employees, servants, or independent contractors who are directly responsible to

that person, except for motor carriers party to a motor carrier transportation contract with the person, and the motor carrier's agents, employees, servants, or independent contractors directly responsible to the motor carrier.

(c) Nothing contained in this section effects a provision, clause, covenant, or agreement where the motor carrier indemnifies or holds harmless the contract's promisee against liability for damages to the extent that the damages were caused by and resulted from the negligence of the motor carrier, its agents, employees, servants, or independent contractors who are directly responsible to the motor carrier.

(d) Notwithstanding the other provisions contained in this section, the term 'motor carrier transportation contract', as defined in this section, shall not include the Uniform Intermodal Interchange and Facilities Access Agreement administered by the Intermodal Association of North America, or other agreements providing for the interchange, use or possession of intermodal chassis, containers, trailers, or other intermodal equipment that contain substantially the same indemnity provision as the provision contained in the Uniform Intermodal Interchange and Facilities Access Agreement."

SECTION 2. This act becomes effective October 1, 2005, and applies to contracts entered into on or after that date.

HOUSE BILL 1163:
Hold Harmless/Motor Carrier Contracts

BILL ANALYSIS

Committee:	Senate Judiciary I	**Date:**	June 20, 2005
Introduced by:	Rep. Cole	**Summary by:**	O. Walker Reagan
Version:	PCS to Second Edition H1163-CSRU-60		Committee Co-Counsel

SUMMARY: The Proposed Senate Committee Substitute for House Bill 1163 makes hold harmless agreements in motor carrier transportation contracts that run in favor of the shipper void as being against public policy.

BILL ANALYSIS: The Senate Committee Substitute for House Bill 1163 states that hold harmless provisions in motor transportation agreements that require the motor carrier to hold the shipper harmless for acts of the shipper are against public policy and void. The act does not affect provisions where the motor carrier holds the shipper harmless for the acts of the motor carrier, nor does it affect certain intermodal transportation contracts. A motor carrier transportation contract is a contract for the transportation of property for compensation, and the entrance onto property for the purpose of loading, unloading or transporting property for hire. It also includes services connected with the transportation, including storage.

EFFECTIVE DATE: This act becomes effective October 1, 2005 and applies to contracts entered into on or after that date.

Steve Rose, counsel to the House Public Utilities Committee, substantially contributed to this summary.

H1163e2-SMRU-CSRU-60

HOUSE BILL 1163

Short Title:	Hold Harmless/Motor Carrier Contracts.	(Public)
Sponsors:	Representative Cole.	
Referred to:	Public Utilities.	

April 11, 2005

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT PROVISIONS IN MOTOR CARRIER FREIGHT TRANSPORTATION CONTRACTS THAT HOLD HARMLESS THE SHIPPER FOR THE SHIPPER'S NEGLIGENCE OR INTENTIONAL ACTS ARE VOID.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 62 of the General Statutes is amended by adding a new section to read:

"**§ 62-212. Indemnity agreements in motor carrier transportation contracts.**

(a) A provision, clause, covenant, or agreement contained in, collateral to, or affecting a motor carrier transportation contract that purports to indemnify, defend, or hold harmless, or has the effect of indemnifying, defending, or holding harmless the promise from or against any liability for loss or damage resulting from the negligence or intentional acts or omission of the promisee is against the public policy of this State and is void and unenforceable.

(b) The following definitions apply in this section:

(1) Motor carrier transportation contract. – A contract, agreement, or understanding covering at least one of the following:

a. The transportation of property for compensation or hire by the motor carrier.

b. Entrance on property by the motor carrier for the purpose of loading, unloading, or transporting property for compensation or hire.

c. A service incidental to activity described in sub-subdivision a. or b. of this subdivison, including, but not limited to, storage of property.

(2) Promisee. – The promisee and any agents, employees, servants, or independent contractors who are directly responsible to the promisee, except for motor carriers party to a motor carrier transportation contract with the promisee, and the motor carrier's agents, employees,

servants, or independent contractors directly responsible to the motor carrier."

SECTION 2. This act is effective when it becomes law and applies to contracts entered into on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

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SENATE BILL 1013
PROPOSED COMMITTEE SUBSTITUTE S1013-PCS75336-RU-58

Short Title: Gen. Contractors/Fees/Cost Recovery. (Public)

Sponsors:

Referred to:

March 24, 2005

A BILL TO BE ENTITLED

AN ACT AUTHORIZING THE STATE LICENSING BOARD FOR GENERAL CONTRACTORS TO INCREASE FEES AND AMENDING CERTAIN PROVISIONS RELATING TO COST RECOVERY UNDER THE LAWS REGULATING GENERAL CONTRACTORS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 87-10(a) reads as rewritten:

"(a) Anyone seeking to be licensed as a general contractor in this State shall file an application for an examination on a form provided by the Board, at least 30 days before any regular or special meeting of the ~~Board accompanied by~~Board. The Board may require the applicant to pay the Board or a provider contracted by the Board an examination fee ~~of fifty dollars ($50.00)~~not to exceed one hundred dollars ($100.00) and ~~by the sum of one hundred dollars ($100.00)~~pay to the Board a license fee not to exceed one hundred twenty-five dollars ($125.00) if the application is for an unlimited license, ~~the sum of seventy-five dollars ($75.00)~~one hundred dollars ($100.00) if the application is for an intermediate ~~license or the sum of fifty dollars ($50.00)~~license, or seventy-five dollars ($75.00) if the application is for a limited ~~license; the fees and sum~~ license. The fees accompanying any application or examination shall be nonrefundable. The holder of an unlimited license shall be entitled to act as general contractor without restriction as to value of any single project; the holder of an intermediate license shall be entitled to act as general contractor for any single project with a value of up to seven hundred thousand dollars ($700,000); the holder of a limited license shall be entitled to act as general contractor for any single project with a value of up to three hundred fifty thousand dollars ($350,000); and the license certificate shall be classified in accordance with this section. Before being entitled to an examination an applicant must show to the satisfaction of the Board from the application and proofs furnished that the applicant is possessed of a good character and is otherwise qualified as to competency, ability, integrity, and financial responsibility, and that the applicant has not committed or done

any act, which, if committed or done by any licensed contractor would be grounds under the provisions hereinafter set forth for the suspension or revocation of contractor's license, or that the applicant has not committed or done any act involving dishonesty, fraud, or deceit, or that the applicant has never been refused a license as a general contractor nor had such license revoked, either in this State or in another state, for reasons that should preclude the granting of the license applied for, and that the applicant has never been convicted of a felony involving moral turpitude, relating to building or contracting, or involving embezzlement or misappropriation of funds or property entrusted to the applicant: Provided, no applicant shall be refused the right to an examination, except in accordance with the provisions of Chapter 150B of the General Statutes."

SECTION 2. G.S. 87-10(d) reads as rewritten:

"(d) Anyone failing to pass this examination may be reexamined at any regular meeting of the Board upon payment of an examination ~~fee of fifty dollars ($50.00).~~fee. Anyone requesting to take the examination a third or subsequent time shall submit a new application with the appropriate examination and license fees."

SECTION 3. G.S. 87-10(e) reads as rewritten:

"(e) A certificate of license shall expire on the thirty-first day of December following its issuance or renewal and shall become invalid 60 days from that date unless renewed, subject to the approval of the Board. Renewals may be effected any time during the month of January without reexamination, by the payment of a fee to the secretary of the Board. The fee shall not exceed ~~one hundred dollars ($100.00)~~one hundred twenty-five dollars ($125.00) for an unlimited license, ~~seventy-five dollars ($75.00)~~one hundred dollars ($100.00) for an intermediate ~~license~~ license, and ~~fifty dollars ($50.00)~~seventy-five dollars ($75.00) for a limited license. No later than November 30 of each year, the Board shall mail written notice of the amount of the renewal fees for the upcoming year to the last address of record for each general contractor licensed pursuant to this Article. Renewal applications shall be accompanied by evidence of continued financial responsibility satisfactory to the Board. Renewal applications received by the Board after January shall be accompanied by a late payment of ten dollars ($10.00) for each month or part after January. After a lapse of two years no renewal shall be effected and the applicant shall fulfill all requirements of a new applicant as set forth in this section."

SECTION 4. G.S. 87-11 is amended by adding the following new subsection to read:

"(e) The Board shall be entitled to recover its reasonable administrative costs associated with the investigation and prosecution of a violation of this Article or rules or regulations of the Board up to a maximum of five thousand dollars ($5,000) for any licensee or qualifying party found to have committed any of the following:

(1) Fraud or deceit in obtaining a license.

(2) Gross negligence, incompetency, or misconduct in the practice of general contracting.

(3) Willful violation of any provision of this Article."

SECTION 5. G.S. 87-13.1 reads as rewritten:

"**§ 87-13.1. Board may seek injunctive relief.**

Whenever the Board determines that any person, firm or corporation has violated or is violating any of the provisions of this Article or rules and regulations of the Board promulgated under this Article, the Board may apply to the superior court for a restraining order and injunction to restrain the violation; and the superior courts have jurisdiction to grant the requested relief, irrespective of whether or not criminal prosecution has been instituted or administrative sanctions imposed by reason of the violation. The court may award the Board its reasonable costs associated with the investigation and prosecution of the violation."

SECTION 6. Sections 1, 2, 3, and 6 of this act are effective when it becomes law. Sections 4 and 5 become effective October 1, 2005, and apply to violations that occur on or after that date.

SENATE BILL 1013:
Gen. Contractors/Fees/Civil Penalties

BILL ANALYSIS

Committee:	Senate Ref to Judiciary I. If fav, re-ref to Finance	**Date:**	June 21, 2005
Introduced by:	Sen. Hoyle	**Summary by:**	O. Walker Reagan Committee Co-Counsel
Version:	PCS to First Edition S1013-CSRU-58		

SUMMARY: The Proposed Committee Substitute for Senate Bill 1013 would authorize the State Licensing Board for General Contractors to increase its licensing fees and to recover its reasonable administrative costs associated with the investigation and prosecution of certain violations of the general contractors' licensing laws.

CURRENT LAW: Currently the State Licensing Board for General Contractors is authorized to charge an examination fee of $50.00 and $100.00 for an unlimited license, $75.00 for an intermediate license and $50.00 for a limited license. An unlimited licensee can construct any price building. An intermediate licensee can construct a building of up to $700,000 in value and a limited licensee can construct a building of up to $350,000 in value. There is currently no authority for the Board to recover its cost for prosecuting violations of the licensing law.

BILL ANALYSIS:

Sections 1, 2 and 3 of the bill authorize the Board to increase its charges for examinations and licensing fees to the following:

- Examination fee – not to exceed $100.
- Unlimited license fee – not to exceed $125.
- Intermediate license fee – not to exceed $100
- Limited license fee – not to exceed $75.

Sections 4 and 5 would authorize the Board to recover reasonable administrative costs associated with the investigation and prosecution of a violation of the law or rules governing general contractor licensing, up to a maximum of $5,000 for any person found to have committed any of the following:

- Fraud or deceit in obtaining a license.
- Gross negligence, incompetency, or misconduct in the practice of general contracting.
- Willful violation of any provision of the licensing law.

EFFECTIVE DATE: Sections 1, 2 and 3 authorizing fee increases would become effective when the bill becomes law. Sections 4 and 5 authorizing cost recovery would become effective October 1, 2005.

BACKGROUND: The bill is serially rereferred to Senate Finance if reported favorably by Senate Judiciary I.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 1013

Short Title:	Gen. Contractors/Fees/Civil Penalties.	(Public)
Sponsors:	Senator Hoyle.	
Referred to:	Judiciary I.	

March 24, 2005

A BILL TO BE ENTITLED

AN ACT AUTHORIZING THE STATE LICENSING BOARD FOR GENERAL CONTRACTORS TO INCREASE FEES AND AMENDING CERTAIN PROVISIONS RELATING TO CIVIL PENALTIES UNDER THE LAWS REGULATING GENERAL CONTRACTORS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 87-10(a) reads as rewritten:

"(a) Anyone seeking to be licensed as a general contractor in this State shall file an application for an examination on a form provided by the ~~Board, at least 30 days before any regular or special meeting of the Board accompanied by~~Board. The Board may require the applicant to pay the Board or a provider contracted by the Board an examination fee ~~of fifty dollars ($50.00)~~not to exceed one hundred dollars ($100.00) and ~~by the sum of one hundred dollars ($100.00)~~pay to the Board a license fee not to exceed one hundred twenty-five dollars ($125.00) if the application is for an unlimited license, ~~the sum of seventy-five dollars ($75.00)~~one hundred dollars ($100.00) if the application is for an intermediate ~~license or the sum of fifty dollars ($50.00)~~license, or seventy-five dollars ($75.00) if the application is for a limited ~~license; the fees and sum~~ license. The fees accompanying any application or examination shall be nonrefundable. The holder of an unlimited license shall be entitled to act as general contractor without restriction as to value of any single project; the holder of an intermediate license shall be entitled to act as general contractor for any single project with a value of up to seven hundred thousand dollars ($700,000); the holder of a limited license shall be entitled to act as general contractor for any single project with a value of up to three hundred fifty thousand dollars ($350,000); and the license certificate shall be classified in accordance with this section. Before being entitled to an examination an applicant must show to the satisfaction of the Board from the application and proofs furnished that the applicant is possessed of a good character and is otherwise qualified as to competency, ability, integrity, and financial responsibility, and that the applicant has not committed or done any act, which, if committed or done by any licensed contractor would be grounds under

the provisions hereinafter set forth for the suspension or revocation of contractor's license, or that the applicant has not committed or done any act involving dishonesty, fraud, or deceit, or that the applicant has never been refused a license as a general contractor nor had such license revoked, either in this State or in another state, for reasons that should preclude the granting of the license applied for, and that the applicant has never been convicted of a felony involving moral turpitude, relating to building or contracting, or involving embezzlement or misappropriation of funds or property entrusted to the applicant: Provided, no applicant shall be refused the right to an examination, except in accordance with the provisions of Chapter 150B of the General Statutes."

SECTION 2. G.S. 87-10(d) reads as rewritten:

"(d) Anyone failing to pass this examination may be reexamined at any regular meeting of the Board upon payment of an examination ~~fee of fifty dollars ($50.00).~~fee. Anyone requesting to take the examination a third or subsequent time shall submit a new application with the appropriate examination and license fees."

SECTION 3. G.S. 87-10(e) reads as rewritten:

"(e) A certificate of license shall expire on the thirty-first day of December following its issuance or renewal and shall become invalid 60 days from that date unless renewed, subject to the approval of the Board. Renewals may be effected any time during the month of January without reexamination, by the payment of a fee to the secretary of the Board. The fee shall not exceed ~~one hundred dollars ($100.00)~~one hundred twenty-five dollars ($125.00) for an unlimited license, ~~seventy-five dollars ($75.00)~~one hundred dollars ($100.00) for an intermediate ~~license~~ license, and ~~fifty dollars ($50.00)~~seventy-five dollars ($75.00) for a limited license. No later than November 30 of each year, the Board shall mail written notice of the amount of the renewal fees for the upcoming year to the last address of record for each general contractor licensed pursuant to this Article. Renewal applications shall be accompanied by evidence of continued financial responsibility satisfactory to the Board. Renewal applications received by the Board after January shall be accompanied by a late payment of ten dollars ($10.00) for each month or part after January. After a lapse of two years no renewal shall be effected and the applicant shall fulfill all requirements of a new applicant as set forth in this section."

SECTION 4. G.S. 87-11 is amended by adding the following new subsection to read:

"(e) The Board shall be entitled to recover its reasonable administrative costs associated with the investigation and prosecution of a violation of this Article or rules or regulations of the Board up to a maximum of five thousand dollars ($5,000) for any licensee or qualifying party found to have committed any of the following:

(1) Fraud or deceit in obtaining a license.

(2) Gross negligence, incompetency, or misconduct in the practice of general contracting.

(3) Willful violation of any provision of this Article."

SECTION 5. G.S. 87-13.1 reads as rewritten:

"**§ 87-13.1. Board may seek injunctive relief.**

Whenever the Board determines that any person, firm or corporation has violated or is violating any of the provisions of this Article or rules and regulations of the Board promulgated under this Article, the Board may apply to the superior court for a restraining order and injunction to restrain the violation; and the superior courts have jurisdiction to grant the requested relief, irrespective of whether or not criminal prosecution has been instituted or administrative sanctions imposed by reason of the violation. The court may award the Board its reasonable costs associated with the investigation and prosecution of the violation."

SECTION 6. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 2

HOUSE BILL 1295
Committee Substitute Favorable 5/31/05

Short Title: New Motor Vehicles Warranties. (Public)

Sponsors:

Referred to:

April 19, 2005

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE MAXIMUM WEIGHT OF A MOTOR VEHICLE THAT IS SUBJECT TO THE NEW MOTOR VEHICLES WARRANTIES ACT AND TO PROMOTE THE EXPEDITIOUS SETTLEMENT OF CLAIMS WHEN THE CONSUMER REQUESTS THE MANUFACTURER TO REPURCHASE THE MOTOR VEHICLE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-351.1(3) reads as rewritten:

"(3) 'Motor vehicle' includes a motor vehicle as defined in G.S. 20-4.01 ~~which~~ that is sold or leased in this State, but does not include 'house trailer' as defined in G.S. 20-4.01 or any motor vehicle ~~with a gross vehicle weight of~~that weighs more than 10,000 ~~pounds or more.~~pounds."

SECTION 2. G.S. 20-351.3(c) reads as rewritten:

"(c) Refunds shall be made to the consumer, ~~lessor~~ lessor, and any lienholders as their interests may appear. The refund to the consumer shall be reduced by a reasonable allowance for the consumer's use of the vehicle. A reasonable allowance for use ~~is that amount directly attributable to use by the consumer prior to his first report of the nonconformity to the manufacturer, its agent, or its authorized dealer, and during any subsequent period when the vehicle is not out of service because of repair. 'Reasonable allowance' is presumed to be the cash price or the lease price, as the case may be, of the vehicle multiplied by a fraction having as its denominator 100,000 miles and its numerator the number of miles attributed to the consumer.~~means the number of miles attributable to a consumer up to the date of the third attempt to repair the same nonconformity which is the subject of the claim, or the first attempt to repair a nonconformity that is likely to cause death or serious bodily injury, or the twentieth cumulative day when the vehicle is out of service by reason of repair of one or more nonconformities, whichever occurs first, multiplied by the purchase price of the vehicle,

or in the event of a leased vehicle, the lessor's actual lease price plus an amount equal to two percent (2%) of the purchase price, and divided by 120,000."

SECTION 3. This act becomes effective October 1, 2005, and applies to contracts entered into on or after that date.

HOUSE BILL 1295:
New Motor Vehicles Warranties

BILL ANALYSIS

Committee:	Senate Judiciary I	**Date:**	June 21, 2005
Introduced by:	Reps. Harrison, Weiss, Martin, Luebke	**Summary by:**	O. Walker Reagan
Version:	Second Edition		Committee Co-Counsel

SUMMARY: House Bill 1295 clarifies the maximum weight of a motor vehicle that is subject to the New Motor Vehicles Warranties Act, and amends the law that defines a reasonable allowance deduction allowed when the dealer buys back a motor vehicle covered by the "lemon law".

CURRENT LAW: The New Motor Vehicles Warranties Act, Article 15A of Chapter 20 of the General Statutes, provides remedies for purchasers of new vehicles that violate express warranties. This is more commonly known as the "Lemon Law". Excluded from the definition of covered motor vehicles are vehicles of 10,000 pounds or more. The law also provides when the manufacturer or dealer are required to buy back a defective motor vehicle, the manufacturer or dealer is entitled to reduce from the original sales price an amount for reasonable allowance for the use of the vehicle. This amount is the original sales price multiplied by an amount equal to the total miles driven by the buyer prior to the time the vehicle is required to be bought back divided by 100,000.

BILL ANALYSIS:

Section 1 would change the definition of motor vehicle from a motor vehicle "with a gross vehicle weight of 10,000 pounds or more" to a motor vehicle "that weighs more than 10,000 pounds". This change would include vehicles weighing 10,000 pounds.

Section 2 would change for purposes of determining the buy-back price the formula for calculating the reduction for the use of the vehicle by the buyer. Under the new formula, the trigger date for the end of the buyer's use is either:

- The date of the third attempt to repair the same nonconformity.
- The date of the first attempt to repair a nonconformity that is likely to cause death or serious bodily injury.
- The 12th cumulative day the vehicle is out of service due to one or more nonconformity.

The formula for calculating the reduction for use is the original purchase price, or the actual lease price plus 2% of the purchase price, multiplied by the number miles driven prior to the trigger date and divided by 120,000.

EFFECTIVE DATE: This act becomes effective October 1, 2005 and applies to contracts entered into on or after that date.

Susan Sitze, counsel to the House Judiciary I Committee, substantially contributed to this summary.

H1295e2-SMRU

LAW OFFICE OF
Postlethwait, Huggins & Morrison
5015 Southpark Drive, Suite 250
DURHAM, NORTH CAROLINA 27713

TELEPHONE: (919) 286-4204
FACSIMILE: (919) 286-2820

June 17, 2005

The Honorable Daniel Clodfelter
Senate Judiciary Committee

Re: Usage change to NC Lemon Law

Dear Chairman Daniel Clodfelter and Members of the Senate Judiciary I Committee:

Our firm does consumer work with an emphasis on the New Motor Vehicle Warranty Law, known as the Lemon Law. We strongly support the change as it would balance and level the playing field and encourage a swift and fair resolution involving defective new motor vehicles. Such a defective new motor vehicle can have a devastating effect on the safety and financial well being of a consumer and their family.

Stalling and delay by manufacturers occurs as there is no penalty to them for the delay. If the manufacturer's delay results in the consumer trading in the vehicle without availing himself or herself of a recovery under the lemon law, the manufacturer has won and saved substantial monies. Under the current usage section of this law, there is no incentive for a manufacturer to resolve a case, after making a cursory offer to resolve to avoid the treble damages penalty. The only offset to usage is finance charges and with interest averaging from 0% to 6%, that would not offset the $.30 per mile usage charged on a $30,000.00 vehicle. Stalling and delay does occur due to this usage provision and we see it daily in our practice.

The three tier balancing test offered would be of great benefit to the consumers in our state and place them closer to the "status quo ante" position intended by lemon laws. We recommend passage of this usage formula as it would be fair to both manufacturers and consumers.

Sincerely,

Raymond W. Postlethwait, Jr.

RWP/lw

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 2

HOUSE BILL 1491

Committee Substitute Favorable 5/19/05

Short Title: Insurance for School Social Workers. (Public)

Sponsors:

Referred to:

April 21, 2005

A BILL TO BE ENTITLED

AN ACT TO REQUIRE LOCAL BOARDS OF EDUCATION TO PROVIDE LIABILITY INSURANCE FOR SCHOOL SOCIAL WORKERS WHO TRANSPORT STUDENTS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 21 of Chapter 115C of the General Statutes is amended by adding the following new section to read:

"**§ 115C-317.1. School social workers and transporting students.**

A school social worker shall not be required to transport students without the existence of a written job description or local board policy that imposes this requirement."

SECTION 2. G.S. 115C-47 is amended by adding a new subdivision to read:

"(25a) To Reimburse the Additional Cost of Automobile Liability Coverage for School Social Workers Required to Transport Students. – A local board of education may require a school social worker who is required to transport students as provided under G.S. 115C-317.1 to increase the liability limits or add a business-use rider, or both, on that employee's personal automobile liability insurance policy for the purpose of transporting students within the course of that employee's work duties. If the board imposes this requirement on a school social worker, the board shall reimburse the employee for the additional premium charged for the increased liability limits or the added rider, or both."

SECTION 3. This act becomes effective July 1, 2005.

HOUSE BILL 1491:
Insurance for School Social Workers

BILL ANALYSIS

Committee:	Senate Judiciary I	**Date:**	June 21, 2005
Introduced by:	Rep. Glazier	**Summary by:**	O. Walker Reagan
Version:	Second Edition		Committee Co-Counsel

SUMMARY: House Bill 1491 would allow local boards to require a school social worker to transport students so long as this requirement is part of a written job description or local board policy. The bill also would allow a local board to require this social worker to increase the liability limits or add a business use rider, or both, on the employee's personal automobile liability insurance policy. If the board imposes this requirement, the board must reimburse the employee for any additional premium charged as a result.

CURRENT LAW/BACKGROUND: There is no law that prohibits a local board from requiring an employee, such as a school social worker, from transporting students as part of that employee's work responsibilities. School social workers, in particular, often are required to use their personal automobiles to transport students between the school and various appointments, such as doctor's visits.

The general law in North Carolina is that a school employee is liable and the school board is vicariously liable only if the school system has purchased insurance and waived its immunity. Currently, 52 LEAs participate in the North Carolina School Boards Trust risk management program for their automobile coverage, instead of purchasing commercial automobile insurance. The Trust program provides excess automobile liability coverage to employees operating their personal automobiles for school business purposes. This means the employee's insurance provides primary coverage, unless the policy excludes driving in the course of employment.

Some LEAs require their employees to have certain amounts of coverage, but this is not uniform. Some LEAs agree to pay the extra insurance costs if they require the employee to purchase higher limits of personal insurance or a business use rider on the employee's personal insurance policy.

BILL ANALYSIS: Section 1 of the bill would provide that a school social worker cannot be required to transport students absent the existence of a written job description or local board policy that imposes this requirement.

Section 2 of the bill would authorize a local board of education to require this social worker to increase the liability limits or add a business use rider, or both, on that employee's personal automobile liability insurance policy for the purpose of transporting students within the course of that employee's employment. If this requirement were imposed, then the board would be required to reimburse the school social worker for the extra premium that results.

EFFECTIVE DATE: This bill would be effective July 1, 2005.

Robin Johnson, counsel to the House Education Committee, and Drupti Chauhan, Staff Attorney, substantially contributed to this summary.

H1491e2-SMRU

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE
Name of Committee

6-21-05
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

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Charlie Dell	NC Trucking Assn.
Virgil McBride	"
Henry Hunter	N.C.S.D.C.
John Cyrus	NCS Grange
Lisa Martin	NC Home Builders Assoc.
Robert Cucchi	Ford Motor Co.
[illegible]	[illegible]
Henry Jones	Attorney - Raleigh
Larry Heckner	HSBC - North America
Mark Seipt	NCLBGC
Warren Savage	Bailey + Dixon

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE — 6/21/05

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
Brad Lambe	NC Consumers Council
[illegible]	SBE / DPI
Stephanie Dorko	Charlotte Chamber
Ryan Pressley	Rep. Glazier intern
Amanda Stokes	Holt Yow McDaniel + High
Hal Miller	NCAECT
Suzanne Bradley	GOV OFFICE
Kevin Redmond	DCSR
Angie Harris	Maupin Taylor
Katherine Joyce	NCAST
Steve Woodson	NCFB

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE
Name of Committee

6/21/05
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
Sandra Jarrett	Clerk of Court - Camp Co
Rick Zechini	NC Assoc. of Realtors
Michael Houser	NCAE
Gardner Payne	Edwards & Webb
BOB KUCAB	NCHTA
Tonia Porter	Manspin Taylor
Bob Hall	Democracy NC
B. Paul Wilms	NCHBA
Stetson CLARK	private citizen
O'NEILL D'GRUV	DOCTOR OF THE DAY
DAVID BARNES	Poyner & Spruill

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE — 6/21/05

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
Jay Rouse	NCAEC
Bob Phillips	CCNC
Andrea Schrag	RT
Bill Rustin	DCP
[illegible]	[illegible]
Stephanie Simpson	NCAR
Carol Scott	WCSR
Colleen Kochanek	Holt, York McDavis Stilson
[illegible]	WCS
[illegible]	[illegible]
[illegible]	[illegible]

Principal Clerk
Reading Clerk

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
THURSDAY	June 23, 2005	10:00 AM	1027 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 223	Public Confidence in Elections.	Senator Kinnaird
SB 539	Public Campaign Fund Amendments.	Senator Clodfelter

Senator Daniel G. Clodfelter, Chair

Judiciary 1 Committee

June 23, 2005

Minutes

Senator Dan Clodfelter, Chair called the meeting to order at 10:20 a.m. with sixteen members present. He introduced Pages Chase Daughtridge from Rocky Mount, NC, Caroline Donaldson from Raleigh, NC. Hal Garrison from Fayetteville, NC, Jack Plexico from Raleigh, NC, Aaron Mintz from Wendell, NC and Vernon King, III from Asheboro, NC. Senator Clodfelter stated that because of conflicting committee meetings, and the late start for this committee, SB 223 would be introduced for discussion but would not be voted on at this time, and SB 539 would be carried over to the next meeting.

SB-223 (Public Confidence in Elections) Committee Substitute was introduced by Senator Clodfelter. Senator Richard Nesbitt moved for adoption of the Committee Substitute. All members voted yes. Motion carried. Senator Clodfelter had previously appointed a Subcommittee consisting of four members, Senator Julia Boseman, Chair, Senator Senator's Jerry Tillman, Senator Janet Cowell, Senator Richard Stevens, and Senator Tony Rand to study the bill. He asked Senator Boseman to give a brief report. She stated that the bill was discussed and was given a Favorable Report by the Subcommittee. He then asked Mr. Bill Gilkeson, staff attorney to explain the different Sections of the bill. (See attached Bill Summary). Ms. Marilyn Chism from the Fiscal Research Department explained the Fiscal Analysis (see attached). Co-chairs of the Joint Select Committee on Electronic Voting Systems and to the Joint Legislative Commission on Governmental Operations, Senator's Austin Allran and Ellie Kinnaird spoke on the results of the Study Committee, saying they had spoken to citizens all over the state of North Carolina, and they gave a summarized report of their findings to members of the J-1 Committee. Senator Clodfelter stated that the bill would be carried over to the next committee meeting.

Being no further business the meeting adjourned at 10:55 a.m.

Senator Dan Clodfelter, Chair **Wanda Joyner, Committee Assistant**

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 223
PROPOSED COMMITTEE SUBSTITUTE S223-CSRR-34 [v.18]

6/22/2005 2:32:16 PM

Short Title: Public Confidence in Elections. (Public)

Sponsors:

Referred to:

February 28, 2005

A BILL TO BE ENTITLED

AN ACT TO RESTORE PUBLIC CONFIDENCE IN THE ELECTION PROCESS BY REQUIRING THAT ALL VOTING SYSTEMS GENERATE EITHER A PAPER BALLOT OR A PAPER RECORD THAT CONFIRMS AND PROVIDES A BACKUP MEANS OF COUNTING THE VOTE THAT THE VOTER CASTS; BY PROVIDING STATUTORY GUIDANCE AS TO COUNTING; BY STANDARDIZING PURCHASING OF VOTING SYSTEMS IN NORTH CAROLINA, INCLUDING A REVIEW OF SOURCE CODE FOR SOFTWARE RELATED TO THOSE VOTING SYSTEMS AND AUTHORIZATION TO ESTABLISH THE ROLE OF THE STATE BOARD OF ELECTIONS AND COUNTY BOARD OF ELECTIONS RELATED TO TRAINING AND SUPPORT OF VOTING SYSTEMS; BY REQUIRING POSTELECTION TESTING OF VOTING SYSTEMS, INCLUDING A PAPER SAMPLE-COUNT; BY EXPANDING THE RIGHT TO A HAND-TO-EYE RECOUNT OF PAPER BALLOTS; AND BY APPROPRIATING FUNDS TO THE STATE BOARD OF ELECTIONS TO IMPLEMENT THIS ACT.

The General Assembly of North Carolina enacts:

SECTION 1.(a) Effective January 1, 2006, Article 14A of Chapter 163 of the General Statutes is amended by adding a new section to read:

"**§ 163-165.9B. Voting systems: permitted voting systems; paper record required; counting.**

(a) Permitted Voting Systems. – The State allows three voting systems: (i) paper ballots; (ii) optical scan; and (iii) direct record electronic (DRE). Each DRE shall, contemporaneously with the casting of the vote by the voter, generate a paper record that confirms the voter's choices and provides a back-up means of counting the vote that the voter has cast.

(b) Counting on Voting Systems. – In counties that use optical scan or DRE voting systems, subject to the sample counts under G.S. 163-182.1 and G.S. 163-182.2,

and of a hand-to-eye recount under G.S. 163-182.7 and G.S. 163-182.7A, a board of elections shall rely in its canvass on the mechanical or electronic count of the vote rather than the full hand-to-eye count of the paper ballots or records. In the event of a discrepancy between the electronic or mechanical count and a hand-to-eye count, the hand-to-eye count shall control, except where paper ballots or records have been lost or destroyed or where there is another reasonable basis to conclude that the hand-to-eye count is not the true count."

SECTION 1.(b) G.S. 163-165.1(e) reads as rewritten:

"(e) Voted ballots and paper records of individual voted ballots shall be treated as confidential, and no person other than elections officials performing their duties may have access to voted ballots or paper records of individual voted ballots except by court order or order of the appropriate board of elections as part of the resolution of an election protest or investigation of an alleged election irregularity or violation. Voted ballots and paper records of individual voted ballots shall not be disclosed to members of the public in such a way as to disclose how a particular voter voted, unless a court orders otherwise."

SECTION 2.(a) Part 2 of Article 14A of Chapter 163 of the General Statutes is amended by adding a new section to read:

"**§ 163-165.9A. Voting systems: requirements for voting systems vendors; penalties.**

(a) Duties of Vendor. – Every vendor that has a contract to provide a voting system in North Carolina shall do all of the following:

(1) The vendor shall place in escrow with an independent escrow agent approved by the State Board of Elections a copy of all source code relevant to the recording or counting of votes and related documentation, together with updates as they become known or available. The documentation shall include a system configuration and a sworn affidavit that the source code includes all relevant program statements in low-level and high-level languages. As used in this section, 'source code' does not include variable codes created for specific elections.

(2) The vendor shall notify the State Board of Elections of any change in source code or any change in the foundation operating system.

(3) The chief executive officer of the vendor shall sign a sworn affidavit that the source code in escrow is the same being used in its voting systems in this State. The chief executive officer shall ensure that the statement is true on a continuing basis.

(4) The vendor shall notify the State Board of Elections and the county board of elections of any county using its voting system of any defect in the same system known to have occurred anywhere and relevant defects known to have occurred in similar systems.

(5) The vendor shall maintain an office in North Carolina with staff to service the contract.

(b) Penalties. – Willful violation of any of the duties in subsection (a) of this section is a Class G felony. Substitution of source code into an operating voting system

without notification as provided by subdivision (a)(2) of this section is a Class I felony. In addition to any other applicable penalties, violations of this section are subject to a civil penalty of up to one hundred thousand dollars ($100,000) per violation."

SECTION 2.(b) This section applies with respect to purchase or upgrade of any voting system on or after August 1, 2005.

SECTION 3.(a) Effective August 1, 2005, and applicable to any voting systems upgraded or acquired on or after that date, G.S. 163-165.7 reads as rewritten:

"**§ 163-165.7. Voting systems: powers and duties of State Board of Elections.**

(a) ~~The State Board of Elections shall have authority to approve types, makes, and models of voting systems for use in elections and referenda held in this State.~~ Only voting systems that have been ~~approved~~ certified by the State Board of Elections shall be used to conduct elections under this Chapter, and the ~~approved~~ certified voting systems shall be valid in any election or referendum held in any county or municipality. ~~The State Board may, upon request of a local board of elections, authorize the use of a voting system not approved for general use.~~ The use of paper ballots counted by hand is a certified voting system. The State Board shall certify additional voting systems through the use of a request for proposal process. The State Board shall develop the requests for proposal subject to the provisions of this Chapter and other applicable State laws. The request for proposal shall address at least all of the following requirements:

(1) That the vendor must post a bond or letter of credit to cover damages resulting from defects in the voting. Damages include the cost of a new election.

(2) That the voting system must comply with all federal requirements for voting systems.

(3) That the voting system must have the capacity to include in precinct returns the votes cast by voters outside of the voter's precinct.

(4) For all voting systems utilizing electronic means, accessibility for the State Board of Elections; the Office of Information Technology Services; the State chairs, or one designee of each chair, of each political party recognized under G.S. 163-96; and the purchasing county to review all source code relevant to the recording or counting of votes.

(5) That the vendor must quote a statewide uniform price for each unit of the equipment.

(6) The minimum specifications of the voting system, including mandatory features.

(7) The mandatory terms of the contract for the purchase of the voting system and the maintenance and training related to that voting system.

(b) The State Board may also, upon notice and hearing, ~~disapprove~~ decertify types, makes, and models of voting systems. Upon ~~disapproving~~ decertifying a type, make, or model of voting system, the State Board shall determine the process by which the ~~disapproved~~ decertified system is discontinued in any county. ~~If a county makes a showing that discontinuance would impose a financial hardship upon it, the county shall be given up to four years from the time of State Board disapproval to replace the~~

~~system.~~ A county may appeal a decision by the State Board concerning ~~discontinuance of a voting system~~ the process by which the decertified system is discontinued in that county ~~to the superior court in that county or~~ to the Superior Court of Wake County. The county has 30 days from the time of the State Board's decision on ~~discontinuance~~the process by which the decertified system is discontinued in that county to make that appeal.

(c) Prior to certifying a voting system, the State Board of Elections shall review, or designate an independent expert to review, all source code made available by the vendor pursuant to this section and certify only those voting systems compliant with state and federal law. At a minimum, the State Board's review shall include a review of security, application vulnerability, application code, wireless security, security policy and processes, security/privacy program management, technology infrastructure and security controls, security organization and governance, and operational effectiveness, as applicable to that voting system. Any portion of the report containing specific information related to any trade secret as designated pursuant to G.S. 132-1.2 shall be confidential, and shall be accessed only under the rules adopted pursuant to subdivision (9) of subsection (d) of this section. The State Board may hear and discuss the report of any such review under G.S. 143-318.11(a)(1).

(d) Subject to the provisions of this Chapter, the State Board of Elections shall prescribe rules for the adoption, handling, operation, and honest use of certified voting systems, ~~including, but not limited to,~~including all of the following:

(1) Procedures for county boards of elections to utilize when recommending the purchase of a ~~Types, makes, and models of~~ certified voting ~~systems approved~~ system for use in ~~this State~~that county.

(2) Form of official ballot labels to be used on voting systems.

(3) Operation and manner of voting on voting systems.

(4) Instruction of precinct officials in the use of voting systems.

(5) Instruction of voters in the use of voting systems.

(6) Assistance to voters using voting systems.

(7) Duties of custodians of voting systems.

(8) Examination and testing of voting systems before and after use in an election.

(9) Notwithstanding G.S. 132-1.2, procedures for the review and examination of any information placed in escrow by a vendor pursuant to G.S. 163-165.9A by only the following persons:

a. State Board of Elections.

b. Office of Information Technology Services.

c. The State chairs, or one designee of each chair, of each political party recognized under G.S. 163-96. For purposes of this review and examination, the State chairs and their designees shall be treated as public officials under G.S. 132-2.

d. The purchasing county.

Any rules adopted under this subsection shall be in conjunction with procedures and standards adopted under G.S. 163-182.1, are exempt from Chapter 150B of the General Statutes, and are subject to the same procedures for notice and publication set forth in G.S. 163-182.1.

(e) The State Board of Elections shall facilitate training and support of the voting systems utilized by the counties."

SECTION 3.(b) Section 11 of S.L. 2003-226, which would have made amendment to G.S. 163-165.7 effective January 1, 2006, is repealed.

SECTION 3.(c) In order to carry forward the first of two amendments that would have been made by Section 11 of S.L. 2003-226 to the old version of G.S. 163-165.7, effective January 1, 2006, G.S. 163-165.7 as rewritten by subsection (a) of this section is amended by adding the following new subsection:

"(a1) Federal Assistance. – The State Board may use guidelines, information, testing reports, certification, decertification, recertification, and any relevant data produced by the Election Assistance Commission, its Standards Board, its Board of Advisors, or the Technical Guidelines Development Committee as established in Title II of the Help America Vote Act of 2002 with regard to any action or investigation the State Board may take concerning a voting system. The State Board may use, for the purposes of voting system certification, laboratories accredited by the Election Assistance Commission under the provisions of section 231(2) of the Help America Vote Act of 2002."

SECTION 3.(d) In order to carry forward the second of two amendments that would have been made by Section 11 of S.L. 2003-226 to the old version of G.S. 163-165.7, effective January 1, 2006, G.S. 163-165.7(d) as rewritten by subsection (a) of this section is amended by adding the following new subdivision:

"(9) Compliance with section 301 of the Help America Vote Act of 2002."

SECTION 3.(e) G.S. 163-132.5G reads as rewritten:

"**§ 163-132.5G. Voting data maintained by precinct.**

To the extent that it can do so without compromising the secrecy of an individual's ballot, each county board of elections shall maintain voting data by precinct so that precinct returns for each item on the ballot shall include the votes cast by residents of the precinct who voted by provisional ballot and by absentee ballot, both mail and one-stop. The county board shall not be required to report provisional and absentee voting data by precinct until ~~60~~120 days after ~~the election.~~general election in 2006 and 60 days after subsequent elections. The State Board of Elections shall adopt rules for the enforcement of this section with the goal that all voting data shall be reported by precinct by the 2006 general election. ~~Those rules shall provide for exemptions where the expense of compliance would place a financial hardship on a county. Those rules shall provide for compliance by 2004 for counties the State Board determines are capable of complying by that year.~~"

SECTION 4. Effective August 1, 2005, G.S. 163-165.8 reads as rewritten:

"**§ 163-165.8. Voting systems: powers and duties of board of county commissioners.**

The board of county commissioners, with the approval of the county board of elections, may adopt and ~~purchase or lease~~ acquire only a voting system of a type, make, and model ~~approved~~ certified by the State Board of Elections for use in some or all voting places in the county at some or all elections.

The board of county commissioners may decline to adopt and ~~purchase or lease~~ acquire any voting system recommended by the county board of elections but may not adopt and ~~purchase or lease~~ acquire any voting system that has not been approved by the county board of elections. Article 8 of Chapter 143 of the General Statutes does not apply to the purchase of a voting system certified by the State Board of Elections."

SECTION 5. Effective August 1, 2005, G.S. 163-165.9 reads as rewritten:

"**§ 163-165.9. Voting systems: powers and duties of county board of elections.**

(a) Before approving the adoption and ~~purchase or lease~~ acquisition of any voting system by the board of county commissioners, the county board of elections shall do all of the following:

(1) ~~Obtain a current financial statement from the proposed vendor or lessor of the voting system and send copies of the statement to the county attorney and the chief county financial officer.~~ Recommend to the board of county commissioners which type of voting system should be acquired by the county.

(2) Witness a demonstration, in that county or at a site designated by the State Board of Elections, of the type of voting system to be recommended ~~by the proposed vendor or lessor~~ and also witness a demonstration of at least one other type of voting system ~~approved~~ certified by the State Board of Elections.

(3) Test, during an election, the proposed voting system in at least one precinct in the county where the voting system would be used if adopted.

(b) After the acquisition of any voting system, the county board of elections shall comply with any requirements of the State Board of Elections regarding training and support of the voting system."

SECTION 6.(a) G.S. 163-182.1(b) reads as rewritten:

"(b) Procedures and Standards. – The State Board of Elections shall adopt uniform and nondiscriminatory procedures and standards for voting systems. The standards shall define what constitutes a vote and what will be counted as a vote for each category of voting system used in the State. The State Board shall adopt those procedures and standards at a meeting occurring not earlier than 15 days after the State Board gives notice of the meeting. The procedures and standards adopted shall apply to all elections occurring in the State and shall be subject to amendment or repeal by the State Board acting at any meeting where notice that the action has been proposed has been given at least 15 days before the meeting. These procedures and standards shall not be considered to be rules subject to Article 2A of Chapter 150B of the General Statutes. However, the State Board shall publish in the North Carolina Register the procedures and standards and any changes to them after adoption, with that publication noted as information helpful to the public under G.S. 150B-21.17(a)(6). Copies of those

procedures and standards shall be made available to the public upon request or otherwise by the State Board. For optical scan and direct record electronic voting systems, and for any other voting systems in which ballots are counted other than on paper by hand and eye, those procedures and standards shall do both of the following:

(1) Provide for a sample hand-to-eye count of the paper ballots or paper records of a statewide ballot item in every county. The presidential ballot item shall be the subject of the sampling in a presidential election. If there is no statewide ballot item, the State Board shall provide a process for selecting district or local ballot items to adequately sample the electorate. The sample chosen by the State Board shall be of full precincts, full counts of absentee ballots, and full counts of one-stop early voting sites. The size of the sample of each category shall be chosen to produce a statistically significant result and shall be chosen after consultation with a statistician. The actual units shall be chosen at random. In the event of a discrepancy between the electronic or mechanical count and a hand-to-eye count, the hand-to-eye count shall control, except where paper ballots or records have been lost or destroyed or where there is another reasonable basis to conclude that the hand-to-eye count is not the true count.–. If the discrepancy between the hand-to-eye count and the mechanical or electronic count is significant, a complete hand-to-eye count shall be conducted.

(2) ~~provide~~ Provide that if the voter selects votes for more than the number of candidates to be elected or proposals to be approved in a ballot item, the voting system shall do all the following:

~~(1)~~a. Notify the voter that the voter has selected more than the correct number of candidates or proposals in the ballot item.

~~(2)~~b. Notify the voter before the vote is accepted and counted of the effect of casting overvotes in the ballot item.

~~(3)~~c. Provide the voter with the opportunity to correct the official ballot before it is accepted and counted."

SECTION 6.(b) G.S. 163-182.2 reads as rewritten:

"**§ 163-182.2. Initial counting of official ballots.**

(a) The initial counting of official ballots shall be conducted according to the following principles:

(1) Vote counting at the precinct shall occur immediately after the polls close and shall be continuous until completed.

(2) Vote counting at the precinct shall be conducted with the participation of precinct officials of all political parties then present. Vote counting at the county board of elections shall be conducted in the presence or under the supervision of board members of all political parties then present.

(3) Any member of the public wishing to witness the vote count at any level shall be allowed to do so. No witness shall interfere with the

orderly counting of the official ballots. Witnesses shall not participate in the official counting of official ballots.

(4) Provisional official ballots shall be counted by the county board of elections before the canvass. If the county board finds that an individual voting a provisional official ballot is not eligible to vote in one or more ballot items on the official ballot, the board shall not count the official ballot in those ballot items, but shall count the official ballot in any ballot items for which the individual is eligible to vote.

(5) Precinct officials shall provide a preliminary report of the vote counting to the county board of elections as quickly as possible. The preliminary report shall be unofficial and has no binding effect upon the official county canvass to follow.

(b) The State Board of Elections shall promulgate rules for the initial counting of official ballots. All election officials shall be governed by those rules. In promulgating those rules, the State Board shall adhere to the following guidelines:

(1) For each voting system used, the rules shall specify the role of precinct officials and of the county board of elections in the initial counting of official ballots.

(1a) For optical scan and direct record electronic voting systems, and for any other voting systems in which ballots are counted other than on paper by hand and eye, those rules shall provide for a sample hand-to-eye count of the paper ballots or paper records of a sampling of a statewide ballot item in every county. The presidential ballot item shall be the subject of the sampling in a presidential election. If there is no statewide ballot item, the State Board shall provide a process for selecting district or local ballot items to adequately sample the electorate. The sample chosen by the State Board shall be of full precincts, full counts of absentee ballots, and full counts of one-stop early voting sites. The size of the sample of each category shall be chosen to produce a statistically significant result and shall be chosen after consultation with a statistician. The actual units shall be chosen at random. In the event of a discrepancy between the electronic or mechanical count and a hand-to-eye count, the hand-to-eye count shall control, except where paper ballots or records have been lost or destroyed or where there is another reasonable basis to conclude that the hand-to-eye count is not the true count.– If the discrepancy between the hand-to-eye count and the mechanical or electronic count is significant, a complete hand-to-eye count shall be conducted.

(2) The rules shall provide for accurate unofficial reporting of the results from the precinct to the county board of elections with reasonable speed on the night of the election.

(3) The rules shall provide for the prompt and secure transmission of official ballots from the voting place to the county board of elections.

The State Board shall direct the county boards of elections in the application of the principles and rules in individual circumstances."

SECTION 6.(c) G.S. 163-182.5 reads as rewritten:

"**§ 163-182.5. Canvassing votes.**

(a) The Canvass. – As used in this Article, the term "canvass" means the entire process of determining that the votes have been counted and tabulated correctly, culminating in the authentication of the official election results. The board of elections conducting a canvass has authority to send for papers and persons and to examine them and pass upon the legality of disputed ballots.

(b) Canvassing by County Board of Elections. – The county board of elections shall meet at 11:00 A.M. on the seventh day after every election to complete the canvass of votes cast and to authenticate the count in every ballot item in the county by determining that the votes have been counted and tabulated correctly. If, despite due diligence by election officials, the initial counting of all the votes has not been completed by that time, the county board may hold the canvass meeting a reasonable time thereafter. The canvass meeting shall be at the county board of elections office, unless the county board, by unanimous vote of all its members, designates another site within the county. The county board shall examine the returns from precincts, from absentee official ballots, from the sample hand-to-eye paper ballot counts, and from provisional official ballots and shall conduct the canvass.

(c) Canvassing by State Board of Elections. – After each general election, the State Board of Elections shall meet at 11:00 A.M. on the Tuesday three weeks after election day to complete the canvass of votes cast in all ballot items within the jurisdiction of the State Board of Elections and to authenticate the count in every ballot item in the county by determining that the votes have been counted and tabulated correctly. After each primary, the State Board shall fix the date of its canvass meeting. If, by the time of its scheduled canvass meeting, the State Board has not received the county canvasses, the State Board may adjourn for not more than 10 days to secure the missing abstracts. In obtaining them, the State Board is authorized to secure the originals or copies from the appropriate clerks of superior court or county boards of elections, at the expense of the counties."

SECTION 6.(d) This section becomes effective January 1, 2006.

SECTION 7.(a) G.S. 163-182.7 reads as rewritten:

"**§ 163-182.7. Ordering recounts.**

(a) Discretionary Recounts. – The county board of elections or the State Board of Elections may order a recount when necessary to complete the canvass in an election. The county board may not order a recount where the State Board of Elections has already denied a recount to the petitioner.

(b) Mandatory Recounts for Ballot Items Within the Jurisdiction of the County Board of Elections. – In a ballot item within the jurisdiction of the county board of elections, a candidate shall have the right to demand a recount of the votes if the difference between the votes for that candidate and the votes for a prevailing candidate is not more than one percent (1%) of the total votes cast in the ballot item, or in the case of a multiseat ballot item not more than one percent (1%) of the votes cast for those two

candidates. The demand for a recount must be made in writing and must be received by the county board of elections by 5:00 P.M. on the first day after the canvass. The recount shall be conducted under the supervision of the county board of elections.

(c) Mandatory Recounts for Ballot Items Within the Jurisdiction of the State Board of Elections. – In a ballot item within the jurisdiction of the State Board of Elections, a candidate shall have the right to demand a recount of the votes if the difference between the votes for that candidate and the votes for a prevailing candidate are not more than the following:

(1) For a nonstatewide ballot item, one percent (1%) of the total votes cast in the ballot item, or in the case of a multiseat ballot item, one percent (1%) of the votes cast for those two candidates.

(2) For a statewide ballot item, one-half of one percent (0.5%) of the votes cast in the ballot item, ~~or in the case of a multiseat ballot item, one-half of one percent (0.5%) of the votes cast for those two candidates,~~ or 10,000 votes, whichever is less.

The demand for a recount must be in writing and must be received by the State Board of Elections by noon on the second Thursday after the election. If on that Thursday the available returns show a candidate not entitled to a mandatory recount, but the Executive Director determines subsequently that the margin is within the threshold set out in this subsection, the Executive Director shall notify the eligible candidate immediately and that candidate shall be entitled to a recount if that candidate so demands within 48 hours of notice. The recount shall be conducted under the supervision of the State Board of Elections.

(d) Rules for Conducting Recounts. – The State Board of Elections shall promulgate rules for conducting recounts. Those rules shall be subject to the following guidelines:

(1) The rules shall specify, with respect to each type of voting system, when and to what extent the recount shall consist of machine recounts and hand-to-eye recounts. Hand-to-eye recounts shall also be ordered as provided by G.S. 163-182.7A.

(2) The rules shall provide guidance in interpretation of the voter's choice.

(3) The rules shall specify how the goals of multipartisan participation, opportunity for public observation, and good order shall be balanced."

SECTION 7.(b) Article 15A of Chapter 163 of the General Statutes is amended by adding a new section to read:

"**§ 163-182.7A. Additional provisions for hand-to-eye recounts.**

(a) The rules promulgated by the State Board of Elections for recounts shall provide that if the initial recount is not hand-to-eye, and if the recount does not reverse the results, the candidate who had originally been entitled to a recount may, within 24 hours of the completion of the first recount, demand a second recount on a hand-to-eye basis in a sample of precincts. If the initial recount was not hand-to-eye and it reversed the results, the candidate who had initially been the winner shall have the same right to ask for a hand-to-eye recount in a sample of precincts.

That sample shall be all the ballots in three percent (3%) of the precincts casting ballots in each county in the jurisdiction of the office, rounded up to the next whole

number of precincts. For the purpose of that calculation, each one-stop (early) voting site and the mail-in absentee ballots shall be considered to be a precinct. The precincts to be recounted by a hand-to-eye count shall be chosen at random within each county. If the results of the hand-to-eye recount differ from the previous results within those precincts to the extent that extrapolating the amount of the change to the entire jurisdiction (based on the proportion of ballots recounted to the total votes cast for that office) would result in the reversing of the results, then the State Board of Elections shall order a hand-to-eye recount of the entire jurisdiction in which the election is held. There shall be no cost to the candidate for that recount in the entire jurisdiction.

(b) Recounts under this section shall be governed by rules adopted under G.S. 163-182.7(d).

(c) No complete hand-to-eye recount shall be conducted under this section if one has already been done under another provision of law."

SECTION 7.(c) This section becomes effective January 1, 2006.

SECTION 8. There is appropriated from the General Fund to the State Board of Elections the recurring sum of six hundred thousand dollars ($600,000) for the 2005-2006 and the 2006-2007 fiscal year and the nonrecurring sum of twenty million dollars ($20,000,000) for the 2005-2006 fiscal year for the purpose of implementing this act.

SECTION 9. The State Board of Elections shall recommend a model code of ethics for members and employees of county boards of elections and of the State Board of Elections. The code shall address the appropriate relations between those members and staff and vendors who do business or seek to do business with boards of elections in North Carolina. It shall address how to avoid both the reality and the appearance of conflicts of interest and impropriety. The State Board shall report its recommended code to the Joint Select Committee on Electronic Voting Systems and to the Joint Legislative Commission on Governmental Operations no later than 60 days after this act becomes law.

SECTION 10. Section 8 of this act becomes effective July 1, 2005. The requirement for testing a voting system in an election provided in G.S. 163-165.9(a)(3), as enacted in Section 5 of this act, does not apply to any voting system acquired before April 15, 2006. Except as otherwise provided in this act, the remainder of this act is effective when it becomes law.

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE — 06/23/05

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
Wm W. Murphy	COMMON CAUSE/NC
Bob Phillips	CCNC
Bob Hall	Democracy North Carolina
Chris Heagarty	NC Center for Voter Education
Elizabeth Custis	NCPIRG
Jim Johnson	FRD
John McMillan	NFOS
Eric Elliott	Forsyth Co. Bd of Elections, Secretary
Joan Cardwell	Forsyth Co. Bd of Elections, Chair
Louise Romanow	League of Women Voters, WC.
Joan Walsh	Durham Bill of Rights Defense Comm.

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE — 06/23/05

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
Rhodia Salem	Durham Bill of Rights Defense Committee
Joyce McCloy	www.NCVotca.net
Andrew Silver	"
Justin Moore	Duke Univ, Nat'l Comm. for Voting Integrity
Dennis Burns	Raleigh NC 27605
Peg Chapin	League of Women Voters Charlotte,
Jane Kimmel	LWV - C/M
Judie Bonsal	LWVNC
Mary Klenz	LWVNC
Kim Strach	SBE
Gary Bartlett	SBE

SENATE BILL 223:
Public Confidence in Elections

BILL ANALYSIS

Committee:	Senate Judiciary I – Elections Subcommittee	**Date:**	June 22, 2005
Introduced by:	Sen. Kinnaird and Allran	**Summary by:**	William R. Gilkeson Committee Co-Counsel
Version:	PCS to First Edition S223-CSRR-34[v.18]		

SUMMARY: ***This Proposed Committee Substitute for Senate Bill 223 would require that, as of 1-1-06, all voting equipment used in North Carolina must generate a paper ballot or backup record. It requires that after that date the State Board of Elections must provide for sample paper hand counts in random precincts over the State. The bill makes specific requirements of any voting equipment vendor who does business in NC, requirements designed to promote accountability. The bill shifts from counties to the State Board of Elections the duty to produce a request for proposal for voting systems. The bill would appropriate $600,000 in recurring and $20 million in nonrecurring money to implement the act.***

CURRENT LAW: Currently county commissioners are responsible for purchasing voting equipment. They may only purchase equipment that has been approved by the county board of elections. The county board of elections may only approved equipment that has been approved by the State Board of Elections. The State Board has broad rulemaking power over the purchase and operation of voting systems. In addition to its authority to approve voting systems for purchase by counties, the State Board may disapprove systems already in use in a county. The county has four years to replace a voting system that has been disapproved.

BILL ANALYSIS:

Section 1 – Permitted Voting Systems, Paper Ballot/Record, and Counting. Lists the three voting systems used in NC: paper ballots counted by hand, Optical scan, and direct record electronic (DRE). Requires by 1-1-06 that every DRE voting system must generate, contemporaneously with the casting of the vote by the voter, a paper ballot or a paper record of the ballot that confirms and provides a backup means of counting the vote that the voter cast. Directs that, with optical scan and DRE systems, subject to sample hand counts and mandatory hand recounts, the boards of elections shall rely on an electronic or mechanical count. If there is a discrepancy between electronic or mechanical counts and hand-to-eye paper counts, the hand-to-eye prevails unless paper ballots have been lost or destroyed or there is another reason to conclude that the paper count is not the true count.

Section 2 -- Requirements for Voting System Vendors. Effective with any upgrade or new voting system purchased beginning 8-1-05, vendors of voting systems in NC must:

- Escrow their relevant source code.
- Keep the escrowed source code up to date, and must swear that it is the code used in operating voting systems.
- Maintain an active office in NC.
- Notify the State Board of any known defect in a voting system used in NC, even if the defect shows up outside the State.

Willful violation of any of the requirements is a Class G felony. Substitution of software into a voting system without notifying the State Board is a Class I felony. Violations are also punishable by civil penalties of up to $100,000.

Section 3 -- State Board of Elections' Role in Purchasing. Effective with any upgrade or new voting system purchased beginning 8-1-05, the State Board of Elections is directed to develop a Request for Proposal. The RFP would have to address the following requirements:

- Posting a bond or letter of credit to cover damages from defects in its voting system, including the cost of a new election.
- Compliance with federal law.

- The capacity to include in precinct returns the votes cast by voters outside the voter's precinct.
- Review of source code by the State Board of Elections, the NC Office of Information Technology, and the Chair (or designee) of any legally recognized political party in NC.
- Stating a statewide price for each unit of the equipment.
- Minimum specifications of the voting system.
- Mandatory terms of the contract for the purchase of voting system and the maintenance and training related to that voting system.

The State Board would be given the duties of monitoring voting system contracts, and of facilitating training and support.

Section 3(e) changes the requirement that counties must report absentee and one-stop results by precinct by the general election of 2006. It adds the requirement that provisional votes must be reported by precinct. For 2006 only, the section gives the county boards of elections 120 days to report those votes by precinct, rather than 60 days. But the section also removes the provision that counties be exempt from the requirement because of financial hardship.

Section 4 -- County Commissioners' Role in Purchasing. Effective 8-1-05, county commissioners would continue to purchase voting equipment. But because of the State Board's new duties, counties would be exempt from the purchasing rules that normally apply to local governments.

Section 5 -- County Board of Elections' Role in Purchasing. Effective 8-1-05, the county board of elections would have the duty to recommend to the county commissioners which type of voting system the county should purchase. Currently, the county chooses from a list of types, makes, and models approved by the State Board. The county board of elections would be required to abide by State Board rules regarding training and support.

Section 6 -- Sample Counts. Effective 1-1-06, State Board of Elections rules must require a hand-to-eye count of paper ballots in a sampling of precincts, early voting sites, or sets of mail absentee ballots in every county. The hand-to-eye sample counts would be of a sampling of statewide races, always including the presidential race when it is on the ballot. If there is no statewide race, then the State Board must have a plan for getting an adequate sample using district or local races. Unless there is clear evidence to believe otherwise, the hand-to-eye count will prevail. If the difference between the hand-to-eye and the electronic or machine county is significant, a complete hand-to-eye count will be conducted.

Section 7 -- Expansion of Right to Hand-to-Eye Recount. Effective 1-1-06, any candidate entitled to a recount under current law – that is, a candidate who was less than 1% behind in the initial count (or the lesser of 0.5% or 10,000 votes behind in a statewide race) – is entitled to a sample hand-to-eye recount. That sample would be of all the ballots in 3% of the precincts, randomly selected, in each county. If an extrapolation of the sample count to the whole count forecasts a reversal of the result, the candidate is entitled to a full hand-to-eye recount. This expanded right would not cost the candidate.

Section 8 -- Appropriations to State Board. Effective 7-1-05, the General Assembly would appropriate $600,000 of recurring funds and $20 million of nonrecurring funds in 2005-2006 to the State Board of Elections to implement the act.

Section 9 -- Code of Ethics. The State Board of Elections would be directed to recommend a code of ethics for members and employees of boards of elections at the county and State level. The code would address appropriate relations with voting system vendors. It would address how to avoid the reality and appearance of conflicts of interest and impropriety. The State Board would report to the Joint Select Committee on Electronic Voting Systems and to the Joint Legislative Commission on Governmental Operations within 60 days after the bill became law.

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE — 06/23/05

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
Patti Meyer	NCACC
Sarah Steege	Common Sense Foundation
Skye Metcalf	The Policy Group
[illegible]	NMRS
Kate Roetzer	
Sarah Harger	ACLU-NC
Dan Blau	ACLU-NC
Suzanne Buckley	GOV OFFICE
Sam McEwen	Dept of Rev
Eddie Finch	Revenue
Tripp Melton	Sen. Stevens Office

VISITOR REGISTRATION SHEET

Name of Committee _____ Date _____

VISITORS:. PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Fred Johnson	Alliance of Disability Advocates
Zeb Alley	Alley Associates
Samantha Mozingo	N/A
Tom Coley	CWA
Richard O'Brien	PFFPNC
Bill Rowe	NC Justice Center
Brian Connor	BOC ENT.
Peyton Maynard	[illegible]

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Thursday	June 30, 2005	8:30 to 10:00 a.m.	1027 LB

NOTE: SB-223 is for adoption of a new edition of the bill only. No vote will be taken.

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 223	Public Confidence in Elections.	Senator Kinnaird
SB 539	Public Campaign Fund Amendments.	Senator Clodfelter
HB 329	Limit Liability for Agritourism Activities.	Representative Faison Representative Cole Representative Wray Representative Tucker
HB 1227	Clarification of Motor Vehicle Repair Act.	Representative Coleman Representative Eddins
HB 1297	MRC and CERT Volunteers Qualified Immunity.	Representative Hackney
HB 1434	Electronic Signature Under Rule 4.	Representative Stiller Representative Glazier
HB 1466	Exploitation/Elderly Or Disabled Adult.	Representative Hackney

Senator Daniel G. Clodfelter, Chair

Judiciary 1 Committee

June 30, 2005

Minutes

Senator Dan Clodfelter, Chair called the meeting to order at 8:37 a.m. with fifteen members present. He introduced Pages, Lily Shorr and Sara Cline both from Charlotte, NC, Amelia Gardner and Erin Yarborough both from Raleigh, NC, Stephan Mazzara, from Cary, NC, Geoffrey Bellow from Speed, NC, Emily Uvguanari from Speed, NC Gerffrey Bellow from Summerfield, NC and Will Robinson from Greensboro, NC

HB-1297 (MRC and CERT Volunteers Qualified Immunity) Committee Substitute was introduced by Senator Clodfelter. Senator Jerry Tillman moved for adoption of the Committee Substitute. All members voted yes. Motion carried. Bill sponsor, Representative Joe Hackney explained that the bill would provide qualified immunity from civil liability for persons performing emergency services for Medical Reserve Corps and Emergency Response Teams in a volunteer capacity. (See Bill Summary for further information). No discussion. Senator Richard Stevens moved for a Favorable Report. All members voted yes. Motion carried.

HB-1466 (Exploitation/Elderly Or Disabled) was introduced by Senator Clodfelter. Bill sponsor, Representative Joe Hackney explained the bill. Senator's Andrew Brock, Clark Jenkins, and Richard Stevens had questions. Representative Hackney and Staff Attorney, Bill Gilkeson answered the questions. Senator Clark Jenkins moved for a Favorable Report. All members votes yes. Motion carried.

HB-329 (Limit Liability for Agritourism Activities) Committee Substitute was introduced by Senator Clodfelter. Senator Jeanne Lucas moved for adoption of the Committee Substitute. All members voted yes. Motion carried. Bill sponsor, Representative Bill Faison explained that the bill would limit liability of persons engaged in providing agritourism activities which are those activities that allow members of the public to view or enjoy rural activities such as farming, ranching historic cultural, or natural activities and attractions. (See Bill Summary for further information). Senator's Clark Jenkins, Janet Cowell, Jerry Tillman, Harry Brown, Vernon Malone, RC Soles and Ham Horton had questions. Representative Faison answered the questions. Senator Clark Jenkins moved for a Favorable Report. All members voted yes. Motion carried.

SB-223 (Public Confidence in Elections) Committee Substitute was introduced by Senator Clodfelter. He then moved for adoption of the Committee Substitute. All members voted yes. Motion carried. Staff attorney, Bill Gilkeson explained the Sections of the bill. Senator Clodfelter stated that the bill would be displaced for further study, and would not be voted on at this time.

HB-1434 (Electronic Signature Under Rule 4.) Committee Substitute was introduced by Senator Clodfelter. Senator RC Soles moved for adoption of the Committee Substitute. All members voted yes. Motion carried. In the absence of bill sponsor, Representative Glazier, Staff Attorney, Walker Reagan explained the bill. Ms. Coleen Kochanek with ADS Corp. Spoke on the bill. Senator's RC Soles and Ham Horton had questions. Mr. Reagan answered the questions. Senator Richard Stevens moved for a Favorable Report. All members voted yes. Motion carried.

Being no further business the meeting adjourned at 9:48 a.m.

Senator Dan Clodfelter, Chair

Wanda Joyner, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Daniel G. Clodfelter, Chair

Wednesday, July 06, 2005

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

FAVORABLE

H.B.(CS #1) **1466** Exploitation/Elderly Or Disabled Adult.

Sequential Referral:	None
Recommended Referral:	None

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **329** Limit Liability for Agritourism Activities.

Draft Number:	PCS50472
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **1297** MRC and CERT Volunteers Qualified Immunity.

Draft Number:	PCS30339
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **1434** Electronic Signature Under Rule 4.

Draft Number:	PCS10377
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 4

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 1297

Committee Substitute Favorable 4/27/05

PROPOSED SENATE COMMITTEE SUBSTITUTE H1297-PCS30339-RU-66

Short Title: MRC and CERT Volunteers Qualified Immunity. (Public)

Sponsors:

Referred to:

April 20, 2005

A BILL TO BE ENTITLED

AN ACT TO PROVIDE QUALIFIED IMMUNITY FROM CIVIL LIABILITY FOR ANY VOLUNTEER WHO SERVES IN A MEDICAL RESERVE CORPS UNIT OR ON A COMMUNITY EMERGENCY RESPONSE TEAM WHILE ENGAGED IN PROVIDING EMERGENCY SERVICES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 1-539.10 reads as rewritten:

"**§ 1-539.10. Immunity from civil liability for volunteers.**

(a) A volunteer who performs services for a charitable organization or a volunteer engaged in providing emergency services is not liable in civil damages for any acts or omissions resulting in any injury, death, or loss to person or property arising from the volunteer services rendered if:

(1) The volunteer was acting in good faith and the services rendered were reasonable under the circumstances; and

(2) The acts or omissions do not amount to gross negligence, wanton conduct, or intentional wrongdoing.

(3) The acts or omissions did not occur while the volunteer was operating or responsible for the operation of a motor vehicle.

(b) To the extent that any charitable organization or volunteer has liability insurance, that charitable organization or volunteer shall be deemed to have waived the qualified immunity herein to the extent of indemnification by insurance for the negligence by any volunteer.

(c) Nothing herein shall be construed to alter the standard of care requirement or liability of persons rendering professional services.

(d) As used in this section, the following terms mean:

(1) Emergency services. – The preparation for and the carrying out of functions to prevent, minimize, and repair injury and damage resulting

from natural or man-made disasters and all other activities necessary or incidental to the preparation for and carrying out of these functions. These functions include firefighting services, police services, medical and health services, rescue services, engineering services, land surveying services, warning services and communications, radiological, chemical and other special weapons defense services, evacuation of persons from stricken areas, emergency welfare services, including providing emergency shelter, emergency transportation, and emergency resource management services, existing or properly assigned plant protection services, temporary restoration of public utility services, services performed as a function of a Medical Reserve Corps (MRC) unit or a Community Emergency Response Team (CERT), and other functions related to civilian protection, including the administration of approved State and federal disaster recovery and assistance programs.

(2) Volunteer. – Any person who provides goods or services without any financial gain."

SECTION 2. This act becomes effective October 1, 2005, and applies to causes of action that arise on or after that date.

HOUSE BILL 1297:
MRC and CERT Volunteers Qualified Immunity

BILL ANALYSIS

Committee:	Senate Judiciary I	**Date:**	June 30, 2005
Introduced by:	Rep. Hackney	**Summary by:**	O. Walker Reagan Committee Co-Counsel
Version:	PCS to Second Edition H1297-CSRU-66		

SUMMARY: ***The Proposed Senate Committee Substitute for House Bill 1297 would provide qualified immunity from civil liability for persons performing emergency services for Medical Reserve Corps (MRC) and Community Emergency Response Teams (CERT) in a volunteer capacity.***

CURRENT LAW: Currently, a volunteer who performs services for a charitable organization is not liable in civil damages for any acts or omissions resulting in any injury, death, or loss to person or property arising from the volunteer services rendered if all of the following apply:

(1) The volunteer was acting in good faith and the services rendered were reasonable under the circumstances.

(2) The acts or omissions do not amount to gross negligence, wanton conduct, or intentional wrongdoing.

(3) The acts or omissions did not occur while the volunteer was operating or responsible for the operation of a motor vehicle.

If either the charitable organization or the volunteer has liability insurance, then that charitable organization or volunteer is deemed to have waived the qualified immunity to the extent of indemnification by the liability insurance for the negligent act. Additionally, the standard of care requirement or liability of persons rendering professional services is not affected by the qualified immunity.

BILL ANALYSIS: House Bill 1297 would add volunteers for Medical Reserve Corps and Community Emergency Response Teams while those persons are engaged in the provision of emergency services to those persons granted qualified immunity from civil liability.

Emergency services would be defined as the preparation for and the carrying out of functions to prevent, minimize, and repair injury and damage resulting from natural or man-made disasters and all other activities necessary or incidental to the preparation for and carrying out of these functions, which functions include:

1. Firefighting, police, and rescue services.
2. Medical and health services.
3. Engineering services.
4. Land surveying services.
5. Warning services and communications.
6. Radiological, chemical and other special weapons defense services.
7. Evacuation of persons from stricken areas.
8. Emergency welfare services, including providing emergency shelter; emergency transportation and emergency resource management services.
9. Existing or properly assigned plant protection services.
10. Temporary restoration of public utility services.
11. Other functions related to civilian protection, including the administration of approved State and federal disaster recovery and assistance programs.

The bill defines "volunteer" as any person who provides goods or services without any financial gain.

EFFECTIVE DATE: The act would become effective when it becomes law, and apply to claims on or after that date.

Erika Churchill, counsel to the House Judiciary I Committee, substantially contributed to this summary.

H1297e2-SMRU-CSRU-66

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 1

HOUSE BILL 1297

Short Title: MRC and CERT Volunteers Qualified Immunity. (Public)

Sponsors: Representatives Hackney; and LaRoque.

Referred to: Judiciary I.

April 20, 2005

A BILL TO BE ENTITLED

AN ACT TO PROVIDE QUALIFIED IMMUNITY FROM CIVIL LIABILITY FOR ANY VOLUNTEER WHO SERVES IN A MEDICAL RESERVE CORPS UNIT OR ON A COMMUNITY EMERGENCY RESPONSE TEAM WHILE ENGAGED IN PROVIDING EMERGENCY SERVICES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 1-539.10 reads as rewritten:

"**§ 1-539.10. Immunity from civil liability for volunteers.**

(a) A volunteer who performs services for a charitable organization and a volunteer who serves in a Medical Reserve Corps (MRC) unit or on a Community Emergency Response Team (CERT) while engaged in providing emergency services is not liable in civil damages for any acts or omissions resulting in any injury, death, or loss to person or property arising from the volunteer services rendered if:

(1) The volunteer was acting in good faith and the services rendered were reasonable under the circumstances; and

(2) The acts or omissions do not amount to gross negligence, wanton conduct, or intentional wrongdoing.

(3) The acts or omissions did not occur while the volunteer was operating or responsible for the operation of a motor vehicle.

(b) To the extent that any charitable organization or volunteer has liability insurance, that charitable organization or volunteer shall be deemed to have waived the qualified immunity herein to the extent of indemnification by insurance for the negligence by any volunteer.

(c) Nothing herein shall be construed to alter the standard of care requirement or liability of persons rendering professional services.

(d) As used in this section, the following definitions apply:

(1) 'Emergency services' means the preparation for and the carrying out of functions to prevent, minimize, and repair injury and damage resulting from natural or man-made disasters and all other activities necessary

or incidental to the preparation for and carrying out of these functions, which functions include firefighting services; police services; medical and health services; rescue services; engineering services; warning services and communications; radiological, chemical, and other special weapons defense; evacuation of persons from stricken areas; emergency welfare services, including providing emergency shelter; emergency transportation; emergency resource management; existing or properly assigned plant protection services; temporary restoration of public utility services; and other functions related to civilian protection, including the administration of approved State and federal disaster recovery and assistance programs.

(2) 'Volunteer' means any person who provides goods or services without any financial gain."

SECTION 2. This act is effective when it becomes law and applies to claims that arise on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 2

HOUSE BILL 1466

Committee Substitute Favorable 5/26/05

Short Title: Exploitation/Elderly or Disabled Adult. (Public)

Sponsors:

Referred to:

April 21, 2005

A BILL TO BE ENTITLED

AN ACT TO AMEND THE OFFENSE OF EXPLOITATION OF AN ELDER ADULT OR DISABLED ADULT AND TO INCREASE THE PENALTY FOR THAT OFFENSE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-32.3(c) is repealed.

SECTION 2. Article 19 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-112.2. Exploitation of an elder adult or disabled adult.**

(a) The following definitions apply in this section:

(1) Disabled adult. – A person 18 years of age or older or a lawfully emancipated minor who is present in the State of North Carolina and who is physically or mentally incapacitated as defined in G.S. 108A-101(d).

(2) Elder adult. – A person 60 years of age or older who is not able to provide for the social, medical, psychiatric, psychological, financial, or legal services necessary to safeguard the person's rights and resources and to maintain the person's physical and mental well-being.

(b) It is unlawful for a person: (i) who stands in a position of trust and confidence with an elder adult or disabled adult, or (ii) who has a business relationship with an elder adult or disabled adult to knowingly, by deception or intimidation, obtain or use, or endeavor to obtain or use, an elder adult's or disabled adult's funds, assets, or property with the intent to temporarily or permanently deprive the elder adult or disabled adult of the use, benefit, or possession of the funds, assets, or property, or to benefit someone other than the elder adult or disabled adult.

(c) It is unlawful for a person, who knows or reasonably should know that an elder adult or disabled adult lacks the capacity to consent, to obtain or use, endeavor to obtain or use, or conspire with another to obtain or use an elder adult's or disabled adult's funds, assets, or property with the intent to temporarily or permanently deprive

the elder adult or disabled adult of the use, benefit, or possession of the funds, assets, or property, or benefit someone other than the elder adult or disabled adult.

(d) A violation of subsection (b) of this section is punishable as follows:

(1) If the funds, assets, or property involved in the exploitation of the elderly person or disabled adult is valued at one hundred thousand dollars ($100,000) or more, then the offense is a Class F felony.

(2) If the funds, assets, or property involved in the exploitation of the elderly person or disabled adult is valued at twenty thousand dollars ($20,000) or more but less than one hundred thousand dollars ($100,000), then the offense is a Class G felony.

(3) If the funds, assets, or property involved in the exploitation of the elderly person or disabled adult is valued at less than twenty thousand dollars ($20,000), then the offense is a Class H felony.

(e) A violation of subsection (c) of this section is punishable as follows:

(1) If the funds, assets, or property involved in the exploitation of the elderly person or disabled adult is valued at one hundred thousand dollars ($100,000) or more, then the offense is a Class G felony.

(2) If the funds, assets, or property involved in the exploitation of the elderly person or disabled adult is valued at twenty thousand dollars ($20,000) or more but less than one hundred thousand dollars ($100,000), then the offense is a Class H felony.

(3) If the funds, assets, or property involved in the exploitation of the elderly person or disabled adult is valued at less than twenty thousand dollars ($20,000), then the offense is a Class I felony."

SECTION 3. This act becomes effective December 1, 2005, and applies to offenses committed on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 329

Committee Substitute Favorable 5/16/05

Third Edition Engrossed 5/23/05

PROPOSED SENATE COMMITTEE SUBSTITUTE H329-PCS50472-RU-67

Short Title: Limit Liability for Agritourism Activities. (Public)

Sponsors:

Referred to:

February 22, 2005

A BILL TO BE ENTITLED

AN ACT TO LIMIT LIABILITY ARISING FROM CERTAIN AGRITOURISM ACTIVITIES.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 99E of the General Statutes is amended by adding a new Article to read:

"Article 4.

"Agritourism Activity Liability.

"**§ 99E-30. Definitions.**

As used in this Article, the following terms mean:

(1) Agritourism activity. – Any activity carried out on a farm or ranch that allows members of the general public, for recreational, entertainment, or educational purposes, to view or enjoy rural activities, including farming, ranching, historic, cultural, harvest-your-own activities, or natural activities and attractions. An activity is an agritourism activity whether or not the participant paid to participate in the activity.

(2) Agritourism professional. – Any person who is engaged in the business of providing one or more agritourism activities, whether or not for compensation.

(3) Inherent risks of agritourism activity. – Those dangers or conditions that are an integral part of an agritourism activity including certain hazards, including surface and subsurface conditions, natural conditions of land, vegetation, and waters, the behavior of wild or domestic animals, and ordinary dangers of structures or equipment ordinarily used in farming and ranching operations. Inherent risks of agritourism activity also include the potential of a participant to act in

a negligent manner that may contribute to injury to the participant or others, including failing to follow instructions given by the agritourism professional or failing to exercise reasonable caution while engaging in the agritourism activity.

(4) Participant. – Any person, other than the agritourism professional, who engages in an agritourism activity.

(5) Person. – An individual, fiduciary, firm, association, partnership, limited liability company, corporation, unit of government, or any other group acting as a unit.

"**§ 99E-31. Liability.**

(a) Except as provided in subsection (b) of this section, an agritourism professional is not liable for injury to or death of a participant resulting from the inherent risks of agritourism activities, so long as the warning contained in G.S. 99E-32 is posted as required and, except as provided in subsection (b) of this section, no participant or participant's representative can maintain an action against or recover from an agritourism professional for injury, loss, damage, or death of the participant resulting exclusively from any of the inherent risks of agritourism activities. In any action for damages against an agritourism professional for agritourism activity, the agritourism professional must plead the affirmative defense of assumption of the risk of agritourism activity by the participant.

(b) Nothing in subsection (a) of this section prevents or limits the liability of an agritourism professional if the agritourism professional does any one or more of the following:

(1) Commits an act or omission that constitutes negligence or willful or wanton disregard for the safety of the participant, and that act or omission proximately causes injury, damage, or death to the participant.

(2) Has actual knowledge or reasonably should have known of a dangerous condition on the land, facilities, or equipment used in the activity or the dangerous propensity of a particular animal used in such activity and does not make the danger known to the participant, and the danger proximately causes injury, damage, or death to the participant.

(c) Nothing in subsection (a) of this section prevents or limits the liability of an agritourism professional under liability provisions as set forth in Chapter 99B of the General Statutes.

(d) Any limitation on legal liability afforded by this section to an agritourism professional is in addition to any other limitations of legal liability otherwise provided by law.

"**§ 99E-32. Warning required.**

(a) Every agritourism professional must post and maintain signs that contain the warning notice specified in subsection (b) of this section. The sign must be placed in a clearly visible location at the entrance to the agritourism location and at the site of the agritourism activity. The warning notice must consist of a sign in black letters, with

each letter to be a minimum of one inch in height. Every written contract entered into by an agritourism professional for the providing of professional services, instruction, or the rental of equipment to a participant, whether or not the contract involves agritourism activities on or off the location or at the site of the agritourism activity, must contain in clearly readable print the warning notice specified in subsection (b) of this section.

(b) The signs and contracts described in subsection (a) of this section must contain the following notice of warning:

'WARNING

Under North Carolina law, there is no liability for an injury to or death of a participant in an agritourism activity conducted at this agritourism location if such injury or death results from the inherent risks of the agritourism activity. Inherent risks of agritourism activities include, among others, risks of injury inherent to land, equipment, and animals, as well as the potential for you to act in a negligent manner that may contribute to your injury or death. You are assuming the risk of participating in this agritourism activity.'

(c) Failure to comply with the requirements concerning warning signs and notices provided in this subsection will prevent an agritourism professional from invoking the privileges of immunity provided by this Article."

SECTION 2. This act becomes effective January 1, 2006, and applies to agritourism activities, as defined in G.S. 99E-30 as enacted in Section 1 of this act, that occur on or after that date.

HOUSE BILL 329:
Limit Liability for Agritourism Activities

BILL ANALYSIS

Committee:	Senate Judiciary I	**Date:**	June 30, 2005
Introduced by:	Reps. Faison, Cole, Tucker, Wray	**Summary by:**	O. Walker Reagan Committee Co-Counsel
Version:	PCS to Third Edition H329-CSRU-67		

SUMMARY: ***The Proposed Senate Committee Substitute for House Bill 329 would limit liability of persons engaged in providing agritourism activities. Agritourism activities are those activities that allow members of the public to view or enjoy rural activities such as farming, ranching, historic, cultural, or natural activities and attractions.***

CURRENT LAW: Currently, no laws exist that specifically address agritourism activities. Chapter 38A – Landowner Liability, limits the liability of a person who invites or permits another person to use their land for educational or recreational purposes at no charge to the duty owed to a trespasser. Chapter 99E contains three articles that limit liability for certain inherently hazardous activities, including Article 1 governing equine activity, Article 2 governing the safety and liability of roller skating rinks, and Article 3 governing the safety and liability of recreational parks for skateboarding, inline skating, and freestyle bicycling. Currently, liability for injuries resulting from agritourism activities would be determined under general tort law analysis.

BILL ANALYSIS: House Bill 329 bill provides that a person engaged in the business of providing an agritourism activity is not liable for the injury or death of a participant resulting from an inherent risk associated with the activity under certain circumstances. The limit of liability is conditioned on the proper posting of a required notice warning of the inherent risk of the activity. The limitation of liability would not apply if the injury or death occurs because the agritourism professional commits an act or omission that constitutes negligence or willful or wanton disregard for the safety of the participant, or the agritourism professional has actual knowledge (or reasonably should have known) of a dangerous condition on the land, facilities or equipment used in the activity, fails to make the danger known to the participant, and that danger causes the injury or death of the participant.

Inherent risks include dangers or conditions that are an integral part of the activity – including natural conditions of land, the behavior of wild or domestic animals, and ordinary dangers of structures or equipment used in farming and ranching operations. The term also includes the potential of participants to act in a negligent manner by failing to follow instructions or failing to exercise reasonable caution.

The required notice must consist of a sign in black letters at least one-inch tall containing a notice of warning that there is no liability for injury or death resulting from inherent risks.

The bill does not affect product liability actions.

EFFECTIVE DATE: The bill becomes effective January 1, 2006 and applies to activities engaged in on or after that date.

Brenda Carter, counsel to House Judiciary III Committee, substantially contributed to this summary.

H0329e3-SMRU-CSRU-67

H 1

HOUSE BILL 329

Short Title:	Limit Liability for Agritourism Activities.	(Public)
Sponsors:	Representatives Faison, Cole, Tucker, Wray (Primary Sponsors); Coleman, Pierce, Wilkins, Cleveland, Harrison, Hill, Langdon, LaRoque, McLawhorn, Pate, Preston, Starnes, Stiller, Underhill, and Warren.	
Referred to:	Judiciary III.	

February 22, 2005

A BILL TO BE ENTITLED

AN ACT TO LIMIT LIABILITY FOR THOSE WHO PARTICIPATE IN AGRITOURISM ACTIVITIES.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 99E of the General Statutes is amended by adding a new Article to read:

"Article 4.

"Agritourism Activity Liability.

"**§ 99E-30. Definitions.**

As used in this Article, the term:

(1) 'Agritourism activity' means any activity that allows members of the general public, for recreational, entertainment, or educational purposes, to view or enjoy rural activities, including, by way of illustration and not limitation, farming, ranching, historic, cultural, or natural activities and attractions. An activity is an agritourism activity whether or not the participant paid to participate in the activity.

(2) 'Agritourism professional' means any person who is engaged in the business of providing one or more agritourism activities.

(3) 'Inherent risks of agritourism activity' means those dangers or conditions that are an integral part of an agritourism activity including certain hazards such as surface and subsurface conditions; natural conditions of land, vegetation, and waters; the behavior of wild or domestic animals; and ordinary dangers of structures or equipment ordinarily used in farming and ranching operations. 'Inherent risks of agritourism activity' also includes the potential of a participant to act in a negligent manner that may contribute to injury to the participant or others, such as failing to follow instructions given by the agritourism

professional or failing to exercise reasonable caution while engaging in the agritourism activity.

(4) 'Participant' means anyone who engages in an agritourism activity.

(5) 'Person' means an individual, a fiduciary, a firm, an association, a partnership, a limited liability company, a corporation, a unit of government, or any other group acting as a unit.

"**§ 99E-31. Liability.**

(a) Except as provided in subsection (b) of this section, an agritourism professional is not liable for injury to or death of a participant resulting from the inherent risks of agritourism activities, so long as the warning contained in subsection (f) of this section is posted as required and, except as provided in subsection (b) of this section, no participant or participant's representative can maintain an action against or recover from an agritourism professional for injury, loss, damage, or death of the participant resulting exclusively from any of the inherent risks of agritourism activities. In any action for damages against an agritourism professional for agritourism activity, the agritourism professional must plead the affirmative defense of assumption of the risk of agritourism activity by the participant.

(b) Nothing in subsection (a) of this section prevents or limits the liability of an agritourism professional if the agritourism professional does any one or more of the following:

(1) Commits an act or omission that constitutes willful or wanton disregard for the safety of the participant, and that act or omission proximately causes injury, damage, or death to the participant.

(2) Has actual knowledge of a dangerous condition on the land, facilities, or equipment used in the activity or the dangerous propensity of a particular animal used in such activity and does not make the danger known to the participant, and the danger proximately causes injury, damage, or death to the participant.

(c) Nothing in subsection (a) of this section prevents or limits the liability of an agritourism professional under liability provisions as set forth in Chapter 99B of the General Statutes.

(d) Any limitation on legal liability afforded by this section to an agritourism professional is in addition to any other limitations of legal liability otherwise provided by law.

(e) The immunities afforded by this section do not apply to agritourism activities that take place at the North Carolina State Fair or at county or regional fairs. As used in this section, 'fairs' has the same meaning as used in G.S. 106-520.1.

(f) Every agritourism professional must post and maintain signs that contain the warning notice specified in subdivision (1) of this subsection. The sign must be placed in a clearly visible location at the entrance to the agritourism location and at the site of the agritourism activity. The warning notice must consist of a sign in black letters, with each letter to be a minimum of one inch in height. Every written contract entered into by an agritourism professional for the providing of professional services, instruction, or the rental of equipment to a participant, whether or not the contract involves agritourism

activities on or off the location or at the site of the agritourism activity, must contain in clearly readable print the warning notice specified in subdivision (1) of this subsection.

(1) The signs and contracts described in subsection (f) of this section must contain the following notice of warning:

'WARNING

Under North Carolina law, there is no liability for an injury to or death of a participant in an agritourism activity conducted at this agritourism location if such injury or death results from the inherent risks of the agritourism activity. Inherent risks of agritourism activities include, among others, risks of injury inherent to land, equipment, and animals, as well as the potential for you to act in a negligent manner that may contribute to your injury or death. You are assuming the risk of participating in this agritourism activity.'

(2) Failure to comply with the requirements concerning warning signs and notices provided in this subsection will prevent an agritourism professional from invoking the privileges of immunity provided by G.S. 99E-31."

SECTION 2. This act becomes effective January 1, 2006, and applies to agritourism activities, as defined in G.S. 99E-30, as enacted in Section 1 of this act, that occur on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 223
PROPOSED COMMITTEE SUBSTITUTE S223-CSRR-34 [v.20]

6/29/2005 8:12:32 PM

Short Title: Public Confidence in Elections. (Public)

Sponsors:

Referred to:

February 28, 2005

A BILL TO BE ENTITLED

AN ACT TO RESTORE PUBLIC CONFIDENCE IN THE ELECTION PROCESS BY REQUIRING THAT THE STATE BOARD OF ELECTIONS, THROUGH THE DEVELOPMENT OF A REQUEST FOR PROPOSAL, ENSURE THAT ALL VOTING SYSTEMS GENERATE EITHER A PAPER BALLOT OR A PAPER RECORD BY WHICH VOTERS MAY VERIFY THEIR VOTES BEFORE CASTING THEM AND WHICH PROVIDES A BACKUP MEANS OF COUNTING THE VOTE THAT THE VOTER CASTS; BY PROVIDING STATUTORY GUIDANCE AS TO COUNTING; BY STANDARDIZING PURCHASING OF VOTING SYSTEMS IN NORTH CAROLINA, INCLUDING A REVIEW OF SOURCE CODE FOR SOFTWARE RELATED TO THOSE VOTING SYSTEMS AND AUTHORIZATION TO ESTABLISH THE ROLE OF THE STATE BOARD OF ELECTIONS AND COUNTY BOARD OF ELECTIONS RELATED TO TRAINING AND SUPPORT OF VOTING SYSTEMS; BY REQUIRING POSTELECTION TESTING OF VOTING SYSTEMS, INCLUDING A PAPER SAMPLE-COUNT; BY EXPANDING THE RIGHT TO A HAND-TO-EYE RECOUNT OF PAPER BALLOTS; BY PERMITTING A PILOT PROGRAM TO EXPERIMENT WITH NON-PAPER MEANS OF VOTER VERIFICATION; AND BY APPROPRIATING FUNDS TO THE STATE BOARD OF ELECTIONS TO IMPLEMENT THIS ACT.

The General Assembly of North Carolina enacts:

SECTION 1.(a) Effective August 1, 2005, and applicable to any voting systems upgraded or acquired on or after that date and to all voting systems used in the State during any election during or after 2006, G.S. 163-165.7 reads as rewritten:

"**§ 163-165.7. Voting systems: powers and duties of State Board of Elections.**

(a) ~~The State Board of Elections shall have authority to approve types, makes, and models of voting systems for use in elections and referenda held in this State. Only voting systems that have been approved by the State Board shall be used to conduct~~

~~elections under this Chapter, and the approved systems shall be valid in any election or referendum held in any county or municipality. The State Board may, upon request of a local board of elections, authorize the use of a voting system not approved for general use.~~ Only voting systems that have been certified by the State Board of Elections in accordance with the procedures and subject to the standards set forth in this section and that have not been subsequently decertified, shall be permitted in the State. Those certified voting systems shall be valid in any election held in the State or in any county, municipality, or other electoral district in the State. Subject to all other applicable rules adopted by the State Board of Elections and, with respect to federal elections, subject to all applicable federal regulations governing voting systems, paper ballots marked by the voter and counted by hand shall be deemed a certified voting system. The State Board may certify additional voting systems through the use of a request for proposal process. In consultation with the Office of Information Technology Services, the State Board shall develop the requests for proposal subject to the provisions of this Chapter and other applicable State laws. No voting system shall be certified by the State Board that does not meet the requirements for requests for proposals. Among other requirements, the request for proposal shall require at least all of the following elements:

(1) That the vendor post a bond or letter of credit to cover damages resulting from defects in the voting. Damages shall include, among other items, any costs of conducting a new election attributable to those defects.

(2) That the voting system comply with all federal requirements for voting systems.

(3) That the voting system must have the capacity to include in precinct returns the votes cast by voters outside of the voter's precinct.

(4) For direct record electronic (DRE) voting systems, that the voting system generate a paper record of each individual vote cast, which paper record shall be maintained in a secure fashion and shall serve as a backup record for purposes of any hand-to-eye count, hand-to-eye recount, or other audit.

(5) For DRE voting systems, that the paper record generated by the system be viewable by the voter before the vote is cast electronically, and that the system permit the voter to correct any discrepancy between the electronic summary of the vote and the paper record before vote is cast. In no case, however, shall a DRE voting system be certified that permits the voter to mark or otherwise alter the paper record or take from the voting place any copy of the paper record or receipt bearing the results of the voter's ballot. Nothing in this subdivision shall prohibit the use of an optical scan system in which the optically scanned paper ballot is generated by the voter using DRE-like technology.

(6) For all voting systems utilizing electronic means, accessibility for the State Board of Elections; the Office of Information Technology Services; the State chairs, or one designee of each chair, of each

political party recognized under G.S. 163-96; and the purchasing county to review all source code relevant to the recording or counting of votes.

(7) That the vendor must quote a statewide uniform price for each unit of the equipment.

~~(8) That the vendor must separately agree that if it is granted a contract to provide software for an electronic voting system but fails to debug, modify, repair, or update the software as agreed or in the event of the vendor having bankruptcy filed for or against it, the source code described in G.S. 163-165.9A(a) shall be turned over to the purchasing county by the escrow agent chosen under G.S. 163-165.9A(a)(1) for the purposes of continuing use of the software for the period of the contract and for permitting access to the persons described in subdivision (6) of this subsection for the purpose of reviewing the source code.~~

~~In its request for proposal, the State Board of Elections shall address the mandatory terms of the contract for the purchase of the voting system and the maintenance and training related to that voting system.~~

(b) The State Board may also, upon notice and hearing, ~~disapprove~~ decertify types, makes, and models of voting systems. Upon ~~disapproving~~ decertifying a type, make, or model of voting system, the State Board shall determine the process by which the ~~disapproved~~ decertified system is discontinued in any county. ~~If a county makes a showing that discontinuance would impose a financial hardship upon it, the county shall be given up to four years from the time of State Board disapproval to replace the system.~~ A county may appeal a decision by the State Board concerning ~~discontinuance of a voting system~~ the process by which the decertified system is discontinued in that county ~~to the superior court in that county or~~ to the Superior Court of Wake County. The county has 30 days from the time of the State Board's decision on ~~discontinuance~~the process by which the decertified system is discontinued in that county to make that appeal. ~~The State Board of Elections shall decertify for use in elections during and after 2006 any voting system that does not comply with the requirements that a request for proposal must contain as provided in subsection (a) of this section.~~

(c) Prior to certifying a voting system, the State Board of Elections shall review, or designate an independent expert to review, all source code made available by the vendor pursuant to this section and certify only those voting systems compliant with state and federal law. At a minimum, the State Board's review shall include a review of security, application vulnerability, application code, wireless security, security policy and processes, security/privacy program management, technology infrastructure and security controls, security organization and governance, and operational effectiveness, as applicable to that voting system. Any portion of the report containing specific information related to any trade secret as designated pursuant to G.S. 132-1.2 shall be confidential, and shall be accessed only under the rules adopted pursuant to subdivision

(9) of subsection (d) of this section. The State Board may hear and discuss the report of any such review under G.S. 143-318.11(a)(1).

(d) Subject to the provisions of this Chapter, the State Board of Elections shall prescribe rules for the adoption, handling, operation, and honest use of certified voting systems, ~~including, but not limited to,~~including all of the following:

(1) Procedures for county boards of elections to utilize when recommending the purchase of a ~~Types, makes, and models of~~ certified voting ~~systems approved~~ system for use in ~~this State~~that county.

(2) Form of official ballot labels to be used on voting systems.

(3) Operation and manner of voting on voting systems.

(4) Instruction of precinct officials in the use of voting systems.

(5) Instruction of voters in the use of voting systems.

(6) Assistance to voters using voting systems.

(7) Duties of custodians of voting systems.

(8) Examination and testing of voting systems before and after use in an election.

(9) Notwithstanding G.S. 132-1.2, procedures for the review and examination of any information placed in escrow by a vendor pursuant to G.S. 163-165.9A by only the following persons:

a. State Board of Elections.

b. Office of Information Technology Services.

c. The State chairs, or one designee of each chair, of each political party recognized under G.S. 163-96. For purposes of this review and examination, the State chairs and their designees shall be treated as public officials under G.S. 132-2.

d. The purchasing county.

Any rules adopted under this subsection shall be in conjunction with procedures and standards adopted under G.S. 163-182.1, are exempt from Chapter 150B of the General Statutes, and are subject to the same procedures for notice and publication set forth in G.S. 163-182.1.

(e) The State Board of Elections shall facilitate training and support of the voting systems utilized by the counties."

SECTION 1.(b) Section 11 of S.L. 2003-226, which would have made amendment to G.S. 163-165.7 effective January 1, 2006, is repealed.

SECTION 1.(c) In order to carry forward the first of two amendments that would have been made by Section 11 of S.L. 2003-226 to the old version of G.S. 163-165.7, effective January 1, 2006, G.S. 163-165.7 as rewritten by subsection (a) of this section is amended by adding the following new subsection:

"(a1) Federal Assistance. – The State Board may use guidelines, information, testing reports, certification, decertification, recertification, and any relevant data produced by the Election Assistance Commission, its Standards Board, its Board of Advisors, or the Technical Guidelines Development Committee as established in Title II of the Help America Vote Act of 2002 with regard to any action or investigation the

State Board may take concerning a voting system. The State Board may use, for the purposes of voting system certification, laboratories accredited by the Election Assistance Commission under the provisions of section 231(2) of the Help America Vote Act of 2002."

SECTION 1.(d) In order to carry forward the second of two amendments that would have been made by Section 11 of S.L. 2003-226 to the old version of G.S. 163-165.7, effective January 1, 2006, G.S. 163-165.7(d) as rewritten by subsection (a) of this section is amended by adding the following new subdivision:

"(9) Compliance with section 301 of the Help America Vote Act of 2002."

SECTION 1.(e) G.S. 163-132.5G reads as rewritten:

"**§ 163-132.5G. Voting data maintained by precinct.**

To the extent that it can do so without compromising the secrecy of an individual's ballot, each county board of elections shall maintain voting data by precinct so that precinct returns for each item on the ballot shall include the votes cast by residents of the precinct who voted by provisional ballot and by absentee ballot, both mail and one-stop. The county board shall not be required to report provisional and absentee voting data by precinct until 60 days after the election. The State Board of Elections shall adopt rules for the enforcement of this section with the goal that all voting data shall be reported by precinct by the 2006 election. ~~Those rules shall provide for exemptions where the expense of compliance would place a financial hardship on a county. Those rules shall provide for compliance by 2004 for counties the State Board determines are capable of complying by that year.~~"

SECTION 1.(f) G.S. 163-165.1(e) reads as rewritten:

"(e) Voted ballots and paper records of individual voted ballots shall be treated as confidential, and no person other than elections officials performing their duties may have access to voted ballots or paper records of individual voted ballots except by court order or order of the appropriate board of elections as part of the resolution of an election protest or investigation of an alleged election irregularity or violation. Voted ballots and paper records of individual voted ballots shall not be disclosed to members of the public in such a way as to disclose how a particular voter voted, unless a court orders otherwise."

SECTION 2.(a) Part 2 of Article 14A of Chapter 163 of the General Statutes is amended by adding a new section to read:

"**§ 163-165.9A. Voting systems: requirements for voting systems vendors; penalties.**

(a) Duties of Vendor. – Every vendor that has a contract to provide a voting system in North Carolina shall do all of the following:

(1) The vendor shall place in escrow with an independent escrow agent approved by the State Board of Elections a copy of all source code relevant to the recording or counting of votes and related documentation, together with updates as they become known or available. The documentation shall include a system configuration, a list of programmers responsible for creating the software, and a sworn affidavit that the source code includes all relevant program statements

in low-level and high-level languages. As used in this section, 'source code' does not include variable codes created for specific elections.

(2) The vendor shall notify the State Board of Elections of any change in source code or any change in the foundation operating system.

(3) The chief executive officer of the vendor shall sign a sworn affidavit that the source code in escrow is the same being used in its voting systems in this State. The chief executive officer shall ensure that the statement is true on a continuing basis.

(4) The vendor shall notify the State Board of Elections and the county board of elections of any county using its voting system of any defect in the same system known to have occurred anywhere and relevant defects known to have occurred in similar systems.

(5) The vendor shall maintain an office in North Carolina with staff to service the contract.

(b) Penalties. – Willful violation of any of the duties in subsection (a) of this section is a Class G felony. Substitution of source code into an operating voting system without notification as provided by subdivision (a)(2) of this section is a Class I felony. In addition to any other applicable penalties, violations of this section are subject to a civil penalty of up to one hundred thousand dollars ($100,000) per violation."

SECTION 2.(b) This section applies with respect to purchase or upgrade of any voting system on or after August 1, 2005.

SECTION 3. Effective August 1, 2005, G.S. 163-165.8 reads as rewritten:

"**§ 163-165.8. Voting systems: powers and duties of board of county commissioners.**

The board of county commissioners, with the approval of the county board of elections, may adopt and ~~purchase or lease~~ acquire only a voting system of a type, make, and model ~~approved~~ certified by the State Board of Elections for use in some or all voting places in the county at some or all elections.

The board of county commissioners may decline to adopt and ~~purchase or lease~~ acquire any voting system recommended by the county board of elections but may not adopt and ~~purchase or lease~~ acquire any voting system that has not been approved by the county board of elections. Article 8 of Chapter 143 of the General Statutes does not apply to the purchase of a voting system certified by the State Board of Elections."

SECTION 4. Effective August 1, 2005, G.S. 163-165.9 reads as rewritten:

"**§ 163-165.9. Voting systems: powers and duties of county board of elections.**

(a) Before approving the adoption and ~~purchase or lease~~ acquisition of any voting system by the board of county commissioners, the county board of elections shall do all of the following:

(1) ~~Obtain a current financial statement from the proposed vendor or lessor of the voting system and send copies of the statement to the county attorney and the chief county financial officer.~~ Recommend to the board of county commissioners which type of voting system should be acquired by the county.

(2) Witness a demonstration, in that county or at a site designated by the State Board of Elections, of the type of voting system to be recommended ~~by the proposed vendor or lessor~~ and also witness a demonstration of at least one other type of voting system ~~approved~~ certified by the State Board of Elections.

(3) Test, during an election, the proposed voting system in at least one precinct in the county where the voting system would be used if adopted.

(b) After the acquisition of any voting system, the county board of elections shall comply with any requirements of the State Board of Elections regarding training and support of the voting system."

SECTION 5.(a) G.S. 163-182.1(b) reads as rewritten:

"(b) Procedures and Standards. – The State Board of Elections shall adopt uniform and nondiscriminatory procedures and standards for voting systems. The standards shall define what constitutes a vote and what will be counted as a vote for each category of voting system used in the State. The State Board shall adopt those procedures and standards at a meeting occurring not earlier than 15 days after the State Board gives notice of the meeting. The procedures and standards adopted shall apply to all elections occurring in the State and shall be subject to amendment or repeal by the State Board acting at any meeting where notice that the action has been proposed has been given at least 15 days before the meeting. These procedures and standards shall not be considered to be rules subject to Article 2A of Chapter 150B of the General Statutes. However, the State Board shall publish in the North Carolina Register the procedures and standards and any changes to them after adoption, with that publication noted as information helpful to the public under G.S. 150B-21.17(a)(6). Copies of those procedures and standards shall be made available to the public upon request or otherwise by the State Board. For optical scan and direct record electronic voting systems, and for any other voting systems in which ballots are counted other than on paper by hand and eye, those procedures and standards shall do both of the following:

(1) Provide for a sample hand-to-eye count of the paper ballots or paper records of a statewide ballot item in every county. The presidential ballot item shall be the subject of the sampling in a presidential election. If there is no statewide ballot item, the State Board shall provide a process for selecting district or local ballot items to adequately sample the electorate. The sample chosen by the State Board shall be of full precincts, full counts of absentee ballots, and full counts of one-stop early voting sites. The size of the sample of each category shall be chosen to produce a statistically significant result and shall be chosen after consultation with a statistician. The actual units shall be chosen at random. In the event of a material discrepancy between the electronic or mechanical count and a hand-to-eye count, the hand-to-eye count shall control, except where paper ballots or records have been lost or destroyed or where there is another reasonable basis to conclude that the hand-to-eye count is not the true

count.–. If the discrepancy between the hand-to-eye count and the mechanical or electronic count is significant, a complete hand-to-eye count shall be conducted.

(2) ~~provide~~ Provide that if the voter selects votes for more than the number of candidates to be elected or proposals to be approved in a ballot item, the voting system shall do all the following:

~~(1)~~a. Notify the voter that the voter has selected more than the correct number of candidates or proposals in the ballot item.

~~(2)~~b. Notify the voter before the vote is accepted and counted of the effect of casting overvotes in the ballot item.

~~(3)~~c. Provide the voter with the opportunity to correct the official ballot before it is accepted and counted."

SECTION 5.(b) G.S. 163-182.2 reads as rewritten:

"**§ 163-182.2. Initial counting of official ballots.**

(a) The initial counting of official ballots shall be conducted according to the following principles:

(1) Vote counting at the precinct shall occur immediately after the polls close and shall be continuous until completed.

(2) Vote counting at the precinct shall be conducted with the participation of precinct officials of all political parties then present. Vote counting at the county board of elections shall be conducted in the presence or under the supervision of board members of all political parties then present.

(3) Any member of the public wishing to witness the vote count at any level shall be allowed to do so. No witness shall interfere with the orderly counting of the official ballots. Witnesses shall not participate in the official counting of official ballots.

(4) Provisional official ballots shall be counted by the county board of elections before the canvass. If the county board finds that an individual voting a provisional official ballot is not eligible to vote in one or more ballot items on the official ballot, the board shall not count the official ballot in those ballot items, but shall count the official ballot in any ballot items for which the individual is eligible to vote.

(5) Precinct officials shall provide a preliminary report of the vote counting to the county board of elections as quickly as possible. The preliminary report shall be unofficial and has no binding effect upon the official county canvass to follow.

(6) In counties that use any certified mechanical or electronic voting system, subject to the sample counts under G.S. 163-182.1 and subdivision (1a) of subsection (b) of this section, and of a hand-to-eye recount under G.S. 163-182.7 and G.S. 163-182.7A, a board of elections shall rely in its canvass on the mechanical or electronic count of the vote rather than the full hand-to-eye count of the paper ballots or

records. In the event of a material discrepancy between the electronic or mechanical count and a hand-to-eye count or recount, the hand-to-eye count or recount shall control, except where paper ballots or records have been lost or destroyed or where there is another reasonable basis to conclude that the hand-to-eye count is not the true count."

(b) The State Board of Elections shall promulgate rules for the initial counting of official ballots. All election officials shall be governed by those rules. In promulgating those rules, the State Board shall adhere to the following guidelines:

(1) For each voting system used, the rules shall specify the role of precinct officials and of the county board of elections in the initial counting of official ballots.

(1a) For optical scan and direct record electronic voting systems, and for any other voting systems in which ballots are counted other than on paper by hand and eye, those rules shall provide for a sample hand-to-eye count of the paper ballots or paper records of a sampling of a statewide ballot item in every county. The presidential ballot item shall be the subject of the sampling in a presidential election. If there is no statewide ballot item, the State Board shall provide a process for selecting district or local ballot items to adequately sample the electorate. The sample chosen by the State Board shall be of full precincts, full counts of absentee ballots, and full counts of one-stop early voting sites. The size of the sample of each category shall be chosen to produce a statistically significant result and shall be chosen after consultation with a statistician. The actual units shall be chosen at random. In the event of a material discrepancy between the electronic or mechanical count and a hand-to-eye count, the hand-to-eye count shall control, except where paper ballots or records have been lost or destroyed or where there is another reasonable basis to conclude that the hand-to-eye count is not the true count.– If the discrepancy between the hand-to-eye count and the mechanical or electronic count is significant, a complete hand-to-eye count shall be conducted.

(2) The rules shall provide for accurate unofficial reporting of the results from the precinct to the county board of elections with reasonable speed on the night of the election.

(3) The rules shall provide for the prompt and secure transmission of official ballots from the voting place to the county board of elections.

The State Board shall direct the county boards of elections in the application of the principles and rules in individual circumstances."

SECTION 5.(c) G.S. 163-182.5 reads as rewritten:

"**§ 163-182.5. Canvassing votes.**

(a) The Canvass. – As used in this Article, the term "canvass" means the entire process of determining that the votes have been counted and tabulated correctly, culminating in the authentication of the official election results. The board of elections

conducting a canvass has authority to send for papers and persons and to examine them and pass upon the legality of disputed ballots.

(b) Canvassing by County Board of Elections. – The county board of elections shall meet at 11:00 A.M. on the seventh day after every election to complete the canvass of votes cast and to authenticate the count in every ballot item in the county by determining that the votes have been counted and tabulated correctly. If, despite due diligence by election officials, the initial counting of all the votes has not been completed by that time, the county board may hold the canvass meeting a reasonable time thereafter. The canvass meeting shall be at the county board of elections office, unless the county board, by unanimous vote of all its members, designates another site within the county. The county board shall examine the returns from precincts, from absentee official ballots, from the sample hand-to-eye paper ballot counts, and from provisional official ballots and shall conduct the canvass.

(c) Canvassing by State Board of Elections. – After each general election, the State Board of Elections shall meet at 11:00 A.M. on the Tuesday three weeks after election day to complete the canvass of votes cast in all ballot items within the jurisdiction of the State Board of Elections and to authenticate the count in every ballot item in the county by determining that the votes have been counted and tabulated correctly. After each primary, the State Board shall fix the date of its canvass meeting. If, by the time of its scheduled canvass meeting, the State Board has not received the county canvasses, the State Board may adjourn for not more than 10 days to secure the missing abstracts. In obtaining them, the State Board is authorized to secure the originals or copies from the appropriate clerks of superior court or county boards of elections, at the expense of the counties."

SECTION 5.(d) This section becomes effective January 1, 2006.

SECTION 6.(a) G.S. 163-182.7 reads as rewritten:

"**§ 163-182.7. Ordering recounts.**

(a) Discretionary Recounts. – The county board of elections or the State Board of Elections may order a recount when necessary to complete the canvass in an election. The county board may not order a recount where the State Board of Elections has already denied a recount to the petitioner.

(b) Mandatory Recounts for Ballot Items Within the Jurisdiction of the County Board of Elections. – In a ballot item within the jurisdiction of the county board of elections, a candidate shall have the right to demand a recount of the votes if the difference between the votes for that candidate and the votes for a prevailing candidate is not more than one percent (1%) of the total votes cast in the ballot item, or in the case of a multiseat ballot item not more than one percent (1%) of the votes cast for those two candidates. The demand for a recount must be made in writing and must be received by the county board of elections by 5:00 P.M. on the first day after the canvass. The recount shall be conducted under the supervision of the county board of elections.

(c) Mandatory Recounts for Ballot Items Within the Jurisdiction of the State Board of Elections. – In a ballot item within the jurisdiction of the State Board of Elections, a candidate shall have the right to demand a recount of the votes if the

difference between the votes for that candidate and the votes for a prevailing candidate are not more than the following:

(1) For a nonstatewide ballot item, one percent (1%) of the total votes cast in the ballot item, or in the case of a multiseat ballot item, one percent (1%) of the votes cast for those two candidates.

(2) For a statewide ballot item, one-half of one percent (0.5%) of the votes cast in the ballot item, ~~or in the case of a multiseat ballot item, one-half of one percent (0.5%) of the votes cast for those two candidates,~~ or 10,000 votes, whichever is less.

The demand for a recount must be in writing and must be received by the State Board of Elections by noon on the second Thursday after the election. If on that Thursday the available returns show a candidate not entitled to a mandatory recount, but the Executive Director determines subsequently that the margin is within the threshold set out in this subsection, the Executive Director shall notify the eligible candidate immediately and that candidate shall be entitled to a recount if that candidate so demands within 48 hours of notice. The recount shall be conducted under the supervision of the State Board of Elections.

(d) Rules for Conducting Recounts. – The State Board of Elections shall promulgate rules for conducting recounts. Those rules shall be subject to the following guidelines:

(1) The rules shall specify, with respect to each type of voting system, when and to what extent the recount shall consist of machine recounts and hand-to-eye recounts. Hand-to-eye recounts shall also be ordered as provided by G.S. 163-182.7A.

(2) The rules shall provide guidance in interpretation of the voter's choice.

(3) The rules shall specify how the goals of multipartisan participation, opportunity for public observation, and good order shall be balanced."

SECTION 6.(b) Article 15A of Chapter 163 of the General Statutes is amended by adding a new section to read:

"**§ 163-182.7A. Additional provisions for hand-to-eye recounts.**

(a) The rules promulgated by the State Board of Elections for recounts shall provide that if the initial recount is not hand-to-eye, and if the recount does not reverse the results, the candidate who had originally been entitled to a recount may, within 24 hours of the completion of the first recount, demand a second recount on a hand-to-eye basis in a sample of precincts. If the initial recount was not hand-to-eye and it reversed the results, the candidate who had initially been the winner shall have the same right to ask for a hand-to-eye recount in a sample of precincts.

That sample shall be all the ballots in three percent (3%) of the precincts casting ballots in each county in the jurisdiction of the office, rounded up to the next whole number of precincts. For the purpose of that calculation, each one-stop (early) voting site and the mail-in absentee ballots shall be considered to be a precinct. The precincts to be recounted by a hand-to-eye count shall be chosen at random within each county. If the results of the hand-to-eye recount differ from the previous results within those precincts to the extent that extrapolating the amount of the change to the entire jurisdiction (based on the proportion of ballots recounted to the total votes cast for that

office) would result in the reversing of the results, then the State Board of Elections shall order a hand-to-eye recount of the entire jurisdiction in which the election is held. There shall be no cost to the candidate for that recount in the entire jurisdiction.

(b) Recounts under this section shall be governed by rules adopted under G.S. 163-182.7(d).

(c) No complete hand-to-eye recount shall be conducted under this section if one has already been done under another provision of law."

SECTION 6.(c) This section becomes effective January 1, 2006.

SECTION 7. G.S. 163-82.28 reads as rewritten:

"**§ 163-82.28. The HAVA Election Fund.**

There is established a special fund to be known as the Election Fund. All funds received for implementation of the Help America Vote Act of 2002, Public Law 107-252, shall be deposited in that fund. The State Board of Elections shall use funds in the Election Fund only to implement ~~HAVA.~~ HAVA and for purposes permitted by HAVA to comply with State law."

SECTION 8. There is appropriated from the General Fund to the State Board of Elections the recurring sum of six hundred thousand dollars ($600,000) for the 2005-2006 and the 2006-2007 fiscal year and the nonrecurring sum of twenty million dollars ($20,000,000) for the 2005-2006 fiscal year for the purpose of implementing this act.

SECTION 9. The State Board of Elections shall recommend a model code of ethics for members and employees of county boards of elections and of the State Board of Elections. The code shall address the appropriate relations between those members and staff and vendors who do business or seek to do business with boards of elections in North Carolina. It shall address how to avoid both the reality and the appearance of conflicts of interest and impropriety. The State Board shall report its recommended code to the Joint Select Committee on Electronic Voting Systems and to the Joint Legislative Commission on Governmental Operations no later than 60 days after this act becomes law.

SECTION 10. Notwithstanding the requirements of G.S. 163-165.7 as amended by this act, the State Board of Elections may conduct, for primaries and elections in 2006 only, experiments with voting systems that do not comply with G.S. 163-165.7(a)(5) in that they do not permit a voter to review a paper record before casting a vote. The pilot program may be conducted in no more than nine counties. The county boards of elections shall cooperate in conducting the pilot program. The pilot program shall be conducted according to the following requirements:

(1) The experiment may be conducted in no more than two voting sites per county. The voting sites may include election-day voting places or one-stop sites.

(2) At each voting site in which the experiment is conducted, voters must have a choice of voting on the experimental voting system or on a voting system that is fully compliant with the requirements of G.S. 163-165.7.

(3) Each experimental voting system shall include an alternative means for the voter to verify the choices that the voter makes in the electronically

cast ballot. That alternative means may utilize audio technology, digital scanners, or some other alternative to paper verification.

(4) Each experimental voting system shall be compliant with the other requirements of G.S. 163-165.7, including the requirement in G.S. 163-165.7(a)(4) that the system must produce a paper backup record.

(5) For all votes cast on an experimental voting system under the pilot, there shall be a full hand-to-eye paper count to test the system. The State Board of Elections may also require a full comparison count of the alternative verification technology with the paper backup record.

The State Board of Elections shall report the results of the pilot program, together with its recommendations, to the 2007 General Assembly.

SECTION 11. Section 8 of this act becomes effective July 1, 2005. The requirement for testing a voting system in an election provided in G.S. 163-165.9(a)(3), as enacted in Section 5 of this act, does not apply to any voting system acquired before January 1, 2008, as long as the voting system is demonstrated in a public forum in the county. Notwithstanding G.S. 163-132.5G, as amended by this act, voting data by precinct shall be reported for the general elections of 2006 by March 1, 2007, and for the primary elections of 2006 by May 1, 2007. Except as otherwise provided in this act, the remainder of this act is effective when it becomes law.

SENATE
COMMITTEE SUBSTITUTE

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

JUL 6 2005

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ADOPTED

HOUSE BILL 1434

Committee Substitute Favorable 5/4/05

PROPOSED SENATE COMMITTEE SUBSTITUTE H1434-PCS10377-RU-65

Short Title: Signature Confirmation Under Rule 4. (Public)

Sponsors:

Referred to:

April 21, 2005

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE SERVICE OF PROCESS UNDER RULE 4 OF THE RULES OF CIVIL PROCEDURE BY SIGNATURE CONFIRMATION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 1A-1, Rule 4(j)(1) reads as rewritten:

"(1) Natural Person. – Except as provided in subsection (2) below, upon a natural person by one of the following:

a. By delivering a copy of the summons and of the complaint to ~~him~~ the natural person or by leaving copies thereof at the defendant's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein.

b. By delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to be served or to accept service of process or by serving process upon such agent or the party in a manner specified by any statute.

c. By mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to the party to be served, and delivering to the addressee.

d. By depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint, addressed to the party to be served, delivering to the addressee, and obtaining a delivery receipt.

e. By mailing a copy of the summons and of the complaint by signature confirmation as provided by the United States Postal Service, addressed to the party to be served, and delivering to the addressee. Nothing in this sub-subdivision authorizes the use of electronic mailing for service on the party to be served."

SECTION 2. G.S. 1A-1, Rule 4(j2)(2) reads as rewritten:

"(2) Registered or Certified ~~Mail~~Mail, Signature Confirmation, or Designated Delivery Service. – Before judgment by default may be had on service by registered or certified ~~mail~~mail, signature confirmation, or by a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) with delivery receipt, the serving party shall file an affidavit with the court showing proof of such service in accordance with the requirements of ~~G.S. 1-75.10(4)~~G.S. 1-75.10(4), ~~or G.S. 1-75.10(5),~~ 1-75.10(5), or 1-75.10(6), as appropriate. This affidavit together with the return or delivery receipt or copy of the proof of delivery provided by the United States Postal Service signed by the person who received the mail or delivery if not the addressee raises a presumption that the person who received the mail or delivery and signed the receipt was an agent of the addressee authorized by appointment or by law to be served or to accept service of process or was a person of suitable age and discretion residing in the addressee's dwelling house or usual place of abode. In the event the presumption described in the preceding sentence is rebutted by proof that the person who received the receipt at the addressee's dwelling house or usual place of abode was not a person of suitable age and discretion residing therein, the statute of limitation may not be pleaded as a defense if the action was initially commenced within the period of limitation and service of process is completed within 60 days from the date the service is declared invalid. Service shall be complete on the day the summons and complaint are delivered to the address."

SECTION 3. G.S. 1-75.10 is amended by adding a new subdivision to read:

"(6) Service by Signature Confirmation. – In the case of service by signature confirmation as provided by the United States Postal Service, by affidavit of the serving party averring all of the following:

a. That a copy of the summons and complaint was deposited in the post office for mailing by signature confirmation.

b. That it was in fact received as evidenced by the attached proof of delivery obtained from the United States Postal Service, or other evidence satisfactory to the court of delivery to the addressee.

c. That the copy of the signature confirmation or other evidence of delivery is attached."

SECTION 4. This act becomes effective October 1, 2005, and applies to actions filed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 2

HOUSE BILL 1434

Committee Substitute Favorable 5/4/05

Short Title: Electronic Signature Under Rule 4. (Public)

Sponsors:

Referred to:

April 21, 2005

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE, FOR SERVICE OF PROCESS UPON A NATURAL PERSON OR FOR PROOF OF PERSONAL SERVICE UNDER RULE 4 OF THE RULES OF CIVIL PROCEDURE, CERTAIN ELECTRONIC SIGNATURE CONFIRMATION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 1A-1, Rule 4(j)(1) reads as rewritten:

"(1) Natural Person. – Except as provided in subsection (2) below, upon a natural person by one of the following:

a. By delivering a copy of the summons and of the complaint to him or by leaving copies thereof at the defendant's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein.

b. By delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to be served or to accept service of process or by serving process upon such agent or the party in a manner specified by any statute.

c. By mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to the party to be served, and delivering to the addressee.

d. By depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint, addressed to the party to be served, delivering to the addressee, and obtaining a delivery receipt.

e. By mailing a copy of the summons and of the complaint, addressed to the party to be served, and delivering to the addressee, when delivery is confirmed by electronic signature confirmation, an electronic proof of service that is obtained from the United States Postal Service Internet Web site, is

maintained by the United States Postal Service, and is available by fax or mail, upon request."

SECTION 2. G.S. 1A-1, Rule 4(j2)(2) reads as rewritten:

"(2) Registered or Certified ~~Mail~~ Mail, Mail when Delivery is Confirmed by Electronic Signature Confirmation, or Designated Delivery Service. – Before judgment by default may be had on service by registered or certified ~~mail~~ mail, by mail when delivery is confirmed by electronic signature confirmation, or by a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) with delivery receipt, the serving party shall file an affidavit with the court showing proof of such service in accordance with the requirements of ~~G.S. 1-75.10(4)~~G.S. 1-75.10(4), 1-75.10(6), or ~~G.S.~~ 1-75.10(5), as appropriate. This affidavit together with the return or delivery receipt or copy of the electronic receipt signed by the person who received the mail or delivery if not the addressee raises a presumption that the person who received the mail or delivery and signed the receipt was an agent of the addressee authorized by appointment or by law to be served or to accept service of process or was a person of suitable age and discretion residing in the addressee's dwelling house or usual place of abode. In the event the presumption described in the preceding sentence is rebutted by proof that the person who received the receipt at the addressee's dwelling house or usual place of abode was not a person of suitable age and discretion residing therein, the statute of limitation may not be pleaded as a defense if the action was initially commenced within the period of limitation and service of process is completed within 60 days from the date the service is declared invalid. Service shall be complete on the day the summons and complaint are delivered to the address."

SECTION 3. G.S. 1-75.10 is amended by adding a new subdivision to read:

"(6) Service by Mail When Delivery is Confirmed by Electronic Signature Confirmation. – In the case of service by mail when delivery is confirmed by electronic signature confirmation, by affidavit of the serving party averring all of the following:

a. That a copy of the summons and complaint was deposited in the post office for mailing.

b. That it was in fact received as confirmed by electronic signature confirmation, an electronic proof of service that is obtained from the United States Postal Service Internet Web site, is maintained by the United States Postal Service, and is available by fax or mail, upon request; and this confirmation is evidenced by the attached copy of the electronic signature or other evidence satisfactory to the court of delivery to the addressee.

c. That the copy of the electronic signature or other evidence is attached."

SECTION 4. This act becomes effective October 1, 2005, and applies to actions filed on or after that date.

HOUSE BILL 1434:
Signature Confirmation Under Rule 4

BILL ANALYSIS

Committee:	Senate Judiciary I	**Date:**	June 30, 2005
Introduced by:	Reps. Glazier, Stiller	**Summary by:**	O. Walker Reagan
Version:	PCS to Second Edition H1434-CSRU-65		Committee Co-Counsel

SUMMARY: The Proposed Senate Committee Substitute for House Bill 1434 would authorize service of process of a summons and complaint on a person by mail when delivery is confirmed by signature confirmation with electronic proof of service obtained from the United States Postal Service (USPS).

CURRENT LAW: Under current law, service of process of a summons and complaint is authorized as follows:

- By delivering them to the defendant or by leaving copies at the defendant's home with a person of suitable age and discretion that resides there.
- By delivering them to or serving them upon an authorized agent.
- By mailing them to the defendant by registered or certified mail, return receipt requested.
- By depositing them with an authorized designated delivery service, delivering them to the addressee, and obtaining a delivery receipt.

BILL ANALYSIS: House Bill 1434 would -

Section 1.: Amend G.S. 1A-1, Rule 4(j)(1) to authorize service of process by mail when delivery is confirmed by signature confirmation obtained from the USPS.

Section 2.: Make a conforming change concerning confirmation of delivery by signature confirmation to G.S. 1A-1, Rule 4(j2)(2) which provides that before judgment by default may be had on service of process by mail or designated delivery service, the serving party must provide the court with appropriate proof of service.

Section 3.: Amend G.S. 1-75.10 (Proof of service of summons, defendant appearing in action) which provides how proof of service shall be demonstrated when a defendant appears in an action and challenges the service of process upon

BACKGROUND[1]**:**

- The fee for USPS Signature Confirmation is $1.30. The fee for Certified Mail with Return Receipt is $4.05.
- In 2003, the State Mail Center reportedly handled an average of 200 pieces of Certified Mail per day (which does not include mail from the Attorney General's Office or the Secretary of State). Based on those figures, savings to North Carolina State Government from the use of Signature Confirmation rather than Certified Mail with Return Receipt could exceed $1,000,000.
- The states of Georgia and Indiana have amended their statutes to permit the use of USPS Signature Confirmation mail in addition to Certified Mail with Return Receipt.

EFFECTIVE DATE: The bill would become effective October 1, 2005.

Jennifer McGinnis, counsel to the House Judiciary IV Committee, substantially contributed to this summary.

H1434e2-SMRU-CSRU-65

[1] Information compiled by Accountable Documents System, and provided by Colleen Kochanek.

§ 1-75.10. Proof of service of summons, defendant appearing in action.

Where the defendant appears in the action and challenges the service of the summons upon him, proof of the service of process shall be as follows:

(1) Personal Service or Substituted Personal Service. –

a. If served by the sheriff of the county or the lawful process officer in this State where the defendant was found, by the officer's certificate thereof, showing place, time and manner of service; or

b. If served by any other person, his affidavit thereof, showing place, time and manner of service; his qualifications to make service under Rule 4(a) or Rule 4(j3) of the Rules of Civil Procedure; that he knew the person served to be the party mentioned in the summons and delivered to and left with him a copy; and if the defendant was not personally served, he shall state in such affidavit when, where and with whom such copy was left. If such service is made outside this State, the proof thereof may in the alternative be made in accordance with the law of the place where such service is made.

(2) Service of Publication. – In the case of publication, by the affidavit of the publisher or printer, or his foreman or principal clerk, showing the same and specifying the date of the first and last publication, and an affidavit of mailing of a copy of the complaint or notice, as the case may require, made by the person who mailed the same.

(3) Written Admission of Defendant. – The written admission of the defendant, whose signature or the subscription of whose name to such admission shall be presumptive evidence of genuineness.

(4) Service by Registered or Certified Mail. – In the case of service by registered or certified mail, by affidavit of the serving party averring:

a. That a copy of the summons and complaint was deposited in the post office for mailing by registered or certified mail, return receipt requested;

b. That it was in fact received as evidenced by the attached registry receipt or other evidence satisfactory to the court of delivery to the addressee; and

c. That the genuine receipt or other evidence of delivery is attached.

(5) Service by Designated Delivery Service. – In the case of service by designated delivery service, by affidavit of the serving party averring:

a. That a copy of the summons and complaint was deposited with a designated delivery service as authorized under G.S. 1A-1, Rule 4, delivery receipt requested;

b. That it was in fact received as evidenced by the attached delivery receipt or other evidence satisfactory to the court of delivery to the addressee; and

c. That the genuine receipt or other evidence of delivery is attached.

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE
Name of Committee

6-30-05
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
Joseph Waymack	NC Coalition for Verified Voting
WARREN MURPHY	COMMON CAUSE/NC
Clyde Michael Morgan 11th Congressional Dist.	N.C. Voter Verified Paper Ballots 15 counties of WNC
Rebecca Tronka	NCACC
Tressa Taylor	Carteret Coalition for Verifiable Voting 1702 Lennoxville Rd, Beaufort, NC 28516
David B. Taylor	Carteret Coalition for Verifiable Voting 1702 Lennoxville Rd, Beaufort, NC
Colleen Kochanek	ADS
Charles Cruikshank	ADS
Ed Turlington	BP
Steve Metcalf	The Policy Group
R. Paul Wiles	NCHBA
Tripp Melton	Sen. Stevens Office

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE — 6-30-05

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
Doug Heron	NC Bar Assoc.
Michelle Frazier	NC Bar Assoc.
Sam McEwen	Dept of Revenue
Gary Bartlett	SBE
Johnnie McLean	SBE
Bill Finger	Charlotte
Boyd Cauble	City of Charlotte
Patrick Mumford	City of Charlotte
Morgan County	Bd of Transportation
Jim Blackburn	NC Association of County Commissioners
David Barnes	Poyner + Spruill

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Thursday	July 21, 2005	9:00 AM	1027 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 223	Public Confidence in Elections.	Senator Kinnaird
SB 539	Public Campaign Fund Amendments.	Senator Clodfelter

Senator Daniel G. Clodfelter, Chair

Judiciary 1 Committee

July 21, 2005

Minutes

Senator Dan Clodfelter, Chair called the meeting to order at 9:08 a.m. with fifteen members present. He introduced Pages Michael Pell from Gibsonville, NC, Casey Ledford from Franklin, NC, Ginny Ostgaard from Marion, NC, Shenequa Bynom, Brandee Jenkins, and Joshua Smith from Gastonia, NC. and Doug White from Louisburg, NC.

SB-223 (Public Confidence in Elections) Committee Substitute was introduced by Senator Clodfelter. Bill sponsor, Senator Ellie Kinnaird explained that the bill would require that the State Board of Elections, through a request for proposal process, certify only voting systems that produce paper ballots or paper records that can be used as a backup means of counting and that the voters may use to verify their choices before they cast their votes. She explained that any voting system purchased or upgraded beginning August 1, 2005 would be subject to this process, and any system, regardless of when purchased, would have to be submitted for compliance with the requirements of the process if the system is to be used in the 2006 elections. The bill shifts from counties to the State Board of Elections the duty to produce a request for voting systems. It requires that beginning in 2006 the State Board of Elections must provide for sample paper hand counts in random precincts over the State. The bill makes specific requirements of any voting equipment vendor who does business in State, requirements designed to promote accountability. The bill would appropriate $600,000 in recurring, and $20 million in nonrecurring money to implement the act, and would allow a limited experiment with voting systems that use non-paper means, in addition to paper means, of voter verification and ballot backup. A study commission met for examination and study of the election laws, and Senator Kinnaird acknowledged the excellent contribution made by Mr. Justin Moore, Computer Science Department at Duke University. She thanked Mr. Moore and Staff Attorney, Bill Gilkeson, who had also spent many, many hours working on the bill. Senator Kinnaird asked Senator Clodfelter to help in explaining the bill. He asked for questions from the committee members. Senator Ham Horton offered an Amendment to the bill on page 13, line 11. Senator Clodfelter called for a vote. All members voted yes. Motion carried. (See attached Amendment). Senator's Jerry Tillman, Ham Horton, Richard Stevens, Janet Cowell, Phillip Berger, Keith Presnell, Andrew Brock, Vernon Malone and Clark Jenkins had question. Ms. Johnnie McLean, Assistant Director, NC State Board of

Elections, answered questions, as did Senator Clodfelter and Senator Kinnaird. Senator Clark Jenkins moved for a Favorable Report as amended. Senator Clodfelter called for a vote on the motion. All members voted yes except Senator Janet Cowell, who voted no. Her vote was based on her disagreement with Section 10, (Pilot Program for Alternative Means of Voter Verification) of the bill. Majority ruled. Motion carried. SB-223 will be referred to Appropriations Committee.

Senator Clodfelter stated that SB-539 would not be heard at this time, but would be scheduled for a future hearing.

Being no further business the meeting adjourned at 10:00 a.m.

Senator Dan Clodfelter, Chair

Wanda Joyner, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Daniel G. Clodfelter, Chair

Tuesday, July 26, 2005

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

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

S.B. **223** Public Confidence in Elections.

Draft Number:	PCS55265
Sequential Referral:	None
Recommended Referral:	Appropriations/Base Budget
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 223
PROPOSED COMMITTEE SUBSTITUTE S223-PCS55265-RR-34

Short Title: Public Confidence in Elections. (Public)

Sponsors:

Referred to:

February 28, 2005

A BILL TO BE ENTITLED

AN ACT TO RESTORE PUBLIC CONFIDENCE IN THE ELECTION PROCESS BY REQUIRING THAT THE STATE BOARD OF ELECTIONS, THROUGH THE DEVELOPMENT OF A REQUEST FOR PROPOSAL, ENSURE THAT ALL VOTING SYSTEMS GENERATE EITHER A PAPER BALLOT OR A PAPER RECORD BY WHICH VOTERS MAY VERIFY THEIR VOTES BEFORE CASTING THEM AND WHICH PROVIDES A BACKUP MEANS OF COUNTING THE VOTE THAT THE VOTER CASTS; BY PROVIDING STATUTORY GUIDANCE AS TO COUNTING; BY STANDARDIZING PURCHASING OF VOTING SYSTEMS IN NORTH CAROLINA, INCLUDING A REVIEW OF SOURCE CODE FOR SOFTWARE RELATED TO THOSE VOTING SYSTEMS AND AUTHORIZATION TO ESTABLISH THE ROLE OF THE STATE BOARD OF ELECTIONS AND COUNTY BOARD OF ELECTIONS RELATED TO TRAINING AND SUPPORT OF VOTING SYSTEMS; BY REQUIRING POSTELECTION TESTING OF VOTING SYSTEMS, INCLUDING A PAPER SAMPLE-COUNT; BY EXPANDING THE RIGHT TO A HAND-TO-EYE RECOUNT OF PAPER BALLOTS; BY PERMITTING A PILOT PROGRAM TO EXPERIMENT WITH NONPAPER MEANS OF VOTER VERIFICATION AND BALLOT BACKUP; AND BY APPROPRIATING FUNDS TO THE STATE BOARD OF ELECTIONS TO IMPLEMENT THIS ACT.

The General Assembly of North Carolina enacts:

SECTION 1.(a) Effective August 1, 2005, and applicable to any voting systems upgraded or acquired on or after that date and to all voting systems used in the State during any election during or after 2006, G.S. 163-165.7 reads as rewritten:

"**§ 163-165.7. Voting systems: powers and duties of State Board of Elections.**

(a) ~~The State Board of Elections shall have authority to approve types, makes, and models of voting systems for use in elections and referenda held in this State. Only~~

~~voting systems that have been approved by the State Board shall be used to conduct elections under this Chapter, and the approved systems shall be valid in any election or referendum held in any county or municipality. The State Board may, upon request of a local board of elections, authorize the use of a voting system not approved for general use.~~ Only voting systems that have been certified by the State Board of Elections in accordance with the procedures and subject to the standards set forth in this section and that have not been subsequently decertified shall be permitted for use in elections in this State. Those certified voting systems shall be valid in any election held in the State or in any county, municipality, or other electoral district in the State. Subject to all other applicable rules adopted by the State Board of Elections and, with respect to federal elections, subject to all applicable federal regulations governing voting systems, paper ballots marked by the voter and counted by hand shall be deemed a certified voting system. The State Board may certify additional voting systems only if they meet the requirements of the request for proposal process set forth in this section and only if they generate either a paper ballot or a paper record by which voters may verify their votes before casting them and which provides a backup means of counting the vote that the voter casts. Those voting systems may include optical scan and direct record electronic (DRE) voting systems. In consultation with the Office of Information Technology Services, the State Board shall develop the requests for proposal subject to the provisions of this Chapter and other applicable State laws. Among other requirements, the request for proposal shall require at least all of the following elements:

(1) That the vendor post a bond or letter of credit to cover damages resulting from defects in the voting. Damages shall include, among other items, any costs of conducting a new election attributable to those defects.

(2) That the voting system comply with all federal requirements for voting systems.

(3) That the voting system must have the capacity to include in precinct returns the votes cast by voters outside of the voter's precinct.

(4) With respect to electronic voting systems, that the voting system generate a paper record of each individual vote cast, which paper record shall be maintained in a secure fashion and shall serve as a backup record for purposes of any hand-to-eye count, hand-to-eye recount, or other audit. Electronic systems that employ optical scan technology to count paper ballots shall be deemed to satisfy this requirement.

(5) With respect to DRE voting systems, that the paper record generated by the system be viewable by the voter before the vote is cast electronically, and that the system permit the voter to correct any discrepancy between the electronic vote and the paper record before the vote is cast.

(6) With respect to all voting systems using electronic means, that the vendor provide access to all of any information required to be placed in escrow by a vendor pursuant to G.S. 163-165.9A for review and

examination by the State Board of Elections; the Office of Information Technology Services; the State chairs of each political party recognized under G.S. 163-96; the purchasing county; and designees as provided in subdivision (9) of subsection (d) of this section.

(7) That the vendor must quote a statewide uniform price for each unit of the equipment.

(8) That the vendor must separately agree with the purchasing county that if it is granted a contract to provide software for an electronic voting system but fails to debug, modify, repair, or update the software as agreed or in the event of the vendor having bankruptcy filed for or against it, the source code described in G.S. 163-165.9A(a) shall be turned over to the purchasing county by the escrow agent chosen under G.S. 163-165.9A(a)(1) for the purposes of continuing use of the software for the period of the contract and for permitting access to the persons described in subdivision (6) of this subsection for the purpose of reviewing the source code.

In its request for proposal, the State Board of Elections shall address the mandatory terms of the contract for the purchase of the voting system and the maintenance and training related to that voting system.

No voting system acquired or upgraded by a county before August 1, 2005, shall be used in an election during or after 2006 unless the county can demonstrate to the State Board of Elections compliance with the requirements in subdivisions (1) through (8) of this subsection, where those requirements are applicable to the type of voting system involved.

(b) The State Board may also, upon notice and hearing, ~~disapprove~~ decertify types, makes, and models of voting systems. Upon ~~disapproving~~ decertifying a type, make, or model of voting system, the State Board shall determine the process by which the ~~disapproved~~ decertified system is discontinued in any county. ~~If a county makes a showing that discontinuance would impose a financial hardship upon it, the county shall be given up to four years from the time of State Board disapproval to replace the system.~~ A county may appeal a decision by the State Board concerning ~~discontinuance of a voting system~~ the process by which the decertified system is discontinued in that county ~~to the superior court in that county or~~ to the Superior Court of Wake County. The county has 30 days from the time it receives notice of the State Board's decision on ~~discontinuance~~the process by which the decertified system is discontinued in that county to make that appeal.

(c) Prior to certifying a voting system, the State Board of Elections shall review, or designate an independent expert to review, all source code made available by the vendor pursuant to this section and certify only those voting systems compliant with State and federal law. At a minimum, the State Board's review shall include a review of security, application vulnerability, application code, wireless security, security policy and processes, security/privacy program management, technology infrastructure and security controls, security organization and governance, and operational effectiveness, as applicable to that voting system. Any portion of the report containing specific

information related to any trade secret as designated pursuant to G.S. 132-1.2 shall be confidential and shall be accessed only under the rules adopted pursuant to subdivision (9) of subsection (d) of this section. The State Board may hear and discuss the report of any such review under G.S. 143-318.11(a)(1).

(d) Subject to the provisions of this Chapter, the State Board of Elections shall prescribe rules for the adoption, handling, operation, and honest use of certified voting systems, ~~including, but not limited to,~~including all of the following:

(1) Procedures for county boards of elections to utilize when recommending the purchase of a ~~Types, makes, and models of~~ certified voting ~~systems approved~~ system for use in ~~this State~~that county.

(2) Form of official ballot labels to be used on voting systems.

(3) Operation and manner of voting on voting systems.

(4) Instruction of precinct officials in the use of voting systems.

(5) Instruction of voters in the use of voting systems.

(6) Assistance to voters using voting systems.

(7) Duties of custodians of voting systems.

(8) Examination and testing of voting systems in a public forum in the county before and after use in an election.

(9) Notwithstanding G.S. 132-1.2, procedures for the review and examination of any information placed in escrow by a vendor pursuant to G.S. 163-165.9A by only the following persons:

a. State Board of Elections.

b. Office of Information Technology Services.

c. The State chairs of each political party recognized under G.S. 163-96.

d. The purchasing county.

Each person listed in sub-subdivisions a. through d. of this subdivision may designate up to three persons as that person's agents to review and examine the information. No person shall designate under this subdivision a business competitor of the vendor whose proprietary information is being reviewed and examined. For purposes of this review and examination, any designees under this subdivision and the State party chairs shall be treated as public officials under G.S. 132-2.

(10) With respect to electronic voting systems, procedures to maintain the integrity of both the electronic vote count and the paper record. Those procedures shall at a minimum include procedures to protect against the alteration of the paper record after a machine vote has been recorded and procedures to prevent removal by the voter from the voting enclosure of any paper record or copy of an individually voted ballot or of any other device or item whose removal from the voting enclosure could permit compromise of the integrity of either the machine count or the paper record.

Any rules adopted under this subsection shall be in conjunction with procedures and standards adopted under G.S. 163-182.1, are exempt from Chapter 150B of the General Statutes, and are subject to the same procedures for notice and publication set forth in G.S. 163-182.1.

(e) The State Board of Elections shall facilitate training and support of the voting systems utilized by the counties."

SECTION 1.(a1) G.S. 163-166.7(c)(3) reads as rewritten:

"(c) The State Board of Elections shall promulgate rules for the process of voting. Those rules shall emphasize the appearance as well as the reality of dignity, good order, impartiality, and the convenience and privacy of the voter. Those rules, at a minimum, shall include procedures to ensure that all the following occur:

(1) The voting system remains secure throughout the period voting is being conducted.

(2) Only properly voted official ballots or paper records of individual voted ballots are introduced into the voting system.

(3) Except as provided by G.S. 163-166.9, no official ballots leave the voting enclosure during the time voting is being conducted there. The rules shall also provide that during that time no one shall remove from the voting enclosure any paper record or copy of an individually voted ballot or of any other device or item whose removal from the voting enclosure could permit compromise of the integrity of either the machine count or the paper record.

(4) All improperly voted official ballots or paper records of individual voted ballots are returned to the precinct officials and marked as spoiled.

(5) Voters leave the voting place promptly after voting.

(6) Voters not clearly eligible to vote in the precinct but who seek to vote there are given proper assistance in voting a provisional official ballot or guidance to another voting place where they are eligible to vote.

(7) Information gleaned through the voting process that would be helpful to the accurate maintenance of the voter registration records is recorded and delivered to the county board of elections.

(8) The registration records are kept secure.

(9) Party observers are given access as provided by G.S. 163-45 to current information about which voters have voted.

(10) The voter, before voting, shall sign that voter's name on the pollbook, other voting record, or voter authorization document. If the voter is unable to sign, a precinct official shall enter the person's name on the same document before the voter votes."

SECTION 1.(b) Section 11 of S.L. 2003-226, which would have made amendment to G.S. 163-165.7 effective January 1, 2006, is repealed.

SECTION 1.(c) In order to carry forward the first of two amendments that would have been made by Section 11 of S.L. 2003-226 to the old version of

G.S. 163-165.7, effective January 1, 2006, G.S. 163-165.7, as rewritten by subsection (a) of this section, is amended by adding the following new subsection:

"(a1) Federal Assistance. – The State Board may use guidelines, information, testing reports, certification, decertification, recertification, and any relevant data produced by the Election Assistance Commission, its Standards Board, its Board of Advisors, or the Technical Guidelines Development Committee as established in Title II of the Help America Vote Act of 2002 with regard to any action or investigation the State Board may take concerning a voting system. The State Board may use, for the purposes of voting system certification, laboratories accredited by the Election Assistance Commission under the provisions of section 231(2) of the Help America Vote Act of 2002."

SECTION 1.(d) In order to carry forward the second of two amendments that would have been made by Section 11 of S.L. 2003-226 to the old version of G.S. 163-165.7, effective January 1, 2006, G.S. 163-165.7(d), as rewritten by subsection (a) of this section, is amended by adding the following new subdivision:

"(11) Compliance with section 301 of the Help America Vote Act of 2002."

SECTION 1.(e) G.S. 163-132.5G reads as rewritten:

"**§ 163-132.5G. Voting data maintained by precinct.**

To the extent that it can do so without compromising the secrecy of an individual's ballot, each county board of elections shall maintain voting data by precinct so that precinct returns for each item on the ballot shall include the votes cast by residents of the precinct who voted by provisional ballot and by absentee ballot, both mail and one-stop. The county board shall not be required to report provisional and absentee voting data by precinct until 60 days after the election. The State Board of Elections shall adopt rules for the enforcement of this section with the goal that all voting data shall be reported by precinct by the 2006 election. ~~Those rules shall provide for exemptions where the expense of compliance would place a financial hardship on a county. Those rules shall provide for compliance by 2004 for counties the State Board determines are capable of complying by that year.~~"

SECTION 1.(f) G.S. 163-165.1(e) reads as rewritten:

"(e) Voted ballots and paper records of individual voted ballots shall be treated as confidential, and no person other than elections officials performing their duties may have access to voted ballots or paper records of individual voted ballots except by court order or order of the appropriate board of elections as part of the resolution of an election protest or investigation of an alleged election irregularity or violation. Voted ballots and paper records of individual voted ballots shall not be disclosed to members of the public in such a way as to disclose how a particular voter voted, unless a court orders otherwise."

SECTION 2.(a) Part 2 of Article 14A of Chapter 163 of the General Statutes is amended by adding a new section to read:

"**§ 163-165.9A. Voting systems: requirements for voting systems vendors; penalties.**

(a) Duties of Vendor. – Every vendor that has a contract to provide a voting system in North Carolina shall do all of the following:

(1) The vendor shall place in escrow with an independent escrow agent approved by the State Board of Elections all software that is relevant to functionality, setup, configuration, and operation of the voting system, including, but not limited to, a complete copy of the source and executable code, build scripts, object libraries, application program interfaces, and complete documentation of all aspects of the system including, but not limited to, compiling instructions, design documentation, technical documentation, user documentation, hardware and software specifications, drawings, records, and data. The State Board of Elections may require in its request for proposal that additional items be escrowed, and if any vendor that agrees in a contract to escrow additional items, those items shall be subject to the provisions of this section. The documentation shall include a list of programmers responsible for creating the software and a sworn affidavit that the source code includes all relevant program statements in low-level and high-level languages.

(2) The vendor shall notify the State Board of Elections of any change in any item required to be escrowed by subdivision (1) of this subsection.

(3) The chief executive officer of the vendor shall sign a sworn affidavit that the source code and other material in escrow is the same being used in its voting systems in this State. The chief executive officer shall ensure that the statement is true on a continuing basis.

(4) The vendor shall promptly notify the State Board of Elections and the county board of elections of any county using its voting system of any decertification of the same system in any state, of any defect in the same system known to have occurred anywhere, and of any relevant defect known to have occurred in similar systems.

(5) The vendor shall maintain an office in North Carolina with staff to service the contract.

(b) Penalties. – Willful violation of any of the duties in subsection (a) of this section is a Class G felony. Substitution of source code into an operating voting system without notification as provided by subdivision (a)(2) of this section is a Class I felony. In addition to any other applicable penalties, violations of this section are subject to a civil penalty of up to one hundred thousand dollars ($100,000) per violation."

SECTION 2.(b) This section applies with respect to purchase or upgrade of any voting system on or after August 1, 2005.

SECTION 3. Effective August 1, 2005, G.S. 163-165.8 reads as rewritten:

"**§ 163-165.8. Voting systems: powers and duties of board of county commissioners.**

The board of county commissioners, with the approval of the county board of elections, may adopt and ~~purchase or lease~~ acquire only a voting system of a type, make, and model ~~approved~~ certified by the State Board of Elections for use in some or all voting places in the county at some or all elections.

The board of county commissioners may decline to adopt and ~~purchase or lease~~ acquire any voting system recommended by the county board of elections but may not adopt and ~~purchase or lease~~ acquire any voting system that has not been approved by the county board of elections. Article 8 of Chapter 143 of the General Statutes does not apply to the purchase of a voting system certified by the State Board of Elections."

SECTION 4. Effective August 1, 2005, G.S. 163-165.9 reads as rewritten:

"**§ 163-165.9. Voting systems: powers and duties of county board of elections.**

(a) Before approving the adoption and ~~purchase or lease~~ acquisition of any voting system by the board of county commissioners, the county board of elections shall do all of the following:

(1) ~~Obtain a current financial statement from the proposed vendor or lessor of the voting system and send copies of the statement to the county attorney and the chief county financial officer.~~ Recommend to the board of county commissioners which type of voting system should be acquired by the county.

(2) Witness a demonstration, in that county or at a site designated by the State Board of Elections, of the type of voting system to be recommended ~~by the proposed vendor or lessor~~ and also witness a demonstration of at least one other type of voting system ~~approved~~ certified by the State Board of Elections.

(3) Test, during an election, the proposed voting system in at least one precinct in the county where the voting system would be used if adopted.

(b) After the acquisition of any voting system, the county board of elections shall comply with any requirements of the State Board of Elections regarding training and support of the voting system."

SECTION 5.(a) G.S. 163-182.1(b) reads as rewritten:

"(b) Procedures and Standards. – The State Board of Elections shall adopt uniform and nondiscriminatory procedures and standards for voting systems. The standards shall define what constitutes a vote and what will be counted as a vote for each category of voting system used in the State. The State Board shall adopt those procedures and standards at a meeting occurring not earlier than 15 days after the State Board gives notice of the meeting. The procedures and standards adopted shall apply to all elections occurring in the State and shall be subject to amendment or repeal by the State Board acting at any meeting where notice that the action has been proposed has been given at least 15 days before the meeting. These procedures and standards shall not be considered to be rules subject to Article 2A of Chapter 150B of the General Statutes. However, the State Board shall publish in the North Carolina Register the procedures and standards and any changes to them after adoption, with that publication noted as information helpful to the public under G.S. 150B-21.17(a)(6). Copies of those procedures and standards shall be made available to the public upon request or otherwise by the State Board. For optical scan and direct record electronic voting systems, and for any other voting systems in which ballots are counted other than on paper by hand and eye, those procedures and standards shall do both of the following:

(1) Provide for a sample hand-to-eye count of the paper ballots or paper records of a statewide ballot item in every county. The presidential ballot item shall be the subject of the sampling in a presidential election. If there is no statewide ballot item, the State Board shall provide a process for selecting district or local ballot items to adequately sample the electorate. The sample chosen by the State Board shall be of full precincts, full counts of absentee ballots, and full counts of one-stop early voting sites. The size of the sample of each category shall be chosen to produce a statistically significant result and shall be chosen after consultation with a statistician. The actual units shall be chosen at random. In the event of a material discrepancy between the electronic or mechanical count and a hand-to-eye count, the hand-to-eye count shall control, except where paper ballots or records have been lost or destroyed or where there is another reasonable basis to conclude that the hand-to-eye count is not the true count. If the discrepancy between the hand-to-eye count and the mechanical or electronic count is significant, a complete hand-to-eye count shall be conducted.

(2) ~~provide~~ Provide that if the voter selects votes for more than the number of candidates to be elected or proposals to be approved in a ballot item, the voting system shall do all the following:

~~(1)~~a. Notify the voter that the voter has selected more than the correct number of candidates or proposals in the ballot item.

~~(2)~~b. Notify the voter before the vote is accepted and counted of the effect of casting overvotes in the ballot item.

~~(3)~~c. Provide the voter with the opportunity to correct the official ballot before it is accepted and counted."

SECTION 5.(b) G.S. 163-182.2 reads as rewritten:

"**§ 163-182.2. Initial counting of official ballots.**

(a) The initial counting of official ballots shall be conducted according to the following principles:

(1) Vote counting at the precinct shall occur immediately after the polls close and shall be continuous until completed.

(2) Vote counting at the precinct shall be conducted with the participation of precinct officials of all political parties then present. Vote counting at the county board of elections shall be conducted in the presence or under the supervision of board members of all political parties then present.

(3) Any member of the public wishing to witness the vote count at any level shall be allowed to do so. No witness shall interfere with the orderly counting of the official ballots. Witnesses shall not participate in the official counting of official ballots.

(4) Provisional official ballots shall be counted by the county board of elections before the canvass. If the county board finds that an

individual voting a provisional official ballot is not eligible to vote in one or more ballot items on the official ballot, the board shall not count the official ballot in those ballot items, but shall count the official ballot in any ballot items for which the individual is eligible to vote.

(5) Precinct officials shall provide a preliminary report of the vote counting to the county board of elections as quickly as possible. The preliminary report shall be unofficial and has no binding effect upon the official county canvass to follow.

(6) In counties that use any certified mechanical or electronic voting system, subject to the sample counts under G.S. 163-182.1 and subdivision (1a) of subsection (b) of this section, and of a hand-to-eye recount under G.S. 163-182.7 and G.S. 163-182.7A, a board of elections shall rely in its canvass on the mechanical or electronic count of the vote rather than the full hand-to-eye count of the paper ballots or records. In the event of a material discrepancy between the electronic or mechanical count and a hand-to-eye count or recount, the hand-to-eye count or recount shall control, except where paper ballots or records have been lost or destroyed or where there is another reasonable basis to conclude that the hand-to-eye count is not the true count.

(b) The State Board of Elections shall promulgate rules for the initial counting of official ballots. All election officials shall be governed by those rules. In promulgating those rules, the State Board shall adhere to the following guidelines:

(1) For each voting system used, the rules shall specify the role of precinct officials and of the county board of elections in the initial counting of official ballots.

(1a) For optical scan and direct record electronic voting systems, and for any other voting systems in which ballots are counted other than on paper by hand and eye, those rules shall provide for a sample hand-to-eye count of the paper ballots or paper records of a sampling of a statewide ballot item in every county. The presidential ballot item shall be the subject of the sampling in a presidential election. If there is no statewide ballot item, the State Board shall provide a process for selecting district or local ballot items to adequately sample the electorate. The sample chosen by the State Board shall be of full precincts, full counts of absentee ballots, and full counts of one-stop early voting sites. The size of the sample of each category shall be chosen to produce a statistically significant result and shall be chosen after consultation with a statistician. The actual units shall be chosen at random. In the event of a material discrepancy between the electronic or mechanical count and a hand-to-eye count, the hand-to-eye count shall control, except where paper ballots or records have been lost or destroyed or where there is another reasonable basis to conclude that

the hand-to-eye count is not the true count. If the discrepancy between the hand-to-eye count and the mechanical or electronic count is significant, a complete hand-to-eye count shall be conducted.

(2) The rules shall provide for accurate unofficial reporting of the results from the precinct to the county board of elections with reasonable speed on the night of the election.

(3) The rules shall provide for the prompt and secure transmission of official ballots from the voting place to the county board of elections.

The State Board shall direct the county boards of elections in the application of the principles and rules in individual circumstances."

SECTION 5.(c) G.S. 163-182.5 reads as rewritten:

"**§ 163-182.5. Canvassing votes.**

(a) The Canvass. – As used in this Article, the term "canvass" means the entire process of determining that the votes have been counted and tabulated correctly, culminating in the authentication of the official election results. The board of elections conducting a canvass has authority to send for papers and persons and to examine them and pass upon the legality of disputed ballots.

(b) Canvassing by County Board of Elections. – The county board of elections shall meet at 11:00 A.M. on the seventh day after every election to complete the canvass of votes cast and to authenticate the count in every ballot item in the county by determining that the votes have been counted and tabulated correctly. If, despite due diligence by election officials, the initial counting of all the votes has not been completed by that time, the county board may hold the canvass meeting a reasonable time thereafter. The canvass meeting shall be at the county board of elections office, unless the county board, by unanimous vote of all its members, designates another site within the county. The county board shall examine the returns from precincts, from absentee official ballots, from the sample hand-to-eye paper ballot counts, and from provisional official ballots and shall conduct the canvass.

(c) Canvassing by State Board of Elections. – After each general election, the State Board of Elections shall meet at 11:00 A.M. on the Tuesday three weeks after election day to complete the canvass of votes cast in all ballot items within the jurisdiction of the State Board of Elections and to authenticate the count in every ballot item in the county by determining that the votes have been counted and tabulated correctly. After each primary, the State Board shall fix the date of its canvass meeting. If, by the time of its scheduled canvass meeting, the State Board has not received the county canvasses, the State Board may adjourn for not more than 10 days to secure the missing abstracts. In obtaining them, the State Board is authorized to secure the originals or copies from the appropriate clerks of superior court or county boards of elections, at the expense of the counties."

SECTION 5.(d) This section becomes effective January 1, 2006.

SECTION 6.(a) G.S. 163-182.7 reads as rewritten:

"**§ 163-182.7. Ordering recounts.**

(a) Discretionary Recounts. – The county board of elections or the State Board of Elections may order a recount when necessary to complete the canvass in an election.

The county board may not order a recount where the State Board of Elections has already denied a recount to the petitioner.

(b) Mandatory Recounts for Ballot Items Within the Jurisdiction of the County Board of Elections. – In a ballot item within the jurisdiction of the county board of elections, a candidate shall have the right to demand a recount of the votes if the difference between the votes for that candidate and the votes for a prevailing candidate is not more than one percent (1%) of the total votes cast in the ballot item, or in the case of a multiseat ballot item not more than one percent (1%) of the votes cast for those two candidates. The demand for a recount must be made in writing and must be received by the county board of elections by 5:00 P.M. on the first day after the canvass. The recount shall be conducted under the supervision of the county board of elections.

(c) Mandatory Recounts for Ballot Items Within the Jurisdiction of the State Board of Elections. – In a ballot item within the jurisdiction of the State Board of Elections, a candidate shall have the right to demand a recount of the votes if the difference between the votes for that candidate and the votes for a prevailing candidate are not more than the following:

(1) For a nonstatewide ballot item, one percent (1%) of the total votes cast in the ballot item, or in the case of a multiseat ballot item, one percent (1%) of the votes cast for those two candidates.

(2) For a statewide ballot item, one-half of one percent (0.5%) of the votes cast in the ballot item, ~~or in the case of a multiseat ballot item, one-half of one percent (0.5%) of the votes cast for those two candidates,~~ or 10,000 votes, whichever is less.

The demand for a recount must be in writing and must be received by the State Board of Elections by noon on the second Thursday after the election. If on that Thursday the available returns show a candidate not entitled to a mandatory recount, but the Executive Director determines subsequently that the margin is within the threshold set out in this subsection, the Executive Director shall notify the eligible candidate immediately and that candidate shall be entitled to a recount if that candidate so demands within 48 hours of notice. The recount shall be conducted under the supervision of the State Board of Elections.

(d) Rules for Conducting Recounts. – The State Board of Elections shall promulgate rules for conducting recounts. Those rules shall be subject to the following guidelines:

(1) The rules shall specify, with respect to each type of voting system, when and to what extent the recount shall consist of machine recounts and hand-to-eye recounts. Hand-to-eye recounts shall also be ordered as provided by G.S. 163-182.7A.

(2) The rules shall provide guidance in interpretation of the voter's choice.

(3) The rules shall specify how the goals of multipartisan participation, opportunity for public observation, and good order shall be balanced."

SECTION 6.(b) Article 15A of Chapter 163 of the General Statutes is amended by adding a new section to read:

"**§ 163-182.7A. Additional provisions for hand-to-eye recounts.**

(a) The rules promulgated by the State Board of Elections for recounts shall provide that if the initial recount is not hand-to-eye, and if the recount does not reverse the results, the candidate who had originally been entitled to a recount may, within 24 hours of the completion of the first recount, demand a second recount on a hand-to-eye basis in a sample of precincts. If the initial recount was not hand-to-eye and it reversed the results, the candidate who had initially been the winner shall have the same right to ask for a hand-to-eye recount in a sample of precincts.

That sample shall be all the ballots in three percent (3%) of the precincts casting ballots in each county in the jurisdiction of the office, rounded up to the next whole number of precincts. For the purpose of that calculation, each one-stop (early) voting site shall be considered to be a precinct. The precincts to be recounted by a hand-to-eye count shall be chosen at random within each county. If the results of the hand-to-eye recount differ from the previous results within those precincts to the extent that extrapolating the amount of the change to the entire jurisdiction (based on the proportion of ballots recounted to the total votes cast for that office) would result in the reversing of the results, then the State Board of Elections shall order a hand-to-eye recount of the entire jurisdiction in which the election is held. There shall be no cost to the candidate for that recount in the entire jurisdiction.

(b) Recounts under this section shall be governed by rules adopted under G.S. 163-182.7(d).

(c) No complete hand-to-eye recount shall be conducted under this section if one has already been done under another provision of law."

SECTION 6.(c) This section becomes effective January 1, 2006.

SECTION 7. G.S. 163-82.28 reads as rewritten:

"**§ 163-82.28. The HAVA Election Fund.**

There is established a special fund to be known as the Election Fund. All funds received for implementation of the Help America Vote Act of 2002, Public Law 107-252, shall be deposited in that fund. The State Board of Elections shall use funds in the Election Fund only to implement ~~HAVA.~~ HAVA and for purposes permitted by HAVA to comply with State law."

SECTION 8. There is appropriated from the General Fund to the State Board of Elections the recurring sum of six hundred thousand dollars ($600,000) for the 2005-2006 and the 2006-2007 fiscal years and the nonrecurring sum of twenty million dollars ($20,000,000) for the 2005-2006 fiscal year for the purpose of implementing this act.

SECTION 9. The State Board of Elections shall recommend a model code of ethics for members and employees of county boards of elections and of the State Board of Elections. The code shall address the appropriate relations between those members and staff and vendors who do business or seek to do business with boards of elections in North Carolina. It shall address how to avoid both the reality and the appearance of conflicts of interest and impropriety. The State Board shall report its recommended code to the Joint Select Committee on Electronic Voting Systems and to the Joint Legislative Commission on Governmental Operations no later than 60 days after this act becomes law.

SECTION 10. The State Board of Elections may conduct, for primaries and elections in 2006 only, experiments with voting systems that use a means in addition to paper to fulfill the backup record and voter verification requirements of G.S. 163-165.7(a)(4) and G.S. 163-165.7(a)(5), as enacted by this act. The pilot program may be conducted in no more than nine counties. The county boards of elections shall cooperate in conducting the pilot program. The pilot program shall be conducted according to the following requirements:

(1) The experiment may be conducted in no more than two voting sites per county. The voting sites may include election-day voting places or one-stop sites.

(2) At each voting site in which the experiment is conducted, voters must have a choice of voting on the experimental voting system or on a voting system that is not part of the experiment.

(3) Each experimental voting system shall include an additional means for the voter to verify the choices that the voter makes in the electronically cast ballot, which means shall also provide for an additional count. That additional means may utilize audio technology, digital scanners, or some other material or technology that shall record the voters choices but shall not record any image of any part of the voter.

(4) On each voting machine or unit used in the experiment, the voting system shall comply with all the applicable requirements of G.S. 163-165.7, including the requirement in G.S. 163-165.7(a)(4) that a DRE system must generate a paper backup record of each individual vote cast electronically and the requirement in G.S. 163-165.7(a)(5) that the paper record generated by the DRE system must be viewable by the voter before the vote is cast electronically and that the system allow the voter to correct any discrepancy between the electronic vote and the paper record before the vote is cast. On every machine or unit, the experimental means to fulfill those functions shall be used in addition to, rather than instead of, the required paper means.

(5) For all votes cast on an experimental voting system under the pilot, there shall be, in addition to an electronic count, a full hand-to-eye paper count and a full comparison count of the experimental verification technology.

The State Board of Elections shall report the results of the pilot program, together with its recommendations, to the 2007 General Assembly and to the Joint Legislative Commission on Governmental Operations by February 1, 2007.

SECTION 11. Section 8 of this act becomes effective July 1, 2005. The requirement for testing a voting system in an election provided in G.S. 163-165.9(a)(3), as enacted in Section 4 of this act, does not apply to any voting system acquired before January 1, 2008, as long as the voting system is demonstrated in a public forum in the county. Notwithstanding G.S. 163-132.5G, as amended by this act, voting data by precinct shall be reported for the general elections of 2006 by March 1, 2007, and for

the primary elections of 2006 by May 1, 2007. Except as otherwise provided in this act, the remainder of this act is effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 223

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

S223-ARR-95 [v.1]

Date July 21 ,2005

Comm. Sub. [YES]
Amends Title [NO]
S223-CSRR-34[v.29]

Senator Norton

moves to amend the bill on page 13, line 11,
by deleting the term "and the mail-in absentee ballots".

SIGNED Norton
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED X FAILED _____ TABLED _____

SENATE BILL 223:
Public Confidence in Elections

BILL ANALYSIS

Committee:	Senate Judiciary I – Elections Subcommittee	**Date:**	July 21, 2005
Introduced by:	Sen. Kinnaird and Allran	**Summary by:**	William R. Gilkeson Committee Co-Counsel
Version:	PCS to First Edition S223-CSRR-34[v.29]		

SUMMARY: ***This Proposed Committee Substitute for Senate Bill 223 would require that the State Board of Elections, through a request for proposal process, certify only voting systems that produce paper ballots or paper records that can be used as a backup means of counting and that the voters may use to verify their choices before they cast their votes. Any voting system purchased or upgraded beginning August 1, 2005 would be subject to this process, and any system, regardless of when purchased, would have to be submitted for compliance with the requirements of the process if the system is to be used in the 2006 elections. The bill shifts from counties to the State Board of Elections the duty to produce a request for proposal for voting systems. It requires that beginning in 2006 the State Board of Elections must provide for sample paper hand counts in random precincts over the State. The bill makes specific requirements of any voting equipment vendor who does business in NC, requirements designed to promote accountability. The bill would appropriate $600,000 in recurring and $20 million in nonrecurring money to implement the act. The bill would allow a limited experiment with voting systems that use non-paper means, in addition to paper means, of voter verification and ballot backup.***

CURRENT LAW: Currently county commissioners are responsible for purchasing voting equipment. They may only purchase equipment that has been approved by the county board of elections. The county board of elections may only approved equipment that has been approved by the State Board of Elections. The State Board has broad rulemaking power over the purchase and operation of voting systems. In addition to its authority to approve voting systems for purchase by counties, the State Board may disapprove systems already in use in a county. The county has four years to replace a voting system that has been disapproved.

BILL ANALYSIS:

Section 1 -- State Board of Elections' Role in Purchasing. Effective with any upgrade or new voting system purchased beginning 8-1-05 and effective for any voting system used in the 2006 elections, the State Board of Elections is directed to develop a Request for Proposal. The RFP would have to include the following requirements:

- Posting a bond or letter of credit to cover damages from defects in its voting system, including the cost of a new election.
- Compliance with federal law.
- The capacity to include in precinct returns the votes cast by voters outside the voter's precinct.
- For electronic voting systems, the system must generate a paper record of each individual vote cast, which paper record shall be maintained in a secure fashion and serve as a backup record for purposes of hand-to-eye counts, hand-to-eye recounts, and other audits.
- For DREs, the paper record must be viewable by the voter before the vote is cast electronically, and the system must permit the voter to correct any discrepancy between the electronic summary of the vote and the paper record before the vote is cast.
- Review of source code by the county, the State Board of Elections, the NC Office of Information Technology, and the Chair of any legally recognized political party in NC. Those entities may designate up to 3 agents to assist in the review.
- A statewide price for each unit of the equipment.
- An agreement by the vendor that if it breaches the upkeep part of the contract or goes into bankruptcy, it will permit the software to be turned over to the county for continuing use during the term of the contract and for review by the people who have a right to review the source code.

The RFP would also address the mandatory terms of the contract for the purchase of voting system and the maintenance and training related to that voting system.
The State Board would be given the duties of monitoring voting system contracts, and of facilitating training and support.
No voting system that was not certified through the RFP process could be acquired after 8-1-05 and no system, regardless of when purchased, may be used in elections during or after 2006 unless the State Board of Elections determines it complies with the RFP requirements.
The State Board is required to have procedures to maintain the integrity of both the paper record and the electronic count and to prevent removal from the voting enclosure of a paper record or other item whose removal would compromise the integrity of the paper record or the electronic count.
Section 1(e) changes the requirement that counties must report absentee and one-stop results by precinct by the election of 2006. It adds the requirement that provisional votes must be reported by precinct. The section also removes the provision that counties be exempt from the requirement because of financial hardship. However, in Section 11, the bill gives boards of elections longer than the statutory 60 days after an election to report the votes by precinct: The 2006 general election results must be reported by March 1, 2007, and the 2006 primary results must be reported by May 1, 2007. In subsequent years, all results must be reported within 60 days.

Section 2 -- Requirements for Voting System Vendors. Effective with any upgrade or new voting system purchased beginning 8-1-05, vendors of voting systems in NC must:

- Escrow their relevant software.
- Keep the escrowed material up to date, and must swear that it is the code used in operating voting systems.
- Maintain an active office in NC.
- Promptly notify the State Board of any decertification of the voting system elsewhere or of any known defect in a voting system used in NC, even if the defect shows up outside NC.

Willful violation of any of the requirements is a Class G felony. Substitution of source code into a voting system without notifying the State Board is a Class I felony. Violations are also punishable by civil penalties of up to $100,000.

Section 3 -- County Commissioners' Role in Purchasing. Effective 8-1-05, county commissioners would continue to purchase voting equipment. But because of the State Board's new duties, counties would be exempt from the purchasing rules that normally apply to local governments.

Section 4 -- County Board of Elections' Role in Purchasing. Effective 8-1-05, the county board of elections would have the duty to recommend to the county commissioners which type of voting system the county should purchase. Currently, the county chooses from a list of types, makes, and models approved by the State Board. The county board of elections would be required to abide by State Board rules regarding training and support.

Section 5 -- Sample Counts. Effective 1-1-06, State Board of Elections rules must require a hand-to-eye count of paper ballots in a sampling of precincts, early voting sites, or sets of mail absentee ballots in every county. The hand-to-eye sample counts would be of a sampling of statewide races, always including the presidential race when it is on the ballot. If there is no statewide race, then the State Board must have a plan for getting an adequate sample using district or local races. Unless there is clear evidence to believe otherwise, the hand-to-eye count will prevail. If the difference between the hand-to-eye and the electronic or machine county is significant, a complete hand-to-eye count will be conducted. This section states the general rule that, with optical scan and DRE systems, subject to sample hand counts and mandatory hand recounts, the boards of elections shall rely on an electronic or mechanical count. If there is a material discrepancy between electronic or mechanical counts and hand-to-eye paper counts, the hand-

to-eye prevails unless paper ballots have been lost or destroyed or there is another reason to conclude that the paper count is not the true count.

Section 6 -- Expansion of Right to Hand-to-Eye Recount. Effective 1-1-06, any candidate entitled to a recount under current law – that is, a candidate who was less than 1% behind in the initial count (or the lesser of 0.5% or 10,000 votes behind in a statewide race) – is entitled to a sample hand-to-eye recount. That sample would be of all the ballots in 3% of the precincts, randomly selected, in each county. If an extrapolation of the sample count to the whole count forecasts a reversal of the result, the candidate is entitled to a full hand-to-eye recount. This expanded right would not cost the candidate.

Section 7 -- Change in HAVA Fund Language. This section changes language of the statute that created, pursuant to federal law, the fund into which is placed federal money under the Help America Vote Act (HAVA) to clarify that the money may be used not only to comply with HAVA but for purpose permitted by HAVA to comply with State law.

Section 8 -- Appropriations to State Board. Effective 7-1-05, the General Assembly would appropriate $600,000 of recurring funds and $20 million of nonrecurring funds in 2005-2006 to the State Board of Elections to implement the act.

Section 9 -- Code of Ethics. The State Board of Elections would be directed to recommend a code of ethics for members and employees of boards of elections at the county and State level. The code would address appropriate relations with voting system vendors. It would address how to avoid the reality and appearance of conflicts of interest and impropriety. The State Board would report to the Joint Select Committee on Electronic Voting Systems and to the Joint Legislative Commission on Governmental Operations within 60 days after the bill became law.

Section 10 - Pilot Program for Alternative Means of Voter Verification. – The State Board of Elections would be allowed to conduct an experiment, in no more than nine counties, with voting systems that use some means other than paper of letting the voter verify their electronic ballot and some non-paper backup. The pilot would have these limits:

- No more than 2 voting sites per county.
- At each voting site the voters would have a choice between a machine with only paper verification/backup and the experimental type of verification/backup.
- The experimental system must have some means for the voter to verify the electronically cast vote. Examples: audio technology, digital scanning. But no experimental system could be used that would record any image of any part of the voter.
- Even the experimental system must produce a paper record for recount purposes.
- There must be a full hand-to-eye paper count of all ballots cast on the experimental system. There would also be a comparison count of the paper to the alternative verification means.

Section 11 - Effective Date. The effective date section generally makes the bill effective when it becomes law, except as provided in internal sections. However, it also allows a longer-than-standard time for counties to report absentee and provisional votes by precinct in 2006, as noted in the summary of Section 1. And it relieves counties – until 2008 -- of the statutory duty to test a new voting system in an election, as long as the voting system is publicly demonstrated.

S0223e1-SMRR-CSRR-34v29

Comparison of 1st Edition of S223 with S223-CSRR-34[v.29]

	First Edition – Original Bill	S223-CSRR-34[v.29]
Effective Date	State Board certification in request-for-proposal process would affect all purchases and upgrades after July 1, 2005. Paper requirement, in separate section, would be effective January 1, 2006.	Paper requirement made part of certification in RFP process. That would affect all purchases and upgrades after August 1, 2005. Previously purchased systems could not be used in 2006 elections unless they complied with requirements in RFP process.
Approved Voter Systems	Paper ballots, optical scan, and direct record electronic (DRE).	No county may purchase or use a system that has not met specific minimum requirements spelled out in bill.
Voter Verification	DRE systems must provide a paper ballot that can be verified by the voter before casting vote.	Verification provisions included in section on mandatory standards for certification of voting systems. All DRE systems must generate a paper record of each vote cast, which shall be maintained in secure fashion and be used for hand-to-eye counts, audits, and recounts. All DREs must allow the voter to review the paper record and make necessary corrections before the vote is cast. More explicit than First Edition.
Security of Paper Records of Votes	Not addressed.	State Board required to set procedures to maintain integrity of both electronic count and paper record. Must include prevention of voter from removing a paper record of a vote from the voting enclosure.
RFP Process and Certification	Paper ballots deemed certified. Vendor must post bond or letter of credit for damages. Voting system must comply with all federal requirements. Voting system must include in precinct returns all out-of-precinct ballots. State must have access to all relevant source code. Vendor must quote a single uniform price for all counties. Bankruptcy issue not addressed. State Board to review or have expert review all source code placed in escrow.	Same as First Edition. Same as First Edition. Same as First Edition. Same as First Edition. Much more explicit statement of same. Same as First Edition. In event of vendor bankruptcy or default, source code for system must be released from escrow and turned over to counties and state. Clarifies that review of source code must be done before a system can be certified rather than only afterward. Specifies what a review must include.
Treatment of Noncomplying Voting Sytems	State Board may decertify voting systems and determine how decertified voting systems are to be discontinued. Says the general paper requirement applies to all voting systems beginning January 1, 2006.	Same. Specifies that no system may be used in 2006 elections or after unless they can demonstrate to State Board compliance with all certification requirements, including paper.
Penalties for Vendor Violations	Class I felony for violation of vendor duties. Civil penalty amount left blank in bill as filed.	Class G penalty for willful violation. Class I felony for substituting source code without notification. Civil penalty of up to $100,000 per violation.

	First Edition – Original Bill	S223-CSRR-34[v.29]
Hand-to-Eye Counts and Recounts	Provides that for machine voting systems, there must be a sample hand-to-eye count to check for discrepancies. Must be of a sampling of statewide races in randomly selected precincts. A candidate who under current law has a right to a recount may get a hand-to-eye recount on a sample basis, and if it shows a discrepancy that if projected would change the result, candidate gets full hand-to-eye recount.	Retains sample count, but requires a sample of only one statewide race. Also provides for a sampling if there is no statewide race in the election. Candidate right to hand-to-eye count unchanged from First Edition.
Reporting of Results by Precinct	Absentee and one-stop results must be reported by precinct by 2008. Postponement of current law, which sets 2006.	Absentee, one-stop, and provisional votes must be reported by precinct by 2006. But current law's 60-day reporting is altered so that 2006 primary results may be in by May 2007 and 2006 general election results in by March 2007.
Funding	Appropriations amounts left blank in bill as filed.	Appropriates $20 million non recurring and $600,000 recurring money to State Board to implement act. Can be used to help counties acquire systems, and to cover costs of certification, monitoring, training, and support.
Code of Ethics for Boards of Elections	State Board required to recommend a model code of ethics for elections board members and staff, addressing appropriate relations with vendors.	Same as First Edition
Field Test of Alternative Systems	Not addressed	State Board may do limited field test of voting systems that use non-paper methods of voter verification and ballot back-up. Results to be reported to 2007 General Assembly. No system may be certified for general use without paper. Field test limited to no more than 2 voting sites in any county. No more than 9 counties may be involved. Pilots voting stations must also have paper verification and backup. There must be full hand-to-eye count of the paper and a comparison count of the alternative backup. No voter shall be required to use a pilot system.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 223

Short Title:	Public Confidence in Elections.	(Public)
Sponsors:	Senators Kinnaird, Allran; Apodaca, Atwater, Berger of Franklin, Bingham, Blake, Brock, Brown, Cowell, Dalton, Dorsett, East, Forrester, Garwood, Goodall, Graham, Hagan, Horton, Hoyle, Jacumin, Jenkins, Lucas, Malone, Nesbitt, Presnell, Purcell, Rand, Shaw, Smith, Snow, Soles, Stevens, Swindell, Thomas, Tillman, and Weinstein.	
Referred to:	Judiciary I.	

February 28, 2005

A BILL TO BE ENTITLED

AN ACT TO RESTORE PUBLIC CONFIDENCE IN THE ELECTION PROCESS BY REQUIRING THAT ALL VOTING SYSTEMS PERMIT ALL VOTERS TO VERIFY THEIR VOTES ON PAPER; BY PROVIDING STATUTORY GUIDANCE AS TO COUNTING; BY PROVIDING CHECKS ON ELECTRONIC VOTING SYSTEM VENDORS, INCLUDING MULTIPARTY REVIEW OF SOURCE CODE, BY AUTHORIZING THE STATE BOARD OF ELECTIONS TO PROMOTE UNIFORMITY IN VOTING SYSTEMS BY STANDARDIZING PURCHASING OF VOTING SYSTEMS IN NORTH CAROLINA, BY EMPOWERING THE STATE BOARD OF ELECTIONS TO CONTROL THE TESTING AND SUPPORT OF VOTING SYSTEMS; BY REQUIRING POSTELECTION TESTING OF VOTING SYSTEMS, INCLUDING A PAPER SAMPLE-COUNT; BY EXPANDING THE RIGHT TO A HAND-TO-EYE RECOUNT OF PAPER BALLOTS; BY APPROPRIATING STATE FUNDS FOR VOTING SYSTEM ACQUISITION TO PREVENT IMPOSING UNFUNDED MANDATES UPON COUNTIES; AND BY APPROPRIATING FUNDS TO THE STATE BOARD OF ELECTIONS TO IMPLEMENT ITS EXPANDED DUTIES WITH REGARD TO VOTING SYSTEMS.

The General Assembly of North Carolina enacts:

SECTION 1. Effective January 1, 2006, Article 14A of Chapter 163 of the General Statutes is amended by adding a new section to read:

"**§ 163-165.9B. Voting systems: permitted voting systems; paper ballot required; counting.**

(a) Permitted Voting Systems. – The State allows three voting systems: (i) paper ballots; (ii) optical scan; and (iii) direct record electronic (DRE). Paper ballots are

inherent to paper ballots and optical scan voting systems. In order to provide a paper ballot in a DRE, each DRE shall generate a paper ballot which can be verified by the voter before the vote is cast.

(b) Counting on Voting Systems. – In counties that use optical scan or DRE voting systems, subject to the sample counts under G.S. 163-182.1 and G.S. 163-182.2, and of a hand-to-eye recount under G.S. 163-182.7 and G.S. 163-182.7A, a board of elections shall rely in its canvass on the mechanical or electronic count of the vote rather than the full hand-to-eye recount of the paper ballots. In the event of a discrepancy between the electronic or mechanical count and a hand-to-eye count, the hand-to-eye count shall control, except where it is reasonable to conclude that the hand-to-eye count for whatever reason is not the true count."

SECTION 2.(a) Part 2 of Article 14A of Chapter 163 of the General Statutes is amended by adding a new section to read:

"**§ 163-165.9A. Voting systems: requirements for voting systems vendors; penalties.**

(a) Duties of Vendor. – Every vendor that has a contract to provide a voting system in North Carolina shall do all of the following:

(1) The vendor shall place in escrow with an independent escrow agent approved by the State Board of Elections a copy of all source code relevant to the recording or counting of votes and related documentation, together with updates as they become known or available. The documentation shall include a system configuration and a sworn affidavit that the source code includes all relevant program statements in low-level and high-level languages. As used in this section, 'source code' does not include variable codes created for specific elections.

(2) The vendor shall notify the State Board of Elections of any change in source code or any change in the foundation operating system.

(3) The vendor shall make accessible for review all source code relevant to the recording or counting of votes by the State Board of Elections; the Office of Information Technology Services; the State chairs, or one designee of each chair, of each political party recognized under G.S. 163-96; and the purchasing county board of elections.

(4) The chief executive officer of the vendor shall sign a sworn affidavit that the source code in escrow is the same being used in its voting systems in this State. The chief executive officer shall ensure that the statement is true on a continuing basis.

(5) The vendor shall notify the State Board of Elections and the county board of elections of any county using its voting system of any defect in the same system known to have occurred anywhere.

(6) The vendor shall maintain an office in North Carolina with staff to service the contract.

(b) Penalties. – Willful and fraudulent violation of any of the duties in subsection (a) of this section is a Class I felony. Substitution of source code into an operating voting system without notification as provided by subdivision (a)(2) of this section is a

Class I felony. In addition to any other applicable penalties, violations of this section are subject to a civil penalty of up to {Insert dollar amount} dollars ($) per violation."

SECTION 2.(b) This section applies with respect to any county that upgrades a voting system or acquires a new voting system on or after July 1, 2005.

SECTION 3.(a) Effective July 1, 2005, and applicable with respect to all voting systems upgraded or acquired on or after that date, G.S. 163-165.7 reads as rewritten:

"**§ 163-165.7. Voting systems: powers and duties of State Board of Elections.**

(a) Certification of Voting Systems. – ~~The State Board of Elections shall have authority to approve types, makes, and models of voting systems for use in elections and referenda held in this State.~~ Only voting systems that have been ~~approved~~ certified by the State Board of Elections shall be used to conduct elections under this Chapter, and the ~~approved~~ certified voting systems shall be valid in any election or referendum held in any county or municipality. ~~The State Board may, upon request of a local board of elections, authorize the use of a voting system not approved for general use.~~ The use of paper ballots counted by hand is a certified voting system. The State Board shall certify additional voting systems through the use of a request for proposal process. In consultation with the Office of Information Technology Services, the State Board of Elections shall develop the requests for proposal subject to the provisions of this Chapter and other applicable State laws. The request for proposal shall require at least all of the following:

(1) That the vendor must post a bond or letter of credit to cover damages resulting from defects in the voting. Damages include the cost of a new election.

(2) That the voting system comply with all federal requirements for voting systems.

(3) That the voting system have the capacity to include in precinct returns the votes cast by voters outside of the voter's precinct.

(4) For all voting systems utilizing electronic means, accessibility to review all source code relevant to the recording or counting of votes by the State Board of Elections; the Office of Information Technology Services; the State chairs, or one designee of each chair, of each political party recognized under G.S. 163-96; and the purchasing county board of elections.

(5) That the vendor state a statewide uniform price for each unit of the equipment.

The State Board shall have as its goal in its request for proposals and its negotiations with vendors the eventual establishment of a uniformity of features within type throughout the State such that each optical scan voting system shall have substantially identical features to all other optical scan voting systems, and each direct record electronic voting system shall have substantially identical features to all other direct record electronic systems. A uniformity of features within type does not necessarily mean there will be only one vendor per type.

(b) Decertification of Voting Systems. – The State Board may also, upon notice and hearing, disapprove types, makes, and models of voting systems. Upon disapproving a type, make, or model of voting system, the State Board shall determine the process by which the disapproved system is discontinued in any county. ~~If a county makes a showing that discontinuance would impose a financial hardship upon it, the county shall be given up to four years from the time of State Board disapproval to replace the system.~~ A county may appeal a decision by the State Board concerning discontinuance of a voting system ~~to the superior court in that county or~~ to the Superior Court of Wake County. The county has 30 days from the time of the State Board's decision on discontinuance to make that appeal.

(c) Monitoring Duties of the State Board. – The State Board of Elections shall review, or designate an independent expert to review, all source code escrowed by vendors pursuant to G.S. 163-165.9A, and shall publish or otherwise make available its findings in accordance with Chapter 132 of the General Statutes. The State Board shall facilitate the review of the escrowed source code by the other entities provided for in G.S. 163-165.9A(a)(3). All source code made available for review pursuant to the provisions of this Chapter shall be deemed a trade secret of the vendor, and any person responsible for the misuse or unauthorized release of the source code shall be subject to the provisions of G.S. 14-75.1 and Article 24 of Chapter 66 of the General Statutes. The State Board shall monitor vendor compliance with all contractual agreements and with all provisions of G.S. 163-165.9A.

(d) Rules. – Subject to the provisions of this Chapter, the State Board of Elections shall prescribe rules for the adoption, handling, operation, and honest use of certified voting systems, including, but not limited to, the following:

(1) Procedures for county boards of elections to utilize when recommending the purchase of a ~~Types, makes, and models of~~ certified voting ~~systems approved~~ system for use in ~~this State~~that county.
(2) Form of official ballot labels to be used on voting systems.
(3) Operation and manner of voting on voting systems. The rules shall comply with G.S. 163-165.9B.
(4) Instruction of precinct officials in the use of voting systems.
(5) Instruction of voters in the use of voting systems.
(6) Assistance to voters using voting systems.
(7) Duties of custodians of voting systems.
(8) Examination and testing of voting systems before and after use in an election.

Any rules adopted under this section shall be in conjunction with procedures and standards adopted under G.S. 163-182.1, are exempt from Chapter 150B of the General Statutes, and are subject to the same procedures for notice and publication set forth in G.S. 163-182.1.

(e) Training and Support of Voting Systems. – The State Board of Elections, with the assistance of other State agencies, shall provide training and support of the

certified voting systems, so that no county board of elections must rely on a vendor for primary support."

SECTION 3.(b) Section 11 of S.L. 2003-226, which would have made amendment to G.S. 163-165.7 effective January 1, 2006, is repealed.

SECTION 3.(c) In order to carry forward the first of two amendments that would have been made by Section 11 of S.L. 2003-226 to the old version of G.S. 163-165.7, effective January 1, 2006, G.S. 163-165.7 as rewritten by subsection (a) of this section is amended by adding the following new subsection:

"(a1) Federal Assistance. – The State Board may use guidelines, information, testing reports, certification, decertification, recertification, and any relevant data produced by the Election Assistance Commission, its Standards Board, its Board of Advisors, or the Technical Guidelines Development Committee as established in Title II of the Help America Vote Act of 2002 with regard to any action or investigation the State Board may take concerning a voting system. The State Board may use, for the purposes of voting system certification, laboratories accredited by the Election Assistance Commission under the provisions of section 231(2) of the Help America Vote Act of 2002."

SECTION 3.(d) In order to carry forward the second of two amendments that would have been made by Section 11 of S.L. 2003-226 to the old version of G.S. 163-165.7, effective January 1, 2006, G.S. 163-165.7(d) as rewritten by subsection (a) of this section is amended by adding the following new subdivision:

"(9) Compliance with section 301 of the Help America Vote Act of 2002."

SECTION 3.(e) G.S. 163-132.5G reads as rewritten:

"**§ 163-132.5G. Voting data maintained by precinct.**

To the extent that it can do so without compromising the secrecy of an individual's ballot, each county board of elections shall maintain voting data by precinct so that precinct returns for each item on the ballot shall include the votes cast by residents of the precinct who voted by absentee ballot, both mail and one-stop. The county board shall not be required to report absentee voting data by precinct until 60 days after the election. The State Board of Elections shall adopt rules for the enforcement of this section with the goal that all voting data shall be reported by precinct by the ~~2006~~ 2008 election. Those rules shall provide for exemptions where the expense of compliance would place a financial hardship on a ~~county.~~ county and shall provide an exemption if the current voting system cannot be programmed to provide such information, but any new voting system acquired after July 1, 2005, must have the ability to provide such information. Those rules shall provide for compliance by 2004 for counties the State Board determines are capable of complying by that year."

SECTION 4. Effective July 1, 2005, G.S. 163-165.8 reads as rewritten:

"**§ 163-165.8. Voting systems: powers and duties of board of county commissioners.**

The board of county commissioners, with the approval of the county board of elections, may adopt and purchase or lease for reimbursement by the State only a voting system of a type, make, and model ~~approved~~ certified by the State Board of Elections for use in some or all voting places in the county at some or all elections.

The board of county commissioners may decline to adopt and purchase or lease any voting system recommended by the county board of elections but may not adopt and purchase or lease any voting system that has not been approved by the county board of elections. Article 8 of Chapter 143 of the General Statutes does not apply to county boards of commissioners purchasing voting systems certified by the State Board of Elections."

SECTION 5. Effective July 1, 2005, G.S. 163-165.9 reads as rewritten:

"**§ 163-165.9. Voting systems: powers and duties of county board of elections.**

Before approving the adoption and purchase or lease of any voting system by the board of county commissioners, the county board of elections shall do all of the following:

(1) ~~Obtain a current financial statement from the proposed vendor or lessor of the voting system and send copies of the statement to the county attorney and the chief county financial officer.~~Recommend to the board of county commissioners which type of voting system should be acquired by the county.

(2) Witness a demonstration, in that county or at a site designated by the State Board of Elections, of the type of voting system to be recommended ~~by the proposed vendor or lessor~~ and also witness a demonstration of at least one other type of voting system ~~approved~~ certified by the State Board of Elections.

(3) Test, during an election, the proposed voting system in at least one precinct in the county where the voting system would be used if adopted."

SECTION 6.(a) G.S. 163-182.1(b) reads as rewritten:

"(b) Procedures and Standards. – The State Board of Elections shall adopt uniform and nondiscriminatory procedures and standards for voting systems. The standards shall define what constitutes a vote and what will be counted as a vote for each category of voting system used in the State. The State Board shall adopt those procedures and standards at a meeting occurring not earlier than 15 days after the State Board gives notice of the meeting. The procedures and standards adopted shall apply to all elections occurring in the State and shall be subject to amendment or repeal by the State Board acting at any meeting where notice that the action has been proposed has been given at least 15 days before the meeting. These procedures and standards shall not be considered to be rules subject to Article 2A of Chapter 150B of the General Statutes. However, the State Board shall publish in the North Carolina Register the procedures and standards and any changes to them after adoption, with that publication noted as information helpful to the public under G.S. 150B-21.17(a)(6). Copies of those procedures and standards shall be made available to the public upon request or otherwise by the State Board. For optical scan and direct record electronic voting systems, and for any other voting systems in which ballots are counted other than on paper by hand and eye, those procedures and standards shall do both of the following:

(1) Provide for a sample hand-to-eye count of the paper official ballots of a sampling of statewide ballot items in every county, always including

the presidential ballot item. The sample chosen by the State Board shall be of full precincts, full counts of absentee ballots, and full counts of one-stop early voting sites. The size of the sample of each category shall be chosen to produce a statistically significant result and shall be chosen after consultation with a statistician. The actual units shall be chosen at random. In the event of a discrepancy between the electronic or mechanical count and a hand-to-eye count, the hand-to-eye count shall control, except where it is reasonable to conclude that the hand-to-eye count for whatever reason is not the true count. If the discrepancy between the hand-to-eye count and the mechanical or electronic count is significant, a complete hand-to-eye count shall be conducted.

(2) ~~provide~~ Provide that if the voter selects votes for more than the number of candidates to be elected or proposals to be approved in a ballot item, the voting system shall do all the following:

~~(1)~~a. Notify the voter that the voter has selected more than the correct number of candidates or proposals in the ballot item.

~~(2)~~b. Notify the voter before the vote is accepted and counted of the effect of casting overvotes in the ballot item.

~~(3)~~c. Provide the voter with the opportunity to correct the official ballot before it is accepted and counted."

SECTION 6.(b) G.S. 163-182.2 reads as rewritten:

"**§ 163-182.2. Initial counting of official ballots.**

(a) The initial counting of official ballots shall be conducted according to the following principles:

(1) Vote counting at the precinct shall occur immediately after the polls close and shall be continuous until completed.

(2) Vote counting at the precinct shall be conducted with the participation of precinct officials of all political parties then present. Vote counting at the county board of elections shall be conducted in the presence or under the supervision of board members of all political parties then present.

(3) Any member of the public wishing to witness the vote count at any level shall be allowed to do so. No witness shall interfere with the orderly counting of the official ballots. Witnesses shall not participate in the official counting of official ballots.

(4) Provisional official ballots shall be counted by the county board of elections before the canvass. If the county board finds that an individual voting a provisional official ballot is not eligible to vote in one or more ballot items on the official ballot, the board shall not count the official ballot in those ballot items, but shall count the official ballot in any ballot items for which the individual is eligible to vote.

(5) Precinct officials shall provide a preliminary report of the vote counting to the county board of elections as quickly as possible. The preliminary report shall be unofficial and has no binding effect upon the official county canvass to follow.

(b) The State Board of Elections shall promulgate rules for the initial counting of official ballots. All election officials shall be governed by those rules. In promulgating those rules, the State Board shall adhere to the following guidelines:

(1) For each voting system used, the rules shall specify the role of precinct officials and of the county board of elections in the initial counting of official ballots.

(1a) For optical scan and direct record electronic voting systems, and for any other voting systems in which ballots are counted other than on paper by hand and eye, those rules shall provide for a sample hand-to-eye count of the paper official ballots of a sampling of statewide ballot items in every county, always including the presidential ballot item. The sample chosen by the State Board shall be of full precincts, full counts of absentee ballots, and full counts of one-stop early voting sites. The size of the sample of each category shall be chosen to produce a statistically significant result and shall be chosen after consultation with a statistician. The actual units shall be chosen at random. In the event of a discrepancy between the electronic or mechanical count and a hand-to-eye count, the hand-to-eye count shall control, except where it is reasonable to conclude that the hand-to-eye count for whatever reason is not the true count. If the discrepancy between the hand-to-eye count and the mechanical or electronic count is significant, a complete hand-to-eye count shall be conducted.

(2) The rules shall provide for accurate unofficial reporting of the results from the precinct to the county board of elections with reasonable speed on the night of the election.

(3) The rules shall provide for the prompt and secure transmission of official ballots from the voting place to the county board of elections.

The State Board shall direct the county boards of elections in the application of the principles and rules in individual circumstances."

SECTION 6.(c) G.S. 163-182.5 reads as rewritten:

"**§ 163-182.5. Canvassing votes.**

(a) The Canvass. – As used in this Article, the term "canvass" means the entire process of determining that the votes have been counted and tabulated correctly, culminating in the authentication of the official election results. The board of elections conducting a canvass has authority to send for papers and persons and to examine them and pass upon the legality of disputed ballots.

(b) Canvassing by County Board of Elections. – The county board of elections shall meet at 11:00 A.M. on the seventh day after every election to complete the canvass of votes cast and to authenticate the count in every ballot item in the county by

determining that the votes have been counted and tabulated correctly. If, despite due diligence by election officials, the initial counting of all the votes has not been completed by that time, the county board may hold the canvass meeting a reasonable time thereafter. The canvass meeting shall be at the county board of elections office, unless the county board, by unanimous vote of all its members, designates another site within the county. The county board shall examine the returns from precincts, from absentee official ballots, from the sample hand-to-eye paper ballot counts, and from provisional official ballots and shall conduct the canvass.

(c) Canvassing by State Board of Elections. – After each general election, the State Board of Elections shall meet at 11:00 A.M. on the Tuesday three weeks after election day to complete the canvass of votes cast in all ballot items within the jurisdiction of the State Board of Elections and to authenticate the count in every ballot item in the county by determining that the votes have been counted and tabulated correctly. After each primary, the State Board shall fix the date of its canvass meeting. If, by the time of its scheduled canvass meeting, the State Board has not received the county canvasses, the State Board may adjourn for not more than 10 days to secure the missing abstracts. In obtaining them, the State Board is authorized to secure the originals or copies from the appropriate clerks of superior court or county boards of elections, at the expense of the counties."

SECTION 6.(d) This section becomes effective January 1, 2006.

SECTION 7.(a) G.S. 163-182.7 reads as rewritten:

"**§ 163-182.7. Ordering recounts.**

(a) Discretionary Recounts. – The county board of elections or the State Board of Elections may order a recount when necessary to complete the canvass in an election. The county board may not order a recount where the State Board of Elections has already denied a recount to the petitioner.

(b) Mandatory Recounts for Ballot Items Within the Jurisdiction of the County Board of Elections. – In a ballot item within the jurisdiction of the county board of elections, a candidate shall have the right to demand a recount of the votes if the difference between the votes for that candidate and the votes for a prevailing candidate is not more than one percent (1%) of the total votes cast in the ballot item, or in the case of a multiseat ballot item not more than one percent (1%) of the votes cast for those two candidates. The demand for a recount must be made in writing and must be received by the county board of elections by 5:00 P.M. on the first day after the canvass. The recount shall be conducted under the supervision of the county board of elections.

(c) Mandatory Recounts for Ballot Items Within the Jurisdiction of the State Board of Elections. – In a ballot item within the jurisdiction of the State Board of Elections, a candidate shall have the right to demand a recount of the votes if the difference between the votes for that candidate and the votes for a prevailing candidate are not more than the following:

(1) For a nonstatewide ballot item, one percent (1%) of the total votes cast in the ballot item, or in the case of a multiseat ballot item, one percent (1%) of the votes cast for those two candidates.

(2) For a statewide ballot item, one-half of one percent (0.5%) of the votes cast in the ballot item, ~~or in the case of a multiseat ballot item, one-half of one percent (0.5%) of the votes cast for those two candidates,~~ or 10,000 votes, whichever is less.

The demand for a recount must be in writing and must be received by the State Board of Elections by noon on the second Thursday after the election. If on that Thursday the available returns show a candidate not entitled to a mandatory recount, but the Executive Director determines subsequently that the margin is within the threshold set out in this subsection, the Executive Director shall notify the eligible candidate immediately and that candidate shall be entitled to a recount if that candidate so demands within 48 hours of notice. The recount shall be conducted under the supervision of the State Board of Elections.

(d) Rules for Conducting Recounts. – The State Board of Elections shall promulgate rules for conducting recounts. Those rules shall be subject to the following guidelines:

(1) The rules shall specify, with respect to each type of voting system, when and to what extent the recount shall consist of machine recounts and hand-to-eye recounts. Hand-to-eye recounts shall also be ordered as provided by G.S. 163-182.7A.

(2) The rules shall provide guidance in interpretation of the voter's choice.

(3) The rules shall specify how the goals of multipartisan participation, opportunity for public observation, and good order shall be balanced."

SECTION 7.(b) Article 15A of Chapter 163 of the General Statutes is amended by adding a new section to read:

"**§ 163-182.7A. Additional provisions for hand-to-eye recounts.**

(a) The rules promulgated by the State Board of Elections for recounts shall provide that if the initial recount is not hand-to-eye, and if the recount does not reverse the results, the candidate who had originally been entitled to a recount may, within 24 hours of the completion of the first recount, demand a second recount on a hand-to-eye basis in a sample of precincts. If the initial recount was not hand-to-eye and it reversed the results, the candidate who had initially been the winner shall have the same right to ask for a hand-to-eye recount in a sample of precincts.

That sample shall be all the ballots in three percent (3%) of the precincts casting ballots in each county in the jurisdiction of the office, rounded up to the next whole number of precincts. For the purpose of that calculation, each one-stop (early) voting site and the mail-in absentee ballots shall be considered to be a precinct. The precincts to be recounted by a hand-to-eye count shall be chosen at random within each county. If the results of the hand-to-eye recount differ from the previous results within those precincts to the extent that extrapolating the amount of the change to the entire jurisdiction (based on the proportion of ballots recounted to the total votes cast for that office) would result in the reversing of the results, then the State Board of Elections shall order a hand-to-eye recount of the entire jurisdiction in which the election is held. There shall be no cost to the candidate for that recount in the entire jurisdiction.

(b) Recounts under this section shall be governed by rules adopted under G.S. 163-182.7(d).

(c) No complete hand-to-eye recount shall be conducted under this section if one has already been done under another provision of law."

SECTION 7.(c) This section becomes effective January 1, 2006.

SECTION 8. To meet the goals of uniformity and equity, and to avoid placing unfunded mandates upon the counties, there is appropriated from the General Fund to the State Board of Elections the sum of for the 2005-2006 fiscal year and the sum of for the 2006-2007 fiscal year (minus Help America Vote Act funds available for the same purpose) for the purpose of reimbursing counties for the lesser of the following expenses:

(1) Upgrading an existing direct record electronic system used in that county to comply with this act (if it is possible to upgrade).

(2) Acquiring a direct record electronic system (DRE) that complies with this act.

(3) Acquiring an optical-scan system that complies with this act.

SECTION 9. There is appropriated from the General Fund to the State Board of Elections the sum of for the 2005-2006 fiscal year and the sum of for the 2006-2007 fiscal year for the purpose of meeting its expanded duties under this act with regard to voting systems.

SECTION 9.1. There will be appropriated from the General Fund to the State Board of Elections an appropriate sum in the 2005-2006 fiscal year and the 2006-2007 fiscal year for the purpose of reimbursing counties for costs incurred for conducting postelection verification or any other hand-eye counting or recounting of votes.

SECTION 10. The State Board of Elections shall recommend a model code of ethics for members and employees of county boards of elections and of the State Board of Elections. The code shall address the appropriate relations between those members and staff and vendors who do business or seek to do business with boards of elections in North Carolina. It shall address how to avoid both the reality and the appearance of conflicts of interest and impropriety. The State Board shall report its recommended code to the Joint Select Committee on Electronic Voting Systems no later than 60 days after this act becomes law.

SECTION 11. Sections 8 and 9 of this act become effective July 1, 2005. Except as otherwise provided herein, the remainder of this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

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SENATE BILL 539
PROPOSED COMMITTEE SUBSTITUTE S539-CSRR-41 [v.7]

6/28/2005 12:21:59 PM

Short Title: Public Campaign Fund Amendments. (Public)

Sponsors:

Referred to:

March 15, 2005

A BILL TO BE ENTITLED

AN ACT TO AMEND THE STATUTES CONCERNING THE NORTH CAROLINA PUBLIC CAMPAIGN FUND AND RELATED STATUTES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 84-34 reads as rewritten:

"**§ 84-34. Membership fees and list of members.**

Every active member of the North Carolina State Bar shall, prior to the first day of July of each year, pay to the secretary-treasurer an annual membership fee in an amount determined by the Council but not to exceed two hundred dollars ($200.00), plus a surcharge of fifty dollars ($50.00) for the implementation of Article 22D of Chapter 163 of the General Statutes, and every member shall notify the secretary-treasurer of the member's correct mailing address. Any member who fails to pay the required dues by the last day of June of each year shall be subject to a late fee in an amount determined by the Council but not to exceed thirty dollars ($30.00). All dues for prior years shall be as were set forth in the General Statutes then in effect. The membership fee shall be regarded as a service charge for the maintenance of the several services authorized by this Article, and shall be in addition to all fees required in connection with admissions to practice, and in addition to all license taxes required by law. The fee shall not be prorated: Provided, that no fee shall be required of an attorney licensed after this Article shall have gone into effect until the first day of January of the calendar year following that in which the attorney was licensed; but this proviso shall not apply to attorneys from other states admitted on certificate. The fees shall be disbursed by the secretary-treasurer on the order of the Council. The fifty-dollar ($50.00) surcharge shall be sent on a monthly schedule to the State Board of Elections. The secretary-treasurer shall annually, at a time and in a law magazine or daily newspaper to be prescribed by the Council, publish an account of the financial transactions of the Council in a form to be prescribed by it. The secretary-treasurer shall compile and keep currently correct from the names and mailing addresses forwarded to the secretary-treasurer and from any

other available sources of information a list of members of the North Carolina State Bar and furnish to the clerk of the superior court in each county, not later than the first day of October in each year, a list showing the name and address of each attorney for that county who has not complied with the provisions of this Article. The name of each of the active members who are in arrears in the payment of membership fees shall be furnished to the presiding judge at the next term of the superior court after the first day of October of each year, by the clerk of the superior court of each county wherein the member or members reside, and the court shall thereupon take action that is necessary and proper. The names and addresses of attorneys so certified shall be kept available to the public. The Secretary of Revenue is hereby directed to supply the secretary-treasurer, from records of license tax payments, with any information for which the secretary-treasurer may call in order to enable the secretary-treasurer to comply with this requirement.

The list submitted to several clerks of the superior court shall also be submitted to the Council at its October meeting of each year and it shall take the action thereon that is necessary and proper."

SECTION 2. G.S. 105-41(a)(1) reads as rewritten:

"(1) An attorney-at-law. ~~In addition to the tax, whenever an attorney pays the tax, the Department must give that attorney an opportunity to make a contribution of fifty dollars ($50.00) to support the North Carolina Public Campaign Financing Fund established by G.S. 163-278.63. Payment of the contribution is not required and is not considered part of the tax owed.~~"

SECTION 3. G.S. 163-278.63(b) reads as rewritten:

"(b) Sources of Funding. – Money received from all the following sources must be deposited in the Fund:

(1) Money from the North Carolina Candidates Financing Fund.

(2) Designations made to the Public Campaign ~~Financing~~ Fund by individual taxpayers pursuant to G.S. 105-159.2.

~~(3) Any contributions made by attorneys in accordance with G.S. 105-41.~~

(4) Public Campaign ~~Financing~~ Fund revenues distributed for an election that remain unspent or uncommitted at the time the recipient is no longer a certified candidate in the election.

(5) Money ordered returned to the Public Campaign ~~Financing~~ Fund in accordance with G.S. 163-278.70.

(6) Voluntary donations made directly to the Public Campaign ~~Financing~~ Fund. Corporations, other business entities, labor unions, and professional associations may make donations to the Fund.

(7) Money collected from the fifty-dollar ($50.00) surcharge on attorney membership fees in G.S. 84-34."

SECTION 4. Article 22D of Chapter 163 of the General Statutes is amended by adding a new section to read:

"**§ 163-278.64A. Special participation provisions for candidates in plurality elections.**

(a) Participation Provisions Modified. -- Candidates in plurality elections as provided in G.S. 163-329 may participate in the Fund subject to the provisions of G.S. 163-278.64 as modified by this section.

(b) Qualifying. - The State Board of Elections shall designate a special qualifying period for a plurality election of no less than four weeks. That qualifying period shall begin at the close of the notice-of-candidacy filing period for the plurality election. To receive certification, a participating candidate shall raise at least 225 qualifying contributions, totaling at least 20 times the amount of the filing fee for the office, for a four-week qualifying period. If the State Board of Elections sets a longer qualifying period, then for each additional week that the qualifying period extends beyond four weeks, the minimum number of qualifying contributions required for certification shall increase by 25 and the minimum amount of the qualifying contributions shall increase by two times the filing fee. The minimum qualifying contributions shall not exceed the limit set by G.S. 163-278.64(b).

(c) Allocations. -- Certified candidates in plurality elections shall receive one percent (1%) of the funding to which they would be eligible under G.S. 163-278.65 times the number of calendar days between the end of the special qualifying period and the day of the general elections. That amount shall not exceed one hundred percent (100%) of the funding to which they would be eligible under G.S. 163-278.65."

SECTION 5. G.S. 163-278.65(c) reads as rewritten:

"(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.~~ 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."

SECTION 6. G.S. 163-278.66(a) reads as rewritten:

"(a) Reporting by Noncertified Candidates and Independent Expenditure Entities. - Any noncertified candidate with a certified opponent shall report total income, expenses, and obligations to the Board by facsimile machine or electronically within 24 hours after the total amount of campaign expenditures or obligations made, or funds raised or borrowed, exceeds eighty percent (80%) of the trigger for rescue funds as defined in G.S. 163-278.62(18). Any entity making independent expenditures ~~in excess of three thousand dollars ($3,000)~~ in support of or opposition to a certified candidate or in support of a candidate opposing a certified candidate shall report the total funds received, spent, or obligated for those expenditures to the Board by facsimile machine or electronically within 24 hours after the total amount of expenditures or obligations made, or funds raised or borrowed, for the purpose of making the independent expenditures, exceeds ~~fifty percent (50%) of the trigger for rescue funds.~~ five thousand dollars ($5,000). After this 24-hour filing, the noncertified candidate or independent expenditure entity shall comply with an expedited reporting schedule by filing

additional reports after receiving each additional amount in excess of one thousand dollars ($1,000) or after making or obligating to make each additional expenditure(s) in excess of one thousand dollars ($1,000). The schedule and forms for reports required by this subsection shall be made according to procedures developed by the Board."

SECTION 7. G.S. 163-278.68(b) reads as rewritten:

"(b) Advisory Council for the Public Campaign ~~Financing~~ Fund. – There is established under the Board the Advisory Council for the Public Campaign ~~Financing~~ Fund to advise the Board on the rules, procedures, and opinions it adopts for the enforcement and administration of this Article and on the funding needs and operation of the Public Campaign ~~Financing~~ Fund. The Advisory Council shall consist of five members to be appointed as follows:

(1) The Governor shall name two members from a list of individuals nominated by the State Chair of the political party with which the greatest number of registered voters is affiliated. The State Chair of that party shall submit to the Governor the names of five nominees.

(2) The Governor shall name two members from a list of individuals nominated by the State Chair of the political party with which the second greatest number of registered voters is affiliated. The State Chair of that party shall submit to the Governor the names of five nominees.

(3) The Board shall name one member by unanimous vote of all members of the Board. If the Board cannot reach unanimity on the appointment of that member, the Advisory Council shall consist of the remaining members.

No individual shall be eligible to be a member of the Advisory Council who would be ineligible to serve on a county board of elections in accordance with G.S. 163-30. The initial members shall be appointed by December 1, 2002. Of the initial appointees, two are appointed for one-year terms, two are appointed for two-year terms, and one is appointed for a three-year term according to random lot. Thereafter, appointees are appointed to serve four-year terms. An individual may not serve more than two full ~~terms.~~terms, except that regardless of the time of appointment each term shall end on December 31. A member shall continue on the Advisory Council beyond the expired term until a successor is appointed. The appointed members receive the legislative per diem pursuant to G.S. 120-3.1. One of the Advisory Council members shall be elected by the members as Chair. A vacancy during an unexpired term shall be filled in the same manner as the regular appointment for that term, but a vacancy appointment is only for the unexpired portion of the term."

SECTION 8. G.S. 163-278.69(c) reads as rewritten:

"(c) Disclaimer. – The Judicial Voter Guide shall contain the following statement: '~~The above statements~~Statements by candidates do not express or reflect the opinions of the State Board of Elections.'"

SECTION 9.(a) G.S. 163-278.13(e) reads as rewritten:

"(e) ~~This~~Except as provided in subsection (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 9.(b) G.S. 163-278.13 is amended by adding a new subsection to read:

"(e3) Notwithstanding the provisions of subsections (a) and (b) of this section, no candidate for superior court judge or district court judge shall accept, and no contributor shall make to that candidate, a contribution in any election exceeding one thousand dollars ($1,000), except as provided in subsection (c) of this section. As used in this subsection, "candidate" is also a political committee authorized by the candidate for that candidate's election. Nothing in this subsection shall prohibit a candidate or the spouse of that candidate from making a contribution or loan secured entirely by that individual's assets to that candidate's own campaign."

SECTION 10. Wherever the term "Public Campaign Financing Fund" appears in the General Statutes, it shall read "Public Campaign Fund."

SECTION 11. G.S. 105-159.2 reads as rewritten:

"**§ 105-159.2. Designation of tax to North Carolina Public Campaign ~~Financing~~ Fund.**

(a) Allocation to the North Carolina Public Campaign ~~Financing~~ Fund. – To ensure the financial viability of the North Carolina Public Campaign ~~Financing~~ Fund established in Article 22D of Chapter 163 of the General Statutes, the Department must allocate to that Fund three dollars ($3.00) from the income taxes paid each year by each individual with an income tax liability of at least that amount, if the individual agrees. A taxpayer must be given the opportunity to indicate an agreement or objection to that allocation in the manner described in subsection (b) of this section. In the case of a married couple filing a joint return, each individual must have the option of agreeing or objecting to the allocation. The amounts allocated under this subsection to the Fund must be credited to it on a ~~quarterly~~ monthly basis.

(b) Returns. – Individual income tax returns must give an individual an opportunity to agree to the allocation of three dollars ($3.00) of the individual's tax liability to the North Carolina Public Campaign ~~Financing~~ Fund. The Department must make it clear to the taxpayer that the dollars will support a nonpartisan court system, that the dollars will go to the Fund if the taxpayer marks an agreement, and that allocation of the dollars neither increases nor decreases the individual's tax liability. The following statement ~~satisfies the intent of~~ must be used to meet this requirement: ~~"Three dollars ($3.00) will go to the North Carolina Public Campaign Financing Fund to support a nonpartisan court system, if you agree. Your tax remains the same whether or not you agree."~~ 'This Fund pays for a nonpartisan voter guide and helps judicial candidates who accept strict fund-raising limits. Do you agree to direct $3 to this Fund from the taxes you pay anyway? Marking Yes will not increase your tax or reduce your refund.' The Department must consult with the State Board of Elections to ensure that the information given to taxpayers complies with the intent of this section.

The Department must inform the entities it approves to reproduce the return ~~of~~ that they must comply with the requirements of this section and that a return may not reflect an agreement or objection unless the individual completing the return decided to agree

or object after being presented with the statement required by subsection (b) of this section and, as available background information or instructions, the information required by subsection (c) of this section. No software package used in preparing North Carolina income tax returns may default to an agreement or objection. A paid preparer of tax returns may not mark an agreement or objection for a taxpayer without the taxpayer's consent.

(c) Instructions. – The instruction for individual income tax returns must include the following explanatory statement: 'The North Carolina Public Campaign ~~Financing~~ Fund provides campaign money to nonpartisan candidates for the ~~North Carolina~~ N.C. Supreme Court and Court of Appeals who voluntarily accept strict campaign spending and fund-raising limits. The Fund also helps finance a Voter Guide with educational materials about voter registration, the role of the appellate courts, and the candidates seeking election as appellate judges in North Carolina. Three dollars ~~($3.00)~~ from the taxes you pay will go to the Fund if you mark an agreement. Regardless of what choice you make, your tax will not increase, nor will any refund you are entitled to be reduced.'"

SECTION 12. Sections 1, 2, and 3 of this act become effective January 1, 2006, and apply to the membership fees due for 2006. Section 9(b) of this act becomes effective January 1, 2006, and applies to contributions made or accepted on or after that date. Contributions made or accepted prior to that date shall count toward the cumulative limit after that date. The remainder of this act is effective when it becomes law.

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE — 7/21/05

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
Tripp Melton	Sen. Stevens office
Bob Hall	Democracy North Carolina
Paula L. Wolf	PPHS
James Pearce	intern
Raymond Shen	intern
[illegible]	[illegible]
R. Paul Wilms	NCHBA
[illegible]	NMRS
Tom Beau	NC Enviro Defense
Elizabeth Ouzts	NCPIRG

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE — 7/21/05

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
	NCFPC
	KCLH
Doug Heron	NCBA
Andrea Gentry	
Kim Strach	SBE
Johnnie McLean	SBE
Eddie Finch	NCDOR
	NCGA
	NCGA
Hal Miller	NCACCT
	NCGA

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE — 7/21/05

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
John McMillan	AFL-CIO
Penny Woods	Citizen
Joyce McCloy	www.ncvoter.net
THOMAS HENKEL	CITIZEN
Kathleen Edwards	UNC-CH Institute of Gov't
Gary Robertson	AP
Angeline Senukhyana	NCGA Intern.
Barbara Cansler	BCCR
[illegible]	[illegible]
Steve Metcalf	Dixie Oil Co.
Matt Wellington	NCAJ

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE — 7/21/05

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
Bob Geary	The Independent Weekly
Kate Boetzer	Sierra Club
Bob Phillips	CCNC
Chris Telesca	NoREDNC
Aimee Schmidt	NC Progressive Dems
PJ Puryear	Coalition for Verified Voting
Shawn Handy	NCATL
Suzanne Bradley	Gov Easley's office
Cassie Gann	NCPIRG
Dan Blau	ACLU-NC
Ed Turlington	BPMHL

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Wednesday	August 10, 2005	10:00 AM	1027 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 888	Cockfighting/Increase Penalty.	Representative Allred
HB 1016	Dispose of Firearms/Benefit Law Enforcement.	Representative Hilton
HB 1086	General Assembly Police Jurisdiction.	Representative Culpepper, III
HB 1279	Speeding to Elude Arrest.	Representative Hill
HB 1409	Bail Bonds/Bond Source.	Representative Jones Representative Dollar

Senator Daniel G. Clodfelter, Chair

Judiciary 1 Committee

August 10, 2005

Minutes

Senator Dan Clodfelter, Chair called the meeting to order at 10:05 a.m. with fourteen members present. He introduced Pages, Tracey Barnes and Thomas Draper from Raleigh, NC, Will Eldridge from Hickory, NC and Thomas Mahaffey from Lenoir, NC.

HB-1086 General Assembly Police Jurisdiction) Committee Substitute was introduced by Senator Clodfelter. Senator Richard Stevens moved for adoption of the Committee Substitute. All members voted yes. Motion carried. Bill sponsor Representative Bill Culpepper explained that the bill renames the State Legislative Building security force as the "General Assembly Special Police," expands the special police force's territorial jurisdiction, and makes technical and conforming amendments to the statutes, (See attached Bill Summary for further information). There was no discussion. Senator Clark Jenkins moved for a Favorable Report. All members voted yes. Motion carried.

HB-888 (Cockfighting/Increase Penalty) was introduced by Senator Clodfelter. Bill sponsor, Representative Cary Allred explained the bill. Senator's Clark Jenkins, Vernon Malone, RC Soles and Andrew Brock had questions. Staff attorney, Hal Pell and Professor William Reppy, Duke University Law School, spoke on the bill and answered questions. Senator Richard Stevens moved for a Favorable Report. Senator Ham Horton moved to amend the bill on page 1, line 8. (See attached Amendment). Senator Stevens, spoke against the Amendment.
Senator's Janet Cowell and Vernon Malone had questions. Mr. Jim Nelson, from Fiscal Research Division answered questions. Senator Clodfelter called for a vote on the Amendment. Majority of members voted yes. Three voted no. Senator Clodfelter called for a vote on Senator Stevens's motion for a Favorable Report to the bill as amended. All members voted yes. Motion carried. There will be a Committee Substitute to the bill.

HB-1016 (Dispose of Firearms/Benefit Law Enforcement) was introduced by Senator Clodfelter. Bill sponsor, Representative Mark Hilton explained that the bill would provide that certain firearms that are seized, confiscated, or received by a law enforcement agency may be used by or sold, traded, or exchanged by the law enforcement agency. (See attached Bill Summary). Senator's Andrew Brock and

Clark Jenkins had questions. Staff attorney, Hal Pell answered the questions. Senator Brock moved for a Favorable Report. All members voted yes. Motion carried.

HB-1409 (Bail Bonds/Bond Source) was introduced by Senator Clodfelter. Bill Co-sponsor, Representative Nelson Dollar explained that the bill amends the State bail laws to authorize judges to conduct hearings on the source of money or property posted for a secured appearance bond, and refuse the bond if the money or property was not derived from a lawful source or will not assure appearance. (See attached Bill Summary for further information). Senator RC Soles had a question. Rep. Dollar answered the question. Senator's RC Soles and Ham Horton had questions regarding language in the bill. Mr. Mike Mann, NC Bail Bond Association, and Mr. Colin Willoughby, District Attorney for the 10th District, and Mr. Dick Taylor, NC Trial Lawyers Association, spoke on the bill and answered questions. Senator Clodfelter stated that he would displace the bill temporarily, until the language had been corrected. He asked staff attorney, Hal Pell, Mr. Dick Taylor and Rep. Dollar to work on the language in the bill.

Being no further business the meeting adjourned at 10:57 a.m.

Senator Dan Clodfelter, Chair

Wanda Joyner, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Daniel G. Clodfelter, Chair

Wednesday, August 10, 2005

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

FAVORABLE

H.B.(CS #1) **1016** Dispose of Firearms/Benefit Law Enforcement.
Sequential Referral: None
Recommended Referral: None

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **888** Cockfighting/Increase Penalty.
Draft Number: PCS60525
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **1086** General Assembly Police Jurisdiction.
Draft Number: PCS70549
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

TOTAL REPORTED: 3

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 1086
Committee Substitute Favorable 5/19/05
Third Edition Engrossed 5/27/05
PROPOSED SENATE COMMITTEE SUBSTITUTE H1086-PCS70549-RK-32

Short Title: General Assembly Police Jurisdiction. (Public)

Sponsors:

Referred to:

April 4, 2005

A BILL TO BE ENTITLED

AN ACT REVISING THE JURISDICTION OF THE GENERAL ASSEMBLY POLICE AND THE OATH OF OFFICE TO REFLECT THAT CHANGE, AND TO MAKE A TECHNICAL AMENDMENT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 120-32.2 reads as rewritten:

"**§ 120-32.2. ~~State Legislative Building~~ General Assembly special police.**

(a) All sworn members of the ~~State Legislative Building security force~~ General Assembly special police employed by the Legislative Services Office are special policemen, and ~~within the State legislative buildings and grounds, as defined in G.S. 120-32.1(d), they shall~~ have all the powers of policemen of ~~cities.~~ cities, within any of the following areas of jurisdiction, while on official duty:

(1) Within those areas of the City of Raleigh and of the unincorporated parts of Wake County surrounded by the innermost right-of-way of Interstate 440.

(2) In any part of the State:

a. While accompanying a member of the General Assembly who is conducting, or traveling to or from, his or her official duties.

b. While preparing for, or providing security to, a session of either or both houses of the General Assembly, or official events directly related to that session.

(b) General Assembly special police officers may arrest persons outside the areas described in subsection (a) of this section when the person arrested has committed a criminal offense within any of the areas, for which the officer could have arrested the person within that area, and the arrest is made during such person's immediate and continuous flight from that area.

(c) The ~~Legislative Building security force~~ General Assembly special police has the exclusive authority and responsibility for enforcing the parking rules of the Legislative Services Commission."

SECTION 2. G.S. 120-32.3 reads as rewritten:

"**§ 120-32.3. Oath of ~~State Legislative Building~~ General Assembly special police.**

Before exercising the duties of a special policeman, each ~~State Legislative Building security~~ General Assembly special police officer shall take an oath before some officer empowered to administer oaths, and the oaths shall be filed with the Clerk of Superior Court of Wake County. The oath of office shall be as follows:

"State of North Carolina, Wake County.

"I, _____, do solemnly swear (or affirm) that I will well and truly execute the duties of General Assembly special policeman in the State Legislative Building and other buildings and grounds subject to the jurisdiction of the Legislative Services Commission and in other areas designated by law, according to the best of my skill and ability and according to law; and that I will use my best endeavors to enforce all rules and regulations of the Legislative Services Commission concerning use of those buildings and ~~grounds.~~ grounds and all laws of the State of North Carolina. So help me, God.

"Sworn and subscribed to before me, this the _____ day of_____, A.D. _____"

SECTION 3. G.S. 143-166.13(a) reads as rewritten:

"**§ 143-166.13. Persons entitled to benefits under Article.**

(a) The following persons who are subject to the Criminal Justice Training and Standards Act are entitled to benefits under this Article:

(1) State Government Security Officers, Department of Administration;
(2) State Correctional Officers, Department of Corrections;
(3) State Probation and Parole Officers, Department of Corrections;
(4) Sworn State Law-Enforcement Officers with the power of arrest, Department of Corrections;
(5) Alcohol Law-Enforcement Agents, Department of Crime Control and Public Safety;
(6) State Highway Patrol Officers, Department of Crime Control and Public Safety;
(7) ~~State Legislative Building~~ General Assembly Special Police, General Assembly;
(8) Sworn State Law-Enforcement Officers with the power of arrest, Department of Health and Human Services;
(9) Juvenile Justice Officers, Department of Juvenile Justice and Delinquency Prevention;
(10) Insurance Investigators, Department of Insurance;
(11) State Bureau of Investigation Officers and Agents, Department of Justice;
(12) Director and Assistant Director, License and Theft Enforcement Section, Division of Motor Vehicles, Department of Transportation;

(13) Members of License and Theft Enforcement Section, Division of Motor Vehicles, Department of Transportation, designated by the Commissioner of Motor Vehicles as either "inspectors" or uniformed weigh station personnel;
(14) Utilities Commission Transportation Inspectors and Special Investigators;
(15) North Carolina Ports Authority Police, Department of Commerce;
(16) Sworn State Law-Enforcement Officers with the power of arrest, Department of Environment and Natural Resources;
(17) Sworn State Law-Enforcement Officers with the power of arrest, Department of Crime Control and Public Safety.
(18) Sworn State Law-Enforcement Officers with the power of arrest, Department of Revenue.
(19) Sworn State Law-Enforcement Officers with the power of arrest, University System."

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

HOUSE BILL 1086:
General Assembly Police Jurisdiction

BILL ANALYSIS

Committee:	Senate Judiciary I	**Date:**	August 10, 2005
Introduced by:	Rep. Culpepper	**Summary by:**	Hal Pell
Version:	PCS to Third Edition H1086-CSRK-32		Committee Co-Counsel

SUMMARY: ***This bill renames the State Legislative Building security force as the "General Assembly Special Police," expands the special police force's territorial jurisdiction, and makes technical and conforming amendments to the statutes.***

CURRENT LAW: The State Legislative Building security force has the same powers as city police officers in the area described in G.S. 120.32.1(d) (see reverse).

BILL ANALYSIS:

Section 1: The bill would rename the State Legislative Building security force as the General Assembly Special Police. The GA police officers, while on official duty, would have the same powers as city police officers

- In the area surrounded by the innermost right-of-way of Interstate 440.
- When accompanying a member of the General Assembly who is conducting, or traveling to or from, his or her official duties.
- While preparing for, or providing security to, a session of either House, or both Houses, of the General Assembly, or at official events related to the session.

The GA officers would also be authorized to arrest persons outside of their jurisdictional area, as long as the offense occurred within their jurisdictional area, and the arrest was made during the person's immediate and continuous flight from that area.

Section 2: Conforming amendments to the oath taken by the special police.

Section 3: Conforming amendment to the Article that provides salary continuation benefits to law enforcement officers.

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

(d) For the purposes of this section, the term "State legislative buildings and grounds" means:

(1) At all times:

a. The State Legislative Building;

a1. Repealed by Session Laws 1998-156, s. 1, effective September 24, 1998.

a2. The areas between the outer walls of the State Legislative Building and the far curbline of those sections of Jones, Wilmington, Salisbury, and Lane Streets that border the land on which it is situated;

b. The Legislative Office Building, which shall include the following areas:

1. The garden area and outer stairway;

2. The loading dock area bounded by the wall on the east abutting the State Government Mall, the southern edge of the southernmost exit lane on Salisbury Street for the parking deck, and the Salisbury Street sidewalk;

3. The area between its outer wall and the near curbline of that section of Lane Street that borders the land on which it is situated; and

4. The area bounded by its western outer wall, the extension of a line along its northern outer wall to the middle of Salisbury Street, following the middle line of Salisbury Street to the nearest point of the intersection of Lane and Salisbury Streets, and thence east to the near curbline of the Legislative Office Building at its southwestern corner;

c. Any State-owned parking lot which is leased to the General Assembly;

d. The bridge between the State Legislative Building and the State Governmental Mall; and

e. A portion of the brick sidewalk surface area of the State Government Mall, described as follows: beginning at the northeast corner of the Legislative Office Building, thence east across the brick sidewalk to the inner edge of the sidewalk adjacent to the grassy area of the Mall, thence south along the inner edge of the sidewalk to the southwest outer corner of the Mall water fountain, thence east along the southern outer edge of the fountain to a point north of the northeast corner of the pedestrian surface of the Lane Street pedestrian bridge, thence south from that point to the northeast corner of the pedestrian surface of the bridge, thence west along the southern edge of the brick sidewalk area of the Mall to the southeast corner of the Legislative Office Building, thence north along the east wall of the Legislative Office Building, to the point of beginning.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 3

HOUSE BILL 1086
Committee Substitute Favorable 5/19/05
Third Edition Engrossed 5/26/05

Short Title: General Assembly Police Jurisdiction. (Public)

Sponsors:

Referred to:

April 4, 2005

A BILL TO BE ENTITLED

AN ACT REVISING THE JURISDICTION OF THE GENERAL ASSEMBLY POLICE AND THE OATH OF OFFICE TO REFLECT THAT CHANGE, AND TO MAKE A TECHNICAL AMENDMENT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 120-32.2 reads as rewritten:

"**§ 120-32.2. ~~State Legislative Building~~ General Assembly special police.**

All sworn members of the ~~State Legislative Building security force~~ General Assembly special police employed by the Legislative Services Office are special policemen, and ~~within the State legislative buildings and grounds, as defined in G.S. 120-32.1(d), they shall~~ have all the powers of policemen of ~~cities.~~ cities, within any of the following areas, while on official duty:

(1) Within the State legislative buildings and grounds, as defined in G.S. 120-32.1(d);

(2) Within that area of the City of Raleigh surrounded by the innermost right-of-way of Interstate 440;

(3) In any part of the State:

a. While accompanying a member of the General Assembly conducting his or her official duties, or traveling to or from his or her official duties; or

b. While preparing for or providing security to a session of either or both houses of the General Assembly, or official events directly related to that session.

The ~~Legislative Building security force~~ General Assembly special police has the exclusive authority and responsibility for enforcing the parking rules of the Legislative Services Commission."

SECTION 2. G.S. 120-32.3 reads as rewritten:

"**§ 120-32.3. Oath of ~~State Legislative Building~~ General Assembly special police.**

Before exercising the duties of a special policeman, each ~~State Legislative Building security~~ General Assembly special police officer shall take an oath before some officer empowered to administer oaths, and the oaths shall be filed with the Clerk of Superior Court of Wake County. The oath of office shall be as follows:

"State of North Carolina, Wake County.

"I, _____, do solemnly swear (or affirm) that I will well and truly execute the duties of General Assembly special policeman in the State Legislative Building and other buildings and grounds subject to the jurisdiction of the Legislative Services Commission and in other areas designated by law, according to the best of my skill and ability and according to law; and that I will use my best endeavors to enforce all rules and regulations of the Legislative Services Commission concerning use of those buildings and ~~grounds.~~ grounds and all laws of the State of North Carolina. So help me, God.

"Sworn and subscribed to before me, this the _____ day of_____, A.D. _____"

SECTION 3. G.S. 143-166.13(a) reads as rewritten:

"**§ 143-166.13. Persons entitled to benefits under Article.**

(a) The following persons who are subject to the Criminal Justice Training and Standards Act are entitled to benefits under this Article:

(1) State Government Security Officers, Department of Administration;
(2) State Correctional Officers, Department of Corrections;
(3) State Probation and Parole Officers, Department of Corrections;
(4) Sworn State Law-Enforcement Officers with the power of arrest, Department of Corrections;
(5) Alcohol Law-Enforcement Agents, Department of Crime Control and Public Safety;
(6) State Highway Patrol Officers, Department of Crime Control and Public Safety;
(7) ~~State Legislative Building~~ General Assembly Special Police, General Assembly;
(8) Sworn State Law-Enforcement Officers with the power of arrest, Department of Health and Human Services;
(9) Juvenile Justice Officers, Department of Juvenile Justice and Delinquency Prevention;
(10) Insurance Investigators, Department of Insurance;
(11) State Bureau of Investigation Officers and Agents, Department of Justice;
(12) Director and Assistant Director, License and Theft Enforcement Section, Division of Motor Vehicles, Department of Transportation;
(13) Members of License and Theft Enforcement Section, Division of Motor Vehicles, Department of Transportation, designated by the Commissioner of Motor Vehicles as either "inspectors" or uniformed weigh station personnel;
(14) Utilities Commission Transportation Inspectors and Special Investigators;

(15) North Carolina Ports Authority Police, Department of Commerce;
(16) Sworn State Law-Enforcement Officers with the power of arrest, Department of Environment and Natural Resources;
(17) Sworn State Law-Enforcement Officers with the power of arrest, Department of Crime Control and Public Safety.
(18) Sworn State Law-Enforcement Officers with the power of arrest, Department of Revenue.
(19) Sworn State Law-Enforcement Officers with the power of arrest, University System."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 888

Committee Substitute Favorable 3/31/05

PROPOSED SENATE COMMITTEE SUBSTITUTE H888-PCS60525-RK-44

Short Title: Cockfighting/Increase Penalty. (Public)

Sponsors:

Referred to:

March 24, 2005

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE PENALTY FOR COCKFIGHTING.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-362 reads as rewritten:

"**§ 14-362. ~~Cock-fighting.~~ Cockfighting.**

A person who instigates, promotes, conducts, is employed at, allows property under his ownership or control to be used for, participates as a spectator at, or profits from an exhibition featuring the fighting of a cock is guilty of a Class ~~2~~1 misdemeanor. A second or subsequent violation shall be a Class H felony. A lease of property that is used or is intended to be used for an exhibition featuring the fighting of a cock is void, and a lessor who knows this use is made or is intended to be made of his property is under a duty to evict the lessee immediately."

SECTION 2. This act becomes effective December 1, 2005, and applies to offenses committed on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. 2

H. B. No. 888 DATE 10 Aug 05

S. B. No. _____ Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
) Horton
Sen.)

moves to amend the bill on page 1, line 8

( ) WHICH CHANGES THE TITLE

by rewriting the line to read:

"exhibition featuring the fighting of a cock is guilty of a cock is guilty of a Class I misdemeanor. A subsequent conviction of this section shall be a Class H felony."

SIGNED _____

ADOPTED ✓ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

HOUSE BILL 888:
Cockfighting/Increase Penalty

BILL ANALYSIS

Committee:	Senate Judiciary I	**Date:**	August 9, 2005
Introduced by:	Rep. Allred	**Summary by:**	Hal Pell
Version:	Second Edition		Committee Counsel

SUMMARY: House Bill 888 increases the penalty for cockfighting from a Class 2 misdemeanor to a Class I felony. This act becomes effective December 1, 2005, and applies to offenses committed on or after that date.

CURRENT LAW:

A person who instigates, promotes, conducts, is employed at, provides a dog for, allows property under his ownership or control to be used for, gambles on, or profits from an exhibition featuring the fighting or baiting of a dog is guilty of a Class H felony.

If the animal involved is other than a dog or cock, the offense is a Class 2 misdemeanor, with a second conviction within three years punishable as a Class I felony.

A Class 2 misdemeanor (no prior convictions) is punishable by community punishment of one to thirty days, and a fine of not more than $1000).

BILL ANALYSIS: House Bill 888 increases the penalty for cockfighting to a Class I felony, punishable by a community punishment of four to six months, and a fine in the discretion of the court.

EFFECTIVE DATE: This act becomes effective December 1, 2005, and applies to offenses committed on or after that date.

H0888e2-SMRK

WHY YOU SHOULD SUPPORT H.B. 888: MAKE COCKFIGHTING A FELONY

Is cockfighting illegal in other states?
YES. Cockfighting is illegal in 48 states; it is a felony in 30 states.

Are other states considering raising the penalty for cockfighting?
YES. Texas, South Carolina (to a felony, punishable by a $500 fine or five years in prison), and Idaho have bills in process to increase the penalty for cockfighting.

Is the incidence of cockfighting in North Carolina increasing?
YES

HOKE COUNTY. JUNE 2004. Deputies raided the back yard of a home and found more than 100 people, including families, watching roosters fight to the death. They found blood in cockfighting rings; roosters tied to leashes, and at least a dozen others either dead or dying. The deputies caught more than 70 people and identified them.[1]

UNION COUNTY. January 2005. Authorities seized about 60 birds from a barn on Jan 8th. Deputies also seized blades and spikes that were put on birds' feet. $1,200 in bets was also confiscated. Authorities found nine dead roosters. Juan Castilloe Moran was charged with fighting game roosters, a misdemeanor. Fifty other men were charged with being spectators. The misdemeanor charges against the 51 people carry a $500 fine and up to six months in jail.[2]

ASHE COUNTY. January 2005. "Tip leads to meth lab and cockfighting in Ashe." "Tips that two fugitive parents might be hiding at an Ashe County house led authorities to discover a large methamphetamine lab and evidence that they say points to a cockfighting operation. Sixty-eight game roosters and 34 game hens were seized by Ashe County Animal Control, along with cockfighting paraphernalia that includes sharpened spurs."[3]

SAMPSON COUNTY: In February 2005, agents with the Special Investigation Division for cock fighting and gambling arrested Flabio Reynosa Pineda and charged him with 87 felony counts of animal cruelty. Approximately 140 to 150 roosters and chickens were found. Animal control reported that 87 of the roosters had the cones on their heads cut off, which is common in fighting cocks. The search yielded a fighting ring, rooster fighting spurs and weapons.[4]

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[1]WRAL, June 14, 2004. WRAL, June 16, 2004.

[2]WSOC, Jan. 9, 2005. *Winston-Salem Journal*, Jan. 12, 2005. The *Charlotte Observer*, Feb. 17, 2005.

[3]*Journal Reporter*, Wednesday, Jan. 19, 2005; mmitchell@wsjournal.com.

[4]sicrime@intrstar.net

Is there a disease problem that could hurt the NC poultry business?

YES. In California, the exotic Newcastle disease was first discovered in a backyard game-fowl flock in Los Angeles. The virus has made its way into Arizona, Nevada, and Texas; costing taxpayers combined $31 million dollars in compensation payments alone. Officials report that 42% of the payments of compensation went to game fowl owners. In California, one owner in Lancaster was paid $325,155 for 2,025 birds, all but three of which were game fowl. A Mojave resident got $22,380 for 172 game birds, including roosters, hens and checks.

Has the poultry industry been affected by Newcastle's Disease?

YES. A strain of avian influenza, or bird flu, has been identified in Delaware poultry flocks, and federal authorities have ordered the destruction of tens or thousands of birds as a disease containment strategy.

The *New York Times*, May 16, 2003, reports that "3.5 million birds had been destroyed in California in an effort to prevent the spread of the disease.... The scary thing is that a poultry worker at a cockfight can get in his pickup and transmit the virus a thousand miles away.... if he's wearing the same boots at his destination, then that virus can thrive."

Have cockfighting birds been implicated in the spread of disease?

YES. US Representative Mark Green reported that cockfighting has been associated with the spread of Exotic Newcastle Disease—an often-fatal virus in chickens. After having spread to several large-scale egg farms throughout the county in recent years, Exotic Newcastle Disease cost US tax payers nearly $200 million to eradicate, and cost the US poultry industry millions more in lost exports.

Cockfighting birds have been implicated in the bird flu outbreak in Asia and in at least two deaths of children there. Thailand has imposed a temporary ban on cockfighting.

Dr. Richard Breitmeyer, California' State Veterinarian, wrote in July 2003 that "Game fowl and their owners have played a major role in the dissemination of the Exotic Newcastle Disease virus due to their high mobility related to meetings, training, breeding, and fighting activities on a regular basis.

Is the federal government concerned about the problem?

YES. A bill is pending in Congress to increase the penalty for interstate transportation of fighting birds to the felony level. On May 9, 2003, the Secretary of Agriculture praised the law that prohibits persons from causing animals to engage in a fight if an animal involved was transported across state lines: "In addition to the cruelty animal fighting venues represent, animals used in such activities may be prime sources to spread disease."

Is there a threat of Avian Flu? Of Human-to-Human transmission?

YES. The World Health Organization (WHO) continues to issue warnings about a possible pandemic resulting from avian influenza. A total of 38 people in Asia have died from the disease, which has a 70% fatality rate among those who are infected. The high fatality rate and lack of understanding about transmission of the disease have prompted WHO to suggest a global flue pandemic could be worse than the recent Asian tsunami.

Where does the National Chicken Council stand?

Council president George Watts on March 30, 2004, endorsed the bill to increase the penalty for violation of the federal law on cockfighting, saying: "We consider cockfighting to be an inhumane practice . . . we are concerned that the nationwide traffic in game birds creates a continuing hazard for the dissemination of animal disease . . . game birds were heavily implicated in the outbreak of Exotic Newcastle Disease in Southern California in 2002 and 2003. Avian influenza and other disease can also be spread by the movement of game birds.

Where do major poultry producers stand?

Tyson Foods and Perdue were the first nationwide agriculture groups to join animal-rights advocates, law enforcement organizations, and veterinary groups call for stricter penalties on cockfights, which is banned in all states except Louisiana and New Mexico.

Wayne Pacelle, president of the Humane Society of the United States: "You have the law enforcement community, the humane community, the veterinary community, and now the poultry industry all backing the legislation and the only people opposing it are the illegal cock and dogfighters."

Where does the American Veterinary Medical Association (AVMA) stand on cockfighting?

The AVMA supports laws against the use and/or transport of domestic or foreign animals for fighting venues. Further, the AVMA recommends that animal fighting be classified as a felony.

NC STATE UNIVERSITY

College of Agriculture and Life Sciences
Extension Poultry Science
Scott Hall / Campus Box 7608
Raleigh, North Carolina 27695

919.515.2621 (phone)
919.515.7070 (fax)

March 29, 2005

Members of the House of Representatives
North Carolina General Assembly
Raleigh, North Carolina

RE: H.B – cockfighting: increase penalty

Dear Representatives:

I am writing to encourage your support of House Bill 888 which would increase the penalty for cockfighting to a Class I felony. I am a veterinary epidemiologist and have been working with the poultry industry since 1989. I am Board Certified in the American College of Poultry Veterinarians and as Extension Poultry Veterinarian work closely with the North Carolina Poultry Industry, especially on matters involving poultry diseases. Foreign animal diseases (FAD) affecting poultry are a huge concern for our industry. Identification of diseases such as Avian Influenza (AI) or Exotic Newcastle Disease (END) in this state would result in a colossal loss for our industry. Our export markets would close immediately upon announcing the identification of a FAD and many thousands to millions of birds would be at risk for infection and slaughter. Additionally, with the current level of concern regarding AI in Southeast Asia, there could be a large public relations component to manage.

I am currently involved in several initiatives funded through the U.S. Department of Homeland Security simulating FAD outbreaks in poultry and coordination of efforts by multiple agencies (local, State and Federal) to contain and eradicate such an outbreak. The threat of a FAD in North Carolina is real and these exercises help us understand the magnitude from a logistical standpoint of this risk. The monetary losses are almost incomprehensible. As an example, California experienced an outbreak of Exotic Newcastle Disease in October 2002 that started in backyard flocks that contained fighting cocks. During the Thanksgiving holiday, many fighting cocks were moved around to attend and compete in the large numbers of cockfights that traditionally occur during that weekend. In December many new cases of END were identified, mostly in fighting cocks but this soon spilled over into the commercial table egg layer population. Containing a FAD in commercial birds is easy when compared to containing that same disease in backyard flocks. By January a State of Emergency was declared, it took 11 months and over $200 million dollars to contain the disease. Of the roughly 2,500 premises infected or exposed, only 22 were commercial farms, the rest were associated with fighting cocks.

Employment and program opportunities are offered to all people regardless of race, color, national origin, sex, age or handicap. North Carolina State University, North Carolina A&T State University, U.S. Department of Agriculture, and local governments cooperating.

The increase in the Hispanic population in North Carolina has resulted in a huge increase in the numbers of cockfights and fighting cocks in this state. Cockfighting is not illegal in Mexico and is a part of the Mexican culture (much like local baseball games and Friday night high school football are deeply imbedded in our culture). Deterring these activities will be difficult, but increasing penalties associated with fighting birds would be a good first step in discouraging people from bringing birds into our state that may have been exposed to a FAD in another state or in Mexico. If penalties in North Carolina are substantially greater than penalties in Tennessee, South Carolina, and Virginia, then it stands to reason that people will attend fights in those states rather than risking a greater penalty by bring birds into North Carolina.

As you know, North Carolina's economy is dependent on a healthy poultry industry. The risk to our industry from cockfighting cannot be overestimated. The identification of a FAD in a fighting bird would result in a complete shutdown of export markets for our industry, even if no commercial birds are affected. Trade rules are such that one case of AI in a fighting cock in western North Carolina would close export markets to birds from eastern North Carolina. Discouraging interstate movement of birds into North Carolina is a step in the right direction to preventing a foreign disease outbreak in our state, and I encourage you to support House Bill 888 and increase the penalty for cockfighting to a Class I felony.

Sincerely,

Donna K Carver

Donna K. Carver, DVM, PhD, ACPV
Poultry Extension Veterinarian
Associate Professor

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 2

HOUSE BILL 888

Committee Substitute Favorable 3/31/05

Short Title: Cockfighting/Increase Penalty. (Public)

Sponsors:

Referred to:

March 24, 2005

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE PENALTY FOR COCKFIGHTING.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-362 reads as rewritten:

"**§ 14-362. ~~Cock fighting.~~ Cockfighting.**

A person who instigates, promotes, conducts, is employed at, allows property under his ownership or control to be used for, participates as a spectator at, or profits from an exhibition featuring the fighting of a cock is guilty of a Class ~~2 misdemeanor.~~ I felony. A lease of property that is used or is intended to be used for an exhibition featuring the fighting of a cock is void, and a lessor who knows this use is made or is intended to be made of his property is under a duty to evict the lessee immediately."

SECTION 2. This act becomes effective December 1, 2005, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 2

HOUSE BILL 1016
Committee Substitute Favorable 4/18/05

Short Title: Dispose of Firearms/Benefit Law Enforcement. (Public)

Sponsors:

Referred to:

March 31, 2005

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW REGARDING THE DISPOSITION OF A FIREARM TO PROVIDE THAT UPON ORDER OF THE APPROPRIATE COURT, A LAW ENFORCEMENT AGENCY MAY USE THE FIREARM FOR OFFICIAL USE OR MAY TRADE, EXCHANGE, OR SELL THE FIREARM TO A FEDERALLY LICENSED FIREARMS DEALER AND MAY USE THE PROCEEDS FROM THE SALE OF UNCLAIMED FIREARMS FOR LAW ENFORCEMENT PURPOSES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15-11.1(b1) reads as rewritten:

"(b1) Notwithstanding subsections (a) and (b) of this section or any other provision of law, if the property seized is a firearm and the district attorney determines the firearm is no longer necessary or useful as evidence in a criminal trial, the district attorney, after notice to all parties known or believed by the district attorney to have an ownership or a possessory interest in the firearm, including the defendant, shall apply to the court for an order of disposition of the firearm. The judge, after hearing, may order the disposition of the firearm in one of the following ways:

(1) By ordering the firearm returned to its rightful owner, when the rightful owner is someone other than the defendant and upon findings by the court (i) that the person, firm, or corporation determined by the court to be the rightful owner is entitled to possession of the firearm and (ii) that the person, firm, or corporation determined by the court to be the rightful owner of the firearm was unlawfully deprived of the same or had no knowledge or reasonable belief of the defendant's intention to use the firearm unlawfully.

(2) By ordering the firearm returned to the defendant, but only if the defendant is not convicted of any criminal offense in connection with the possession or use of the firearm, the defendant is the rightful owner

of the firearm, and the defendant is not otherwise ineligible to possess such firearm.

(3) By ordering the firearm turned over to be destroyed by the sheriff of the county in which the firearm was seized or by his duly authorized agent. The sheriff shall maintain a record of the destruction of the firearm.

(4) By ordering the firearm turned over to a law enforcement agency in the county of trial for (i) the official use of the agency or (ii) sale, trade, or exchange by the agency to a federally licensed firearm dealer in accordance with all applicable State and federal firearm laws. The court may order a disposition of the firearm pursuant to this subdivision only upon the written request of the head or chief of the law enforcement agency and only if the firearm has a legible, unique identification number. If the law enforcement agency sells the firearm, then the proceeds of the sale shall be remitted to the appropriate county finance officer as provided by G.S. 115C-452 to be used to maintain free public schools. The receiving law enforcement agency shall maintain a record and inventory of all firearms received pursuant to this subdivision.

This subsection (b1) is not applicable to seizures pursuant to G.S. 113-137 of firearms used only in connection with a violation of Article 22 of Chapter 113 of the General Statutes or any local wildlife hunting ordinance."

SECTION 2. Article 2 of Chapter 15 of the General Statutes is amended by adding a new section to read:

"**§ 15-11.2. Disposition of unclaimed firearms not confiscated or seized as trial evidence.**

(a) Definition. – For purposes of this section, the term "unclaimed firearm" means a firearm that is found or received by a law enforcement agency and that remains unclaimed by the person who may be entitled to it for a period of 30 days after the publication of the notice required by subsection (b) of this section. The term does not include a firearm that is seized and disposed of pursuant to G.S. 15-11.1 or a firearm that is confiscated and disposed of pursuant to G.S. 14-269.1.

(b) Published Notice of Unclaimed Firearm. – When a law enforcement agency finds or receives a firearm and the firearm remains unclaimed for a period of 180 days, the agency shall publish at least one notice in a newspaper published in the county in which the agency is located. The notice shall include all of the following:

(1) A statement that the firearm is unclaimed and is in the custody of the law enforcement agency.

(2) A statement that the firearm may be sold or otherwise disposed of unless the firearm is claimed within 30 days of the date of the publication of the notice.

(3) A brief description of the firearm and any other information that the chief or head of the law enforcement agency may consider necessary or advisable to reasonably inform the public about the firearm.

(c) If the firearm remains unclaimed for a period of 30 days after the publication of the notice, then the person who found the firearm and turned it over to the law enforcement agency may claim the firearm provided the person satisfies the custodial law enforcement agency holding the firearm that the person is qualified under State and federal law to possess the firearm and also presents a pistol permit issued in accordance with Article 52A of Chapter 14 of the General Statutes.

(d) If the firearm remains unclaimed for a period of 30 days after the publication of the notice and the person who found the firearm does not claim it as provided by subsection (c) of this section, then the head or chief of the law enforcement agency may apply to the appropriate district court for an order of disposition of the unclaimed firearm. The application shall be written.

(e) Disposition of Firearm. – The judge, after hearing, may order the disposition of the firearm in one of the following ways:

(1) By ordering the firearm turned over to be destroyed by the sheriff of the county in which the law enforcement agency applying for the order of disposition is located or by the sheriff's duly authorized agent. The sheriff shall maintain a record of the destruction of the firearm.

(2) By ordering the firearm turned over to the law enforcement agency applying for the disposition of the firearm for (i) the official use of the agency or (ii) sale, trade, or exchange by the agency to a federally licensed firearm dealer in accordance with all applicable State and federal firearm laws. The court may order a disposition of the firearm pursuant to this subsection only if the firearm has a legible, unique identification number.

(f) Disbursement of Proceeds of Sale. – If the law enforcement agency sells the firearm, then the proceeds of the sale shall be retained by the law enforcement agency and used for law enforcement purposes. The receiving law enforcement agency shall maintain a record and inventory of all firearms received pursuant to this section."

SECTION 3. G.S. 14-269.1 reads as rewritten:

"**§ 14-269.1. Confiscation and disposition of deadly weapons.**

Upon conviction of any person for violation of G.S. 14-269, G.S. 14-269.7, or any other offense involving the use of a deadly weapon of a type referred to in G.S. 14-269, the deadly weapon with reference to which the defendant shall have been convicted shall be ordered confiscated and disposed of by the presiding judge at the trial in one of the following ways in the discretion of the presiding judge.

(1) By ordering the weapon returned to its rightful owner, but only when such owner is a person other than the defendant and has filed a petition for the recovery of such weapon with the presiding judge at the time of the defendant's conviction, and upon a finding by the presiding judge that petitioner is entitled to possession of same and that he was unlawfully deprived of the same without his consent.

(2), (3) Repealed by Session Laws 1994, Ex. Sess., c. 16, s. 2.

(4) By ordering such weapon turned over to the sheriff of the county in which the trial is held or his duly authorized agent to be destroyed. The sheriff shall maintain a record of the destruction thereof.

~~(4a) By ordering the weapon, if the weapon has a legible unique identification number, turned over to a law enforcement agency in the county of trial for the official use of such agency, but only upon the written request by the head or chief of such agency. The receiving law enforcement agency shall maintain a record and inventory of all such weapons received.~~

(4b) By ordering the weapon turned over to a law enforcement agency in the county of trial for (i) the official use of the agency or (ii) sale, trade, or exchange by the agency to a federally licensed firearm dealer in accordance with all applicable State and federal firearm laws. The court may order a disposition of the firearm pursuant to this subdivision only upon the written request of the head or chief of the law enforcement agency and only if the firearm has a legible, unique identification number. If the law enforcement agency sells the firearm, then the proceeds of the sale shall be remitted to the appropriate county finance officer as provided by G.S. 115C-452 to be used to maintain free public schools. The receiving law enforcement agency shall maintain a record and inventory of all firearms received pursuant to this subdivision.

(5) By ordering such weapon turned over to the North Carolina State Bureau of Investigation's Crime Laboratory Weapons Reference Library for official use by that agency. The State Bureau of Investigation shall maintain a record and inventory of all such weapons received.

(6) By ordering such weapons turned over to the North Carolina Justice Academy for official use by that agency. The North Carolina Justice Academy shall maintain a record and inventory of all such weapons received."

SECTION 4. G.S. 50B-3.1(h) reads as rewritten:

"(h) Disposal of Firearms. – If the defendant does not file a motion requesting the return of any firearms, ammunition, or permits surrendered within the time period prescribed by this section, if the court determines that the defendant is precluded from regaining possession of any firearms, ammunition, or permits surrendered, or if the defendant or third-party owner fails to remit all fees owed for the storage of the firearms or ammunition within 30 days of the entry of the order granting the return of the firearms, ammunition, or permits, the sheriff who has control of the firearms, ammunition, or permits shall give notice to the defendant, and the sheriff shall apply to the court for an order of disposition of the firearms, ammunition, or permits. The judge, after a hearing, may order the disposition of the firearms, ammunition, or permits in one or more of the ways authorized by law, including subdivision (4), ~~(4a),~~(4b), (5), or (6) of G.S. 14-269.1. If a sale by the sheriff does occur, any proceeds from the sale after

deducting any costs associated with the sale, and in accordance with all applicable State and federal law, shall be provided to the defendant, if requested by the defendant by motion made before the hearing or at the hearing and if ordered by the judge."

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

HOUSE BILL 1016:
Dispose of Firearms/Benefit Law Enforcement

BILL ANALYSIS

Committee:	Senate Judiciary I	**Date:**	August 10, 2005
Introduced by:	Rep. Hilton	**Summary by:**	Hal Pell
Version:	Second Edition		Committee Co-Counsel

SUMMARY: House Bill 1016 would provide that certain firearms that are seized, confiscated, or received by a law enforcement agency may be used by or sold, traded, or exchanged by the law enforcement agency.

CURRENT LAW: Under current law, there are two main statutes that govern the disposition of firearms seized or confiscated by law enforcement agencies:

G.S. 15-11.1. governs the seizure and disposition by law enforcement officers of property that may be used in evidence at trail. In the case of a firearm, if the district attorney determines that the firearm is no longer necessary as evidence, the court may dispose of the firearm by:

- Returning it to its owner, if the firearm was stolen or used without the owner's knowledge.
- Returning it to the defendant if the defendant was not convicted.
- Ordering it to be destroyed by the sheriff of the county in which it was seized.

G.S. 14-269.1. governs the confiscation and disposition of the deadly weapon used by a defendant convicted of an offense involving the use of a deadly weapon. Upon conviction, the presiding judge may dispose of the weapon by:

- Returning it to its owner, if the weapon was stolen.
- Ordering it to be destroyed by the sheriff of the county in which the trial was held.
- Turning it over to a law enforcement agency in the county in which the trial was held for use by the agency.
- Turning it over to the SBI Crime Laboratory Weapons Reference Library.
- Turning it over to the North Carolina Justice Academy.

Current law also provides for the disposition of unclaimed property generally. G.S. 15-12 through G.S. 15-15 provide for the public auction of unclaimed property in possession of a sheriff or police department.

BILL ANALYSIS: House Bill 1016 would expand the options for disposition of seized and confiscated firearms by:

- **Section 1:** Authorizing a court under **G.S. 15-11.1** to dispose of a seized firearm by turning it over to a law enforcement agency in the county in which the trial was held for (1) use by the agency or (2) for sale, trade, or exchange to a federally licensed firearm dealer. If the law enforcement agency sells the firearm, the proceeds will go to the county finance officer to be used to maintain public schools.

(over)

- **Section 3:** Authorizing a court under **G.S. 14-269.1** to dispose of a confiscated firearm by turning it over to a law enforcement agency in the county in which the trial was held for (1) use by the agency, or (2) for sale, trade, or exchange to a federally licensed firearm dealer. If the law enforcement agency sells the firearm, the proceeds will go to the county finance officer to be used to maintain public schools.

In **Section 2** of the bill, a new provision, **G.S. 15-11.2**, would provide a specific process for the disposition of unclaimed firearms. Under this new section, when a law enforcement agency receives a firearm, and the firearm has not been claimed for a period of 180 days from the date of receipt, the agency may publish a notice in a county newspaper.

The notice will contain a brief description of the firearm and require a person who claims an interest in the firearm to establish the claim not later than 30 days after the publication of the notice. If the firearm remains unclaimed for 30 days after the publication of the notice, the person who turned the firearm over to the law enforcement agency may claim it if the person is qualified under State and federal law to posses a firearm.

An "unclaimed firearm" is defined as a firearm that is "found or received by a law enforcement agency," and that "remains unclaimed by a person who may be entitled to it for a period of 30 days after receipt and publication of notice by the law enforcement agency. If the firearm still remains unclaimed, the head of the law enforcement agency may apply to the appropriate district court for disposition of the firearm.

The judge may dispose of the firearm by:

- Ordering it to be destroyed by the sheriff of the county in which the law enforcement agency holding the firearm is located.
- Turning it over to a law enforcement agency in the county in which the trial was held for use by the agency or for sale, trade, or exchange to a federally licensed firearm dealer. If the law enforcement agency sells the firearm, the proceeds will be retained by the agency to be used for law enforcement purposes.

Section 4 of the bill makes a conforming change to the law on the disposition of firearms under the domestic violence statutes (defendant had surrendered firearm pursuant to court order).

EFFECTIVE DATE: House Bill 1016 would become effective when it becomes law.

Summary contribution by Jeff Hudson, Staff Attorney

H1016e2-SMRK

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 2

HOUSE BILL 1409

Committee Substitute Favorable 5/23/05

Short Title: Bail Bonds/Bond Source. (Public)

Sponsors:

Referred to:

April 21, 2005

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A JUDICIAL HEARING MAY BE CONDUCTED TO DETERMINE THE SOURCE OF MONEY OR PROPERTY FOR A SECURED APPEARANCE BOND AND THAT THE MONEY OR PROPERTY MAY BE REFUSED IF IT WAS NOT DERIVED FROM A LAWFUL SOURCE OR WILL NOT REASONABLY ASSURE APPEARANCE.

The General Assembly of North Carolina enacts:

SECTION 1. Article 26 of Chapter 15A of the General Statutes is amended by adding a new section to read:

"**§ 15A-534.6. Source of bail.**

A judicial official may, upon motion of the State or upon the judicial official's own motion, and for good cause shown, conduct a hearing into the source of money or property posted or to be posted for any defendant who has been released or is about to be released on a secured appearance bond. If the judicial official finds the money or property posted or proposed to be posted for the appearance bond is not derived from a lawful source or will not reasonably assure the appearance of the person required, the judicial official may refuse to accept the offered money or property as security for the appearance bond."

SECTION 2. This act becomes effective December 1, 2005, and applies to bond hearings conducted on or after that date, provided that if a pretrial release order has been entered prior to the effective date of this act, the court may not revoke or modify the order of release solely on the basis of this act.

HOUSE BILL 1409:
Bail Bonds/Bond Source

BILL ANALYSIS

Committee:	Senate Judiciary I	**Date:**	August 10, 2005
Introduced by:	Reps. Dollar, Jones	**Summary by:**	Hal Pell
Version:	Second Edition		Committee Co-Counsel

SUMMARY: House Bill 1409 amends the State bail laws to authorize judges to conduct hearings on the source of money or property posted for a secured appearance bond, and refuse the bond if the money or property was not derived from a lawful source or will not assure appearance.

BILL ANALYSIS: House Bill 1409 amends the current State law on bail bonds to:

- Authorize a judicial officer, upon motion of the State or upon the judicial officer's own motion, and for good cause shown, to conduct a hearing on the source of money or property posted (or to be posted) for a secured appearance bond.
- Authorize the judicial officer to refuse the bond if the judicial officer finds that the money or property posted (or proposed to be posted) for bond was not derived from a lawful source or will not reasonably assure the appearance of the person required.

SECTION 2. This act becomes effective December 1, 2005, and applies to bond hearings conducted on or after that date, provided that if a pretrial release order has been entered prior to the effective date of this act, the court may not revoke or modify the order of release solely on the basis of this act.

BACKGROUND: Washington DC and several states have similar laws: California, Florida, Illinois, Indiana, New Jersey, Pennsylvania, and Tennessee. The federal law relating to release of a defendant pending bail, includes the following consideration for the court:

> In considering the conditions of release described in . . . this section, the judicial officer may upon his own motion, or shall upon the motion of the Government, conduct an inquiry into the source of the property to be designated for potential forfeiture or offered as collateral to secure a bond, and shall decline to accept the designation, or the use as collateral, of property that, because of its source, will not reasonably assure the appearance of the person as required. 18 U.S.C. §3142(g)(4).

Summary contribution by Giles Perry, Staff Attorney.

H1409e2-SMRK

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE — 8-10-05

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
Bill Peppy	Duke Law School - Durham
Ellie Caldwell	NC Sheriffs Assn.
Lou Hady	Att at Law
Zeb Alley	Alley Associates
John Goodman	"
Henry Jones	Attorney Raleigh
[illegible]	[illegible]
Cashwell Skinner	NCCDS
[illegible]	[illegible]
Rick Zechini	NC Assn of Realtors
Pep Bowen	Conference of D.A.s
[illegible]	[illegible]

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE — 8-10-05

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
Cola Willoughby	DA - 10th Dist
Erica Peterson	NC Agribusiness Council
[illegible]	Hunton & Williams
[illegible]	[illegible]
Angie Harris	Maupin Taylor
MIKE MANN	NCBAA
TOM BEAN	NCWF
PAUL MAYER	NCACC
Alastair Maclaglan	NCHBA
David Humphrey	Sen. Apodaca's office
[illegible]	[illegible]

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE — 8-10-05

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
Tim Boyum	News 14 Carolina
Teresa Nichols	Intern Sen. Phil Berger
Josh Mcmillan	NFOS
Chris Heagarty	NCCUE
Marlowe Foster	NCAHP
[illegible]	TWC
Rick Webb	NCGA

Principal Clerk ____
Reading Clerk ____

Corrected:

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Thursday	August 11, 2005	9:00 TO 11:00 AM	1027 LB

2nd REVISED NOTICE – TIME CHANGE, BILLS ADDED

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 1227	Clarification of Motor Vehicle Repair Act.	Representative Coleman Representative Eddins
HB 1279	Speeding to Elude Arrest.	Representative Hill
HB 1295	New Motor Vehicles Warranties.	Representative Martin, III Representative Weiss Representative Luebke Representative Harrison
HB 1404	Seizure of Documents and Plates.	Representative Folwell
HB 1491	Insurance for School Social Workers.	Representative Glazier
HB 128	Early Prep for Absentee Count.	Representative Preston Representative Insko
HB 1115	Election Administration Amendments.	Representative Ross Representative Moore
HB 1128	Campaign Finance Amendments.	Representative Ross Representative Moore
HB 650	Business Court Cases/Fee.	Representative Glazier Representative Haire
HB 1527	Clarify MV Dealer Franchise Laws.	Representative Cole

Judicial 1 Committee

August 11, 2005

Minutes

Senator Dan Clodfelter, Chair, Called the meeting to order at 9:24 a.m. with thirteen members present. He introduced Pages, Hogan Medlin from Eden, NC, Logan Joldersman from Advance, NC, Ashley McBride from Monroe, NC and Chris Willis from Prospect Hill, NC.

HB-1295 (New Motor Vehicles Warranties) Committee Substitute was introduced by Senator Clodfelter. Senator Charlie Albertson moved for adoption of the Committee Substitute. All members voted yes. Motion carried. One of the bill sponsors, Representative Jennifer Weiss explained the changes to the bill. No discussion. Senator Clark Jenkins moved for a Favorable Report. All members voted yes. Motion carried.

HB-1227Clarification of Motor Vehicle Repair Act. Committee Substitute was introduced by Senator Clodfelter. Senator Clark Jenkins moved for adoption of the Committee Substitute. All members voted yes. Motion carried. Co-sponsor, Representative Linda Coleman explained that the bill would clarify the definition of "motor Vehicle repair" under the Motor Vehicle Repair Act to include shop supply fees and hazardous material disposal fees. The bill would also allow an existing automobile dealership to relocate within four and one half miles of its existing site without notification and hearing procedures. (See attached Bill Summary for further information). Senator's Tony Rand and Harry Brown had questions. Rep. Coleman answered the questions. Senator Richard Stevens moved for a Favorable Report. All members voted yes. Motion carried.

HB-1404 (Seizure of Documents and Plates) Committee Substitute was introduced by Senator Clodfelter. Senator Jerry Tillman moved for adoption of the Committee Substitute. All members voted yes. Motion carried. Bill sponsor, Representative Dale Folwell explained that the bill amends the Motor Vehicle law to authorize any sworn law enforcement officer to seize any certificate of title, registration card, permit, license, or registration plate that has been revoked or cancelled by the Division of Motor Vehicles. (See attached Bill Summary for further information). There was a technical drafting problem to the bill page 1, line 27 and page 2, line 22, which will be amended on the Senate floor during session, after the bill has been reported out of J-1 Committee. Senator Tony Rand moved for a Favorable Report. All members voted yes. Motion carried.

HB-1279 (Speeding to Elude Arrest) was introduced by Senator Clodfelter. In the absence of bill sponsor, Representative Dewey Hill, Senator RC Soles explained the bill. No discussion. Senator Tony Rand moved for a Favorable Report. All members voted yes. Motion carried.

HB-1491 (Insurance for School Social Workers). Committee Substitute was introduced by Senator Clodfelter. Senator Tony Rand moved for adoption of the Committee Substitute. All members voted yes. Motion carried. Bill sponsor, Representative Rick Glazier explained that the bill would allow local boards to require a school social worker to transport students so long as this requirement is part of a written job description or local board policy. The bill would also allow a local board to insure the liability of this social worker for carrying out these duties or require this social worker to increase the liability limits or add a business use rider, or both, on the employee's personal automobile liability insurance policy. If the board requires the employee to get the additional insurance coverage, the board must reimburse the employee for any additional premium charged as a result, up to a maximum limit. (See attached Bill Summary for further information). No discussion. Senator Richard Stevens moved for a Favorable Report. All members voted yes. Motion carried.

Being no further business the meeting adjourned at 9:40 a.m.

Senator Dan Clodfelter, Chair

Wanda Joyner, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Daniel G. Clodfelter, Chair

Thursday, August 11, 2005

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

FAVORABLE

H.B.(CS #1) **1279** Speeding to Elude Arrest.
Sequential Referral: None
Recommended Referral: None

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

H.B. **1227** Clarification of Motor Vehicle Repair Act.
Draft Number: PCS10394
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **1295** New Motor Vehicles Warranties.
Draft Number: PCS30371
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **1404** Seizure of Documents and Plates.
Draft Number: PCS60532
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **1491** Insurance for School Social Workers.
Draft Number: PCS70553
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

TOTAL REPORTED: 5

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 1295

Committee Substitute Favorable 5/31/05

PROPOSED SENATE COMMITTEE SUBSTITUTE H1295-PCS30371-RK-46

Short Title: New Motor Vehicles Warranties. (Public)

Sponsors:

Referred to:

April 19, 2005

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE MAXIMUM WEIGHT OF A MOTOR VEHICLE THAT IS SUBJECT TO THE NEW MOTOR VEHICLES WARRANTIES ACT AND TO PROMOTE THE EXPEDITIOUS SETTLEMENT OF CLAIMS WHEN THE CONSUMER REQUESTS THE MANUFACTURER TO REPURCHASE THE MOTOR VEHICLE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-351.1(3) reads as rewritten:

"(3) 'Motor vehicle' includes a motor vehicle as defined in G.S. 20-4.01 ~~which~~ that is sold or leased in this State, but does not include 'house trailer' as defined in G.S. 20-4.01 or any motor vehicle ~~with a gross vehicle weight of~~that weighs more than 10,000 ~~pounds or more.~~pounds."

SECTION 2. G.S. 20-351.3(c) reads as rewritten:

"(c) Refunds shall be made to the consumer, ~~lessor~~ lessor, and any lienholders as their interests may appear. The refund to the consumer shall be reduced by a reasonable allowance for the consumer's use of the vehicle. A reasonable allowance for use ~~is that amount directly attributable to use by the consumer prior to his first report of the nonconformity to the manufacturer, its agent, or its authorized dealer, and during any subsequent period when the vehicle is not out of service because of repair. 'Reasonable allowance' is presumed to be the cash price or the lease price, as the case may be, of the vehicle multiplied by a fraction having as its denominator 100,000 miles and its numerator the number of miles attributed to the consumer.~~is calculated from the number of miles used by the consumer up to the date of the third attempt to repair the same nonconformity which is the subject of the claim, or the twentieth cumulative business day when the vehicle is out of service by reason of repair of one or more nonconformities, whichever occurs first. The number of miles used by the consumer is

multiplied by the purchase price of the vehicle or the lessor's actual lease price, and divided by 120,000."

SECTION 3. This act becomes effective October 1, 2005, and applies to contracts entered into on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 2

HOUSE BILL 1295

Committee Substitute Favorable 5/31/05

Short Title: New Motor Vehicles Warranties. (Public)

Sponsors:

Referred to:

April 19, 2005

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE MAXIMUM WEIGHT OF A MOTOR VEHICLE THAT IS SUBJECT TO THE NEW MOTOR VEHICLES WARRANTIES ACT AND TO PROMOTE THE EXPEDITIOUS SETTLEMENT OF CLAIMS WHEN THE CONSUMER REQUESTS THE MANUFACTURER TO REPURCHASE THE MOTOR VEHICLE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-351.1(3) reads as rewritten:

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SECTION 2. G.S. 20-351.3(c) reads as rewritten:

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or in the event of a leased vehicle, the lessor's actual lease price plus an amount equal to two percent (2%) of the purchase price, and divided by 120,000."

SECTION 3. This act becomes effective October 1, 2005, and applies to contracts entered into on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 1227
PROPOSED SENATE COMMITTEE SUBSTITUTE H1227-PCS10394-RK-42

Short Title: Motor Vehicle Repair and Franchise Changes. (Public)

Sponsors:

Referred to:

April 14, 2005

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE MOTOR VEHICLE REPAIR ACT AND TO AMEND MOTOR VEHICLE FRANCHISE LAWS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-354.2 reads as rewritten:

"**§ 20-354.2. Definitions.**

As used in this act:

(1) "Customer" means the person who signs the written repair estimate or any other person whom that person designates as a person who may authorize repair work.

(2) "Employee" means an individual who is employed full time or part time by a motor vehicle repair shop and performs motor vehicle repairs.

(3) "Motor vehicle" means any automobile, truck, bus, recreational vehicle, motorcycle, motor scooter, or other motor-powered vehicle, but does not include trailers, mobile homes, travel trailers, or trailer coaches without independent motive power, or watercraft or aircraft.

(4) "Motor vehicle repair" means all maintenance of and modification and repairs to motor vehicles and the diagnostic work incident to those repairs, including, but not limited to, the rebuilding or restoring of rebuilt vehicles, body work, painting, warranty work, <u>shop supply fees, hazardous material disposal fees incident to a repair,</u> and other work customarily undertaken by motor vehicle repair shops. Motor vehicle repair does not include the sale or installation of tires when authorized by the customer.

(5) "Motor vehicle repair shop" means any person who, for compensation, engages or attempts to engage in the repair of motor vehicles owned by other persons and includes, but is not limited to:

a. Mobile motor vehicle repair shops.
b. Motor vehicle and recreational vehicle dealers.
c. Garages.
d. Service stations.
e. Self-employed individuals.
f. Truck stops.
g. Paint and body shops.
h. Brake, muffler, or transmission shops.
i. Shops doing glasswork.

Any person who engages solely in the maintenance or repair of the coach portion of a recreational vehicle is not a motor vehicle repair shop."

SECTION 2. G.S. 20-305 reads as rewritten:

"**§ 20-305. Coercing dealer to accept commodities not ordered; threatening to cancel franchise; preventing transfer of ownership; granting additional franchises; terminating franchises without good cause; preventing family succession.**

It shall be unlawful for any manufacturer, factory branch, distributor, or distributor branch, or any field representative, officer, agent, or any representative whatsoever of any of them:

....

(5) To enter into a franchise establishing an additional new motor vehicle dealer or relocating an existing new motor vehicle dealer into a relevant market area where the same line make is then represented without first notifying in writing the Commissioner and each new motor vehicle dealer in that line make in the relevant market area of the intention to establish an additional dealer or to relocate an existing dealer within or into that market area. Within 30 days of receiving such notice or within 30 days after the end of any appeal procedure provided by the manufacturer, any new motor vehicle dealer may file with the Commissioner a protest to the establishing or relocating of the new motor vehicle dealer. When a protest is filed, the Commissioner shall promptly inform the manufacturer that a timely protest has been filed, and that the manufacturer shall not establish or relocate the proposed new motor vehicle dealer until the Commissioner has held a hearing and has determined that there is good cause for permitting the addition or relocation of such new motor vehicle dealer.

a. This section does not apply:

1. To the relocation of an existing new motor vehicle dealer within that dealer's relevant market area, provided that the relocation not be at a site within 10 miles of a licensed new motor vehicle dealer for the same line make of motor vehicle. If this sub-subdivision is applicable, only dealers trading in the same line-make of vehicle that are located within the 10-mile radius shall be

entitled to notice from the manufacturer and have the protest rights afforded under this section; or

2. If the proposed additional new motor vehicle dealer is to be established at or within two miles of a location at which a former licensed new motor vehicle dealer for the same line make of new motor vehicle had ceased operating within the previous two years;

3. To the relocation of an existing new motor vehicle dealer within two miles of the existing site of the new motor vehicle dealership if the franchise has been operating on a regular basis from the existing site for a minimum of three years immediately preceding the relocation;

4. To the relocation of an existing new motor vehicle dealer if the proposed site of the relocated new motor vehicle dealership is further away from all other new motor vehicle dealers of the same line make in that relevant market ~~area.~~area; or

5. To the relocation of an existing new motor vehicle dealer to a location within four and one-half miles of the existing site of the new motor vehicle dealership if the line make has been operating on a regular basis from the existing site for a minimum of 50 years immediately preceding the effective date of this sub-subdivision, provided that the relocation site not be located within four miles of another licensed new motor vehicle dealer for the same line make of motor vehicle.

..."

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

HOUSE BILL 1227:
Clarification of Motor Vehicle Repair Act.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Date:**	August 11, 2005
Introduced by:	Reps. Coleman, Eddins	**Summary by:**	Hal Pell
Version:	PCS to First Edition H1227-CSRK-42		Committee Co-Counsel

SUMMARY: ***The proposed committee substitute would clarify the definition of "motor vehicle repair" under the Motor Vehicle Repair Act to include shop supply fees and hazardous material disposal fees. The bill would also allow an existing automobile dealership to relocate within four and one half miles of its existing site without notification and hearing procedures. The act is effective when it becomes law.***

CURRENT LAW: Article 15B of Chapter 20 of the General Statutes (the Motor Vehicle Repair Act) regulates motor vehicle repair shops in North Carolina. Under the Act, shops are required to provide written estimates to customers before performing motor vehicle repairs that will exceed $350

G.S. 20-354.2(4) defines "motor vehicle repair" as all maintenance, modification, and repair to motor vehicles and the diagnostic work incident to those repairs. The definition specifically includes, but is not limited to, the rebuilding or restoring of rebuilt vehicles, body work, painting, warranty work, and other work customarily undertaken by repair shops.

BILL ANALYSIS:

Section 1: House Bill 1227 would amend G.S. 20-354.2(4) to clarify that shop supply fees and hazardous material disposal fees incident to a repair are also included in the definition of "motor vehicle repair."

Section 2: Under motor vehicle franchise laws, a new motor vehicle dealer must notify the Commissioner and each new motor vehicle dealer in their line make if they intend to establish or relocate in a market area or within certain distances from their present location. If a protest is filed, then the dealership cannot be established until a hearing has been held. The dealership may be established if good cause is found for permitting the establishment or relocation.

This bill would add to the list of exclusions from the notification and hearing procedure. If a dealer is relocating (1) within four and a half miles from an existing site, (2) the relocation site is not located within four miles of another licensed new motor vehicle dealer for the same line make of vehicle, and (3) the dealership has been operating at its existing site for a minimum of 50 years prior to the effective date of the provision, then the dealership would be excluded from the requirements.

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

Summary contribution by Wendy Graf Ray, Staff Attorney

H1227e1-SMRK-CSRK

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

HOUSE BILL 1227

Short Title:	Clarification of Motor Vehicle Repair Act.	(Public)
Sponsors:	Representatives Coleman and Eddins (Primary Sponsors).	
Referred to:	Transportation.	

April 14, 2005

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE MOTOR VEHICLE REPAIR ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-354.2 reads as rewritten:

"**§ 20-354.2. Definitions.**

As used in this act:

(1) "Customer" means the person who signs the written repair estimate or any other person whom that person designates as a person who may authorize repair work.

(2) "Employee" means an individual who is employed full time or part time by a motor vehicle repair shop and performs motor vehicle repairs.

(3) "Motor vehicle" means any automobile, truck, bus, recreational vehicle, motorcycle, motor scooter, or other motor-powered vehicle, but does not include trailers, mobile homes, travel trailers, or trailer coaches without independent motive power, or watercraft or aircraft.

(4) "Motor vehicle repair" means all maintenance of and modification and repairs to motor vehicles and the diagnostic work incident to those repairs, including, but not limited to, the rebuilding or restoring of rebuilt vehicles, body work, painting, warranty work, <u>shop supply fees, hazardous material disposal fees,</u> and other work customarily undertaken by motor vehicle repair shops. Motor vehicle repair does not include the sale or installation of tires when authorized by the customer.

(5) "Motor vehicle repair shop" means any person who, for compensation, engages or attempts to engage in the repair of motor vehicles owned by other persons and includes, but is not limited to:

a. Mobile motor vehicle repair shops.

b. Motor vehicle and recreational vehicle dealers.

c. Garages.
d. Service stations.
e. Self-employed individuals.
f. Truck stops.
g. Paint and body shops.
h. Brake, muffler, or transmission shops.
i. Shops doing glasswork.

Any person who engages solely in the maintenance or repair of the coach portion of a recreational vehicle is not a motor vehicle repair shop."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 1404

Committee Substitute Favorable 6/1/05

PROPOSED SENATE COMMITTEE SUBSTITUTE H1404-PCS60532-RU-62

Short Title: Seizure of Documents and Plates. (Public)

Sponsors:

Referred to:

April 21, 2005

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE LAW ENFORCEMENT OFFICERS TO SERVE PROCESS AND REVOCATION ORDERS FOR THE NORTH CAROLINA DIVISION OF MOTOR VEHICLES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-45 reads as rewritten:

"**§ 20-45. Seizure of documents and plates.**

(a) The Division is hereby authorized to take possession of any certificate of title, registration card, permit, license, or registration plate issued by it upon expiration, revocation, cancellation, or suspension thereof, or which is fictitious, or which has been unlawfully or erroneously issued, or which has been unlawfully used.

(b) ~~Nothing contained herein or elsewhere shall be construed to require the Division to take possession of any certificate of title, registration card permit, license, or registration plate which has expired, been revoked, canceled or suspended or which is fictitious or which has been unlawfully or erroneously issued, or which has been unlawfully used.~~ The Division may give notice to the owner, licensee or lessee of its authority to take possession of any ~~ownership document, operator's license, or plate~~ certificate of title, registration card, permit, license, or registration plate issued by it and require that person to surrender it to the Commissioner or his officers or agents. Any person who fails to surrender the ~~ownership document, operator's license, or plate,~~certificate of title, registration card, permit, license, or registration plate or any duplicate ~~thereof~~ thereof, upon personal service of notice or within 10 days after receipt of notice by ~~mail,~~mail as provided in G.S. 20-48, shall be guilty of a Class 2 misdemeanor.

(c) Any sworn law enforcement officer, including a member of the State Highway Patrol, is authorized to seize a certificate of title, registration card, permit, license, or registration plate that has been revoked by the Division. When, in reliance

upon written, electronic, or other notice from the Division, any law enforcement officer, with territorial and subject matter jurisdiction, has probable cause to believe that the certificate of title, registration card, permit, license, or registration plate has been revoked or cancelled by the Division pursuant to G.S. 20-309(e), in accordance with this section, or any other statute, in addition to the officer taking appropriate enforcement action against the owner, licensee or lessee, the officer is authorized to seize and deliver the certificate of title, registration card, permit, license, or registration plate subject to revocation to the Division, after completion of all court proceedings. A law enforcement officer acting pursuant to this subsection shall have the same authority while executing a revocation as if the law enforcement officer was serving an arrest warrant.

(d) Any law enforcement officer who seizes a registration plate pursuant to this section shall report the seizure to the Division within 48 hours of the seizure."

SECTION 2. This act becomes effective December 1, 2005.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 2

HOUSE BILL 1404

Committee Substitute Favorable 6/1/05

Short Title: Seizure of Documents and Plates. (Public)

Sponsors:

Referred to:

April 21, 2005

A BILL TO BE ENTITLED

AN ACT TO REQUIRE LAW ENFORCEMENT OFFICERS TO SERVE PROCESS AND REVOCATION ORDERS FOR THE NORTH CAROLINA DIVISION OF MOTOR VEHICLES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-45 reads as rewritten:

"**§ 20-45. Seizure of documents and plates.**

(a) The Division is hereby authorized to take possession of any certificate of title, registration card, permit, license, or registration plate issued by it upon expiration, revocation, cancellation, or suspension thereof, or which is fictitious, or which has been unlawfully or erroneously issued, or which has been unlawfully used.

(b) ~~Nothing contained herein or elsewhere shall be construed to require the Division to take possession of any certificate of title, registration card permit, license, or registration plate which has expired, been revoked, canceled or suspended or which is fictitious or which has been unlawfully or erroneously issued, or which has been unlawfully used.~~ The Division may give notice to the owner, licensee or lessee of its authority to take possession of any ~~ownership document, operator's license, or plate~~ registration plate issued by it and require that person to surrender it to the Commissioner or his officers or agents. Any person who fails to surrender the ownership document, operator's license, or plate, or any duplicate thereof upon personal service of notice or within 10 days after receipt of notice by mail, as provided in G.S. 20-48, shall be guilty of a Class 2 misdemeanor.

(c) If the Division does not receive the registration plate which has been revoked; canceled; suspended; which was fictitious; which has been unlawfully or erroneously issued; or which has been unlawfully used, the Division shall issue a process or revocation order directing the State Highway Patrol and all other law enforcement agencies to locate the registration plate and seize it. The law enforcement officer serving the process or revocation order shall take appropriate enforcement action against the owner, licensee, or lessee. A law enforcement officer shall have the same authority

while serving a process or revocation order as if the member was serving an arrest warrant."

SECTION 2. This act becomes effective October 1, 2005.

HOUSE BILL 1404:
Seizure of Documents and Plates

BILL ANALYSIS

Committee:	Senate Judiciary I	**Date:**	August 11, 2005
Introduced by:	Rep. Folwell	**Summary by:**	Hal Pell Committee Co-Counsel
Version:	PCS to Second Edition H1404-CSRK		

SUMMARY: ***House Bill 1404 amends the Motor Vehicle law to authorize any sworn law enforcement officer to seize any certificate of title, registration card, permit, license, or registration plate that has been revoked or cancelled by the Division of Motor Vehicles. This act becomes effective December 1, 2005.***

CURRENT LAW:

In 2002, the Enforcement Section of the Division of Motor Vehicles was transferred from the Department of Transportation to the Department of Crime Control and Public Safety.

Under current law, the Division of Motor Vehicles is authorized to take possession of any certificate of title, registration card, permit, license, or registration plate upon expiration, revocation, cancellation, or suspension of the document or plate, or if the document or plate is fictitious, has been unlawfully or erroneously issued, or has been unlawfully used. If the Division determines to take possession of the document or plate, it may give notice to the owner, licensee or lessee and require the person to surrender the document or plate to the Commissioner or his officers or agents. Failure to surrender the document or plate is punishable as a Class 2 misdemeanor.

BILL ANALYSIS:

This bill provides that if a law enforcement officer has probable cause to believe that a certificate of title, registration card, permit, license, or registration plate has been revoked or cancelled by the Division, the officer may seize the document or plate. An officer who seizes a registration plate has the same authority while executing a revocation as if the officer was serving an arrest warrant.

A law enforcement officer may rely on written, electronic, or other notice from the Division; the seizure must be reported to the Division within 48 hours.

The document or plate, following completion of any court proceedings, is to be delivered to the Division.

EFFECTIVE DATE: This act becomes effective December 1, 2005.

Summary contribution by Karen Cochrane-Brown, Staff Attorney.

H1404e2-SMRK-CSRK

INSURANCE FEDERATION OF NORTH CAROLINA

August 10, 2005

Honorable Dale Folwell
508 Legislative Office Building
Raleigh, NC 27603

Re: H 1404, Seizure of Documents and Plates

Rep. Folwell:

The Insurance Federation of North Carolina (IFNC) represents the leading companies that write property and casualty insurance in our State. The fifteen members of IFNC comprise a market share of over 85% of the total consumer auto insurance and homeowners policies held by the citizens of North Carolina.

The issue of uninsured motorists is of great concern to the insurance industry, in large part because the cost from accidents caused by motorists who disregard the law and operate their car without having required liability insurance must be borne by consumers who do abide by the law.

By most estimates, there are over 400,000 motor vehicles on North Carolina roads that are not insured today, and while the cost of damage by collisions caused by uninsured motorists is difficult to determine exactly, we estimate the combined expense of auto repairs, medical injury, and lost wages of innocent victims could very well be between $15,000,000 and $25,000,000 annually, and possibly more. Unless more is done to address this problem, the consumers of North Carolina can only expect this figure to continue to rise.

We believe any legislation that improves efforts to get uninsured motorists off our roads is a step in the right direction in addressing this problem, and our association supports your bill as it relates to directing the removal of license tags from vehicles that are not properly insured as required by law.

Thank you for your commitment to this issue.

Best wishes,

Joseph R. Stewart
Executive Director

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 2

HOUSE BILL 1279

Committee Substitute Favorable 5/16/05

Short Title: Speeding to Elude Arrest. (Public)

Sponsors:

Referred to:

April 19, 2005

A BILL TO BE ENTITLED

AN ACT TO AMEND THE SPEEDING TO ELUDE ARREST STATUTES TO CLARIFY THE PROXIMATE CAUSE REQUIREMENT WHEN THE OFFENSE RESULTS IN DEATH.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-141.5 reads as rewritten:

"**§ 20-141.5. Speeding to elude arrest.**

(a) It shall be unlawful for any person to operate a motor vehicle on a street, highway, or public vehicular area while fleeing or attempting to elude a law enforcement officer who is in the lawful performance of his duties. Except as provided in subsection (b) of this section, violation of this section shall be a Class 1 misdemeanor.

(b) If two or more of the following aggravating factors are present at the time the violation occurs, violation of this section shall be a Class H felony.

(1) Speeding in excess of 15 miles per hour over the legal speed limit.

(2) Gross impairment of the person's faculties while driving due to:

a. Consumption of an impairing substance; or

b. A blood alcohol concentration of 0.14 or more within a relevant time after the driving.

(3) Reckless driving as proscribed by G.S. 20-140.

(4) Negligent driving leading to an accident causing:

a. Property damage in excess of one thousand dollars ($1,000); or

b. Personal injury.

(5) Driving when the person's drivers license is revoked.

(6) Driving in excess of the posted speed limit, during the days and hours when the posted limit is in effect, on school property or in an area designated as a school zone pursuant to G.S. 20-141.1, or in a highway work zone as defined in G.S. 20-141(j2).

(7) Passing a stopped school bus as proscribed by G.S. 20-217.

(8) Driving with a child under 12 years of age in the vehicle.

(c) When a violation of subsection (a) of this section is the proximate cause of the death of any person, the person violating subsection (a) of this section shall be guilty of a Class H felony. When a violation of subsection (b) of this section is the proximate cause of the death of any person, the person violating subsection (b) of this section shall be guilty of a Class E felony.

~~(c)~~(d) Whenever evidence is presented in any court or administrative hearing of the fact that a vehicle was operated in violation of this section, it shall be prima facie evidence that the vehicle was operated by the person in whose name the vehicle was registered at the time of the violation, according to the Division's records. If the vehicle is rented, then proof of that rental shall be prima facie evidence that the vehicle was operated by the renter of the vehicle at the time of the violation.

~~(d)~~(e) The Division shall suspend, for up to one year, the drivers license of any person convicted of a misdemeanor under this section. The Division shall revoke, for two years, the drivers license of any person convicted of a felony under this section if the person was convicted on the basis of the presence of two of the aggravating factors listed in subsection (b) of this section. The Division shall revoke, for three years, the drivers license of any person convicted of a felony under this section if the person was convicted on the basis of the presence of three or more aggravating factors listed in subsection (b) of this section. In the case of a first felony conviction under this section where only two aggravating factors were present, the licensee may apply to the sentencing court for a limited driving privilege after a period of 12 months of revocation, provided the operator's license has not also been revoked or suspended under any other provision of law. A limited driving privilege issued under this subsection shall be valid for the period of revocation remaining in the same manner and under the terms and conditions prescribed in G.S. 20-16.1(b). If the person's license is revoked under any other statute, the limited driving privilege issued pursuant to this subsection is invalid.

~~(e)~~(f) When the probable cause of the law enforcement officer is based on the prima facie evidence rule set forth in subsection ~~(c)~~(d) above, the officer shall make a reasonable effort to contact the registered owner of the vehicle prior to initiating criminal process.

~~(f)~~(g) Each law enforcement agency shall adopt a policy applicable to the pursuit of fleeing or eluding motorists. Each policy adopted pursuant to this subsection shall specifically include factors to be considered by an officer in determining when it is advisable to break off a chase to stop and apprehend a suspect. The Attorney General shall develop a model policy or policies to be considered for use by law enforcement agencies."

SECTION 2. This act becomes effective December 1, 2005, and applies to offenses committed on or after that date.

HOUSE BILL 1279: Speeding to Elude Arrest

BILL ANALYSIS

Committee:	Senate Judiciary I	**Date:**	August 10, 2005
Introduced by:	Rep. Hill	**Summary by:**	Hal Pell
Version:	PCS to Second Edition H1279-CSRK-39		Committee Co-Counsel

SUMMARY: This proposed committee substitute would enhance the penalties for a violation of the Speeding to Elude Arrest statute where the violation results in a death. The bill also aggravates the penalties for discharging a weapon into an occupied dwelling or vehicle in operation. This act becomes effective December 1, 2005, and applies to offenses committed on or after that date.

CURRENT LAW:

Involuntary Manslaughter:

Involuntary manslaughter (Class F felony) is the unlawful and unintentional killing of another:

(1) without malice, resulting from an unlawful act that is not a felony, and not normally dangerous to human life, or

(2) by an act or omission constituting culpable negligence. The North Carolina Supreme Court has held that an intentional, willful or wanton violation of a statute designed for the protection of human life or limb, which proximately results in injury or death, is culpable negligence. (*E.g.*, passing four vehicles at one time in a no passing zone; passing more than one vehicle by crossing over a double yellow line).

Second Degree Murder:

To prove Second Degree Murder (Class B2 felony) in an automobile accident case, the State must show that the defendant acted with "malice," in that the defendant had the intent to perform the act of driving in such a reckless manner as reflects knowledge that injury or death would likely result, thus evidencing depravity of mind. When culpable negligence is accompanied by an act that imports danger to another, and is done so recklessly or wantonly as to manifest depravity of mind and disregard of human life [malice], the act is sufficient to support a second-degree murder charge. (E.g., defendant speeding to elude police, ran red light, several stop signs, turned lights off on dark road, all with clear mind free from intoxicating substances).

BILL ANALYSIS:

Section 1:

The Speeding to Elude Arrest statute would be amended to provide that:

- If the defendant was attempting to elude or flee from police (a Class 1 misdemeanor), and causes a death, then the offense would be a Class H felony.
- If the defendant was attempting to elude or flee from the police, committed any two (2) or more of the eight (8) listed aggravating factors in the statute (a Class H felony), and causes a death, then the offense would be a Class E felony.

The offenses would not be lesser included offenses of either Involuntary Manslaughter or Second Degree Murder; consequently, a defendant could be tried and convicted for both (e.g., Speeding to Elude Arrest and Involuntary Manslaughter).

Section 2:

The bill also amends the criminal law statute that penalizes the discharge of a weapon into occupied property. The bill would create a higher level felony if the person discharges the weapon into an occupied dwelling, or into an occupied vehicle that is in operation. The offense would be aggravated from a Class E felony to a Class C felony. If the violation causes serious injury, the offense would be a B2 felony.

EFFFECTIVE DATE: This act becomes effective December 1, 2005, and applies to offenses committed on or after that date.

H1279e2-SMRK-CSRK

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 1491

Committee Substitute Favorable 5/19/05

PROPOSED SENATE COMMITTEE SUBSTITUTE H1491-PCS70553-RK-48

Short Title: Insurance for School Social Workers. (Public)

Sponsors:

Referred to:

April 21, 2005

A BILL TO BE ENTITLED

AN ACT TO REQUIRE LOCAL BOARDS OF EDUCATION TO PROVIDE LIABILITY INSURANCE FOR SCHOOL SOCIAL WORKERS WHO TRANSPORT STUDENTS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 21 of Chapter 115C of the General Statutes is amended by adding the following new section to read:

"**§ 115C-317.1. School social workers and transporting students.**

A school social worker shall not be required to transport students without the existence of a written job description or local board policy that imposes this requirement."

SECTION 2. G.S. 115C-47 is amended by adding a new subdivision to read:

"(25a) To Reimburse the Additional Cost of Automobile Liability Coverage for School Social Workers Required to Transport Students. – Unless a local board of education otherwise provides for liability insurance coverage of a school social worker who is required to transport students under G.S. 115C-317.1, a local board of education may require a school social worker who is required to transport students as provided under G.S. 115C-317.1 to increase the liability limits or add a business-use rider, or both, on that employee's personal automobile liability insurance policy for the purpose of transporting students within the course of that employee's work duties, only if the board reimburses the employee for the additional premium charged, up to the maximum additional amount charged to a person with up to two points assessed under the Safe Driver Incentive Plan pursuant to G.S. 58-36-65, for the increased liability limits or the added rider, or both."

SECTION 3. This act becomes effective October 1, 2005.

HOUSE BILL 1491:
Insurance for School Social Workers

BILL ANALYSIS

Committee:	Senate Judiciary I	**Date:**	August 9, 2005
Introduced by:	Rep. Glazier	**Summary by:**	O. Walker Reagan
Version:	Second Edition H1491-ARU-69		Committee Co-Counsel

SUMMARY: ***The Proposed Senate Committee Substitute for House Bill 1491 would allow local boards to require a school social worker to transport students so long as this requirement is part of a written job description or local board policy. The bill also would allow a local board to insure the liability of this social worker for carrying out these duties or require this social worker to increase the liability limits or add a business use rider, or both, on the employee's personal automobile liability insurance policy. If the board requires the employee to get the additional insurance coverage, the board must reimburse the employee for any additional premium charged as a result, up to a maximum limit.***

CURRENT LAW/BACKGROUND: There is no law that prohibits a local board from requiring an employee, such as a school social worker, from transporting students as part of that employee's work responsibilities. School social workers, in particular, often are required to use their personal automobiles to transport students between the school and various appointments, such as doctor's visits.

The general law in North Carolina is that a school employee is liable and the school board is vicariously liable only if the school system has purchased insurance and waived its immunity. Currently, 52 LEAs participate in the North Carolina School Boards Trust risk management program for their automobile coverage, instead of purchasing commercial automobile insurance. The Trust program provides excess automobile liability coverage to employees operating their personal automobiles for school business purposes. This means the employee's insurance provides primary coverage, unless the policy excludes driving in the course of employment.

Some LEAs require their employees to have certain amounts of coverage, but this is not uniform. Some LEAs agree to pay the extra insurance costs if they require the employee to purchase higher limits of personal insurance or a business use rider on the employee's personal insurance policy.

BILL ANALYSIS: Section 1 of the bill would provide that a school social worker cannot be required to transport students absent the existence of a written job description or local board policy that imposes this requirement.

Section 2 of the bill would authorize a local board of education to require this social worker to increase the liability limits or add a business use rider, or both, on that employee's personal automobile liability insurance policy for the purpose of transporting students within the course of that employee's employment, if the board does not otherwise insure for this additional risk itself. If the board requires the employee to get the additional insurance coverage, then the board would be required to reimburse the school social worker for the extra premium that results, up to the additional premium for a person with 2 insurance points.

EFFECTIVE DATE: This bill would be effective July 1, 2005.

Robin Johnson and Drupti Chauhan, counsel to the House Education Committee, substantially contributed to this summary.

H1491e2-SMRU-ARU-69

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 2

HOUSE BILL 1491

Committee Substitute Favorable 5/19/05

Short Title: Insurance for School Social Workers. (Public)

Sponsors:

Referred to:

April 21, 2005

A BILL TO BE ENTITLED

AN ACT TO REQUIRE LOCAL BOARDS OF EDUCATION TO PROVIDE LIABILITY INSURANCE FOR SCHOOL SOCIAL WORKERS WHO TRANSPORT STUDENTS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 21 of Chapter 115C of the General Statutes is amended by adding the following new section to read:

"**§ 115C-317.1. School social workers and transporting students.**

A school social worker shall not be required to transport students without the existence of a written job description or local board policy that imposes this requirement."

SECTION 2. G.S. 115C-47 is amended by adding a new subdivision to read:

"(25a) To Reimburse the Additional Cost of Automobile Liability Coverage for School Social Workers Required to Transport Students. – A local board of education may require a school social worker who is required to transport students as provided under G.S. 115C-317.1 to increase the liability limits or add a business-use rider, or both, on that employee's personal automobile liability insurance policy for the purpose of transporting students within the course of that employee's work duties. If the board imposes this requirement on a school social worker, the board shall reimburse the employee for the additional premium charged for the increased liability limits or the added rider, or both."

SECTION 3. This act becomes effective July 1, 2005.

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE
Name of Committee

8-11-05
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
Anita K Nichols	A.G.
Gary O. Bartlett	SBE
Johnnie McLean	SBE
Cam Ames	BPMHL
David Hooker	RESTORUCK
Steve Wall	DENR
Brenda Freeman	DMV
Kathy Brewington	DMV
Portia Manley	NCDOT / DMV
Joey Hunter	DMV License + Theft
Beth Hathcock	DOS

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE — 8-11-05

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
Eddie Edwards	NC Sheriffs Assn
Chris Heagarty	NCCUE
Brad Lamb	NC Consumers Council
Henry Jones	Attorney, Raleigh
Sam Taylor	Honda
Henry Taylor	Isuzu
Bob Hall	Democracy North Carolina
Kathleen Edwards	UNC-CH Institute of Gov't
Jennifer Sullivan	NRCD. NC
K Reynolds	Consultant
W.R Mann	SSI

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE — 8-11-05

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
Molly Ryan	NCSBA
Leanne Lachmar	NCSBA
Susan Hanner	WCPSS
Aaron Clary	Intern
Alastair Macaulay	NCHBA
LISA MARTIN	NCHBA
Mary Mumbaster	Poyner & Spruill
Roger Bone	Bone & Assoc.
FRANK W. FOLGER	NC DOT
R. Paul Wilms	NCHBA
Al Ripley	NC Justice

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE — 8-11-05

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
Zach Ambrose	CTGOV

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Friday	August 12, 2005	10:00 AM	1027 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 128	Early Prep for Absentee Count.	Representative Preston Representative Insko
HB 327	2005 Technical Corrections Act.	Representative Culpepper, III
HB 650	Business Court Cases/Fee.	Representative Glazier Representative Haire
HB 1115	Election Administration Amendments.	Representative Ross Representative Moore
HB 1128	Campaign Finance Amendments.	Representative Ross Representative Moore
HB 1146	Foreclosure Reform.	Representative Michaux, Jr.
HB 1409	Bail Bonds/Bond Source	Representative Dollar
HB 1527	Clarify MV Dealer Franchise Laws.	Representative Cole
HB-1543	Autopsy Photos Not Public Records	Representative Ray

Senator Daniel G. Clodfelter, Chair

Judiciary 1 Committee

August 12, 2005 a.m.

Minutes

Senator Dan Clodfelter, Chair called the meeting to order at 10:10 a.m. with 18 members present.

HB-327 (2005 Technical Corrections Act) Committee Substitute was introduced by Senator Clodfelter. He stated that the only action on the bill at this time would be to adopt the Committee Substitute. Senator Jeanne Lucas moved for adoption. All members voted yes. Motion carried.

HB-1527 (Clarify MV Dealer Franchise Laws) Committee Substitute was introduced by Senator Clodfelter. Senator Phillip Berger moved for adoption of the Committee Substitute. All members voted yes. Motion carried. Bill sponsor, Representative Nelson Cole explained that the bill makes changes to the Motor Vehicle Dealers and Manufacturers Licensing Law. (See attached Bill Summary for further information). Senator Jerry Tillman offered an Amendment to the bill on page 13, line 18, and moved for adoption of the amendment. (See attached Amendment). All members voted yes. Motion carried. Senator RC Soles offered a second Amendment to the bill on page 6, line 9, and moved for adoption of the amendment. (See attached Amendment). All members voted yes. Motion carried. Senator Tillman moved for a Favorable Report. All members voted yes. Motion carried.

Senator Clodfelter stated that HB 1146 would not be taken up at this time.

HB-650 (Business Court Cases/Fee.) Committee Substitute was introduced by Senator Clodfelter. Senator Jeanne Lucas moved for adoption of the Committee Substitute. All members voted yes. Motion carried. Co-sponsor, Representative Phillip Haire explained that the bill statutorily authorized the Chief Justice of the NC Supreme Court to assign special superior court judges to hear complex business cases and codifies the practice of assigning mandatory complex business cases. It also increases the filing fee for those cases from sixty-nine dollars to two hundred,

amended in House Finance, provides that district court judges are to assume office on the first day of January following election. (See attached Bill Summary for further information). Senator's Phillip Berger, Richard Stevens and RC Soles had questions. Senator Clodfelter answered the questions. Senator Martin Nesbitt moved for a Favorable Report. All members voted yes. Motion carried.

HB-1543 (Autopsy Photos Not Public Records) Committee Substitute was introduced by Senator Clodfelter. Senator RC Soles moved for adoption of the Committee Substitute. All members voted yes. Motion carried. Senator Karen Ray explained the bill would provide that photographs and video and audio recordings of official autopsies are not public records. The text of an autopsy report, however, would continue to be a public record and fully accessible to the public. The bill would authorize the custodian of the photographs or recordings to permit any member of the public to view them, but not to provide copies. It would allow certain public officials and others to obtain copies for official use or specialized use only. Under the bill, any person could seek an order through a special proceeding to obtain copies of the photos or recordings, but unauthorized disclosure of these materials would be a Class 2 misdemeanor and stealing them would be a Class 1 misdemeanor. (See attached Bill Summary for further information).
Senator Martin Nesbitt spoke on the bill and offered an Amendment to the bill on page 4, line 26. All members voted yes. Motion carried. He Senator Phillip Berger moved for a Favorable Report as amended. All members voted yes. Motion carried.

HB-1409 (Bail Bonds/Bond Source) Committee Substitute was introduced by Vice Chair, Senator RC Soles. He moved for adoption of the Committee Substitute. All members voted yes. Motion carried. Bill sponsor, Representative Nelson Dollar explained that the bill amends the State bail laws to authorize judges to conduct hearings on the source of money or property posted for a secured appearance bond, and refuse the bond if the money or property was not derived from a lawful source or will not assure appearance. Senator Clark Jenkins offered an Amendment to the bill on page 1, line 17 (See attached Amendment, and asked for adoption of the Amendment. All members voted yes. Motion carried. Senator RC Soles offered a second Amendment on page 1, lines 14 and 15. Senator Richard Stevens moved for adoption of the Amendment. All members voted yes. Motion carried. Mr., Mike Mann, NC Bail Bondsmen Association, spoke on the bill. Senator Stevens moved for a Favorable Report. All members voted yes. Motion carried.

HB-1115 (Election Administration Amendments) Committee Substitute was introduced by Senator Clodfelter. Senator Charlie Albertson moved for adoption of the Committee Substitute. All members voted yes. Motion carried. Bill sponsor, Representative Deborah Ross explained the bill makes several changes to the laws concerning election administration. The changes are based on proposals made by the staff of the State Board of Elections. (See attached Bill Summary for further information). Rep. Ross asked staff attorney, Mr. Bill Gilkeson to explain all the

provisions. Senator Clodfelter stated that the bill would be displaced at this time and would be heard again at the afternoon meeting today.

Being no further business the meeting adjourned at 10:58 a.m.

Senator Dan Clodfelter, Chair

Wanda Joyner, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Daniel G. Clodfelter, Chair

Friday, August 12, 2005

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

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #2) **650** Business Court Cases/Fee.

Draft Number:	PCS60539
Sequential Referral:	Finance
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comments:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Daniel G. Clodfelter, Chair

Friday, August 12, 2005

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

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **1409** Bail Bonds/Bond Source.

Draft Number:	PCS50491
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **1527** Clarify MV Dealer Franchise Laws.

Draft Number:	PCS60537
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **1543** Autopsy Photos not Public Record.

Draft Number:	PCS10398
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 3

Committee Clerk Comments:

8-12-05

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 327*
Committee Substitute Favorable 5/31/05
PROPOSED SENATE COMMITTEE SUBSTITUTE H327-CSRH-56 [v.16]

8/12/2005 9:42:19 AM

Short Title: 2005 Technical Corrections Act. (Public)

Sponsors:

Referred to:

February 22, 2005

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 RECOMMENDED BY THE GENERAL STATUTES COMMISSION

SECTION 1.(a) G.S. 7A-775(a)(4) reads as rewritten:

"(4) Arranging for an annual audit, in accordance with ~~G.S. 143-6.1;~~G.S. 143-6.2;".

SECTION 1.(b) G.S. 143B-168.12(c) reads as rewritten:

"(c) The North Carolina Partnership shall require each local partnership to place in each of its contracts a statement that the contract is subject to monitoring by the local partnership and North Carolina Partnership, that contractors and subcontractors shall be fidelity bonded, unless the contractors or subcontractors receive less than one hundred thousand dollars ($100,000) or unless the contract is for child care subsidy services, that contractors and subcontractors are subject to audit oversight by the State Auditor, and that contractors and subcontractors shall be audited as required by ~~G.S. 143-6.1.~~G.S. 143-6.2. Organizations subject to G.S. 159-34 shall be exempt from this requirement."

SECTION 2. G.S. 14-226(b) reads as rewritten:

"(b) A defendant in a criminal proceeding who threatens a witness in the defendant's case with the assertion or denial of parental rights shall be ~~a~~ in violation of this section."

SECTION 3.(a) G.S. 14-309.15(a) reads as rewritten:

"(a) It is lawful for any nonprofit organization or association, recognized by the Department of Revenue as tax-exempt pursuant to G.S. 105-130.11(a), and for any

government entity within the State, to conduct raffles in accordance with this section. Any person who conducts a raffle in violation of any provision of this section shall be guilty of a Class 2 misdemeanor. Upon conviction that person shall not conduct a raffle for a period of one year. It is lawful to participate in a raffle conducted pursuant to this section. It shall not constitute a violation of State law to advertise a raffle conducted in accordance with this section. A raffle conducted pursuant to this section is not "gambling"."

SECTION 3.(b) Section 2 of Chapter 219 of the 1993 Session Laws is repealed.

SECTION 4. G.S. 14-404(a) reads as rewritten:

"(a) Upon application, the sheriff shall issue the license or permit to a resident of that ~~county~~ county, unless the purpose of the permit is for collecting, in which case a sheriff can issue a permit to a ~~nonresident~~ nonresident, when the sheriff has done all of the following:

(1) Verified by a criminal history background investigation that it is not a violation of State or federal law for the applicant to purchase, transfer, receive, or possess a handgun. The sheriff shall determine the criminal history of any applicant by accessing computerized criminal history records as maintained by the State Bureau of Investigation and the Federal Bureau of Investigation, by conducting a national criminal history records check, and by conducting a criminal history check through the Administrative Office of the Courts.

(2) Fully satisfied himself or herself by affidavits, oral evidence, or otherwise, as to the good moral character of the applicant.

(3) Fully satisfied himself or herself that the applicant desires the possession of the weapon mentioned for (i) the protection of the home, business, person, family or property, (ii) target shooting, (iii) collecting, or (iv) hunting."

SECTION 5. G.S. 14-407.1 reads as rewritten:

"**§ 14-407.1. Sale of blank cartridge pistols.**

The provisions of ~~G.S. 14-402 and 14-405 to 14-407~~ G.S. 14-402, 14-405, and 14-406 shall apply to the sale of pistols suitable for firing blank cartridges. The ~~clerks of the superior courts~~ sheriffs of all the counties of this State are authorized and may in their discretion issue to any person, firm or corporation, in any such county, a license or permit to purchase or receive any pistol suitable for firing blank cartridges from any person, firm or corporation offering to sell or dispose of the same, which said permit shall be in substantially the following form:

North Carolina

_____ County

I, _____, ~~Clerk of the Superior Court~~ sheriff of said county, do hereby certify that _____, whose place of residence is _____ Street in _____ (or) in _____ Township in _____ County, North Carolina, having this day satisfied me that the possession of a pistol suitable for firing blank cartridges will be used only for lawful purposes, a permit is therefore given

said _____ to purchase said pistol from any person, firm or corporation authorized to dispose of the same, this _____ day of _____, _____.

_____

~~Clerk of Superior Court~~ Sheriff

The ~~clerk~~ sheriff shall charge for ~~his~~ the sheriff's services, upon issuing such permit, a fee of fifty cents (50¢)."

SECTION 6. G.S. 20-158(b)(2) reads as rewritten:

"(2) ~~Approaching with traffic signal traffic signal the approaching~~

a. When a ~~steady or strobe beam stoplight~~ steady-beam traffic signal is emitting a red light controlling traffic ~~passing through~~ approaching an intersection, an approaching vehicle facing the red light shall come to a stop and shall not enter the intersection. After coming to a complete stop and unless prohibited by an appropriate sign, that approaching vehicle may make a right turn.

b. Any vehicle that turns right under this subdivision shall yield the right-of-way to:

1. Other traffic and pedestrians using the intersection; and
2. Pedestrians who are moving towards the intersection, who are in reasonably close proximity to the intersection, and who are preparing to cross in front of the traffic that is required to stop at the red light.

c. Failure to yield to a pedestrian under this subdivision shall be an infraction, and the court may assess a penalty of not more than five hundred dollars ($500.00) and not less than one hundred dollars ($100.00).

d. The Department of Transportation shall collect data regarding the number of individuals who are found responsible for violations of sub-subdivision b. of this subdivision and the number of pedestrians who are involved in accidents at intersections because of a driver's failure to yield the right-of-way while turning right at a red light. The data shall include information regarding the number of disabled pedestrians, including individuals with visual or mobility-related disabilities, who are involved in right turn on red accidents. The Department shall report the data annually to the Joint Legislative Transportation Oversight Committee beginning January 1, 2006."

SECTION 7. G.S. 58-31-66(b) reads as rewritten:

"(b) (1) Repealed by Session Laws 2004-203, s. 74(b), effective October 1, 2004.

~~(2)~~ ~~because~~".

SECTION 8. G.S. 66-58(b)(13a) is repealed.

SECTION 9. G.S. 95-265(a)(2)b. reads as rewritten:

"b. The complainant certified to the court that there is good cause to grant the remedy because the harm that the remedy is intended to prevent would ~~like~~ likely occur if the respondent were given any prior notice of the complainant's efforts to obtain judicial relief."

SECTION 10. G.S. 120-32.1(d) reads as rewritten:

"(d) For the purposes of this section, the term "State legislative buildings and grounds" means:

(1) At all times:

a. The State Legislative Building;

a1. Repealed by Session Laws 1998-156, s. 1, effective September 24, 1998.

a2. The areas between the outer walls of the State Legislative Building and the far curbline of those sections of Jones, Wilmington, Salisbury, and Lane Streets that border the land on which it is situated;

b. The Legislative Office Building, which shall include the following areas:

1. The garden area and outer stairway;

2. The loading dock area bounded by the wall on the east abutting ~~the State Government~~ Halifax Street Mall, the southern edge of the southernmost exit lane on Salisbury Street for the parking deck, and the Salisbury Street sidewalk;

3. The area between its outer wall and the near curbline of that section of Lane Street that borders the land on which it is situated; and

4. The area bounded by its western outer wall, the extension of a line along its northern outer wall to the middle of Salisbury Street, following the middle line of Salisbury Street to the nearest point of the intersection of Lane and Salisbury Streets, and thence east to the near curbline of the Legislative Office Building at its southwestern corner;

c. Any State-owned parking lot which is leased to the General Assembly;

d. The bridge between the State Legislative Building and ~~the State Governmental~~ Halifax Street Mall; and

e. A portion of the brick sidewalk surface area of ~~the State Government~~ Halifax Street Mall, described as follows: beginning at the northeast corner of the Legislative Office Building, thence east across the brick sidewalk to the inner edge of the sidewalk adjacent to the grassy area of the Mall, thence south along the inner edge of the sidewalk to the southwest

outer corner of the Mall water fountain, thence east along the southern outer edge of the fountain to a point north of the northeast corner of the pedestrian surface of the Lane Street pedestrian bridge, thence south from that point to the northeast corner of the pedestrian surface of the bridge, thence west along the southern edge of the brick sidewalk area of the Mall to the southeast corner of the Legislative Office Building, thence north along the east wall of the Legislative Office Building, to the point of beginning.

(2) Repealed by Session Laws 1998-156, s. 1, effective September 24, 1998."

SECTION 11. G.S. 120-231(b) reads as rewritten:

"(b) The Committee may consult with the State Chief Information Officer on statewide technology strategies and initiatives and review all legislative proposals and other recommendations of the State Chief Information Officer.

~~Office of Information Technology Services~~".

SECTION 12. G.S. 126-5(e) reads as rewritten:

"(e) An exempt employee may be transferred, demoted, or separated from his or her position by the department head authorized to designate the exempt position except:

(1) When an employee who has the minimum service requirements described in ~~subsection (c)(1) above~~ G.S. 126-1.1 but less than 10 years of cumulative service in subject positions prior to placement in an exempt position is removed from an exempt position, for reasons other than just cause, the employee shall have priority to any position that becomes available for which the employee is qualified, according to rules and regulations regulating and defining priority as promulgated by the State Personnel Commission; or

(2) When an employee who has 10 years or more cumulative service, including the immediately preceding 12 months, in subject positions prior to placement in an exempt position is removed from an exempt position, for reasons other than just cause, the employee shall be reassigned to a subject position within the same department or agency, or if necessary within another agency, and within a 35 mile radius of the exempt position, at the same grade and salary, including all across-the-board increases since placement in the position designated as exempt, as his most recent subject position."

SECTION 13. G.S. 126-14.4(g) reads as rewritten:

"(g) A career State employee with:

(1) Less than 10 years of service who was placed in an exempt managerial position, as defined by G.S. 126-5(b)(2), shall be given priority consideration for a position at the same salary grade equal to that held in the most recent position ~~prior to the promotion~~ before being placed in the exempt managerial position if he or she has to vacate because of violation of G.S. 126-14.2.

(2) 10 or more years of service who was placed in an exempt managerial position, as defined by G.S. 126-5(b)(2), shall be placed in a comparable position at the same grade and salary equal to that held in the most recent position ~~prior to the promotion~~ before being placed in the exempt managerial position if he or she had to vacate because of violation of G.S. 126-14.2."

SECTION 14. G.S. 126-15.1 reads as rewritten:

"**§ 126-15.1. Probationary State employee defined.**

As used in this Article, "probationary State employee" means a State employee who is exempt from the Personnel Act only because he has not been continuously employed by the State for the period required by ~~G.S. 126-5(c).~~G.S. 126-1.1."

SECTION 15. G.S. 135-4A is recodified as G.S. 135-4.1.

SECTION 16. G.S. 143B-405 reads as rewritten:

"**§ 143B-405. North Carolina State Commission of Indian Affairs – purposes for creation.**

~~The purposes of the Commission shall be~~ The purposes of the Commission shall be as follows:

(1) To deal fairly and effectively with Indian affairs.

(2) To bring local, State, and federal resources into focus for the implementation or continuation of meaningful programs for Indian citizens of the State of North Carolina.

(3) To provide aid and protection for Indians as needs are demonstrated; to prevent undue hardships.

(4) To hold land in trust for the benefit of State-recognized Indian tribes. This subdivision shall not apply to federally recognized Indian tribes.

(5) To assist Indian communities in social and economic development.

(6) To promote recognition of and the right of Indians to pursue cultural and religious traditions considered by them to be sacred and meaningful to Native Americans."

SECTION 17. G.S. 153A-129 reads as rewritten:

"**§ 153A-129. Firearms.**

A county may by ordinance regulate, restrict, or prohibit the discharge of firearms at any time or place except when used to take birds or animals pursuant to Chapter 113, Subchapter ~~III,~~IV, when used in defense of person or property, or when used pursuant to lawful directions of law-enforcement officers. A county may also regulate the display of firearms on the public roads, sidewalks, alleys, or other public property. This section does not limit a county's authority to take action under Chapter 14, Article 36A."

SECTION 18.(a) G.S. 160A-37(f1) reads as rewritten:

"(f1) Property Subject to Present-Use Value Appraisal. – If an area described in an annexation ordinance includes agricultural land, horticultural land, or forestland that meets either of the conditions listed below on the effective date of annexation, then the annexation becomes effective as to that property pursuant to subsection (f2) of this section:

(1) ~~Land that~~ The land is being taxed at present-use value pursuant to G.S. 105-277.4.

(2) ~~Land that~~ The land meets both of the following conditions:

a. On the date of the resolution of intent for annexation it was being used for actual production and is eligible for present-use value taxation under G.S. 105-277.4, but the land ~~has~~ had not been in use for actual production for the required time under G.S. 105-277.3.

b. The assessor for the county where the land subject to annexation is located has certified to the city that the land meets the requirements of this subdivision."

SECTION 18.(b) G.S. 160A-37(f2) reads as rewritten:

"(f2) Effective Date of Annexation for Certain Property. – Annexation of property subject to annexation under subsection (f1) of this section becomes effective as provided in this ~~subsection.~~subsection:

(1) Upon the effective date of the annexation ordinance, the property is considered part of the city only (i) for the purpose of establishing city boundaries for additional annexations pursuant to this Article and (ii) for the exercise of city authority pursuant to Article 19 of this Chapter.

(2) For all other purposes, the annexation becomes effective as to each tract of the property or part thereof on the last day of the month in which that tract or part thereof becomes ineligible for classification pursuant to G.S. 105-277.4 or no longer meets the requirements of subdivision (f1)(2) of this section. Until annexation of a tract or a part of a tract becomes effective pursuant to this subdivision, the tract or part of a tract is not subject to taxation by the city under Article 12 of Chapter 105 of the General Statutes nor is the tract or part of a tract entitled to services provided by the city."

SECTION 18.(c) G.S. 160A-37(h) reads as rewritten:

"(h) Remedies for Failure to Provide Services. – If, not earlier than one year from the effective date of annexation, and not later than 15 months from the effective date of annexation, any person owning property in the annexed territory shall believe that the municipality has not followed through on its service plans adopted under the provisions of G.S. 160A-35(3) and ~~160A-37(e), such~~ subsection (e) of this section, the person may apply for a writ of mandamus under the provisions of Article 40, Chapter 1 of the General Statutes. Relief may be granted by the judge of superior court

(1) If the municipality has not provided the services set forth in its plan submitted under the provisions of G.S. 160A-35(3)a on substantially the same basis and in the same manner as such services were provided within the rest of the municipality prior to the effective date of annexation, and

(2) If at the time the writ is sought such services set forth in the plan submitted under the provisions of G.S. 160A-35(3)a are still being

provided on substantially the same basis and in the same manner as on the date of annexation of the municipality.

Relief may also be granted by the judge of superior court

(1) If the plans submitted under the provisions of ~~G.S. 160A-35(3)c~~ G.S. 160A-35(3)b. require the construction of major trunk water mains and sewer outfall lines and

(2) If contracts for such construction have not yet been let.

If a writ is issued, costs in the action, including a reasonable attorney's fee for such aggrieved person, shall be charged to the municipality."

SECTION 19. G.S. 160A-49(f2) reads as rewritten:

"(f2) Effective Date of Annexation for Certain Property. – Annexation of property subject to annexation under subsection (f1) of this section shall become effective:

(1) Upon the effective date of the annexation ordinance, the property is considered part of the city only (i) for the purpose of establishing city boundaries for additional annexations pursuant to this Article and (ii) for the exercise of city authority pursuant to Article 19 of this Chapter.

(2) For all other purposes, the annexation becomes effective as to each tract of such property or part thereof on the last day of the month in which that tract or part thereof becomes ineligible for classification pursuant to ~~G.S. 105-227.4~~ G.S. 105-277.4 or no longer meets the requirements of subdivision (f1)(2) of this section. Until annexation of a tract or a part of a tract becomes effective pursuant to this subdivision, the tract or part of a tract is not subject to taxation by the city under Article 12 of Chapter 105 of the General Statutes nor is the tract or part of a tract entitled to services provided by the city."

SECTION 20. G.S. 160A-215(g) reads as rewritten:

"(g) This section applies only to Beech Mountain District W, to the Cities of Gastonia, Goldsboro, Greensboro, High Point, Kings Mountain, Lexington, Lincolnton, Lumberton, Monroe, Mount Airy, Shelby, Statesville, Washington, and Wilmington, to the Towns of Beech Mountain, Blowing Rock, Carolina Beach, Carrboro, Franklin, Jonesville, Kure Beach, ~~Jonesville,~~ Mooresville, North Topsail Beach, Selma, Smithfield, St. Pauls, Wilkesboro, and Wrightsville Beach, and to the municipalities in Avery and Brunswick Counties."

SECTION 21. G.S. 163-128(a) reads as rewritten:

"(a) Each county shall be divided into a convenient number of precincts for the purpose of voting. Upon a resolution adopted by the county board of elections and approved by the ~~Secretary-Director~~ Executive Director of the State Board of Elections voters from a given precinct may be temporarily transferred, for the purpose of voting, to an adjacent precinct. Any such transfers shall be for the period of time equal only to the term of office of the county board of elections making such transfer. When such a resolution has been adopted by the county board of elections to assign voters from more than one precinct to the same precinct, then the county board of elections shall maintain separate registration and voting records, consistent with the procedure prescribed by the State Board of Elections, so as to properly identify the precinct in which such voters

reside. The polling place for a precinct shall be located within the precinct or on a lot or tract adjoining the precinct.

Except as provided by Article 12A of this Chapter, the county board of elections shall have power from time to time, by resolution, to establish, alter, discontinue, or create such new election precincts or voting places as it may deem expedient. Upon adoption of a resolution establishing, altering, discontinuing, or creating a precinct or voting place, the board shall give 45 days' notice thereof prior to the next primary or election. Notice shall be given by advertisement in a newspaper having general circulation in the county, by posting a copy of the resolution at the courthouse door and at the office of the county board of elections, and by mailing a copy of the resolution to the chairman of every political party in the county. Notice may additionally be made on a radio or television station or both, but such notice shall be in addition to the newspaper and other required notice. No later than 30 days prior to the primary or election, the county board of elections shall mail a notice of precinct change to each registered voter who as a result of the change will be assigned to a different voting place."

SECTION 22. G.S. 163-296 reads as rewritten:

"**§ 163-296. Nomination by petition.**

In cities conducting partisan elections, any qualified voter who seeks to have his name printed on the regular municipal election ballot as an unaffiliated candidate may do so in the manner provided in G.S. 163-122, except that the petitions and affidavits shall be filed not later than 12:00 noon on the Friday preceding the seventh Saturday before the election, and the petitions shall be signed by a number of qualified voters of the municipality equal to at least four percent (4%) of the whole number of voters qualified to vote in the municipal election according to the voter registration records of the State Board of Elections as of January 1 of the year in which the general municipal election is held. A person whose name appeared on the ballot in a primary election is not eligible to have his name placed on the regular municipal election ballot as an unaffiliated candidate for the same office in that year. The Board of Elections shall examine and verify the signatures on the petition, and shall certify only the names of signers who are found to be qualified registered voters in the municipality. Provided that in the case where a qualified voter seeks to have his name printed on the regular municipal election ballot as an unaffiliated candidate for election from an election district within the municipality, the petition shall be signed by four percent (4%) of the voters qualified to vote for that office."

SECTION 23.(a) Section 18.2(e) of S.L. 2004-124 reads as rewritten:

"**SECTION 18.2.(e).** ~~The~~ With the exception of G.S. 143-655, the word "Commission" shall be replaced with "Division" every place that word appears in Article 68 of Chapter 143 of the General Statutes."

SECTION 23.(b) G.S. 143-655 reads as rewritten:

"**§ 143-655. Fees; State Boxing ~~Commission~~ Revenue Account.**

(a) License Fees. – The ~~Commission~~ Division shall collect the following license fees:

Announcer	$50.00
Contestant	$25.00
Judge	$50.00
Manager	$100.00
Matchmaker	$200.00
Promoter	$300.00
Referee	$50.00
Timekeeper	$50.00
Second	$25.00.

The annual license renewal fees shall not exceed the initial license fees.

(b) Permit Fees. – The ~~Commission~~ Division may establish a fee schedule for permits issued under this Article. The fees may vary depending on the seating capacity of the facility to be used to present a match. The fee may not exceed the following amounts:

Seating Capacity	Fee Amount
Less than 2,000	$100.00
2,000 – 5,000	$200.00
Over 5,000	$300.00.

(c) State Boxing ~~Commission~~ Revenue Account. – There is created the State Boxing ~~Commission~~ Revenue Account within the Department of Crime Control and Public Safety. Monies [moneys] collected pursuant to the provisions of this Article shall be credited to the Account and applied to the administration of the Article."

SECTION 23.(c) G.S. 143-651(23b) reads as rewritten:

"(23b) Sanctioned amateur match. – Any boxing or kickboxing match regulated by an amateur sports organization that has been recognized and approved by the Division.

~~North Carolina Boxing Commission.~~"

SECTION 24. The introductory language of Section 15 of S.L. 2004-127 reads as rewritten:

"**SECTION 15.** ~~G.S. 163-278(9)~~ G.S. 163-278.6(9) reads as rewritten:".

SECTION 25. The introductory language of Section 27(e) of S.L. 2004-199 reads as rewritten:

"**SECTION 27.(e)** ~~G.S. 106-577~~ G.S. 106-557 reads as rewritten:".

SECTION 26. Section 44 of S.L. 2004-203 is repealed.

SECTION 27. Section 68 of S.L. 2004-203 is repealed.

SECTION 28. The introductory language of Section 1 of S.L. 2005-5 reads as rewritten:

"**SECTION 1.** Section 6 of Chapter 1191 of the 1957 Session Laws, as amended by Section 2 of Chapter 292 of the 1985 Session Laws, reads as rewritten:"

PART II. OTHER CHANGES

SECTION 29.(a) G.S. 7A-38.3B, as created in Section 8 of S.L. 2005-150, is recodified as G.S. 7A-38.3C.

SECTION 29.(b) G.S. 160A-331.1, as created in Section 3 of S.L. 2005-150, reads as rewritten:

"**§ 160A-331.1. Construction of lines between June 1, 2005, and May 31, 2007.**

During the period beginning June 1, 2005, and ending May 31, 2007, a city shall not construct or extend an electric distribution line outside of its corporate limits as of June 1, 2005, in territory assigned to an electric membership corporation by the North Carolina Utilities Commission without the written consent of the electric membership corporation. Provided, however, that the consent of an electric membership corporation shall not be required in connection with the proposed construction of an electric distribution line solely to serve a facility owned by a city. The electric membership corporation shall give its consent unless the electric membership corporation, in good faith, believes that the construction of the electric distribution line is not necessary to satisfy the reasonable needs of the public for the delivery of an adequate and reliable supply of electric energy and that, when compared with reasonable, alternative courses of action and locations, construction of the electric distribution line in the proposed location is not reasonable, preferred, in the public interest, and the most economical and practically feasible route to deliver electric energy in accordance with prudent utilities practice. Any dispute concerning the failure of the electric membership corporation to give its written consent shall be submitted to prelitigation mediation in accordance with ~~the provisions of G.S. 7A-38.3B.~~G.S. 7A-38.3C."

SECTION 29.(c) G.S. 160A-331.2(b), as created in Section 3 of S.L. 2005-150, reads as rewritten:

"(b) During the period beginning June 1, 2005, and ending May 31, 2007, electric membership corporations and cities that own and maintain their own electric distribution lines shall undertake good faith negotiations concerning the provision of future electric services within areas outside of the corporate limits of such cities as of June 1, 2005, and the development of agreements relating to the provision of electric services, the location of lines, and the areas within which electric services may be provided by such electric suppliers. To the extent such negotiations produce any agreements between the affected electric suppliers, such agreements shall be submitted to the North Carolina Utilities Commission for approval under this section. To the extent such negotiations do not produce an agreement and disputes among the suppliers remain as of May 31, 2007, such disputes shall be resolved ~~pursuant to the provisions of G.S. 7A-38.3B(i).~~under G.S. 7A-38.3C(i)."

SECTION 29.(d) G.S. 117-10.3, as created in Section 7 of S.L. 2005-150, reads as rewritten:

"**§ 117-10.3. Construction of lines between June 1, 2005, and May 31, 2007.**

During the period beginning June 1, 2005, and ending May 31, 2007, an electric membership corporation shall not construct or extend an electric distribution line in territory assigned to it by the North Carolina Utilities Commission without the written consent of the municipality that owns and maintains its own electric system whose corporate limits, as of June 1, 2005, are within three miles of any part of the line or extension proposed to be constructed by the electric membership corporation. The municipality shall give its consent unless the municipality, in good faith, believes that

the construction or extension of the electric distribution line is not necessary to satisfy the reasonable needs of the public for the delivery of an adequate and reliable supply of electric energy and that, when compared with reasonable, alternative courses of action and locations, construction of that part of the electric distribution line in the proposed location within three miles of the city is not reasonable, preferred, in the public interest, and the most economical and practically feasible route to deliver electric energy in accordance with prudent utilities practice. Any dispute concerning the failure of the municipality to give its written consent shall be submitted to prelitigation mediation in accordance with ~~the provisions of G.S. 7A-38.3B.~~G.S. 7A-38.3C."

SECTION 30.(a) G.S. 7A-177(a) reads as rewritten:

"(a) Within six months of taking the oath of office as a magistrate for the first time, a magistrate is required to attend and satisfactorily complete a course of basic training of at least 40 hours in the civil and criminal duties of a magistrate. The Administrative Office of the Courts is authorized to contract with the ~~Institute of Government~~ School of Government at the University of North Carolina at Chapel Hill or with any other qualified educational organization to conduct this training, and to reimburse magistrates for travel and subsistence expenses incurred in taking such training."

SECTION 30.(b) G.S. 7A-413(a)(4) reads as rewritten:

"(a) The Conference may:

. . . . .

(4) Cooperate with the Administrative Office of the Courts and the ~~Institute of Government~~ School of Government at the University of North Carolina at Chapel Hill concerning education and training programs for prosecutors and staff."

SECTION 30.(c) G.S. 17C-3(a)(5) reads as rewritten:

"(a) There is established the North Carolina Criminal Justice Education and Training Standards Commission, hereinafter called "the Commission." The Commission shall be composed of 33 members as follows:

. . . . .

(5) Citizens and Others. – The President of The University of North Carolina; the ~~Director of the Institute of Government;~~ Dean of the School of Government at the University of North Carolina at Chapel Hill; and two citizens, one of whom shall be selected by the Governor and one of whom shall be selected by the Attorney General. The General Assembly shall appoint four persons, two upon the recommendation of the Speaker of the House of Representatives and two upon the recommendation of the President Pro Tempore of the Senate. Appointments by the General Assembly shall be made in accordance with G.S. 120-122. Appointments by the General Assembly shall be for two-year terms to conclude on June 30th in odd-numbered years.

. . . . ."

SECTION 30.(d). G.S. 17C-3(b) reads as rewritten:

"(b) The members shall be appointed for staggered terms. The initial appointments shall be made prior to September 1, 1983, and the appointees shall hold office until July 1 of the year in which their respective terms expire and until their successors are appointed and qualified as provided hereafter:

For the terms of one year: one member from subdivision (1) of subsection (a) of this section, serving as a police chief; three members from subdivision (2) of subsection (a) of this section, one serving as a police official, and two criminal justice officers; one member from subdivision (4) of subsection (a) of this section, appointed by the North Carolina Law-Enforcement Training Officers' Association; and two members from subdivision (5) of subsection (a) of this section, one appointed by the Governor and one appointed by the Attorney General.

For the terms of two years: one member from subdivision (1) of subsection (a) of this section, serving as a police chief; one member from subdivision (2) of subsection (a) of this section, serving as a police official; and two members from subdivision (4) of subsection (a) of this section, one appointed by the League of Municipalities and one appointed by the North Carolina Association of District Attorneys.

For the terms of three years: two members from subdivision (1) of subsection (a) of this section, one police chief appointed by the North Carolina Association of Chiefs of Police and one police chief appointed by the Governor; one member from subdivision (2) of subsection (a) of this section, serving as a police official; and three members from subdivision (4) of subsection (a) of this section, one appointed by the North Carolina Law-Enforcement Women's Association, one appointed by the North Carolina Criminal Justice Association, and one appointed by the North State Law-Enforcement Officers' Association.

Thereafter, as the term of each member expires, his successor shall be appointed for a term of three years. Notwithstanding the appointments for a term of years, each member shall serve at the will of the appointing authority.

The Attorney General, the Secretary of Crime Control and Public Safety, the Secretary of Correction, the President of The University of North Carolina, the ~~Director of the Institute of Government,~~ Dean of the School of Government at the University of North Carolina at Chapel Hill, the President of the North Carolina Community Colleges System, and the Secretary of Juvenile Justice and Delinquency Prevention shall be continuing members of the Commission during their tenure. These members of the Commission shall serve ex officio and shall perform their duties on the Commission in addition to the other duties of their offices. The ex officio members may elect to serve personally at any or all meetings of the Commission or may designate, in writing, one member of their respective office, department, university or agency to represent and vote for them on the Commission at all meetings the ex officio members are unable to attend.

Vacancies in the Commission occurring for any reason shall be filled, for the unexpired term, by the authority making the original appointment of the person causing the vacancy. A vacancy may be created by removal of a Commission member by majority vote of the Commission for misconduct, incompetence, or neglect of duty. A

Commission member may be removed only pursuant to a hearing, after notice, at which the member subject to removal has an opportunity to be heard."

SECTION 30.(e) G.S. 17E-3(a)(4) reads as rewritten:

"(a) There is hereby established the North Carolina Sheriffs' Education and Training Standards Commission. The Commission shall be composed of 17 members as follows:

. . . . .

(4) Others. – The President of the Department of Community Colleges or ~~his~~ the President's designee and the ~~Director of the Institute of Government~~ Dean of the School of Government at the University of North Carolina at Chapel Hill or ~~his~~ the Dean's designee shall be ex officio, nonvoting members of the Commission."

SECTION 30.(f) G.S. 105-501 reads as rewritten:

"**§ 105-501. Distribution of additional taxes.**

The Secretary shall, on a monthly basis, allocate the net proceeds of the additional one-half percent (1/2%) sales and use taxes levied under this Article to the taxing counties on a per capita basis according to the most recent annual population estimates certified to the Secretary by the State Budget Officer. The Secretary shall then adjust the amount allocated to each county as provided in G.S. 105-486(b). The amount allocated to each taxing county shall then be divided among the county and the municipalities located in the county in accordance with the method by which the one percent (1%) sales and use taxes levied in that county pursuant to Article 39 of this Chapter or Chapter 1096 of the 1967 Session Laws are distributed. No municipality may receive any funds under this section if it was incorporated with an effective date of on or after January 1, 2000, and is disqualified from receiving funds under G.S. 136-41.2. No municipality may receive any funds under this section, incorporated with an effective date on or after January 1, 2000, unless a majority of the mileage of its streets are open to the public. The previous sentence becomes effective with respect to distribution of funds on or after July 1, 1999.

In determining the net proceeds of the tax to be distributed, the Secretary shall deduct from the collections to be allocated an amount equal to one-twelfth of the costs during the preceding fiscal year of:

(1) The Department of Revenue in performing the duties imposed by G.S. 105-275.2 and by Article 15 of this Chapter.

(1a) Seventy percent (70%) of the expenses of the Department of Revenue in performing the duties imposed by Article 2D of this Chapter.

(2) The Property Tax Commission.

(3) The ~~Institute of Government~~ School of Government at the University of North Carolina at Chapel Hill in operating a training program in property tax appraisal and assessment.

(4) The personnel and operations provided by the Department of State Treasurer for the Local Government Commission."

SECTION 30.(g) G.S. 113A-4(3) reads as rewritten:

"**§ 113A-4. Cooperation of agencies; reports; availability of information.**

The General Assembly authorizes and directs that, to the fullest extent possible:

. . . . .

(3) The Governor, and any State agency charged with duties under this Article, may call upon any of the public institutions of higher education of this State for assistance in developing plans and procedures under this Article and in meeting the requirements of this Article, including without limitation any of the following units of the University of North Carolina: the Water Resources Research Institute, the Institute for Environmental Studies, the Triangle Universities Consortium on Air Pollution, and the ~~Institute of Government.~~ School of Government at the University of North Carolina at Chapel Hill."

SECTION 30.(h) G.S. 115C-50 reads as rewritten:

"**§ 115C-50. Training of board members.**

All members of local boards of education shall receive a minimum of 12 clock hours of training annually. The training shall include but not be limited to public school law, public school finance, and duties and responsibilities of local boards of education. The training may be provided by the North Carolina School Boards Association, the ~~Institute of Government,~~ School of Government at the University of North Carolina at Chapel Hill, or other qualified sources at the choice of the local board of education."

SECTION 30.(i) G.S. 120-129 reads as rewritten:

"**§ 120-129. Definitions.**

As used in this Article:

(1) "Document" means all records, papers, letters, maps, books, photographs, films, sound recordings, magnetic or other tapes, electronic data-processing records, artifacts, or other documentary material regardless of physical form or characteristics.

(1a) "Legislative commission" means any commission or committee which the Legislative Services Commission is directed or authorized to staff by law or resolution and which it does, in fact, staff.

(2) "Legislative employee" means employees and officers of the General Assembly, consultants and counsel to members and committees of either house of the General Assembly or of legislative commissions who are paid by State funds, and employees of the ~~Institute of Government;~~ School of Government at the University of North Carolina at Chapel Hill; but does not mean legislators and members of the Council of State.

(3) "Legislator" means a member-elect, member-designate, or member of the North Carolina Senate or House of Representatives."

SECTION 30.(j) G.S. 120-61 reads as rewritten:

"**§ 120-161. Facilities and staff.**

The Commission may meet in the Legislative Building or the Legislative Office Building. Staff for the Commission shall be provided by the Legislative Services Commission. The Commission may contract with the ~~Institute of Government,~~ School of Government at the University of North Carolina at Chapel Hill, the Local

Government Commission, the Department of Environment and Natural Resources, or other agencies as may be necessary in completing any required studies, within the funds appropriated to the Commission."

SECTION 30.(k) G.S. 122C-412.2 reads as rewritten:

"**§ 122C-412.2. Planning Council; planning responsibility.**

The Butner Planning Council shall, in consultation with the Department of Health and Human Services, the Community Assistance Division of the Department of Commerce, the ~~Institute of Government,~~ School of Government at the University of North Carolina at Chapel Hill, and other State and local agencies, prepare a long-range plan for the future development of the Camp Butner Reservation. This plan shall provide a blueprint for the development of the Reservation and the adjoining areas of Granville, Durham, and Person Counties and shall consider issues such as:

(1) The possible incorporation of a municipality on the Camp Butner Reservation;

(2) The provision of housing, public safety services, water and sewer services, school facilities, and park and recreational services for the increasing Butner population;

(3) The possible transfer of State-owned property for the future development in and around Butner;

(4) The growth and development of business and industrial areas within the Camp Butner Reservation, including planning and zoning issues; and

(5) How to maximize the utility of the Camp Butner Reservation to the State of North Carolina as a site for future State facilities and still meet the needs and improve the quality of life for the residents of Butner.

Copies of the long-range plan shall be submitted to the Secretary of Health and Human Services, the Joint Legislative Commission on Governmental Operations, the Fiscal Research Division of the General Assembly, and to each member of the General Assembly representing the area no later than December 31, 1998. The Department of Health and Human Services, through the Butner Town Manager, shall provide necessary financial and personnel support for the preparation of this plan."

SECTION 30.(l) G.S. 143-64.24 reads as rewritten:

"**§ 143-64.24. Applicability of Article.**

This Article shall not apply to the General Assembly, special study commissions, the Research Triangle Institute, or the ~~Institute of Government,~~ School of Government at the University of North Carolina at Chapel Hill, nor shall it apply to attorneys employed by the North Carolina Department of Justice, or physicians or doctors performing contractual services for any State agency. This Article shall not apply to Independent Review Organizations selected by the Commissioner of Insurance pursuant to G.S. 58-50-85."

SECTION 30.(m) G.S. 143-151.9 reads as rewritten:

"**§ 143-151.9. North Carolina Code Officials Qualification Board established; members; terms; vacancies.**

(a) There is hereby established the North Carolina Code Officials Qualification Board in the Department of Insurance. The Board shall be composed of 20 members appointed as follows:

(1) One member who is a city or county manager;
(2) Two members, one of whom is an elected official representing a city over 5,000 population and one of whom is an elected official representing a city under 5,000 population;
(3) Two members, one of whom is an elected official representing a county over 40,000 population and one of whom is an elected official representing a county under 40,000 population;
(4) Two members serving as building officials with the responsibility for administering building, plumbing, electrical and heating codes, one of whom serves a county and one of whom serves a city;
(5) One member who is a registered architect;
(6) One member who is a registered engineer;
(7) Two members who are licensed general contractors, at least one of whom specializes in residential construction;
(8) One member who is a licensed electrical contractor;
(9) One member who is a licensed plumbing or heating contractor;
(10) One member selected from the faculty of the North Carolina State University School of Engineering and one member selected from the faculty of the School of Engineering of the North Carolina Agricultural and Technical State University;
(11) One member selected from the faculty of the ~~Institute of Government;~~ School of Government at the University of North Carolina at Chapel Hill;
(12) One member selected from the Community Colleges System Office;
(13) One member selected from the Division of Engineering and Building Codes in the Department of Insurance; and,
(14) One member who is a local government fire prevention inspector and one member who is a citizen of the State.

The various categories shall be appointed as follows: (1), (2), (3), and (14) by the Governor; (4), (5), and (6) by the General Assembly upon the recommendation of the President Pro Tempore in accordance with G.S. 120-121; (7), (8), and (9) by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121; (10) by the deans of the respective schools of engineering of the named universities; (11) by the ~~Director of the Institute of Government;~~ Dean of the School of Government at the University of North Carolina at Chapel Hill; (12) by the President of the Community College System; and (13) by the Commissioner of Insurance."

SECTION .(n) G.S. 143B-350(m) reads as rewritten:

"(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 and shall include input from the ~~Institute of Government,~~ School of Government at the University of North Carolina at Chapel Hill, 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."

SECTION 30.(o) G.S. 143B-394.15(c)(4) reads as rewritten:

"(c) Membership. – The Commission shall consist of 39 members, who reflect the geographic and cultural regions of the State, as follows:

. . . . .

(4) The following persons or their designees, ex officio:

a. The Governor.

b. The Lieutenant Governor.

c. The Attorney General.

d. The Secretary of the Department of Administration.

e. The Secretary of the Department of Crime Control and Public Safety.

f. The Superintendent of Public Instruction.

g. The Secretary of the Department of Correction.

h. The Secretary of the Department of Health and Human Services.

i. The Director of the Office of State Personnel.

j. The Executive Director of the North Carolina Council for Women.

k. The ~~Director of the Institute of Government.~~Dean of the School of Government at the University of North Carolina at Chapel Hill.

l. The Chairman of the Governor's Crime Commission."

SECTION 30.(p) G.S. 147-54 reads as rewritten:

"**§ 147-54. Printing, distribution and sale of the North Carolina Manual.**

The Secretary of State shall have printed biennially for distribution and sale, two thousand three hundred fifty (2,350) copies of the North Carolina Manual, and shall make distribution to the State agencies, individuals, institutions and others as herein set forth.

NORTH CAROLINA STATE GOVERNMENT:

Members of the General Assembly	1 ea.
Officers of the General Assembly	1 ea.
Offices of the Clerk of each House of the General Assembly	1 ea.
Legislative Services Officer	1
Legislative Library	6
Members of the Council of State	2 ea.
Appointed Secretaries of Executive Departments	2 ea.
Personnel of the Department of the Secretary of State	1 ea.
State Board of Elections	2

Divisions of Archives and History, Director 1
Search Room 3
Publications Section 2
State Library 10
Libraries within State Agencies ..... 1 ea.
Justices of the North Carolina Supreme Court ..... 1 ea.
Judges of the North Carolina Court of Appeals ..... 1 ea.
Judges of the North Carolina Superior Court ..... 1 ea.
Supreme Court Library 12
Court of Appeals Library 2
Clerk of the Supreme Court 1
Clerk of the Court of Appeals 1
Reporter of the Supreme Court and Court of Appeals 1
Administrative Office of the Courts 5
NORTH CAROLINA EDUCATIONAL INSTITUTIONS:
University of North Carolina System
General Administration Offices 12
Chancellors of the Constituent Institutions ..... 1 ea.
University of North Carolina – Chapel Hill Library 15
North Carolina State University Library 5
East Carolina University Library 5
North Carolina Central University Library 5
Appalachian State University Library 4
University of North Carolina – Charlotte Library 4
University of North Carolina – Greensboro Library 4
Western Carolina University Library 4
Other Constituent Institutions Libraries ..... 3 ea.
North Carolina School of the Arts 2
~~Institute of Government~~ ..... ~~2~~
University of North Carolina-Chapel Hill School of Government 2
Community Colleges and Technical Institutes ..... 2 ea.
Private Colleges and Universities
Duke University Library 6
Wake Forest University 6
Campbell University Library 5
Davidson College Library 4
All other Libraries of Senior and Junior Colleges ..... 2 ea.
Public and Private Schools containing grades 8-12 ..... 1 ea.
COUNTY GOVERNMENT:
Clerks of Court ..... 1 ea.
Registers of Deeds ..... 1 ea.
Public Libraries of North Carolina ..... 1 ea.
FEDERAL GOVERNMENT:
President of the United States 1

North Carolina Members of the Presidential Cabinet ..... 1 ea.
North Carolina Members of the United States Congress ..... 2 ea.
Library of Congress 3
Resident Judges of the Federal Judiciary
and United States Attorneys in North Carolina ..... 1 ea.
Secretaries of State of the United States
and Territories ..... 1 ea.

After making the above distribution, the remainder shall be sold at the cost of publication plus tax and postage and the proceeds from such sales deposited with the State Treasurer for use by the Publications Division of the Secretary of State's Office to defray the expense of publishing the North Carolina Manual. Libraries and educational institutions not covered in the above distribution shall be entitled to a twenty percent (20%) discount on the cost of any purchase(s)."

SECTION 31.(a) 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 31.(b) This section becomes effective October 1, 2005, and applies to persons summoned for jury service on or after that date.

SECTION 32. G.S. 14-269.2(h) reads as rewritten:

"(h) No person shall be guilty of a criminal violation of this section with regard to the possession or carrying of a ~~firearm~~ weapon so long as both of the following apply:

(1) The person comes into possession of a weapon by taking or receiving the weapon from another person or by finding the weapon.

(2) The person delivers the weapon, directly or indirectly, as soon as practical to law enforcement authorities."

SECTION 33.(a) G.S. 14-404(a)(1), as amended by section 4 of this act, reads as rewritten:

"(a) Upon application, the sheriff shall issue the license or permit to a resident of that county, unless the purpose of the permit is for collecting, in which case a sheriff can issue a permit to a nonresident, when the sheriff has done all of the following:

(1) ~~Verified~~ Verified, before the issuance of a permit, by a criminal history background investigation that it is not a violation of State or federal law for the applicant to purchase, transfer, receive, or possess a handgun. The sheriff shall determine the criminal and background history of any applicant by accessing computerized criminal history records as maintained by the State Bureau of Investigation and the Federal Bureau of Investigation, by conducting a national criminal history records check, by conducting a check through the National Instant Criminal Background Check System (NICS), and by

conducting a criminal history check through the Administrative Office of the Courts.

(2) Fully satisfied himself or herself by affidavits, oral evidence, or otherwise, as to the good moral character of the applicant.

(3) Fully satisfied himself or herself that the applicant desires the possession of the weapon mentioned for (i) the protection of the home, business, person, family or property, (ii) target shooting, (iii) collecting, or (iv) hunting."

SECTION 33.(b) G.S. 14-415.13(b) reads as rewritten:

"(b) The sheriff shall submit the fingerprints to the State Bureau of Investigation for a records check of State and national databases. The State Bureau of Investigation shall submit the fingerprints to the Federal Bureau of Investigation as necessary. The sheriff shall determine the criminal and background history of an applicant also by conducting a check through the National Instant Criminal Background Check System (NICS). The cost of processing the set of fingerprints shall be charged to an applicant as provided by G.S. 14-415.19."

SECTION 34. 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, 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 35. G.S. 15A-1331(a) is repealed.

SECTION 36. G.S. 15A-1371(b) reads as rewritten:

"(b) (1), (2) Repealed by Session Laws 1993, c. 538, s. 22.

(3) Whenever the Post-Release Supervision and Parole Commission will be considering for parole a prisoner serving a sentence of life imprisonment the Commission must notify, at least 30 days in advance of considering the parole, by first class mail at the last known address:

a. The prisoner;
b. The district attorney of the district where the prisoner was convicted;

c. The head of the law enforcement agency that arrested the ~~prisoner, if the head of the agency has requested in writing that he be notified;~~ prisoner and the sheriff of the county where the crime occurred;

d. Any of the victim's immediate family members who have requested in writing to be notified; and

e. Repealed by Session Laws 1993, c. 538, s. 22.

f. As many newspapers of general circulation and other media in the county where the defendant was convicted and if different, in the county where the prisoner was charged, as reasonable.

The Post-Release Supervision and Parole Commission must consider any information provided by any such parties before consideration of parole. The Commission must also give the district attorney, the head of the law enforcement agency who has requested in writing to be notified, the victim, any member of the victim's immediate family who has requested to be notified, and as many newspapers of general circulation and other media in the county or counties designated in sub-subdivision f. of this section as reasonable, written notice of its decision within 10 days of that decision. The Parole Commission shall not, however, include the name of any victim in its notification to the newspapers and other media.'"

SECTION 37. G.S. 18B-500(a) reads as rewritten:

"(a) Appointment. – The Secretary of Crime Control and Public Safety shall appoint alcohol law-enforcement agents and other enforcement personnel. The Secretary of Crime Control and Public Safety may also appoint regular employees of the Commission as alcohol law-enforcement agents. Alcohol law-enforcement agents shall be designated as "alcohol law-enforcement agents". Persons serving as reserve Alcohol law-enforcement agents are considered employees of the Division of Alcohol Law Enforcement for Workers' Compensation purposes while performing duties assigned or approved by the Director of Alcohol Law Enforcement or the Director's designee."

SECTION 38. G.S. 20-118(c)(14) reads as rewritten:

"(c) Exceptions. – The following exceptions apply to G.S. 20-118(b) and 20-118(e).

...

(14) Subsections (b) and (e) of this section do not apply to a vehicle that meets all of the conditions below, but all other enforcement provisions of this Article remain applicable:

a. Is hauling aggregates from a distribution yard or a State-permitted production site located within a North Carolina county contiguous to the North Carolina State border to a destination in another state adjacent to that county as verified by a weight ticket in the driver's possession and available for inspection by enforcement personnel.

b. Does not operate on an interstate highway or posted bridge.

c. Does not exceed 69,850 pounds gross vehicle weight and 53,850 pounds per axle grouping for tri-axle vehicles. For purposes of this subsection, a tri-axle vehicle is a single power unit vehicle with a three consecutive axle group on which the respective distance between any two consecutive axles of the group, measured longitudinally center to center to the nearest foot, does not exceed eight feet. For purposes of this subsection, the tolerance provisions of subsection (h) of this section do not apply, and vehicles must be licensed in accordance with G.S. 20-88.

d. Repealed by Session Laws 2001-487, s. 10, effective December 16, 2001.

..."

SECTION 39. G.S. 20-309 is amended by adding a new subsection to read:

"(g) Notwithstanding the penalty and restoration fee provisions of this section, any monetary penalty or restoration fee shall be waived for any person who, at the time of notification of a lapse in coverage, was a member of the United States Armed Forces, and was deployed outside of the continental United States in support of Operation Enduring Freedom or Operation Iraqi Freedom."

SECTION 40.(a) G.S. 32A-37(g), as created by Section 1 of S.L. 2005-178, reads as rewritten:

"(g) Nothing in this Article requires a person who accepts a power of attorney to permit an attorney-in-fact to conduct business not authorized by the terms of the power of ~~attorney.~~attorney, or otherwise not permitted by applicable statute or regulation."

SECTION 40.(b) This section becomes effective October 1, 2005, and applies to powers of attorney created before, on, or after that date."

SECTION 41.(a) G.S. 45-36.6(b), as created in Section 1 of S.L. 2005-123, reads as rewritten:

"(b) If a person records a satisfaction or affidavit of satisfaction of a security instrument in error or if a security instrument is satisfied of record erroneously by any other means, the person or the secured creditor may execute and record a document of rescission. The document of rescission must be duly acknowledged before an officer authorized to make acknowledgments. Upon recording, the document rescinds an erroneously recorded satisfaction or affidavit and the erroneous satisfaction of record of the security instrument and reinstates the security instrument."

SECTION 41.(b) G.S. 45-37(a), as amended in Section 1 of S.L. 2005-123, 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.

...

(4) By presentation to the register of deeds of any original security instrument given to secure the bearer or holder of any negotiable instruments transferable by delivery, together with all the evidences of indebtedness secured thereby, marked paid and satisfied in full and signed by the bearer or holder thereof.

Only upon presentation of the original security instruments, and the originals of evidences of indebtedness properly marked shall the register of deeds record a record of satisfaction as described in G.S. 45-37.2(b), which record of satisfaction shall be valid and binding upon all persons, if no person rightfully entitled to the security instrument or evidences of indebtedness has previously notified the register of deeds by means of a written affidavit of the loss or theft of the security instrument or evidences of indebtedness and has caused the register of deeds to record the affidavit of loss or theft as a separate document, as required by G.S. 161-14.1.

~~Upon receipt of an affidavit of loss or theft of the security instrument or evidences of indebtedness that identify the security instrument, the original parties to the security instrument, and the recording data for the security instrument, the register of deeds shall record a record of satisfaction, as described in G.S. 45-37.2(b).~~ The security instrument shall not be presented for satisfaction after such recording of a record of satisfaction or marginal entry until the ownership of said instrument shall have been lawfully determined. Nothing in this subdivision (4) shall be construed to impair the negotiability of any instrument otherwise properly negotiable, nor to impair the rights of any innocent purchaser for value thereof.

(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 41.(c) G.S. 47-14(a), as amended by Section 2 of S.L. 2005-123, 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 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, ~~or~~ (iii) the legal sufficiency of any document presented for ~~registration.~~registration, or (iv) whether the original document has been changed or altered."

SECTION 41.(d) This section becomes effective October 1, 2005.

SECTION 41.1. G.S. 50C-8(c) reads as rewritten:

"(c) Any order may be extended one or more times, as required, provided that the requirements of G.S. 50C-6 or G.S. 50C-7, as appropriate, are satisfied. The court may renew an order, including an order that previously has been renewed, upon a motion by the complainant filed before the expiration of the current order. The court may renew the order for good cause. The commission of an act of unlawful conduct by the respondent after entry of the current order is not required for an order to be renewed. If the motion for extension is uncontested and the complainant seeks no modification of the order, the order may be extended if the complainant's motion or affidavit states that there has been no material change in relevant circumstances since entry of the order and states the reason for the requested extension. Extensions may be granted only in open court and not under the provisions of ~~G.S. 50D-6(c).~~G.S.50D-6(d)."

SECTION 42. G.S. 51-1 reads as rewritten:

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

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

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

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

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

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

SECTION 43. G.S. 51-1.1 reads as rewritten:

"**§ 51-1.1. Certain marriages performed by ministers of Universal Life Church validated.**

Any marriages performed by ministers of the Universal Life Church ~~prior to~~ on, before, and after July 3, 1981, are validated, unless they have been invalidated by a court of competent jurisdiction, provided that all other requirements of law have been

met and the marriages would have been valid if performed by an official authorized by law to perform wedding ceremonies."

SECTION 44.(a) G.S. 58-40-50, as amended by Section 7 of S.L. 2005-210, is amended by adding the following new subsection to read:

'(i) A statistical organization is considered an insurance company for purposes of the applicability of G.S. 58-6-7.'

SECTION 44.(b) G.S. 58-36-4, as created by Section 18 of S.L. 2005-210, is amended by adding the following new subsection to read:

'(g) A statistical organization is considered an insurance company for purposes of the applicability of G.S. 58-6-7.'

SECTION 44.(c) This section becomes effective October 1, 2005.

SECTION 45. G.S. 74C-3(b) reads as rewritten:

"(b) "Private protective services" shall not mean:

...

(14) An employee of a security department of a private business that conducts investigations exclusively on matters internal to the business affairs of the ~~business.~~business;

(15) Safety patrols operating primarily on public property, operated by nonprofit organizations funded all or in part by business improvement districts."

SECTION 46. G.S. 90-171.21(d)(3) reads as rewritten:

"(3) A public member appointed by the Governor shall not be a provider of health services, employed in the health services ~~field, or hold a vested interest at any level in the provision of health services as defined by the North Carolina Board of Ethics.~~ field. No public member appointed by the Governor or person in the public member's immediate family as defined by G.S. 90-405(8) shall be currently employed as a licensed nurse or been previously employed as a licensed nurse."

SECTION 47. G.S. 93A-2(c)(1) reads as rewritten:

"(c) The provisions of this Chapter do not apply to and do not include:

(1) Any person, partnership, corporation, limited liability company, association, or other business ~~entity~~ entity, or any salaried employee thereof, who, as owner or lessor, shall perform any of the acts aforesaid with reference to property owned or leased by them, where the acts are performed in the regular course of or as incident to the management of that property and the investment therein.

..."

SECTION 48.(a) G.S. 93A-4A is recodified as G.S. 93A-4.1.

SECTION 48.(b) G.S. 115D-5(h) reads as rewritten:

"(h) Whenever a community college offers real estate continuing education courses ~~pursuant to G.S. 93A-4A,~~ under G.S. 93A-4.1, the courses shall be offered on a self-supporting basis."

SECTION 49. G.S. 95-138(a), as amended by S.L. 2005-138, reads as rewritten:

"**§ 95-138. Civil penalties.**

(a) The Commissioner, upon recommendation of the Director, or the North Carolina Occupational Safety and Health Review Commission in the case of an appeal, ~~may~~ shall have the authority to assess penalties against any employer who violates the requirements of this Article, or any standard, rule, or order ~~promulgated pursuant to~~ adopted under this Article, as follows:

(1) A minimum penalty of five thousand dollars ($5,000) to a maximum penalty of seventy thousand dollars ($70,000) may be assessed for each willful or repeat violation.

(2) A ~~maximum~~ penalty of up to seven thousand dollars ($7,000) shall be assessed for each ~~nonserious or~~ serious violation.

(2a) A penalty of up to seven thousand dollars ($7,000) may be assessed for each violation that is adjudged not to be of a serious nature.

(3) A ~~maximum~~ penalty of up to seven thousand dollars ($7,000) may be assessed ~~for each day that~~ against an employer who fails to correct and abate a violation, within the period allowed for its correction and abatement, which period shall not begin to run until the date of the final Order of the Commission in the case of any appeal proceedings in this Article initiated by the employer in good faith and not solely for the delay of avoidance of penalties. The assessment shall be made to apply to each day during which the failure or violation continues.

(4) A ~~maximum~~ penalty of up to seven thousand dollars ($7,000) shall be assessed for violating the posting requirements, as required under the provisions of this Article."

SECTION 50.(a) Article 16 of Chapter 95 of the General Statutes is amended to add a new section to read:

"**§ 95-156. Fall protection for tower climbers.**

(a) General.

(1) Prior to employees climbing the tower at heights above six feet, the employer shall ensure that one hundred percent (100%) fall protection systems compatible with the tasks assigned are provided, used, and maintained.

(2) The provisions of this section shall not require the retrofitting of communication towers; provided, that employees who are exposed to fall hazards above six feet while performing work on communication towers are protected from such hazards by means of a one hundred percent (100%) fall protection system.

(b) Preclimb Planning and Inspection. – In addition to the criteria for preclimb planning and inspection included in subsection (g) of this section, the employer shall ensure that the following items occur prior to employees climbing the tower at heights above six feet:

(1) All climbing jobs shall be planned by a competent person.

(2) All climbing facilities shall be visually inspected daily at the tower base by a competent person for rust, corrosion, deterioration, or other hazards. Additionally, the employer shall ensure that the climbing facilities are visually inspected for these items, during ascension, to the elevation point where work is being performed. If any such hazard is identified during this inspection, employees shall not use the climbing facility until such hazards are abated.

(3) A competent person shall ensure that all fall protection equipment is inspected prior to each use for wear, damage, defect, or other deterioration by employees who have been trained in accordance with 13 NCAC 07F .0609. Defective equipment shall be identified as defective and immediately removed from service.

(4) Components of a fall protection system and the fall protection equipment utilized by employees shall be compatible with one another and shall be utilized in accordance with the manufacturer's recommendations.

(5) The employer shall ensure that the planning and inspections are performed and documented. The documentation shall be maintained on site while work is being performed, and thereafter by the employer at its place of business. The documentation shall include the date of the planning and inspection, the name of the competent person performing the planning and inspection, and the site location.

(c) Fall Protection Systems. – In order to comply with the requirements of subdivision (a)(1) of this section, the employer may permit employees to utilize the 100% fall protection systems described in subsections (d) through (g) of this section. If the fall protection systems described therein are not present on the tower, the employer shall not permit employees to climb the tower at heights above six feet unless:

(1) An alternative means of one hundred percent (100%) fall protection is utilized that is at least as effective as the fall protection systems described in subsections (d) through (g) of this section;

(2) An alternative means of access to the work area is utilized such as an aerial lift or elevated work platform; or

(3) The employer can demonstrate that the requirements for a fall protection plan under subsection (i) of this section have been met.

(d) Guardrail Systems. – The employer shall ensure that guard rail systems and their components that are utilized by employees as a means of one hundred percent (100%) fall protection conform to the criteria in 29 C.F.R. § 1926.502(b).

(e) Personal Fall Arrest Systems (PFAS). – The employer shall ensure that personal fall arrest systems and their components that are utilized by employees as a means of one hundred percent (100%) fall protection conform to the criteria in 29 § C.F.R. 1926.502(d) and are utilized according to the manufacturer's recommendations. When utilized by employees as an anchorage as part of a PFAS, the employer shall ensure that step bolts and the attachment point to the structure are designed to meet the

requirements of an approved anchorage in accordance with 29 C.F.R. § 1926.502(d) and are designed to ensure the connector will not slip off the end of the step bolt.

(f) Positioning Device System. – The employer shall ensure that positioning device systems and their components that are utilized by employees as a means of one hundred percent (100%) fall protection conform to the criteria in 29 C.F.R. § 1926.502(e).

(g) Ladder Safety Systems. – The employer shall ensure that, in addition to the applicable criteria in 29 C.F.R. § 1926, Subpart X, ladder safety systems and related support systems for fixed ladders that are utilized by employees as a means of one hundred percent (100%) fall protection conform to the following criteria:

(1) Prior to climbing the structure, the employer shall ensure that the employee(s) have tested the ladder safety system for proper operation and that all components utilized with the ladder safety system are compatible.

(2) To perform the test required by subdivision (g)(1) of this section, the employee(s) shall:

a. Approach the ladder at the base and connect to the functional safety climb system;

b. Climb to a height less than six feet;

c. Forcibly engage the device without letting go of the ladder;

d. If the device functions as intended, the employee(s) shall begin the ascension;

e. If the device does not function properly, the employee(s) shall immediately descend the structure and shall not utilize the device until it functions properly;

(3) If a ladder is obstructed, inhibiting the effective use of the ladder safety system, an alternative means of one hundred percent (100%) fall protection shall be utilized that is at least as effective as the types of fall protection described by this section.

(h) Fall Protection Plan. – This section applies when employees are working on a structure where no adequate tie-off anchorage point(s) exist, the fall protection systems described in subsection (c) of this section are not feasible or create a greater hazard, and the work cannot be completed utilizing an alternative means of access to the work area such as an aerial lift or elevated work platform. If an employer demonstrates the foregoing conditions are present, then in addition to the criteria in 29 C.F.R. § 1926.502(k), the employer shall conform to the following provisions:

(1) The employer shall ensure that each employee under the fall protection plan has been trained as a qualified climber.

(2) The fall protection plan shall be made available and communicated to exposed employee(s) prior to the employee(s) beginning work, and such communication shall be documented.

(3) The fall protection plan shall identify each location on the tower structure where fall protection methods as described in subsection (c) of this section cannot be used. As soon as adequate tie-off anchorage

points or other fall protection systems can be established, the employee shall utilize any of the fall protection systems described in subsection (c) of this section.

(i) Emergency and Rescue Procedures. –

(1) The employer shall establish procedures for prompt rescue of employees in the event of an emergency, which shall include whether the employer will designate its own employees to perform the rescue procedures or whether the employer will designate a third party to perform the rescue procedures. The procedures shall be documented and available for review by the Deputy Commissioner of Labor for Occupational Safety and Health or that official's designee, upon request.

(2) Employer to perform rescue procedures. – An employer whose employees have been designated to provide elevated (high angle) rescue and emergency services shall take all of the following measures:

a. Ensure at least two trained and designated rescue employees are on-site when employees are working at heights over six feet on the tower, except that where only two employees are on-site, then an employer may comply with the requirements of this sub-subdivision if one employee is a trained and designated rescue employee and one employee has been employed for less than one year and has received documented orientation from the employer outlining steps to take in an emergency.

b. Ensure that personal protective equipment (PPE) and high angle rescue equipment needed to conduct elevated rescues are provided, used, and maintained by the designated rescue employees.

c. Train designated rescue employees so they are proficient in the use and maintenance of PPE and high angle rescue equipment needed to conduct elevated rescues.

d. Train designated rescue employees to perform assigned rescue duties to ensure that they become competent to perform such duties, including conducting simulated rescue operations at least once every 12 months.

(3) Third party to perform rescue procedures. – An employer who designates a third-party rescue and emergency service to provide elevated (high angle) rescue and emergency services shall take all of the following measures:

a. Obtain verification from the third-party rescue team or service stating that the third-party rescue team or service is able to respond to a rescue summons in a timely manner.

b. Obtain verification from the third-party rescue team or service stating that the third-party rescue team or service is proficient in

rescue related tasks and equipment as they relate to rescuing climbers from elevated heights on communication structures.

c. Select a rescue team or service from those evaluated that has the capability to reach the victim(s) and is equipped for and capable of performing the needed rescue services.

d. Provide the selected rescue team or service with contact information regarding the tower site to allow the selected rescue team or service to conduct whatever preparation for rescue is deemed necessary.

e. Inform each rescue team or service, prior to the first day on which employee(s) perform work at heights over six feet on the tower, of the site and location of the tower(s) to be climbed; the hazard(s) identified on the site; the number of employees that will climb the tower(s); the height(s) at which employee(s) will be working; the name(s) and telephone number(s) for any employer contact(s); and, any other information that is requested by the rescue team or service.

(j) First Aid/CPR Training and Supplies. – In addition to the requirements of 29 C.F.R. § 1910.151 and 29 C.F.R. § 1926.50, the employer shall ensure that at least two employees on-site are trained and hold current certifications in basic first aid and cardiopulmonary resuscitation (CPR) issued by the American Red Cross or any other organization whose standards are equivalent to the American Red Cross; except that where only two employees are on-site, then an employer may comply with the requirements of this subsection if one employee is trained and holds current certifications in basic first aid and CPR, and one employee has been employed for less than six months."

SECTION 50.(b) This section supersedes 13 NCAC 07F .0605 adopted by the Department of Labor on October 2, 2004, and approved by the Rules Review Commission on December 16, 2004, and any other rule that is in conflict with this section.

SECTION 51.1. G.S. 95-231(3) reads as rewritten:

"(3) "Examinee" means an individual who is ~~an employee of the examiner or~~ an applicant for employment with the examiner and who is requested or required by an examiner to submit to a controlled substance examination."

SECTION 51. G.S. 105-159.1(a) reads as rewritten:

"(a) Every individual whose income tax liability for the taxable year is ~~one dollar ($1.00)~~ three dollars ($3.00) or more may designate on his or her income tax return that ~~one dollar ($1.00)~~three dollars ($3.00) of the tax shall be credited to the North Carolina Political Parties Financing Fund for the use of the political party designated by the taxpayer. In the case of a married couple filing a joint return whose income tax liability for the taxable year is ~~two dollars ($2.00)~~ six dollars ($6.00) or more, each spouse may designate on the income tax return that ~~one dollar ($1.00)~~three dollars ($3.00) of the tax shall be credited to the North Carolina Political Parties Financing Fund for the use of

the political party designated by the taxpayer. Amounts credited to the Fund shall be allocated among the political parties according to the designation of the taxpayer. Where any taxpayer elects to designate but does not specify a particular political party, those funds shall be distributed among the political parties on a pro rata basis according to their respective party voter registrations as determined by the most recent certification of the State Board of Elections. As used in this section, the term 'political party' means one of the following that has at least one percent (1%) of the total number of registered voters in the State:

(1) A political party that at the last preceding general State election received at least ten percent (10%) of the entire vote cast in the State for Governor or for presidential electors.

(2) A group of voters who by July 1 of the preceding calendar year, by virtue of a petition as a new political party, had duly qualified as a new political party within the meaning of Chapter 163 of the General Statutes."

SECTION 52.(a) G.S. 115C-81(e1)(1) reads as rewritten:

"**§ 115C-81. Basic Education Program.**

...

(e1) School Health Education Program to Be Developed and Administered.

(1) A comprehensive school health education program shall be developed and taught to pupils of the public schools of this State from kindergarten through ninth grade. This program includes age-appropriate instruction in the following subject areas, regardless of whether this instruction is described as, or incorporated into a description of, "family life education", "family health education", "health education", "family living", "health", "healthful living curriculum", or "self-esteem":

a. Mental and emotional health;
b. Drug and alcohol abuse prevention;
c. Nutrition;
d. Dental health;
e. Environmental health;
f. Family living;
g. Consumer health;
h. Disease control;
i. Growth and development;
j. First aid and emergency care, including the teaching of cardiopulmonary resuscitation (CPR) and the Heimlich maneuver by using hands-on training with mannequins so that students become proficient in order to pass a test approved by the American Heart Association, or American Red Cross;
k. Preventing sexually transmitted diseases, including ~~Acquired Immune Deficiency Syndrome (AIDS) virus infection,~~ HIV/AIDS, and other communicable diseases;

l. Abstinence until marriage education; and
m. Bicycle safety.

As used in this subsection, "HIV/AIDS" means Human Immunodeficiency Virus/Acquired Immune Deficiency Syndrome."

SECTION 52.(b) G.S. 115C-81(e1)(3), (4), and (5) read as rewritten:

"(3) The State Board of Education shall develop objectives for instruction in the prevention of sexually transmitted diseases, including ~~Acquired Immune Deficiency Syndrome (AIDS) virus infection,~~ HIV/AIDS, that ~~includes~~include emphasis on the importance of parental involvement, abstinence from sex until marriage, and avoiding intravenous drug use. Any program developed under this subdivision shall present techniques and strategies to deal with peer pressure and to offer positive reinforcement and shall teach reasons, skills, and strategies for remaining or becoming abstinent from sexual activity; for appropriate grade levels and classes, shall teach that abstinence from sexual activity until marriage is the only certain means of avoiding out-of-wedlock pregnancy, sexually transmitted ~~diseases,~~ diseases when transmitted through sexual contact, and other associated health and emotional problems, and that a mutually faithful monogamous heterosexual relationship in the context of marriage is the best lifelong means of avoiding diseases transmitted by sexual contact, including ~~Acquired Immune Deficiency Syndrome (AIDS);~~HIV/AIDS, shall teach how alcohol and drug use lower inhibitions, which may lead to risky sexual behavior, and shall teach the positive benefits of abstinence until marriage and the risks of premarital sexual activity. ~~Any instruction concerning the causes of sexually transmitted diseases, including Acquired Immune Deficiency Syndrome (AIDS), in cases where homosexual acts are a significant means of transmission, shall include the current legal status of those acts.~~

(4) The State Board of Education shall evaluate abstinence until marriage curricula and their learning materials and shall develop and maintain a recommended list of one or more approved abstinence until marriage curricula. The State Board may develop an abstinence until marriage program to include on the recommended list. The State Board of Education shall not select or develop a program for inclusion on the recommended list that does not include the positive benefits of abstinence until marriage and the risks of premarital sexual activity as the primary focus. The State Board shall include on the recommended list only programs that include, in appropriate grades and classes, instruction that:

a. Teaches that abstinence from sexual activity outside of marriage is the expected standard for all school-age children;
b. Presents techniques and strategies to deal with peer pressure and offering positive reinforcement;

c. Presents reasons, skills, and strategies for remaining or becoming abstinent from sexual activity;

d. Teaches that abstinence from sexual activity is the only certain means of avoiding out-of-wedlock pregnancy, sexually transmitted diseases when transmitted through sexual contact, including ~~Acquired Immune Deficiency Syndrome (AIDS),~~ HIV/AIDS, and other associated health and emotional problems;

e. Teaches that a mutually faithful monogamous heterosexual relationship in the context of marriage is the best lifelong means of avoiding sexually transmitted diseases, including ~~Acquired Immune Deficiency Syndrome (AIDS);~~ HIV/AIDS;

f. Teaches the positive benefits of abstinence until marriage and the risks of premarital sexual activity;

g. Provides opportunities that allow for interaction between the parent or legal guardian and the student; ~~and~~

h. Provides factually accurate biological or pathological information that is related to the human reproductive system.

(5) The State Board of Education shall make available to all local school administrative units for review by the parents and legal guardians of students enrolled at that unit any State-developed objectives for instruction, any approved textbooks, the list of reviewed materials, and any other State-developed or approved materials that pertain to or are intended to impart information or promote discussion or understanding in regard to the prevention of sexually transmitted diseases, including ~~Acquired Immune Deficiency Syndrome (AIDS),~~ HIV/AIDS, to the avoidance of out-of-wedlock pregnancy, or to the abstinence until marriage curriculum. The review period shall extend for at least 60 days before use."

SECTION 52.(c) G.S. 115C-81(e1)(7) and (8) read as rewritten:

"(7) Each school year, before students may participate in any portion of (i) a program that pertains to or is intended to impart information or promote discussion or understanding in regard to the prevention of sexually transmitted diseases, including ~~Acquired Immune Deficiency Syndrome (AIDS),~~ HIV/AIDS, or to the avoidance of out-of-wedlock pregnancy, (ii) an abstinence until marriage program, or (iii) a comprehensive sex education program, whether developed by the State or by the local board of education, the parents and legal guardians of those students shall be given an opportunity to review the objectives and materials. Local boards of education shall adopt policies to provide opportunities either for parents and legal guardians to consent or for parents and legal guardians to withhold their consent to the students' participation in any or all of these programs.

(8) Students may receive information about where to obtain contraceptives and abortion referral services only in accordance with a local board's policy regarding parental consent. Any instruction concerning the use of contraceptives or prophylactics shall provide accurate statistical information on their effectiveness and failure rates for preventing pregnancy and sexually transmitted diseases, including ~~Acquired Immune Deficiency Syndrome (AIDS),~~ HIV/AIDS, in actual use among adolescent populations and shall explain clearly the difference between risk reduction and risk elimination through abstinence. The Department of Health and Human Resources shall provide the most current available information at the beginning of each school year."

SECTION 52.(d) This section applies beginning with the 2006-2007 school year.

SECTION 53. G.S. 115C-84.2(d) reads as rewritten:

"(d) Opening and Closing Dates. – Local boards of education shall determine the dates of opening and closing the public schools under subdivision (a)(1) of this section. Except for year-round schools, the opening date for students shall not be before August 25, and the closing date for students shall not be after June 10. A local board may submit to the State Board for its approval, an alternate opening date commensurate with the average number of instructional days missed due to inclement weather in the past five years if there is a showing of good cause. The State Board shall approve this alternate opening date if there is a showing of good cause only as needed so that school calendars are able to provide sufficient days to accommodate anticipated makeup days due to school closings. On a showing of good cause, the State Board of Education may waive this requirement to the extent that school calendars are able to provide sufficient days to accommodate anticipated makeup days due to school closings. A local board may revise the scheduled closing date if necessary in order to comply with the minimum requirements for instructional days or instructional time. For purposes of this subsection, the term "good cause" means that schools in any local school administrative unit in a county have been closed eight days per year during any four of the last 10 years because of severe weather conditions, energy shortages, power failures, or other emergency situations.

The State Board also may waive this requirement for an educational purpose. The term "educational purpose" means a local school administrative unit establishes a need to adopt a different calendar for (i) a specific school to accommodate a special program offered generally to the student body of that school, (ii) a school that primarily serves a special population of students, or (iii) a defined program within a school. The State Board may grant the waiver for an educational purpose for that specific school or defined program to the extent that the State Board finds that the educational purpose is reasonable, the accommodation is necessary to accomplish the educational purpose, and the request is not an attempt to circumvent the opening and closing dates set forth in this subsection. The waiver requests for educational purposes shall not be used to accommodate system-wide class scheduling preferences.

The required opening and closing dates under this subsection shall not apply to any school that a local board designated as having a modified calendar for the 2003-2004 school year or to any school that was part of a planned program in the 2003-2004 school year for a system of modified calendar schools, so long as the school operates under a modified calendar."

SECTION 54.(a) Article 19A of Chapter 115C of the General Statutes is repealed.

SECTION 54.(b) G.S. 115C-284(c) reads as rewritten:

'(c) The State Board of Education shall have entire control of certifying all applicants for supervisory and professional positions in all public elementary and high schools of North Carolina; and it shall prescribe the rules and regulations for the renewal and extension of all certificates, and shall determine and fix the salary for each grade and type of certificate which it authorizes. The State Board of Education shall require each applicant for an initial certificate or graduate ~~certificate, other than an applicant who is qualified under Article 19A of this Chapter,~~ certificate to demonstrate the applicant's academic and professional preparation by achieving a prescribed minimum score at least equivalent to that required by the Board on November 30, 1972, on a standard examination appropriate and adequate for that purpose. If the Board shall specify the National Teachers Examination for this purpose, the required minimum score shall not be lower than that which the Board required on November 30, 1972. ~~The Board may not require an applicant who is qualified under Article 19A of this Chapter to take an additional exam to demonstrate academic competence.~~ The Board shall not issue provisional certificates for principals.'"

SECTION 55.(a) Article 26A of Chapter 115C of the General Statutes, as created in Section 1 of S.L. 2005-22, is recodified as Article 25A of Chapter 115C of the General Statutes.

SECTION 55.(b) G.S. 115C-375.2(g), as created by Section 1 of S.L. 2005-22, reads as rewritten:

'(g) No local board of education, nor its members, employees, designees, agents, or volunteers, shall be liable in civil damages to any party for any act authorized by this ~~subsection.~~ section, or for any omission relating to that act, unless that act or omission amounts to gross negligence, wanton conduct, or intentional wrongdoing.'

SECTION 55.(c) The introductory language of Section 2.(b) of S.L. 2005-22 reads as rewritten:

"**SECTION 2.(b)** Article ~~26A,~~ 25A of Chapter 115C of the General Statutes, as created in Section 1 of this act, is amended by adding the following new section to read:'"

SECTION 56. G.S. 115C-391.1(d)(3), as created by Section 2 of S.L. 2005-205, reads as rewritten:

"(3) Nothing in this subsection shall be construed to prevent the use of mechanical restraint ~~devices, devices~~ such as handcuffs by law enforcement officers in the lawful exercise of their law enforcement duties."

SECTION 57.(a) G.S. 115C-566(a) reads as rewritten:

'(a) The Secretary of Administration, upon consideration of the advice of the Division of Nonpublic Education in the ~~Office of the Governor~~ Department of Administration and representatives of nonpublic schools, shall adopt rules for the procedures a person who is or was enrolled in a home school, in a nonpublic school that is not accredited by the State Board of Education, or in an educational program found by a court, prior to July 1, 1998, to comply with the compulsory attendance law, must follow and the requirements that person must meet to obtain a driving eligibility certificate. The procedures shall provide that the person who is required under G.S. 20-11(n) to sign the driving eligibility certificate must provide the certificate if he or she determines that one of the following requirements is met:

(1) The person seeking the certificate is eligible for the certificate under G.S. 20-11(n)(1) and is not subject to G.S. 20-11(n1).

(2) The person seeking the certificate is eligible for the certificate under G.S. 20-11(n)(1) and G.S. 20-11(n1).

The rules shall define exemplary student behavior, define what constitutes the successful completion of a drug or alcohol treatment counseling program, and provide for an appeal to an appropriate educational entity by a person who is denied a driving eligibility certificate. The Division of Nonpublic Education also shall develop policies as to when it is appropriate to notify the Division of Motor Vehicles that a person who is or was enrolled in a home school or in a nonpublic school that is not accredited by the State Board of Education no longer meets the requirements for a driving eligibility certificate."

SECTION 57.(b) G.S. 116-31.10(b) is repealed.

SECTION 57.(c) G.S. 143-49(4) is repealed.

SECTION 57.(d) G.S. 143-55 reads as rewritten:

'§ 143-55. Requisitioning for supplies by agencies; must purchase through sources certified.

~~After~~ Unless otherwise provided by law, after sources of supply have been established by contract and certified by the Secretary of Administration to the said departments, institutions and agencies as herein provided for, it shall be the duty of all departments, institutions and agencies to make requisition or issue orders on forms to be prescribed by the Secretary of Administration, for all supplies, materials and equipment required by them upon the sources of supply so certified, and, except as herein otherwise provided for, it shall be unlawful for them, or any of them, to purchase any supplies, materials or equipment from other sources than those certified by the Secretary of Administration. One copy of such requisition or order shall be furnished to and when requested by the Secretary of Administration.'

SECTION 57.(e) G.S. 143-57 reads as rewritten:

'§ 143-57. Purchases of articles in certain emergencies.

In case of any emergency or pressing need arising from unforeseen causes including but not limited to delay by contractors, delay in transportation, breakdown in machinery, or unanticipated volume of work, the Secretary of Administration shall have power to obtain or authorize obtaining in the open market any necessary supplies, materials, equipment, printing or services for immediate delivery to any department,

institution or agency of the State government. A report on the circumstances of such emergency or need and the transactions thereunder shall be made a matter of record promptly thereafter. ~~If the expenditure exceeds ten thousand dollars ($10,000), the report shall also be made promptly thereafter to the Division of Purchase and Contract.~~'

SECTION 57.(f) G.S. 143-60(1) and G.S. 143-60(2) are repealed.

SECTION 57.(g) G.S. 143-169(b) reads as rewritten:

"(b) Every publication published at State expense which makes use of the multicolor process is prohibited except:

(1) In cases of scientific illustrations when the illustrations would be unintelligible if published in black and white;

(2) When the publication is a project of the Department of Environment and Natural Resources, or is a part of the magazine "Wildlife in North Carolina," published under the auspices of the Wildlife Resources Commission; or

(3) When the express approval of the ~~Department of Administration~~ agency's executive officer is obtained."

SECTION 58. G.S. 120-10.3(b), as created by Section 2 of S.L. 2005-3, reads as rewritten:

"(b) When May Initiate. – The notice of intent may be filed no earlier than the date provided in G.S. 163-182.5 for the canvass by the board of elections with jurisdiction for the office under G.S. 163-182.4. The notice of intent must be filed no later than the latter of: (i) 10 days after a certificate of election has been issued, or (ii) 10 days after the conclusion of the election protest procedure under Article 15A of Chapter 163 of the General Statutes, but in no event may a contestant initiate a contest later than 30 days after the convening of a regular ~~or special~~ session of the General Assembly next after the election."

SECTION 59. G.S. 120-32.1 reads as rewritten:

"**§ 120-32.1. Use and maintenance of buildings and grounds.**

(a) The Legislative Services Commission shall:

(1) Establish policy for the use of the State legislative buildings and grounds;

(2) Maintain and care for the State legislative buildings and grounds, but the Commission may delegate the actual work of the maintenance of those buildings and grounds to the Department of Administration, which shall perform the work as delegated;

(3) Provide security for the State legislative buildings and grounds;

(4) Allocate space within the State legislative buildings and grounds; and

(5) Have the exclusive authority to assign parking space in the State legislative buildings and grounds.

(b) The Legislative Services Officer shall have posted the rules adopted by the Legislative Services Commission under the authority of this section in a conspicuous place in the State Legislative Building and the Legislative Office Building. The Legislative Services Officer shall have filed a copy of the rules, certified by the chairman of the Legislative Services Commission, in the office of the Secretary of State

and in the office of the Clerk of the Superior Court of Wake County. When so posted and filed, these rules shall constitute notice to all persons of the existence and text of the rules. Any person, whether on his own behalf or for another, or acting as an agent or representative of any person, firm, corporation, partnership or association, who knowingly violates any of the rules adopted, posted and filed under the authority of this section is guilty of a Class 1 misdemeanor. Any person, firm, corporation, partnership or association who combines, confederates, conspires, aids, abets, solicits, urges, instigates, counsels, advises, encourages or procures another or others to knowingly violate any of the rules adopted, posted and filed under the authority of this section is guilty of a Class 1 misdemeanor.

(c) The Legislative Services Commission may cause to be removed at the owner's expense any vehicle parked in the State legislative buildings and grounds in violation of the rules of the Legislative Services Commission and may cause to be removed any vehicle parked in any State-owned parking space leased to an employee of the General Assembly where the vehicle is parked without the consent of the employee to whom the space is leased.

(d) For the purposes of this section, the term "State legislative buildings and grounds" means:

(1) At all times:

a. The State Legislative Building;

a1. Repealed by Session Laws 1998-156, s. 1, effective September 24, 1998.

a2. The areas between the outer walls of the State Legislative Building and the far curbline of those sections of Jones, Wilmington, Salisbury, and Lane Streets that border the land on which it is situated;

b. The Legislative Office Building, which shall include the following areas:

1. The garden area and outer stairway;

2. The loading dock area bounded by the wall on the east abutting the State Government Mall, the southern edge of the southernmost exit lane on Salisbury Street for the parking deck, and the Salisbury Street sidewalk;

3. The area between its outer wall and the near curbline of that section of Lane Street that borders the land on which it is situated; and

4. The area bounded by its western outer wall, the extension of a line along its northern outer wall to the middle of Salisbury Street, following the middle line of Salisbury Street to the nearest point of the intersection of Lane and Salisbury Streets, and thence east to the near curbline of the Legislative Office Building at its southwestern corner;

c. Any State-owned parking lot which is leased to the General Assembly;

d. The bridge between the State Legislative Building and the State Governmental Mall; and

e. A portion of the brick sidewalk surface area of the State Government Mall, described as follows: beginning at the northeast corner of the Legislative Office Building, thence east across the brick sidewalk to the inner edge of the sidewalk adjacent to the grassy area of the Mall, thence south along the inner edge of the sidewalk to the southwest outer corner of the ~~Mall water fountain,~~ Mall, thence east along the southern outer edge of the ~~fountain~~ Mall to a point north of the northeast corner of the pedestrian surface of the Lane Street pedestrian bridge, thence south from that point to the northeast corner of the pedestrian surface of the bridge, thence west along the southern edge of the brick sidewalk area of the Mall to the southeast corner of the Legislative Office Building, thence north along the east wall of the Legislative Office Building, to the point of beginning.

(2) Repealed by Session Laws 1998-156, s. 1, effective September 24, 1998."

SECTION 60.(a) G.S. 122C-270 reads as rewritten:

"**§ 122C-270. Attorneys to represent the respondent and the State.**

(a) In a superior court district or set of districts as defined in G.S. 7A-41.1 in which a State facility for the mentally ill is located, the Commission on Indigent Defense Services shall appoint an attorney licensed to practice in North Carolina as special counsel for indigent respondents who are mentally ill. These special counsel shall serve at the pleasure of the Commission, may not privately practice law, and shall receive annual compensation within the salary range for assistant public defenders as fixed by the Office of Indigent Defense Services. The special counsel shall represent all indigent respondents at all hearings, rehearings, and supplemental hearings held at the State ~~facility and on appeals held under this Article.~~ facility. Special counsel shall determine indigency in accordance with G.S. 7A-450(a). Indigency is subject to redetermination by the presiding judge. If the respondent appeals, counsel for the appeal shall be appointed in accordance with rules adopted by the Office of Indigent Defense Services.

(b) The State facility shall provide suitable office space for the counsel to meet privately with respondents. The Office of Indigent Defense Services shall provide secretarial and clerical service and necessary equipment and supplies for the office.

(c) In the event of a vacancy in the office of special counsel, counsel's incapacity, or a conflict of interest, counsel for indigents at hearings or rehearings may be assigned in accordance with rules adopted by the Office of Indigent Defense Services. No mileage or compensation for travel time is paid to a counsel appointed pursuant to this

subsection. Counsel may also be so assigned when, in the opinion of the Director of the Office of Indigent Defense Services, the volume of cases warrants.

(d) At hearings held in counties other than those designated in subsection (a) of this section, counsel for indigent respondents shall be appointed in accordance with rules adopted by the Office of Indigent Defense Services.

(e) ~~Counsel assigned to represent an indigent respondent at the initial district court hearing is also responsible for perfecting and concluding an appeal, if there is one. Upon completion of an appeal, or upon transfer of the respondent to a State facility for the mentally ill, if there is no appeal, assigned counsel is discharged.~~ If the respondent is committed to a non-State 24-hour facility, assigned counsel remains responsible for ~~his~~ the respondent's representation at the trial level until discharged by order of district court, until the respondent is unconditionally discharged from the facility, or until the respondent voluntarily admits himself or herself to the facility. If the respondent is transferred to a State facility for the mentally ill, assigned counsel is discharged. If the respondent appeals, counsel for the appeal shall be appointed in accordance with rules adopted by the Office of Indigent Defense Services.

(f) The Attorney General may employ four attorneys, one to be assigned by him full-time to each of the State facilities for the mentally ill, to represent the State's interest at commitment hearings, rehearings and supplemental hearings held under this Article at the State facilities for respondents admitted to those facilities pursuant to Part 3, 4, 7, or 8 of this Article or G.S. 15A-1321 and to provide liaison and consultation services concerning these matters. These attorneys are subject to Chapter 126 of the General Statutes and shall also perform additional duties as may be assigned by the Attorney General. The attorney employed by the Attorney General in accordance with G.S. 114-4.2B shall represent the State's interest at commitment hearings, rehearings and supplemental hearings held for respondents admitted to the University of North Carolina Hospitals at Chapel Hill pursuant to Part 3, 4, 7, or 8 of this Article or G.S. 15A-1321.'

SECTION 60.(b) G.S. 122C-289 reads as rewritten:

'**§ 122C-289. Duty of assigned counsel; discharge.**

~~Counsel assigned to represent an indigent respondent at the initial district court hearing is also responsible for perfecting and concluding an appeal. Upon completion of an appeal, assigned counsel is discharged.~~ If the respondent is committed, assigned counsel remains responsible for ~~his~~ the respondent's representation at the trial level until discharged by order of district court or until the respondent is otherwise unconditionally discharged. If the respondent appeals, counsel for the appeal shall be appointed in accordance with rules adopted by the Office of Indigent Defense Services.'

SECTION 60.(c) This section becomes effective October 1, 2005, and applies to appeals filed on or after that date."

SECTION 61.(a) Effective January 1, 2006, G.S. 130A-209 reads as rewritten:

"**§ 130A-209. Incidence reporting of cancer; charge for collection if failure to report.**

(a) All health care facilities and health care providers that detect, diagnose, or treat cancer or benign brain or central nervous system tumors shall report to the central cancer registry each diagnosis of cancer or benign brain or central nervous system tumors in any person who is screened, diagnosed, or treated by the facility or provider. The reports shall be made within six months of diagnosis. Diagnostic, demographic and other information as prescribed by the rules of the Commission shall be included in the report.

(b) If a health care facility or health care provider fails to report as required under this section, then the central cancer registry may conduct a site visit to the facility or provider or be provided access to the information from the facility or provider and report it in the appropriate format. The Commission may adopt rules requiring that the facility or provider reimburse the registry for its cost to access and report the information in an amount not to exceed one hundred dollars ($100.00) per case. Thirty days after the expiration of the six-month period for reporting under subsection (a) of this section, the registry shall send notice to each facility and provider that has not submitted a report as of that date that failure to file a report within 30 days shall result in collection of the data by the registry and liability for reimbursement imposed under this section. Failure to receive or send the notice required under this section shall not be construed as a waiver of the reporting requirement. For good cause, the central cancer registry may grant an additional 30 days for reporting.

(c) As used in this section, the term:

(1) "Health care facility" or "facility" means any hospital, clinic, or other facility that is licensed to administer medical treatment or the primary function of which is to provide medical treatment in this State. The term includes health care facility laboratories and independent pathology laboratories;

(2) "Health care provider" or "provider" means any person who is licensed or certified to practice a health profession or occupation under Chapter 90 of the General Statutes and who diagnoses or treats ~~cancer.~~cancer or benign brain or central nervous system tumors."

SECTION 61.(b) G.S. 108A-55.1 reads as rewritten:

"**§ 108A-55.1. Medicare enrollment required.**

The Department shall require State Medical Assistance Program recipients who qualify for Medicare to enroll in ~~Medicare,~~ all Medicare Parts for which they are qualified, in accordance with Title XIX of the Social Security Act, in order to pay medical expenditures that qualify for payment under Medicare ~~Part B.~~ Parts A, B, C, and D. Failure to enroll in Medicare shall result in nonpayment of these expenditures under the State Medical Assistance Program. A provider may seek payment for services from Medicaid enrollees who are eligible for but not enrolled in ~~Medicare Part B.~~Medicare. A provider also may seek payment for services from Medicaid enrollees who are enrolled in Medicare but do not use or refuse to use Medicare to pay for the medical services."

SECTION 62. G.S. 130A-335.1(a) reads as rewritten:

"(a) The manufacturer ~~of each~~ of, or the person who installs, repairs, or pumps, any each septic tank to be installed in this State as a part of a septic tank system that is designed to treat 3,000 gallons per day or less of sewage shall provide an effluent filter approved by the Department pursuant to the requirements of G.S. 130A-335, this section, and rules adopted by the Commission. Any person who installs, repairs, or pumps systems described in this section may purchase and install any appropriate filters on the systems. The person who installs the ~~septic tank system~~ effluent filter shall install the effluent filter as a part of the septic tank system in accordance with the specifications provided by the manufacturer of the effluent filter. An effluent filter shall:

(1) Be made of materials that are capable of withstanding the corrosives to which septic tank systems are normally subject.

(2) Prevent solid material larger than one-sixteenth of an inch, as measured along the shortest axis of the material, from entering the drainfield.

(3) Be designed and constructed to allow for routine maintenance.

(4) Be designed and constructed so as not to require maintenance more frequently than once in any three-year period under normally anticipated use."

SECTION 63.(a) G.S. 130A-480(d) reads as rewritten:

"(d) For purposes of this section, "hospital" means a hospital, as defined in G.S. 131E-214.1(3), that operates an emergency room on a 24-hour basis. The term does not include a psychiatric hospital ~~subject to Article 2 of Chapter 122C of the General Statutes.~~ that operates an emergency room."

SECTION 63.(b) G.S. 131E-14.2(d), as amended by Section 1 of S.L. 2005-0070, reads as rewritten:

"(d) Subsection (a) of this section shall not apply to any member of the board of directors of a public hospital if (i) the undertaking or contract or series of undertakings or contracts between the public hospital and one of its officials is approved by specific resolution of the board adopted in an open and public meeting and recorded in its minutes; (ii) the official entering into the contract or undertaking with the public hospital does not in an official capacity participate in any way or vote; and (iii) the amount does not exceed twelve thousand five hundred dollars ($12,500) for medically related services and twenty-five thousand dollars ($25,000) for other goods or services within a 12-month ~~period;~~ period, or the contract is for medically related or administrative services that are provided by a director who serves on the board as an ex officio representative of the hospital medical staff pursuant to a hospital bylaw adopted prior to January 1, 2005, or that are provided by the spouse of that director."

SECTION 64. G.S. 131D-21.2(b) reads as rewritten:

"(b) The proceedings of a quality assurance, medical, or peer review committee, the records and materials it produces and the materials it considers shall be confidential and not considered public records within the meaning of G.S. 132-1, "Public records' defined", and shall not be subject to discovery or introduction into evidence in any civil action against ~~a nursing~~ an adult care home or a provider of professional health services that results from matters that are the subject of evaluation and review by the committee.

No person who was in attendance at a meeting of the committee shall be required to testify in any civil action as to any evidence or other matters produced or presented during the proceedings of the committee or as to any findings, recommendations, evaluations, opinions, or other actions of the committee or its members. However, information, documents, or records otherwise available are not immune from discovery or use in a civil action merely because they were presented during proceedings of the committee. Documents otherwise available as public records within the meaning of G.S. 132-1 do not lose their status as public records merely because they were presented or considered during proceedings of the committee. A member of the committee or a person who testifies before the committee may testify in a civil action but cannot be asked about the person's testimony before the committee or any opinions formed as a result of the committee hearings."

SECTION 65.(a) G.S. 135-40.13A reads as rewritten:

"**§ 135-40.13A. Liability of third person; right of subrogation; right of first recovery.**

(a) ~~Whenever the Plan pays benefits for hospital, surgical, medical, or prescription drug expenses, with respect to any Plan member, the Plan shall be subrogated, to the extent of any payments under the Plan, to all of the Plan member's rights of recovery against liable third parties, regardless of the entity or individual from whom recovery may be due.~~The Plan shall have the right of subrogation upon all of the Plan member's right to recover from a liable third party for payment made under the Plan, for all medical expenses, including provider, hospital, surgical, or prescription drug expenses, to the extent those payments are related to an injury caused by a liable third party. The Plan member shall do nothing to prejudice these rights. The Plan has the right to first recovery on any amounts so recovered, whether by the Plan or the Plan member, and whether recovered by litigation, arbitration, mediation, settlement, or otherwise. Notwithstanding any other provision of law to the contrary, the recovery limitation set forth in G.S. 28A-18-2 shall not apply to the Plan's right of subrogation of Plan members.

(b) If the Plan is precluded from exercising its right of subrogation, it may exercise its rights of recovery pursuant to G.S. 135-40.13(g) ~~to the extent allowed by law~~. If the Plan recovers damages from a liable third party in excess of the claims paid, any excess will be paid to the member, less a proportionate share of the costs of collection.

(c) In the event a Plan member recovers any amounts from a liable third party to which the Plan is entitled under this section, the Plan may recover the amounts directly from the Plan member. The Plan has a lien, for not more than the value of claims paid related to the liability of the third party, on any damages subsequently recovered against the liable third party. If the Plan member fails to pursue the remedy against a liable third party, the Plan is subrogated to the rights of the Plan member and is entitled to enforce liability in the Plan's own name or in the name of the Plan member for the amount paid by the Plan.

(d) In no event shall the Plan's lien exceed fifty percent (50%) of the total damages recovered by the Plan member, exclusive of the Plan member's reasonable

costs of collection as determined by the Plan in the Plan's sole discretion. The decision by the Plan as to the reasonable cost of collection is conclusive and is not a "final agency decision" for purposes of a contested case under Chapter 150B of the General Statutes. Notice of the Plan's lien or right to recovery shall be presumed when a Plan member is represented by an attorney, and the attorney shall disburse proceeds pursuant to this section."

SECTION 65.(b) G.S. 28A-18-2(a) reads as rewritten:

"**§ 28A-18-2. Death by wrongful act of another; recovery not assets.**

(a) When the death of a person is caused by a wrongful act, neglect or default of another, such as would, if the injured person had lived, have entitled him to an action for damages therefor, the person or corporation that would have been so liable, and his or their personal representatives or collectors, shall be liable to an action for damages, to be brought by the personal representative or collector of the decedent; and this notwithstanding the death, and although the wrongful act, neglect or default, causing the death, amounts in law to a felony. The personal representative or collector of the decedent who pursues an action under this section may pay from the assets of the estate the reasonable and necessary expenses, not including attorneys' fees, incurred in pursuing the action. At the termination of the action, any amount recovered shall be applied first to the reimbursement of the estate for the expenses incurred in pursuing the action, then to the payment of attorneys' fees, and shall then be distributed as provided in this section. The amount recovered in such action is not liable to be applied as assets, in the payment of debts or legacies, except as to burial expenses of the deceased, and reasonable hospital and medical expenses not exceeding four thousand five hundred dollars ($4,500) incident to the injury resulting in death, except that the amount applied for hospital and medical expenses shall not exceed fifty percent (50%) of the amount of damages recovered after deducting attorneys' fees, but shall be disposed of as provided in the Intestate Succession Act. The limitations on recovery for hospital and medical expenses under this subsection do not apply to subrogation rights exercised pursuant to G.S. 135-40.13A. All claims filed for such services shall be approved by the clerk of the superior court and any party adversely affected by any decision of said clerk as to said claim may appeal to the superior court in term time."

SECTION 65.(c) This section is effective when it becomes law and applies to payments made by the Plan after July 20, 2004 for which reimbursement is sought on or after the effective date. Subsection (b) of this section applies to wrongful deaths occurring on or after the effective date.

SECTION 66. G.S. 143B-165 reads as rewritten:

"**§ 143B-165. North Carolina Medical Care Commission – creation, powers and duties.**

There is ~~hereby~~ created the North Carolina Medical Care Commission of the Department of Health and Human Services with the power and duty to ~~promulgate rules and regulations to be followed in the construction and maintenance of public and private hospitals, medical centers, and related facilities with the power and duty to~~ adopt, amend and rescind rules ~~and regulations~~ under and not inconsistent with the laws of the State necessary to carry out the provisions and purposes of this Article.

(1) The North Carolina Medical Care Commission ~~has the duty to~~ shall adopt rules for the development and administration of statewide plans for the construction and maintenance of public and private hospitals, medical centers, and related facilities, or ~~such~~ other plans that are ~~as may be found~~ desirable and necessary in order to meet the requirements and receive the benefits of any federal legislation with regard ~~thereto.~~to these facilities.

(2) ~~The Commission is authorized to adopt such rules and regulations as may be necessary to carry out the intent and purposes of Article 13 of Chapter 131 of the General Statutes of North Carolina.~~

(3) ~~The Commission may adopt such reasonable and necessary standards with reference thereto as may be proper to cooperate fully with the Surgeon General or other agencies or departments of the United States and the use of funds provided by the federal government as contained and referenced in Article 13 of Chapter 131 of the General Statutes of North Carolina.~~

(4) ~~The Commission shall have the power and duty to approve projects in the amounts of grants in aid from funds supplied by the federal and State governments for the planning and construction of hospitals and other related medical facilities according to the provisions of Article 13 of Chapter 131 of the General Statutes of North Carolina.~~

(5) Repealed by Session Laws 1981 (Regular Session, 1982), c. 1388, s. 3.

(6) ~~The Commission has the duty to adopt rules and regulations and standards with respect to the different types of hospitals to be licensed under the provisions of Article 13A of Chapter 131 of the General Statutes of North Carolina.~~

(7) The Commission ~~is authorized and empowered to~~ may adopt ~~such rules and regulations,~~ rules, not inconsistent with the laws of this State, as may be required by the federal government for grants-in-aid for medical facility services and licensure ~~which~~ that may be made available to the State by the federal government. This section is to be liberally construed in order that the State and its citizens may benefit from ~~such~~ these grants-in-aid.

(8) The Commission shall adopt ~~such rules and regulations;~~ rules consistent with the provisions of this Chapter. All rules ~~and regulations~~ not inconsistent with the provisions of this Chapter heretofore adopted by the North Carolina Medical Care Commission shall remain in full force and effect unless and until repealed or superseded by action of the North Carolina Medical Care Commission. All rules ~~and regulations~~ adopted by the Commission shall be enforced by the Department of Health and Human Services.

(9) The Commission shall ~~have the power and duty to~~ adopt rules ~~and regulations~~ with regard to emergency medical services in accordance with the provisions of ~~Article 26 of Chapter 130~~ Article 7 of Chapter

131E and Article 56 of Chapter 143 of the General Statutes of North Carolina.

(10) The Commission shall ~~have the power and duty to~~ adopt rules for the operation of nursing homes, as defined by Article 6 of Chapter 131E of the General Statutes.

(11) The Commission ~~is authorized to adopt such~~ may adopt rules as may be necessary to carry out the provisions of ~~Part C~~ Part 3 of Article 6, and Article 10, of Chapter 131E of the General Statutes of North Carolina.

(12) The Commission shall adopt rules, including temporary rules pursuant to G.S. 150B-13, providing for the accreditation of facilities that perform mammography procedures and for laboratories evaluating screening pap smears. Mammography accreditation standards shall address, but are not limited to, the quality of mammography equipment used and the skill levels and other qualifications of personnel who administer mammographies and personnel who interpret mammogram results. The Commission's standards shall be no less stringent than those established by the United States Department of Health and Human Services for Medicare/Medicaid coverage of screening mammography. These rules shall also specify procedures for waiver of these accreditation standards on an individual basis for any facility providing screening mammography to a significant number of patients, but only if there is no accredited facility located nearby. The Commission may grant a waiver subject to any conditions it deems necessary to protect the health and safety of patients, including requiring the facility to submit a plan to meet accreditation standards.

(13) The Commission shall ~~have the power and duty to~~ adopt rules for the inspection and licensure of adult care homes and operation of adult care homes, as defined by Article 1 of Chapter 131D of the General Statutes, and for personnel requirements of staff employed in adult care homes, except where rule-making authority is assigned to the Secretary."

SECTION 67.(a) G.S. 143B-437.51 reads as rewritten:

"**§ 143B-437.51. Definitions.**

The following definitions apply in this Part:

(1) Agreement. – A community economic development agreement under G.S. 143B-437.57.

(2) Base ~~years~~ period. – The ~~first 24 months following the date set by the Committee for performance to begin under the agreement~~ period of time set by the Committee during which new employees are to be hired for the positions on which the grant shall be based.

(3) Business. – A corporation, sole proprietorship, cooperative association, partnership, S corporation, limited liability company, nonprofit

corporation, or other form of business organization, located either within or outside this State.

(4) Committee. – The Economic Investment Committee established pursuant to G.S. 143B-437.54.

(5) Eligible position. – A position created by a business and filled by a new ~~full-time~~ employee in this State during the base ~~years or in subsequent years of a grant~~ period.

(5a) Enterprise tier. – The classification assigned to an area pursuant to G.S. 105-129.3.

(6) Full-time employee. – A person who is employed for consideration for at least 35 hours a week, whose wages are subject to withholding under Article 4A of Chapter 105 of the General Statutes, and who is determined by the Committee to be employed in a permanent position according to criteria it develops in consultation with the Attorney General. The term does not include any person who works as an independent contractor or on a consulting basis for the business.

(7) New employee. – A full-time employee who represents a net increase in the number of the business's employees statewide. ~~The term includes an employee who previously filled an eligible position who is rehired or called back from a layoff that occurs during or following the base years to a vacant position previously held by that employee or to a new position established during or following the base years.~~

(8) Overdue tax debt. – Defined in G.S. 105-243.1.

(9) Related member. – Defined in G.S. 105-130.7A.

(10) Withholdings. – The amount withheld by a business from the wages of employees in eligible positions under Article 4A of Chapter 105 of the General Statutes."

SECTION 67.(b) G.S. 143B-437.52(d)

"**§ 143B-437.52. Job Development Investment Grant Program.**

(d) Measuring Employment. – For the purposes of subdivision (a)(1) of this section and G.S. 143B-437.51(5), 143B-437.51(7), and 143B-437.57(a)(11), the Committee may designate that the increase or maintenance of employment is measured at the level of a division or another operating unit of a business, rather than at the business level, if both of the following conditions are met:

(1) The Committee makes an explicit finding that the designation is necessary to secure the project in this State.

(2) The ~~designation~~ agreement contains terms to ensure that the business does not create eligible positions by transferring or shifting to the project existing positions from another project of the business or a related member of the business."

SECTION 67.(c) G.S. 143B-437.55(a) reads as rewritten:

"**§ 143B-437.55. Applications; fees; reports; study.**

(a) Application. – A business shall apply, under oath, to the Committee for a grant on a form prescribed by the Committee that includes at least all of the following:

(1) The name of the business, the proposed location of the project, and the type of activity in which the business will engage at the project site or sites.

(2) The names and addresses of the principals or management of the business, the nature of the business, and the form of business organization under which it is operated.

(3) The financial statements of the business prepared by a certified public accountant and any other financial information the Committee considers necessary.

(4) The number of eligible positions proposed to be created ~~during the base years and thereafter~~ for the project and the salaries for these positions."

SECTION 67.(d) G.S. 143B-437.56(c) reads as rewritten:

"**§ 143B-437.56. Calculation of minimum and maximum grants; factors considered.**

(c) The grant may be based only on eligible positions created during the base ~~years, unless the Committee makes an explicit determination that the grant shall also be based on additional eligible positions created during the remainder of the term of the grant~~ period set by the Committee."

SECTION 67.(e) G.S. 143B-437.57(a) reads as rewritten:

"**§ 143B-437.57. Community economic development agreement.**

(a) Terms. – Each community economic development agreement shall include at least the following:

(1) A detailed description of the proposed project that will result in job creation and the number of new employees to be hired ~~in~~ during the base ~~years and later years~~ period.

(2) The term of the grant and the criteria used to determine the first year for which the grant may be claimed.

(3) The number of eligible positions that are subjects of the grant and a description of those positions and the location of those positions.

(4) The amount of the grant based on a percentage of withholdings.

(5) A method for determining the number of new employees hired during a grant year.

(6) A method for the business to report annually to the Committee the number of eligible positions for which the grant is to be made.

(7) A requirement that the business report to the Committee annually the aggregate amount of withholdings during the grant year.

(8) A provision permitting an audit of the payroll records of the business by the Committee from time to time as the Committee considers necessary.

(9) A provision that requires the Committee to amend an agreement pursuant to G.S. 143B-437.59.

(10) A provision that requires the business to maintain operations at the project location or another location approved by the Committee for at

least one hundred fifty percent (150%) of the term of the grant and a provision to permit the Committee to recapture all or part of the grant at its discretion if the business does not remain at the site for the required term.

(11) A provision that requires the business to maintain employment levels in this State at the level of the year immediately preceding the base ~~years~~ period."

SECTION 67.(f) G.S. 143B-437.58(a) reads as rewritten:

"**§ 143B-437.58. Grant recipient to submit records.**

(a) No later than March 1 of each year, for the preceding grant year, every business that is awarded a grant under this Part shall submit to the Committee a report showing withholdings as a condition of its continuation in the grant program. In addition, during the base period, the business shall submit to the Committee an annual payroll report showing the eligible positions that ~~are~~ have been created during the ~~base years and the new eligible positions created during each subsequent~~ preceding calendar year and, subsequent to the base period, the business shall submit to the Committee an annual report showing the eligible positions that remain filled at the end of each year of the grant. Upon request of the Committee, the business shall also submit a copy of its State and federal tax returns. Payroll and tax information and State and federal tax returns of individual taxpayers submitted under this subsection is tax information subject to G.S. 105-259. Aggregated payroll or withholding tax information submitted or derived under this subsection is not tax information subject to G.S. 105-259. When making a submission under this section, the business must pay the Committee a fee of one thousand five hundred dollars ($1,500). The fee is due at the time the submission is made. The Secretary of Commerce, the Secretary of Revenue, and the Director of the Office of State Budget and Management shall determine the allocation of the fee imposed by this section among their agencies. The proceeds of the fee are receipts of the agency to which they are credited."

SECTION 67.(g) G.S. 143B-437.59 reads as rewritten:

"**§ 143B-437.59. Failure to comply with agreement.**

(a) If the business receiving a grant fails to meet or comply with any material condition or requirement set forth in an agreement or with criteria developed by the Committee in consultation with the Attorney General, the Committee shall amend the agreement to reduce the amount of the grant or the term of the agreement and may terminate the agreement. Any reduction of the grant is applicable to the grant year immediately following the grant year in which the Committee amends the agreement. The reduction in the amount or the term must, at a minimum, be proportional to the failure to comply measured relative to the condition or criterion with respect to which the failure occurred.

(b) If a business fails to maintain employment at the levels stipulated in the agreement or otherwise fails to comply with any material condition of the agreement for any two consecutive years, the Committee shall terminate the agreement.

(c) Notwithstanding the provisions of subsections (a) and (b) of this section, if the Committee finds that the business has manipulated or attempted to manipulate

employee withholdings with the purpose of increasing the amount of a grant, the Committee shall immediately terminate the agreement and take action to recapture any grant funds disbursed in any year in which the Committee finds the business manipulated or attempted to manipulate employee withholdings with the purpose of increasing the amount of the grant."

SECTION 67.(h) G.S. 143B-437.60 reads as rewritten:

"**§ 143B-437.60. Disbursement of grant.**

A business may not receive an annual disbursement of a grant if, at the time of disbursement, the business has received a notice of an overdue tax debt and that overdue tax debt has not been satisfied or otherwise resolved. A business may receive an annual disbursement of a grant only after the Committee has certified ~~to the State Controller~~ that there are no outstanding overdue tax debts and that the business has met the terms and conditions of the agreement. No amount shall be disbursed to a business as a grant under this Part in any year until the Secretary of Revenue has certified to the Committee (i) that there are no outstanding overdue tax debts of the business and (ii) the amount of withholdings received in that year by the Department of Revenue from the business. A business that has met the terms of the agreement shall make an annual certification of this to the Committee. The Committee shall require that the business provide such evidence of compliance as the Committee deems necessary to verify ~~this information and certify to the State Controller~~ that the terms of the agreement have been met. The Committee shall ~~further~~ certify ~~to the State Controller~~ the grant amount ~~of a grant~~ for which the business is eligible under the agreement and the amount of a grant for which the business would be eligible under the agreement without regard to G.S. 143B-437.56(d). The ~~State Controller~~ Department of Commerce shall remit a check to the business in the amount of the certified grant amount within 90 days of receiving the certification of the Committee."

SECTION 67.(i) G.S. 143B-437.61 reads as rewritten:

"**§ 143B-437.61. Transfer to Industrial Development Fund.**

At the time the ~~State Controller~~ Department of Commerce remits a check to a business under G.S. 143B-437.60, the ~~State Controller~~ Department of Commerce shall transfer to the Utility Account of the Industrial Development Fund an amount equal to the amount certified by the Committee as the difference between the amount of the grant and the amount of the grant for which the business would be eligible without regard to G.S. 143B-437.56(d)."

SECTION 68. G.S. 145-23, as created by S.L. 2005-78, reads as rewritten:

"**§ 145-23. State birthplace of traditional pottery.**

The Seagrove area, including portions of Randolph, Chatham, Lee, Moore, and Montgomery Counties, is designated as the official location of the birthplace of North Carolina traditional pottery."

SECTION 69. G.S. 147-33.72F reads as rewritten:

"**§ 147-33.72F. Procurement procedures; cost savings.**

Pursuant to Part 4 of this Article, the Office of ~~State~~ Information Technology Services shall establish procedures for the procurement of information technology. The procedures may include aggregation of hardware purchases, the use of formal bid

procedures, restrictions on supplemental staffing, enterprise software licensing, hosting, and multiyear maintenance agreements. The procedures may require agencies to submit information technology procurement requests to the Office of ~~State~~ Information Technology Services on October 1, January 1, and June 1 of each fiscal year in order to allow for bulk purchasing."

SECTION 70. G.S. 160A-164.2 reads as rewritten:

"**§ 160A-164.2. Criminal history record check of employees permitted.**

The council may adopt or provide for rules and regulations or ordinances concerning a requirement that any applicant for employment be subject to a criminal history record check of State and National Repositories of Criminal Histories conducted by the Department of Justice in accordance with G.S. ~~114-19.12.~~114-19.14. The city may consider the results of these criminal history record checks in its hiring decisions."

SECTION 71. G.S. 160A-311 reads as rewritten:

"**§ 160A-311. Public enterprise defined.**

As used in this Article, the term "public enterprise" includes:

(1) Electric power generation, transmission, and distribution systems.

(2) Water supply and distribution systems.

(3) Wastewater collection, treatment, and disposal systems of all types, including septic tank systems or other on-site collection or disposal facilities or systems.

(4) Gas production, storage, transmission, and distribution systems, where systems shall also include the purchase or lease of natural gas fields and natural gas reserves, the purchase of natural gas supplies, and the surveying, drilling and any other activities related to the exploration for natural gas, whether within the State or without.

(5) Public transportation systems.

(6) Solid waste collection and disposal systems and facilities.

(7) Cable television systems. Video programming service offered by a public utility, as defined in G.S. 62-3, is not considered a separate cable television system subject to this Article or to G.S. 153A-137.

(8) Off-street parking facilities and systems.

(9) Airports.

(10) Stormwater management programs designed to protect water quality by controlling the level of pollutants in, and the quantity and flow of, stormwater and structural and natural stormwater and drainage systems of all types."

SECTION 72. G.S. 163-182.15 is amended by adding a subsection to read:

"(d) Determining Results. – In a primary for party nomination, the results shall be determined in accordance with G.S. 163-111 and the certificate issued accordingly. In a general election, the individuals having the highest number of votes for each office shall be declared elected to the office, and the certificate shall be issued accordingly. In a referendum, the ballot proposal receiving the highest number of votes shall be declared to have prevailed, and the certificate shall be issued accordingly."

SECTION 73. Section 11 of Chapter 149 of the 1931 Sessions Laws, as amended by Chapter 255 of the 1947 Session Laws and Chapter 745 of the 1953 Session laws and Chapter 20 of the 1985 Session Laws and Section 42 of Chapter 199 of the 2004 Session Laws is rewritten to read:

"Sec. 1. The term of the School Board shall be for four years and the governing body of the City of Asheville shall, during the month of March 2007 and quadrennially thereafter, appoint or elect two persons to the Board for four-year terms or until their successors are elected and qualified, and, during the month March 2009 and quadrennially thereafter, appoint or elect three persons to the Board for four-year terms or until their successors are elected and qualified. All Board members shall be residents of the Asheville City School District and shall be persons known to be in favor of public education and interested in the welfare of the schools and shall be appointed or elected with the sole object in view of maintaining the efficiency of the schools of said district and without any partisan prejudice or bias. If any vacancy in the membership of said board occurs by reasons of death or resignation or otherwise the governing body of the City of Asheville shall fill the same appointment or election. Terms shall begin on April 1 and in April 2007, and each biennial year thereafter, the Board shall meet and elect a chairman, who will preside over the meetings of the Board. A majority of the members of the Board shall constitute a quorum and the chairman or two members may call a meeting.

Sec. 2. That all laws and clauses in conflict with this Act are hereby repealed.

Sec. 3. That this Act shall be effective when it becomes law."

SECTION 74. Chapter 273 of the 1983 Session Laws, as amended by Section 127 of Chapter 1034 of the 1983 Session Laws, is amended by adding the following new sections to read:

"Section 1.2. Beginning with fiscal year 2007-2008 and every fiscal year thereafter, the Burke County Board of Commissioners may appropriate up to ten percent (10%) of the anticipated revenues in Section 1(2) of the Act to the local current expense fund of the Burke County Board of Education. All remaining revenues shall be appropriated by the Burke County Board of Commissioners to the local capital outlay fund of the Burke County Board of Education.

Section 1.3 In the alternative to Section 1.2 above, during any fiscal year in which the anticipated revenues by the Burke County Board of Commissioners for appropriation under Section 1(2) of the Act exceed the amount of seven million dollars ($7,000,000.00), the Burke County Board of Commissioners may appropriate an amount equal to fifty percent (50%) of the revenues designated for school capital expenditures and debt under Article 42 of Chapter 105 of the North Carolina General Statutes from the anticipated revenues appropriated under Section 1(2) of the Act to (1) the Burke County Board of Commissioners' general fund, (2) the local current expense fund of the Burke County Board of Education as part of its appropriation to that fund, or (3) both funds.

Section 1.4 In the event that the Burke County Board of Education receives additional capital outlay revenues from a fund or source other than those in existence on or before September 1, 2005 ("the Additional Capital Revenue"), then, to the extent

permitted by applicable law, the Board of Commissioners may appropriate up to fifty percent (50%) of the value of the Additional Capital Revenue appropriated for use to or used by the Board of Education in any fiscal year from the revenues appropriated under Section 1(2) of the Act to (1) the Burke County Board of Commissioners' general fund, (2) the local current expense fund of the Board of Education as part of its appropriation to that fund, or (3) both funds. In no event shall the amount of this appropriation exceed the anticipated revenues appropriated under Section 1(2) of the Act."

SECTION 75. Section 4 of S.L. 1991-1012 is repealed.

SECTION 75.1. Section 11.69 of S.L. 1997-443 as rewritten by Section 3 of S.L. 2001-234 reads as rewritten:

"**SECTION 3.** Section 11.69 of S.L. 1997-443, as amended by Section 12.16C(a) of S.L. 1998-212, and as further amended by Section 1 of S.L. 1999-135 as amended by Section 11.9(a) of S.L. 2000-67, reads as rewritten:

"Section 11.69. (a) The General Assembly finds:

(1) That the cost of care for seventy percent (70%) of adult care home residents is paid by the State and the counties;

(2) That the cost to the State for care for residents in adult care homes is substantial, and high vacancy rates in adult care homes further increases the cost of care;

(3) That the proliferation of unnecessary adult care home beds results in costly duplication and underuse of facilities and may result in lower quality service; and

(4) That it is necessary to protect the general welfare and lives, health, and property of the people of the State to slow temporarily licensure of adult care home beds pending a finding of a more definitive means of developing and maintaining the quality of adult care home beds so that unnecessary costs to the State do not result, adult care home beds are available where needed, and that individuals who need care in adult care homes may have access to quality care.

(b) Effective until December 31, 2001, the Department of Health and Human Services shall not approve the addition of any adult care home beds for any type home or facility in the State, except as follows:

(1) Plans submitted for approval prior to May 18, 1997, may continue to be processed for approval;

(2) Plans submitted for approval subsequent to May 18, 1997, may be processed for approval if the individual or organization submitting the plan demonstrates to the Department that on or before August 25, 1997, the individual or organization purchased real property, entered into a contract to purchase or obtain an option to purchase real property, entered into a binding real property lease arrangement, or has otherwise made a binding financial commitment for the purpose of establishing or expanding an adult care home facility. An owner of real property who entered into a contract prior to August 25, 1997, for the sale of an existing building together with land zoned for the development of not more than 50 adult care home beds with a proposed purchaser who failed to consummate the transaction may, after August 25, 1997, sell the property to another purchaser and the Department may process and approve plans submitted by the purchaser for the development of not more than 50 adult care home beds. It shall be the responsibility of the applicant to establish, to the satisfaction of the Department, that any of these conditions have been met;

(3) Adult care home beds in facilities for the developmentally disabled with six beds or less which are or would be licensed under G.S. 131D or G.S. 122C may continue to be approved;

(4) If the Department determines that the vacancy rate of available adult care home beds in a county is fifteen percent (15%) or less of the total number of available beds in the county as of August 26, 1997, and no new beds have been approved or licensed in the county or plans submitted for approval in accordance with subdivision (1) or (2) of this section which would raise the vacancy rate above fifteen percent (15%) in the county, then the department may accept and approve the addition of beds in that county; or

(5) If a county board of commissioners determines that a substantial need exists for the addition of adult care home beds in that county, the board of commissioners may request that a specified umber of additional beds be licensed for development in their county. In making their determination, the board of commissioners shall give consideration to meeting the needs of Special Assistance clients. The Department may approve licensure of the additional beds from the first facility that files for licensure and subsequently meets the licensure requirements.

(b1) Any person who obtained an exemption under subsection (b) of this section and has not obtained a license for the beds for which the exemption was granted shall no longer be authorized to develop the beds, unless all of the following conditions are met:

(1) No later than June 1, 2002, the person granted the exemption shall submit to the Department of Health and Human Services fully executed copies of loan closing papers for a loan to the exempted person or a letter from a certified public accountant which states that liquid reserves have been placed in a separately identified account for the exempted person that document sufficient funding to cover the entire capital cost of the project for which the exemption was granted.

(2) No later than December 1, 2002, the person granted the exemption shall submit to the Department of Health and Human Services documentation from the builder or architect that the foundation and footings of the facility for which the exemption was granted have been completed.

(3) No later than December 1, 2003, the person granted the exemption shall submit to the Department of Health and Human Services a copy of the certificate of occupancy from the local building inspector for the facility for which the exemption was granted.

(b2) Notwithstanding the provisions of subsection (b1) of this section, any person who obtained an exemption under subsection (b) of this section for the construction of a new building that is not connected to any other existing structure by more than a protected walkway, and who obligated one or more Qualifying Financial Commitments for the construction of the building of a value totaling at least twenty-five thousand dollars ($25,000), before January 1, 2001, may proceed to develop the beds and obtain a license for the operation of the beds if all of the following conditions are met. Exemptions that were received for increases in bed capacity of existing buildings must meet the requirements set forth in subsection (b1) of this section.

(1) No later than the close of business on June 1, 2004, the person granted the exemption shall submit to the Department of Health and Human Services fully executed copies of loan closing papers for a loan to the exempted person or a letter from a certified public accountant which states that liquid reserves have been placed in a separately identified account for the exempted person that document sufficient funding to cover the entire capital cost of the project for which the exemption was granted.

(2) Not later than the close of business on December 1, 2004, the person granted the exemption shall submit to the Department of Health and Human Services documentation from the builder or architect that the foundation and footings of the facility for which the exemption was granted have been completed.

(3) Not later than the close of business on June 30, 2006, the person granted the exemption who has met the requirements set forth in subdivisions (1) and (2) of this subsection shall submit to the Department of Health and Human Services a copy of the certificate of occupancy from the building inspector for the facility for which the exemption was granted.

For the purposes of this subsection, "Qualifying Financial Commitments" includes any and all of the following expenses: (i) zoning fees and expenses; (ii) marketing and other demographic research and studies; (iii) site preparation costs including soil testing and soil boring costs; (iv) water and sewer improvements; (v) professional fees associated with the foregoing activities and which are otherwise connected to the development of the site, including accounting, architectural, engineering, and legal fees.

(c) The Department shall study the issue of high vacancy rates for adult care home beds, including the impact of those vacancy rates on cost-effectiveness and quality of care for the occupants of adult care homes and other facilities, and make recommendations with respect to the need for establishing new procedures for determining the State and county reimbursement amounts for Special Assistance recipients, the need for the establishment of a certificate of need type process for adult care homes, or any changes needed in the certificate of need process for any other facilities to prevent high vacancy rates for adult care home beds. The Department also shall study the issue of the availability of beds for Special Assistance clients and how recent new bed development has impacted the availability, quality, and cost of beds available for those clients. The Department shall report the results of its study, along with the recommendations required by this section and any other proposals and recommendations, to the Chairs of the House and Senate Appropriations Subcommittees on Human Resources by February 1, 1998. The Department's report shall include any observations or recommendations it deems appropriate with respect to correlations between the vacancy rates and the condition or age of facilities.

(d) This section shall not apply to adult care home beds which are part of a continuing care facility subject to the jurisdiction of or licensed by the Department of Insurance pursuant to Article 64, Chapter 58 of the General Statutes.

(e) This section is effective when this act becomes law."

SECTION 76. The introductory of Section 5 of S.L. 2005-123 is amended by deleting "G.S. 47-46.1 reads as rewritten" and substituting: "G.S. 47-46.1 and G.S. 47-46.2 read as rewritten".

SECTION 77. The prefatory language in Section 19 of S.L. 2005-210 is amended by deleting: "58-37(l)" and substituting "58-37-35(l)".

SECTION 78. If House Bill 392, 2005 General Assembly, becomes law, then G.S. 18B-101(9) as amended by Section 1 of that act, reads as rewritten:

"(9) 'Malt beverage' means beer, lager, malt liquor, ale, porter, and any other brewed or fermented beverage except unfortified or fortified wine as defined by this Chapter, containing at least one-half of one percent (0.5%), and not more than fifteen percent (15%), alcohol by volume. Any malt beverage containing more than six percent (6%) alcohol by volume shall bear a label clearly indicating the alcohol content of the malt beverage."

SECTION 79.(a) If House Bill 1466, 2005 Regular Session, becomes law, then G.S. 14-112.2(c) as enacted by Section 2 of that act reads as rewritten:

"(c) It is unlawful for a person, who knows or reasonably should know that an elder adult or disabled adult lacks the capacity to consent, to obtain or use, endeavor to obtain or use, or conspire with another to obtain or use an elder adult's or disabled adult's funds, assets, or property with the intent to temporarily or permanently deprive the elder adult or disabled adult of the use, benefit, or possession of the funds, assets, or property, or benefit someone other than the elder adult or disabled adult. This subsection shall not apply to a person acting within the scope of ~~their~~ that person's lawful authority as the agent for the elder adult or disabled adult."

SECTION 79.(b) If Senate Bill 98, 2005 Regular Session becomes law, then Section 1 of that act is amended by adding a new subdivision to read:

"(13) If any polling place that had been a satellite voting place in 2004 under G.S. 163-130 is designated as a voting center, the county board of elections may provide in its Plan of Implementation that only voters assigned to the satellite voting place may vote at the voting center there, and that such voters may not vote at any other voting center on election day."

SECTION 79.(c) If Senate Bill 98, 2005 Regular Session becomes law, then that act is amended by adding a new section to read:

"**SECTION 1.1.** If no elections are conducted under this act in 2005, then any or all elections occurring in 2007 may also be held under this act in addition to those in 2006."

SECTION 80.(a) If Senate Bill 622, 2005 General Assembly, becomes law, then G.S. 108A-70.5, as enacted by that act, reads as rewritten:

"**§ 108A-70.5. Medicaid Estate Recovery Plan.**

(a) There is established in the Department of Health and Human Services, the Medicaid Estate Recovery Plan, as required by the Omnibus Budget Reconciliation Act of 1993. The Department shall administer the program in accordance with applicable federal law and regulations, including those under Title XIX of the Social Security Act, 42 U.S.C. § 1396(p). ~~To the extent allowed by section 1396(p) of Title XIX of the Social Security Act, the Department may impose liens against real property, including the home, of a recipient of medical assistance. The Department shall file any liens imposed under this section in the court where the property is located in the same manner as for any other lien under North Carolina law.~~

(b) As used in this section:

(1) "Medical assistance" means medical care services paid for by the North Carolina Medicaid Program on behalf of the recipient:

a. If the recipient of any age is receiving medical care services as an inpatient in a nursing facility, intermediate care facility for the mentally retarded, or other medical institution, and cannot reasonably be expected to be discharged to return home; or

b. If the recipient is 55 years of age or older and is receiving one or more of the following medical care services:

1. Nursing facility services.

2. Home and community-based services.
3. Hospital care and prescription drugs related to nursing facility services or home and community-based services.
4. Personal care services.
5. Medicare premiums.
6. Private duty nursing.
7. Home health aide services.
8. Home health therapy.
9. Speech pathology services.

(2) "Estate" means all the real and personal property considered assets of the estate available for the discharge of debt pursuant to G.S. 28A-15-1.

(3) "Home" means property in which a recipient has, or had immediately before or at the time of the recipient's death, an ownership interest or legal title to, consisting of the recipient's dwelling and the land used and operated in connection with the dwelling.

(c) Upon the death of a recipient of medical assistance, the unpaid cost of medical assistance received by the decedent shall constitute a claim on all property of the decedent, both real and personal, and shall be payable from the decedent's estates as a fifth class claim under G.S. 18A-19-6 after the payment of taxes due to the State or its subdivisions. All debt accrued to the Department that exists at the time of the recipient's death shall be recovered only after the death of the recipient's spouse, if any, and any child of the recipient who is either under twenty-one years of age or is blind or totally and permanently disabled as defined in accordance with Title XVI of the Social Security Act, [42 U.S.C. §1382c.] The amount the Department recovers from the estate of any recipient shall not exceed the amount of medical assistance made on behalf of the recipient and shall be recoverable only for medical care services prescribed in subsection (b) of this section. ~~To the extent that allowable Medicaid claims are not satisfied as a result of the execution of any liens held by the Department, the Department is a fifth class creditor, as prescribed in G.S. 28A-19-6, for purposes of determining the order of claims against an estate; provided, however, that judgments in favor of other fifth class creditors docketed and in force before the Department seeks recovery for medical assistance shall be paid prior to recovery by the Department.~~

(c1) For recipients of medical assistance as defined in sub-subdivision (b)(1)a. of this section, the Department may impose a lien against any real property owned by the recipient in the amount of medical assistance paid or to be paid for the benefit of the recipient if, after notice and opportunity for a hearing in accordance with rules adopted by the Department, the Department determines that the recipient cannot reasonably be expected to be discharged from the medical institution and to return home. However, no lien shall be placed on the recipient's home under this subsection for medical assistance if any of the following individuals are lawfully residing in the home:

(1) The recipient's spouse.

(2) The recipient's child who is under 21 years of age, or is blind permanently and totally disabled as defined in accordance with Ti XVI of the Social Security Act, 42 U.S.C. §1382c.

(3) The recipient's sibling who is an owner or part owner of the home and who was residing in the home for at least one year immediately before the date the recipient was admitted to the medical institution.

(c2) Upon the recipient's death, the Department may impose a lien against all property of a recipient of medical assistance, both real and personal, which shall be payable from the decedent's estate.

(c3) The Department shall release a lien obtained under subsection (c1) of this section when the Department is notified by the recipient or the recipient's representative that the recipient has been discharged from the medical institution and has returned home.

(c4) Liens established under this section shall be filed in the office of the clerk of superior court in the county of residence of the recipient or decedent and in the county or counties in which the real property in which the recipient or the decedent owns an interest is located. The lien shall be docketed and indexed by the clerk. Once docketed, the lien shall take priority over all other liens subsequently filed and shall continue from the date of filing until satisfied or waived by the Department. Notwithstanding any other statute of limitations, no action to enforce a lien may be brought by the Department more than twenty years from the earlier of the date of filing or the date of death of the recipient. The Department's failure to enforce the lien shall not be a complete bar against recovery but shall only extinguish the lien and priority established by it.

(c5) Upon receipt of the unpaid costs of medical assistance or upon agreement of compromise of partial payment, the Department shall notify the clerks of superior court in the counties where the lien has been recorded that the recipient's debt has been paid, and the clerks shall release the lien of record.

(d) The Department of Health and Human Services shall adopt rules pursuant to Chapter 150B of the General Statutes to implement the Plan to ensure that all recipients are notified that their estates are subject to recovery at the time they become eligible to receive medical assistance.

(e) Regarding trusts that contain the assets of an individual who is disabled as defined in Title ~~19 of Section 1014(a)(3)~~ XVI of Section 1614(a)(3), [42 U.S.C. Sec. 1382c(a)(3)]of the Social Security Act, as amended, if the trust is established and managed by a nonprofit association, to the extent that amounts remaining in the beneficiary's account upon the death of the beneficiary are not retained by the nonprofit association, the trust pays to the Department from these remaining amounts in the account an amount equal to the total amount of medical assistance paid on behalf of the beneficiary under the North Carolina Medicaid Program."

SECTION 80.(b) If Senate Bill 622, 2005 General Assembly, becomes law, then G.S. 108A-70.6(c), as enacted by that act, reads as rewritten:

"(c) An undue hardship exists if:

(1) The property subject to the lien has a tax value that is equal to or less than thirty thousand dollars ($30,000).

(2) The property subject to the Department's claim is the sole source of income for a surviving heir or beneficiary, and the loss of the net income derived from the property would result in the heir's or beneficiary's annual gross income to fall below one hundred percent (100%) of the federal poverty guidelines in the year in which the hardship is claimed; or

(3) The sale of the property would be required to satisfy the Department's claim, and all of the following conditions are met:

a. The heir or beneficiary resided in the decedent's home on a continual basis for at least 24 months immediately prior to the date of the recipient's death and the heir or beneficiary was using the property as a principal place of residence on the date of the recipient's death;

b. The heir or beneficiary has, from the time the Department first presents its claim for recovery against the deceased recipient's estate and after, annual gross income in the amount not exceeding one hundred fifty percent (150%) of the federal poverty income standard;

c. The heir or beneficiary owns no other real property or agrees to sell other real property in partial payment of the Department's claim; and

d. The heir or beneficiary owns other assets not exceeding a net value of thirty thousand dollars ($30,000)."

SECTION 81. If Senate Bill 622, 2005 General Assembly, becomes law, then Section 7.57 of that act reads as rewritten:

"**SECTION 7.57.** Of the funds appropriated for ~~Student Transportation~~ the State Public School Fund for the 2005-2006 fiscal year, the Department of Public Instruction shall use up to one hundred fifty thousand dollars ($150,000) for a study of the current allotment formula for school transportation. The study shall be conducted by an independent consultant.

In the course of the study, the consultant shall consider whether (i) the current formula sufficiently encourages the efficient and effective use of school transportation funds by urban and rural school systems, (ii) the formula is adequately and equitably meeting the needs of school systems, and (iii) the formula is appropriate in light of the Leandro litigation. The consultant shall also propose options for reducing the severe and growing disparity in funding that exists under the formula among local school administrative units.

The consultant shall report the results of its study to the State Board of Education by December ~~1,~~ 15, 2005. The State Board of Education shall submit a plan for the implementation of the consultant's report to the Joint Legislative Education Oversight Committee by ~~March~~ April 15, 2006."

SECTION 82. If Senate Bill 622, 2005 General Assembly, becomes law, then Section 10.40D.(f) of that act reads as rewritten:

"**SECTION 10.40D.(f)** The Department of Health and Human Services, the Department of Public Instruction, and representatives of local school administrative units shall examine the policies regarding the administration of medications in school and make recommendations regarding the use of medication aides in the public schools. The Secretary of Health and Human Services and the Chair of the Board of Education shall convene a task force consisting of representatives of the agencies listed above and other interested parties. The Task Force shall develop recommendations for the Secretary and the Chair by April 1, 2006."

SECTION 83. If Senate Bill 622, 2005 General Assembly, becomes law, then Section 10.11(t) of that act reads as rewritten:

"**SECTION 10.11.(t)** For the purposes of determining eligibility for Medical Assistance, the Department of Health and Human Services may apply federal transfer of assets policies, as described in Title XIX, section 1917(c) of the Social Security Act, including the attachment of liens, to (i) life estates purchased by or on behalf of the recipient, ~~other than life estates excluded from countable resources under this section,~~ and (ii) to real property excluded as "income producing", tenancy-in-common, or as nonhomesite property made "income producing" under Title XIX, section 1902(r)(2) of the Social Security Act. The transfer of assets policy shall apply only to an institutionalized individual or the individual's spouse as defined in Title XIX, section 1917(c) of the Social Security Act. The Department shall exclude from countable resources ~~any~~ only a life estate in real property that ~~is in the recipient's home,~~ meets the definition of homesite and is measured by the recipient's ~~life, and is the result of the transfer of a remainder interest.~~life.

Federal transfer of assets policies applied to "income producing" real property under Title XIX, section 1902(r)(2) of the Social Security Act shall become effective not earlier than October 1, 2001. Federal transfer of assets policies and attachment of liens applied to real property excluded as tenancy-in-common, or as nonhomesite property made "income producing" in accordance with this subsection shall become effective not earlier than November 1, 2002. Federal transfer of assets policies applied to life estates in accordance with this subsection shall become effective not earlier than October 1, 2005."

SECTION 84. If Senate Bill 622, 2005 General Assembly, becomes law, then Section 29.30A of that act is repealed.

SECTION 85.(a) If Senate Bill 622, 2005 Regular Session, becomes law, then that act 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 85.(b) If Senate Bill 622, 2005 Regular Session, becomes law, then G.S. 105-163.2B as enacted by that act, 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 85.(c) If Senate Bill 622, 2005 Regular Session, becomes law, then G.S. 114-19.16, as enacted by that act, 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 85.(d) If Senate Bill 622, 2005 Regular Session becomes law, then that act is amended by adding a new section read:

"**SECTION 31.1.(kk)** If House Bill 1023, 2005 Regular Session becomes law, then that act is amended by adding a new section 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 86.(a) The persons owning the Shull's Mill Property are hereby declared persons not served by the Carolina Water Service, Inc. of North Carolina facility providing service to Hound Ears Subdivision under CPCN W-354, Sub 55 but who can reasonably be served by that facility.

SECTION 86.(b) This section applies to Watauga County only.

PART III. EFFECTIVE DATE

SECTION 87. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H **D**

HOUSE BILL 1527
Committee Substitute Favorable 5/26/05
PROPOSED SENATE COMMITTEE SUBSTITUTE H1527-PCS60537-RK-47

Short Title: Clarify MV Dealer Franchise Laws. (Public)

Sponsors:

Referred to:

April 21, 2005

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE MOTOR VEHICLE DEALER FRANCHISE LAWS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-297.1 reads as rewritten:

"**§ 20-297.1. ~~Prefiling of franchise agreements and amendments.~~Franchise-related form agreements.**

~~Any franchise, as defined in G.S. 20-286(8a), offered to a motor vehicle dealer in this State shall provide that all terms and conditions in the agreement inconsistent with any of the laws or rules of this State are of no force and effect. On or before January 1, 1998, every manufacturer, factory branch, distributor, or distributor branch licensed by the Commissioner under this Article which uses an identical or substantially similar form franchise for its dealers or distributors in this State shall file with the Commissioner a copy of the franchise and all supplements. Any applicant for licensing by the Commissioner as a manufacturer, factory branch, distributor, or distributor branch licensed under this Article, which would use an identical or substantially similar form franchise, as defined in G.S. 20-286(8a), for its dealers or distributors in this State, shall, as a condition for the issuance of a license, file with the Commissioner a copy of the franchise and all supplements thereto. Not later than 60 days prior to the date a revision, modification, or addition to a franchise is offered generally to a licensee's franchisees in this State, the licensee shall notify the Commissioner of the proposed revision, modification, or addition to the franchise on file with the Commissioner and include with the notification:~~

~~(1) A copy of the form franchise which incorporates all of the proposed revisions, modifications, and additions;~~

~~(2) A separate statement which identifies all substantive revisions, modifications, and additions proposed.~~

~~It shall be unlawful for a franchise or any addendum or supplement thereto to be offered to a motor vehicle dealer in this State after January 1, 1998, until an applicant or licensee has complied with all of the requirements of this section. The Commissioner is authorized and directed to investigate and prevent violations of this section, including inconsistencies of any manufacturer's franchise with the provisions of this Article.~~

(a) All franchise-related form agreements, as defined in this subsection, offered to a motor vehicle dealer in this State shall provide that all terms and conditions in the agreement inconsistent with any of the laws or rules of this State are of no force and effect. For purposes of this section, the term "franchise-related form agreements" means one or more contracts between a franchised motor vehicle dealer and a manufacturer, factory branch, distributor, or distributor branch, including a written communication from a manufacturer or distributor in which a duty is imposed on the franchised motor vehicle dealer under which:

(1) The franchised motor vehicle dealer is granted the right to sell and service new motor vehicles manufactured or distributed by the manufacturer or distributor or only to service motor vehicles under the contract and a manufacturer's warranty;

(2) The franchised motor vehicle dealer is a component of the manufacturer or distributor's distribution system as an independent business;

(3) The franchised motor vehicle dealer is substantially associated with the manufacturer or distributor's trademark, trade name, and commercial symbol;

(4) The franchised motor vehicle dealer's business substantially relies on the manufacturer or distributor for a continued supply of motor vehicles, parts, and accessories; or

(5) Any right, duty, or obligation granted or imposed by this Chapter is affected.

(b) Notwithstanding the terms of any franchise or agreement, it shall be unlawful for any manufacturer, factory branch, distributor, or distributor branch to offer to a dealer, revise, modify, or replace a franchise-related form agreement, as defined above in this section, which agreement, modification, or replacement may adversely affect or alter the rights, obligations, or liability of a motor vehicle dealer or may adversely impair the sales, service obligations, investment, or profitability of any motor vehicle dealer located in this State, unless:

(1) The manufacturer, factory branch, distributor, or distributor branch provides prior written notice by registered or certified mail to each affected dealer, the Commissioner, and the North Carolina Automobile Dealers Association, Inc., of the modification or replacement in the form and within the time frame set forth within this section and in subsection (c) of this section; and

(2) If a protest is filed under this section, the Commissioner approves the modification or replacement.

(c) The notice required by subdivision (b)(1) of this section shall:

(1) Be given not later than the 60th day before the effective date of the modification or replacement;

(2) Contain on its first page a conspicuous statement that reads: 'NOTICE TO DEALER: YOU MAY BE ENTITLED TO FILE A PROTEST WITH THE COMMISSIONER OF THE NORTH CAROLINA DIVISION OF MOTOR VEHICLES AND HAVE A HEARING IN WHICH YOU MAY PROTEST THE PROPOSED INITIAL OFFERING, MODIFICATION, OR REPLACEMENT OF CERTAIN FRANCHISE-RELATED FORM AGREEMENTS UNDER THE TERMS OF THE MOTOR VEHICLE DEALERS AND MANUFACTURERS LICENSING LAW, IF YOU OPPOSE THIS ACTION'; and

(3) Contain a separate letter or statement that identifies all substantive modifications or revisions and the principal reasons for each such modification or revision.

(d) A franchised dealer may file a protest with the Commissioner of the offering, modification, or replacement pursuant to this section not later than the latter of:

(1) The 60th day after the date of the receipt of the notice; or

(2) The time specified in the notice.

(e) After a protest is filed, the Commissioner shall determine whether the manufacturer, factory branch, distributor, or distributor branch has established by a preponderance of the evidence that there is good cause for the proposed offering, modification, or replacement. The prior franchise-related form agreement, if any, continues in effect until the Commissioner resolves the protest.

(f) The Commissioner is authorized and directed to investigate and prevent violations of this section, including inconsistencies of any franchise-related form agreement with the provisions of this Article.

(g) Nothing contained in this section shall in any way limit a dealer's rights under any other provision of this Article or other applicable law."

SECTION 2. G.S. 20-305(30) reads as rewritten:

"**§ 20-305. Coercing dealer to accept commodities not ordered; threatening to cancel franchise; preventing transfer of ownership; granting additional franchises; terminating franchises without good cause; preventing family succession.**

It shall be unlawful for any manufacturer, factory branch, distributor, or distributor branch, or any field representative, officer, agent, or any representative whatsoever of any of them:

...

(30) To vary the price charged to any of its franchised new motor vehicle dealers located in this State for new motor vehicles based on the dealer's purchase of new facilities, supplies, tools, equipment, or other merchandise from the manufacturer, the dealer's relocation, remodeling, repair, or renovation of existing dealerships or construction of a new facility, the dealer's participation in training

programs sponsored, endorsed, or recommended by the manufacturer, whether or not the dealer is dualed with one or more other line makes of new motor vehicles, or the dealer's sales penetration. Except as provided in this subdivision, it shall be unlawful for any manufacturer, factory branch, distributor, or distributor branch, or any field representative, officer, agent, or any representative whatsoever of any of them to vary the price charged to any of its franchised new motor vehicle dealers located in this State for new motor vehicles based on the dealer's sales volume, the dealer's level of sales or customer service satisfaction, the dealer's purchase of advertising materials, signage, nondiagnostic computer hardware or software, communications devices, or furnishings, or the dealer's participation in used motor vehicle inspection or certification programs sponsored or endorsed by the manufacturer.

The price of the vehicle, for purposes of this subdivision shall include the manufacturer's use of rebates, credits, or other consideration ~~which~~ that has the effect of causing a variance in the price of new motor vehicles offered to its franchised dealers located in the State.

Notwithstanding the foregoing, nothing in this subdivision shall be deemed to preclude a manufacturer from establishing sales contests or promotions ~~which~~ that provide or award dealers or consumers rebates or incentives; provided, however, that the manufacturer complies with all of the following conditions:

a. With respect to manufacturer to consumer rebates and incentives, the manufacturer's criteria for determining eligibility shall:
   1. Permit all of the manufacturer's franchised new motor vehicle dealers in this State to offer the rebate or incentive; and
   2. Be uniformly applied and administered to all eligible consumers.

b. With respect to manufacturer to dealer rebates and incentives, the rebate or incentive program shall:
   1. Be based solely on the dealer's actual or reasonably anticipated sales volume or on a uniform per vehicle sold or leased basis;
   2. Be uniformly available, applied, and administered to all of the manufacturer's franchised new motor vehicle dealers in this State; and
   3. Provide that any of the manufacturer's franchised new motor vehicle dealers in this State may, upon written request, obtain the method or formula used by the manufacturer in establishing the sales volumes for

receiving the rebates or incentives and the specific calculations for determining the required sales volumes of the inquiring dealer and any of the manufacturer's other franchised new motor vehicle dealers located within 75 miles of the inquiring dealer.

Nothing contained in this subdivision shall prohibit a manufacturer from providing assistance or encouragement to a franchised dealer to remodel, renovate, recondition, or relocate the dealer's existing facilities, provided that this assistance, encouragement, or rewards are not determined on a per vehicle basis.

It is unlawful for any manufacturer to charge or include the cost of any program or policy prohibited under this subdivision in the price of new motor vehicles that the manufacturer sells to its franchised dealers or purchasers located in this State.

In the event that as of October 1, 1999, a manufacturer was operating a program that varied the price charged to its franchised dealers in this State in a manner that would violate this subdivision, or had in effect a documented policy that had been conveyed to its franchised dealers in this State and that varied the price charged to its franchised dealers in this State in a manner that would violate this subdivision, it shall be lawful for that program or policy, including amendments to that program or policy that are consistent with the purpose and provisions of the existing program or policy, or a program or policy similar thereto implemented after October 1, 1999, to continue in effect as to the manufacturer's franchised dealers located in this State until June 30, ~~2006.~~2010.

In the event that as of June 30, 2001, a manufacturer was operating a program that varied the price charged to its franchised dealers in this State in a manner that would violate this subdivision, or had in effect a documented policy that had been conveyed to its franchised dealers in this State and that varied the price charged to its franchised dealers in this State in a manner that would violate this subdivision, and the program or policy was implemented in this State subsequent to October 1, 1999, and prior to June 30, 2001, and provided that the program or policy is in compliance with this subdivision as it existed as of June 30, 2001, it shall be lawful for that program or policy, including amendments to that program or policy that comply with this subdivision as it existed as of June 30, 2001, to continue in effect as to the manufacturer's franchised dealers located in this State until June 30, ~~2006.~~2010.

Any manufacturer shall be required to pay or otherwise compensate any franchise dealer who has earned the right to receive payment or other compensation under a program in accordance with the manufacturer's program or policy.

The provisions of this subdivision shall not be applicable to multiple or repeated sales of new motor vehicles made by a new motor vehicle dealer to a single purchaser under a bona fide fleet sales policy of a manufacturer, factory branch, distributor, or distributor branch."

SECTION 3. Chapter 20 of the General Statutes is amended by adding a new Article to read:

"Article 12A.

"Motor Vehicle Captive Finance Source Law.

"**§ 20-308.3. Regulation of motor vehicle captive finance sources.**

The General Assembly finds and declares that the distribution of motor vehicles in the State of North Carolina vitally affects the general economy of the State and the public interest and public welfare, and in the exercise of its police power, it is necessary to regulate motor vehicle captive finance sources doing business in North Carolina to protect and preserve the investments and properties of the citizens of this State.

"**§ 20-308.4. Definitions.**

The definitions contained in G.S. 20-286 shall be applicable to the provisions of this Article.

"**§ 20-308.5. Prohibited contractual requirements imposed by manufacturer, distributor, or captive finance source.**

It shall be unlawful for any manufacturer, factory branch, captive finance source, distributor, or distributor branch, or any field representative, officer, agent, or any representative of them, notwithstanding the terms, provisions, or conditions of any agreement or franchise, to require any of its franchised dealers located in this State to agree to any terms, conditions, or requirements that are set forth in subdivisions (1) through (8) below in order for any such dealer to sell to any captive finance source (defined below) any retail installment contract, loan, or lease of any motor vehicles purchased or leased by any of the dealer's customers ("contract for sale or lease"), or to be able to participate in, or otherwise, directly or indirectly, obtain the benefits of any consumer transaction incentive program payable to the consumer or the dealer and offered by or through any financial source that provides automotive-related loans or purchases retail installment contracts or lease contracts for motor vehicles in North Carolina and is, directly or indirectly, owned, operated, or controlled by such manufacturer, factory branch, distributor, or distributor branch ("captive finance source").

(1) Require a dealer to grant such captive finance source a power of attorney to do anything on behalf of the dealer other than sign the dealer's name on any check, draft, or other instrument received in payment or proceeds under any contract for the sale or lease of a motor vehicle that is made payable to the dealer but which is properly payable to the captive finance source, is for the purpose of correcting an error in a customer's finance application or title processing document, or is for the purpose of processing regular titling of the vehicle.

(2) Require a dealer to warrant or guarantee the accuracy and completeness of any personal, financial, or credit information provided by the customer on the credit application and/or in the course of applying for credit other than to require that the dealer make reasonable inquiry regarding the accuracy and completeness of such information and represent that such information is true and correct to the best of the dealer's knowledge.

(3) Require a dealer to repurchase, pay off, or guaranty any contract for the sale or lease of a motor vehicle or to require a dealer to indemnify, defend, or hold harmless the captive finance source for settlements, judgments, damages, litigation expenses, or other costs or expenses incurred by such captive finance source unless the obligation to repurchase, pay off, guaranty, indemnify, or hold harmless resulted directly from (i) the subject dealer's material breach of the terms of a written agreement with the captive finance source or the terms for the purchase of an individual contract for sale or lease that the captive finance source communicates to the dealer before each such purchase, except to the extent the breached terms are otherwise prohibited under subdivisions (1) through (8) of this section, or (ii) the subject dealer's violation of applicable law. For purposes of this section, the dealer may, however, contractually obligate itself to warrant the accuracy of the information provided on the finance contact, but such warranty can only be enforced if the captive finance source gives the dealer a reasonable opportunity to cure or correct any errors on the finance contract where cure or correction is possible. For purposes of this section, any allegation by a third party that would constitute a breach of the terms of a written agreement between the dealer and a captive finance source shall be considered a material breach.

(4) Notwithstanding the terms of any contract or agreement, treat a dealer's breach of an agreement between the dealer and a captive finance source with respect to the captive finance source's purchase of individual contracts for the sale or lease of a motor vehicle as a breach of such agreement with respect to purchase of other such contracts, nor shall such a breach, in and of itself, constitute a breach of any other agreement between the dealer and the captive finance source, or between the dealer and any affiliate of such captive finance source.

(5) Require a dealer to waive any defenses that may be available to it under its agreements with the captive finance source or under any applicable laws.

(6) Require a dealer to settle or contribute any of its own funds or financial resources toward the settlement of any multiparty or class action litigation without obtaining the dealer's voluntary and written consent subsequent to the filing of such litigation.

(7) Require a dealer to contribute to any reserve or contingency account established or maintained by the captive finance source, for the financing of the sale or lease of any motor vehicles purchased or leased by any of the dealer's customers, in any amount or on any basis other than the reasonable expected amount of future finance reserve chargebacks to the dealer's account. This section shall not apply to or limit (i) reasonable amounts reserved and maintained related to the sale or financing of any products ancillary to the sale, lease, or financing of the motor vehicle itself; (ii) a delay or reduction in the payment of dealer's portion of the finance income pursuant to an agreement between the dealer and a captive finance source under which the dealer agrees to such delay or reduction in exchange for the limitation, reduction, or elimination of the dealer's responsibility for finance reserve chargebacks; or (iii) a chargeback to a dealer (or offset of any amounts otherwise payable to a dealer by the captive finance source) for any indebtedness properly owing from a dealer to the captive finance source as part of a specific program covered by this section, the terms of which have been agreed to by the dealer in advance, except to the extent such chargeback would otherwise be prohibited under subdivisions (1) through (8) of this section.

(8) Require a dealer to repossess or otherwise gain possession of a motor vehicle at the request of or on behalf of the captive finance source. This section shall not apply to any requirements contained in any agreement between the dealer and the captive finance source wherein the dealer agrees to receive and process vehicles that are voluntarily returned by the customer or returned to the lessor at the end of the lease term.

Any clause or provision in any franchise or agreement between a dealer and a manufacturer, factory branch, distributor, or distributor branch, or between a dealer and any captive finance source, that is in violation of or that is inconsistent with any of the provisions of this section shall be voidable, to the extent that it violates this section, at any time at the election of the dealer."

"**§ 20-308.6. Powers of Commissioner.**

(a) The Commissioner shall promote the interests of the retail buyer of motor vehicles.

(b) The Commissioner shall have power to prevent unfair or deceptive acts or practices and other violations of this Article. Any franchised new motor vehicle dealer who believes that a captive finance source with whom the dealer does business in North Carolina has violated or is currently violating any provision of this Article may file a petition before the Commissioner setting forth the factual and legal basis for such violations. The Commissioner shall promptly forward a copy of the petition to the named captive finance source requesting a reply to the petition within 30 days. Allowing for sufficient time for the parties to conduct discovery, the Commissioner or

his designee shall then hold an evidentiary hearing and render findings of fact and conclusions of law based on the evidence presented.

(c) The Commissioner shall have the power in hearings arising under this Article to enter scheduling orders and limit the time and scope of discovery; to determine the date, time, and place where hearings are to be held; to subpoena witnesses; to take depositions of witnesses; and to administer oaths.

(d) The Commissioner may, whenever he shall believe from evidence submitted to him that any person has been or is violating any provision of this Article, in addition to any other remedy, bring an action in the name of the State against that person and any other persons concerned or in any way participating in, or about to participate in, practices or acts so in violation, to enjoin any persons from continuing the violations.

(e) The Commissioner may issue rules and regulations to implement the provisions of this section and to establish procedures related to administrative proceedings commenced under this section.

(f) In the event that a dealer, who is permitted or required to file a notice, protest, or petition before the Commissioner within a certain period of time in order to adjudicate, enforce, or protect rights afforded the dealer under this Article, voluntarily elects to appeal a policy, determination, or decision of the captive finance source through an appeals board or internal grievance procedure of the captive finance source, or to participate in or refer the matter to mediation, arbitration, or other alternative dispute resolution procedure or process established or endorsed by the captive finance source, the applicable period of time for the dealer to file the notice, protest, or petition before the Commissioner under this Article shall not commence until the captive finance source's appeal board or internal grievance procedure, mediation, arbitration, or appeals process of the captive finance source has been completed and the dealer has received notice in writing of the final decision or result of the procedure or process. Nothing, however, contained in this subsection shall be deemed to require that any dealer exhaust any internal grievance or other alternative dispute process required or established by the captive finance source before seeking redress from the Commissioner as provided in this Article.

"**§ 20-308.7. Rules and regulations.**

The Commissioner may make such rules and regulations, not inconsistent with the provisions of this Article, as he shall deem necessary or proper for the effective administration and enforcement of this Article, provided that a copy of such rules and regulations shall be mailed to each motor vehicle dealer licensee and captive finance source 30 days prior to the effective date of such rules and regulations.

"**§ 20-308.8. Hearing notice.**

In every case of a hearing before the Commissioner authorized under this Article, the Commissioner shall give reasonable notice of each such hearing to all interested parties, and the Commissioner's decision shall be binding on the parties, subject to the rights of judicial review and appeal as provided in Chapter 150B of the General Statutes. The costs of such hearings shall be assessed by the Commissioner.

"**§ 20-308.9. Article applicable to existing and future agreements.**

The provisions of this Article shall be applicable to all contracts and agreements existing between dealers and captive finance sources at the time of its ratification and to all such future contracts and agreements.

"§ 20-308.10. Jurisdiction.

A new motor vehicle dealer located in this State may bring suit against any captive finance source engaged in commerce in this State in the General Court of Justice in the State of North Carolina that has proper venue.

"§ 20-308.11. Civil actions for violations.

(a) Notwithstanding the terms, provisions, or conditions of any agreement or other terms or provisions of any novation, waiver, arbitration agreement, or other written instrument, any person who is or may be injured by a violation of a provision of this Article, or any party to an agreement who is so injured in his business or property by a violation of a provision of this Article relating to that agreement, or an arrangement which, if consummated, would be in violation of this Article may, notwithstanding the initiation or pendency of, or failure to initiate an administrative proceeding before the Commissioner concerning the same parties or subject matter, bring an action for damages and equitable relief, including injunctive relief, in any court of competent jurisdiction with regard to any matter not within the jurisdiction of the Commissioner or that seeks relief wholly outside the authority or jurisdiction of the Commissioner to award.

(b) Where the violation of a provision of this Article can be shown to be willful, malicious, or wanton, or if continued multiple violations of a provision or provisions of this Article occur, the court may award punitive damages, attorneys' fees and costs in addition to any other damages under this Article.

(c) A new motor vehicle dealer, if he has not suffered any loss of money or property, may obtain final equitable relief if it can be shown that the violation of a provision of this Article by a captive finance source may have the effect of causing a loss of money or property.

(d) Any association that is comprised of a minimum of 400 new motor vehicle dealers, or a minimum of 10 motorcycle dealers, substantially all of whom are new motor vehicle dealers located within North Carolina, and which represents the collective interests of its members, shall have standing to file a petition before the Commissioner or a cause of action in any court of competent jurisdiction for itself, or on behalf of any or all of its members, seeking declaratory and injunctive relief. Prior to bringing an action, the association and captive finance source shall initiate mediation as set forth in G.S. 20-301.1(b). An action brought pursuant to this subsection may seek a determination whether one or more captive finance sources doing business in this State have violated any of the provisions of this Article, or for the determination of any rights created or defined by this Article, so long as the association alleges an injury to the collective interest of its members cognizable under this section. A cognizable injury to the collective interest of the members of the association shall be deemed to occur if a captive finance source doing business in this State has engaged in any conduct or taken any action which actually harms or affects all of the franchised new motor vehicle dealers holding agreements with that captive finance source in this State. With respect

to any administrative or civil action filed by an association pursuant to this subsection, the relief granted shall be limited to declaratory and injunctive relief and in no event shall the Commissioner or court enter an award of monetary damages.

"**§ 20-308.12. Applicability of this Article.**

(a) Any captive finance source who engages directly or indirectly in purposeful contacts within this State in connection with the offering or advertising the availability of financing for the sale or lease of motor vehicles within this State, or who has business dealings within this State, shall be subject to the provisions of this Article and shall be subject to the jurisdiction of the courts of this State.

(b) The applicability of this Article shall not be affected by a choice of law clause in any agreement, waiver, novation, or any other written instrument.

(c) Any provision of any agreement, waiver, novation, or any other written instrument which is in violation of any section of this Article shall be deemed null and void and without force and effect to the extent it violates this section.

(d) It shall be unlawful for a captive finance source to use any subsidiary corporation, affiliated corporation, or any other controlled corporation, partnership, association, or person to accomplish what would otherwise be illegal conduct under this Article on the part of the captive finance source."

SECTION 4. Article 12 of Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-305.7. Protecting dealership data and consent to access dealership information.**

(a) No manufacturer, factory branch, distributor, or distributor branch shall access or obtain dealer or customer data from or write dealer or customer data to a dealer management computer system utilized by a motor vehicle dealer located in this State, or require or coerce a motor vehicle dealer located in this State to utilize a particular dealer management computer system, unless the dealer management computer system allows the dealer to reasonably maintain the security, integrity, and confidentiality of the data maintained in the system. No manufacturer, factory branch, distributor, distributor branch, dealer management computer system vendor, or any third party acting on behalf of any manufacturer, factory branch, distributor, distributor branch, or dealer management computer system vendor shall prohibit a dealer from providing a means to regularly and continually monitor the specific data accessed from or written to the dealer's computer system and from complying with applicable State and federal laws and any rules or regulations promulgated thereunder. These provisions shall not be deemed to impose an obligation on a manufacturer, factory branch, distributor, distributor branch, dealer management computer system vendor, or any third party acting on behalf of any manufacturer, factory branch, distributor, distributor branch, or dealer management computer system vendor to provide such capability.

(b) No manufacturer, factory branch, distributor, distributor branch, dealer management computer system vendor, or any third party acting on behalf of any manufacturer, factory branch, distributor, distributor branch, or dealer management computer system vendor, may provide access to customer or dealership information maintained in a dealer management computer system utilized by a motor vehicle dealer

located in this State, without first obtaining the dealer's prior express written consent, revocable by the dealer upon five business days written notice, to provide such access. Prior to obtaining said consent and prior to entering into an initial contract or renewal of a contract with a dealer located in this State, the manufacturer, factory branch, distributor, distributor branch, dealer management computer system vendor, or any third party acting on behalf of, or through any manufacturer, factory branch, distributor, distributor branch, or dealer management computer system vendor shall provide to the dealer a written list of all third parties to whom any North Carolina dealer management computer system data has been provided within the 12-month period ending November 1 of the prior year. The list shall further describe the scope of the data provided. In addition to the initial list, a dealer management computer system vendor or any third party acting on behalf of, or through a dealer management computer system vendor shall provide to the dealer an annual list of third parties to whom said data is being provided on November 1 of each year and to whom said data has been provided in the preceding 12 months and describe the scope of the data provided. Such list shall be provided to the dealer by January 1 of each year. Any dealer management computer system vendor's contract that directly relates to the transfer or accessing of dealer or dealer customer information must conspicuously state, "NOTICE TO DEALER: THIS AGREEMENT RELATES TO THE TRANSFER AND ACCESSING OF CONFIDENTIAL INFORMATION AND CONSUMER RELATED DATA". Such consent does not change any such person's obligations to comply with the terms of this section and any additional State or federal laws (and any rules or regulations promulgated thereunder) applicable to them with respect to such access. In addition, no dealer management computer system vendor may refuse to provide a dealer management computer system to a motor vehicle dealer located in this State if the dealer refuses to provide any consent under this subsection, except to the extent that consent is deemed by the parties to be reasonably necessary in order for the vendor to provide the system to the dealer.

(c) No dealer management computer system vendor, or third party acting on behalf of or through any dealer management computer system vendor, may access or obtain data from or write data to a dealer management computer system utilized by a motor vehicle dealer located in this State, unless the dealer management computer system allows the dealer to reasonably maintain the security, integrity, and confidentiality of the customer and dealership information maintained in the system. No dealer management computer system vendor, or third party acting on behalf of or through any dealer management computer system vendor, shall prohibit a dealer from providing a means to regularly and continually monitor the specific data accessed from or written to the dealer's computer system and from complying with applicable State and federal laws and any rules or regulations promulgated thereunder. These provisions shall not be deemed to impose an obligation on a manufacturer, factory branch, distributor, distributor branch, dealer management computer system vendor, or any third party acting on behalf of any manufacturer, factory branch, distributor, distributor branch, or dealer management computer system vendor to provide such capability.

(d) Any manufacturer, factory branch, distributor, distributor branch, dealer management computer system vendor, or any third party acting on behalf of or through any dealer management computer system vendor, having electronic access to customer or motor vehicle dealership data in a dealership management computer system utilized by a motor vehicle dealer located in this State shall provide notice to the dealer of any security breach of dealership or customer data obtained through such access, which at the time of the breach was in the possession or custody of the manufacturer, factory branch, distributor, distributor branch, dealer management computer system vendor, or third party. The disclosure notification shall be made without unreasonable delay by the manufacturer, factory branch, distributor, distributor branch, dealer management computer system vendor, or third party following discovery by the person, or notification to the person, of the breach. The disclosure notification shall describe measures reasonably necessary to determine the scope of the breach and corrective actions which may be taken in an effort to restore the integrity, security, and confidentiality of such data. Such measures and corrective actions shall be implemented as soon as practicable by all persons responsible for the breach.

(e) Nothing in this section shall preclude, prohibit, or deny the right of the manufacturer, factory branch, distributor, or distributor branch to receive customer or dealership information from a motor vehicle dealer located in this State for the purposes of complying with federal or State safety requirements or implementing steps related to manufacturer recalls at such times as necessary in order to comply with federal and State requirements or manufacturer recalls provided that receiving this information from the dealer does not impair, alter, or reduce the security, integrity, and confidentiality of the customer and dealership information collected or generated by the dealer.

(f) The following definitions apply to this section:

(1) "Dealer management computer system" – A computer hardware and software system having dealer business process management modules that provide real time access to customer records and transactions by a motor vehicle dealer located in this State and that allow such motor vehicle dealer timely information in order to sell vehicles, parts or services through such motor vehicle dealership.

(2) "Dealer management computer system vendor" – A seller or reseller of dealer management computer systems (but only to the extent that such person is engaged in such activities).

(3) "Security breach" – An incident of unauthorized access to and acquisition of records or data containing dealership or dealership customer information where unauthorized use of the dealership or dealership customer information has occurred or is reasonably likely to occur or that creates a material risk of harm to a dealership or a dealership's customer. Any incident of unauthorized access to and acquisition of records or data containing dealership or dealership customer information shall constitute a security breach.

(g) The provisions of G.S. 20-308.1(d) shall not apply to an action brought under this section against a dealer management computer system vendor.

(h) This section shall apply to contracts entered into on or after November 1, 2005."

SECTION 5. G.S. 20-308 reads as rewritten:

"**§ 20-308. Penalties.**

Any person violating any of the provisions of this ~~Article~~ Article, except for G.S. 20-305.7, shall be guilty of a Class 1 misdemeanor."

SECTION 6. G.S. 20-308.2 is amended by adding a new subsection to read:

"(e) The provisions of this Article shall apply to all written agreements between a manufacturer, wholesaler, or distributor with a motor vehicle dealer including, but not limited to, the franchise offering, the franchise agreement, sales of goods, services or advertising, leases or deeds of trust of real or personal property, promises to pay, security interests, pledges, insurance contracts, advertising contracts, construction or installation contracts, servicing contracts, and all other such agreements between a motor vehicle dealer and a manufacturer, wholesaler, or distributor."

SECTION 7. G.S. 20-286(10) reads as rewritten:

"**§ 20-286. Definitions.**

The following definitions apply in this Article:

...

(10) Motor vehicle. – Any motor propelled vehicle, trailer or semitrailer, required to be registered under the laws of this State.

a. "New motor vehicle" means a motor vehicle ~~which~~ that has never been the subject of a completed, successful, or conditional sale that was subsequently approved ~~sale~~ other than between new motor vehicle dealers, or between manufacturer and dealer of the same franchise.

b. "Used motor vehicle" means a motor vehicle other than described in paragraph (10)a above."

SECTION 8. Section 3 of this act becomes effective January 1, 2006. The remainder of this act is effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1527

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

H1527-ARK-25 [v.1]

Date 8.12 ,2005

Comm. Sub. [YES]
Amends Title [NO]
Second Edition

Senator Tillman

moves to amend the bill on page 13, line 18, by rewriting the line to read:

"customer and dealership information maintained in the system. No dealer management computer system vendor, or third party acting on behalf of or through any dealer management computer system vendor, shall prohibit a dealer from providing a means to regularly and continually monitor the specific data accessed from or written to the dealer's computer system and from complying with applicable state and federal laws and any rules or regulations promulgated thereunder."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 1527

S. B. No. _____

COMMITTEE SUBSTITUTE _____

DATE 12 Aug 05

Amendment No. 2
(to be filled in by Principal Clerk)

Rep.)
) Soles
Sen)

moves to amend the bill on page 6, line 9

( ) WHICH CHANGES THE TITLE

by inserting the following:

"MOTOR VEHICLE CAPTIVE FINANCE SOURCE LAW"

SIGNED _____

ADOPTED ✓ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

HOUSE BILL 1527:
Clarify MV Dealer Franchise Laws

BILL ANALYSIS

Committee:	Senate Judiciary I	**Date:**	August 12, 2005
Introduced by:	Rep. Cole	**Summary by:**	Hal Pell
Version:	PCS to Second Edition H1527-CSRK-47		Committee Co-Counsel

SUMMARY: ***House Bill 1527 makes changes to the Motor Vehicle Dealers and Manufacturers Licensing Law. Section 3 is effective January 1, 2006; the remainder of the act is effective when it becomes law.***

CURRENT LAW AND BILL ANALYSIS: Article 12 of Chapter 20 of the General Statutes provides for regulation and licensing of motor vehicle manufacturers, distributors, dealers, salesmen, and their representatives doing business in North Carolina. House bill 1527 makes the following changes to those provisions:

Section 1. This section rewrites G.S. 20-297.1, which requires the prefiling of dealer franchise agreements and modifications to those agreements with the Commissioner of Motor Vehicles. The bill would require that prior written notice of modifications be given to each affected dealer, the Commissioner, and the NC Automobile Dealers Association, by registered or certified mail at least 60 days before the effective date of the modification. The bill would also provide that a franchised motor vehicle dealer may file a protest of the modification with the Commissioner and have a hearing if he is opposed to it.

Section2. G.S. 20-305(30) prohibits manufacturers, factory branches, distributors, distributor branches, or their representatives, from varying the price charged to their franchised dealers for new motor vehicles based on the dealer's purchase of facilities, equipment, or merchandise from the manufacturer, the dealer's remodeling or construction of a facility, or the dealer's participation in manufacturer-sponsored training programs. It also prohibits the varying of vehicle price based on the dealer's sales volume, level of sales and customer satisfaction, the dealer's purchase of advertising materials, communication devices or furnishings, or the dealer's participation in manufacturer-sponsored used motor vehicle inspection or certification programs. However, a manufacturer can establish sales contests and promotions that provide dealers and consumers with rebates or incentives under certain circumstances. Under the current law, manufacturers with programs that vary the price of vehicles in violation of this provision, but that were in compliance when they were established, may continue to operate the programs until June 30, 2006. This section would extend that exception to June 30, 2010.

Section 3. This section adds a new Article to Chapter 20 that would prohibit manufacturers, factory branches, distributors, distributor branches, or their representatives, from requiring their franchised dealers to agree to any of the following conditions in order for the dealer to floor plan inventory, provide financing for the dealer's customers, finance construction or renovation of the dealer's facilities, or obtain benefits offered by a "captive finance source" (one that provides car loans and is owned, operated, or controlled by the manufacturer, factory branch, distributor, or distributor branch).

The Article also authorizes the Commissioner to enforce the provisions through injunctive relief and other measures to protect parties' rights pending the outcome hearings. The Article also provides civil remedies for any party to bring an action for damages or equitable relief in a court of competent jurisdiction.

Section 4. This section adds new G.S. 20-305.7 to the Motor Vehicle Dealers and Manufacturers Licensing Law, which would place limitations on any manufacturer, factory branch, distributor, or distributor branch, with regard to a dealer's management computer system. The law would prohibit any requirement for a dealer to use a particular management computer system that does not enable the dealer to maintain the security, integrity, and confidentiality of data. The section also places requirements on a manufacturer to disclose to a dealer any breach of unencrypted confidential dealership or customer data; requires the dealer to consent to disclosure of information; the provision of a list of all third parties to whom dealer management computer system data has been disclosed; and other notice and consent requirements.

Section 5. Exempts G.S. 20-305.7 [see Section 4] from the criminal penalty provisions of the Chapter.

Section 6. G.S. 20-308.2 deals with applicability of the Motor Vehicle Dealers and Manufacturers Licensing Law, and this section would clarify that its provisions apply to all agreements between manufacturers, wholesalers, or distributors and motor vehicle dealers.

Section 7. Under the Motor Vehicle Dealers and Manufacturers Licensing Law, a "new motor vehicle" is a vehicle that has never been the subject of a sale other than between new motor vehicle dealers or between a manufacturer and dealer of the same franchise. This section would amend the definition of "new motor vehicle" to specify that it includes vehicles that have never been the subject of a *completed, successful, or conditional sale that was subsequently approved.*

EFFECTIVE DATE: Section 3 of the act is effective January 1, 2006. The remainder of the act is effective when it becomes law.

Summary contribution by Wendy Graf Ray, Staff Attorney

H1527e2-SMRK-CSRK-47

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 2

HOUSE BILL 1527
Committee Substitute Favorable 5/26/05

Short Title: Clarify MV Dealer Franchise Laws. (Public)

Sponsors:

Referred to:

April 21, 2005

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE MOTOR VEHICLE DEALER FRANCHISE LAWS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-297.1 reads as rewritten:

"**§ 20-297.1. ~~Prefiling of franchise agreements and amendments.~~Franchise-related form agreements.**

~~Any franchise, as defined in G.S. 20-286(8a), offered to a motor vehicle dealer in this State shall provide that all terms and conditions in the agreement inconsistent with any of the laws or rules of this State are of no force and effect. On or before January 1, 1998, every manufacturer, factory branch, distributor, or distributor branch licensed by the Commissioner under this Article which uses an identical or substantially similar form franchise for its dealers or distributors in this State shall file with the Commissioner a copy of the franchise and all supplements. Any applicant for licensing by the Commissioner as a manufacturer, factory branch, distributor, or distributor branch licensed under this Article, which would use an identical or substantially similar form franchise, as defined in G.S. 20-286(8a), for its dealers or distributors in this State, shall, as a condition for the issuance of a license, file with the Commissioner a copy of the franchise and all supplements thereto. Not later than 60 days prior to the date a revision, modification, or addition to a franchise is offered generally to a licensee's franchisees in this State, the licensee shall notify the Commissioner of the proposed revision, modification, or addition to the franchise on file with the Commissioner and include with the notification:~~

~~(1) A copy of the form franchise which incorporates all of the proposed revisions, modifications, and additions;~~

~~(2) A separate statement which identifies all substantive revisions, modifications, and additions proposed.~~

~~It shall be unlawful for a franchise or any addendum or supplement thereto to be offered to a motor vehicle dealer in this State after January 1, 1998, until an applicant or licensee has complied with all of the requirements of this section. The Commissioner is~~

~~authorized and directed to investigate and prevent violations of this section, including inconsistencies of any manufacturer's franchise with the provisions of this Article.~~

(a) All franchise-related form agreements, as defined in this subsection, offered to a motor vehicle dealer in this State shall provide that all terms and conditions in the agreement inconsistent with any of the laws or rules of this State are of no force and effect. For purposes of this section, the term "franchise-related form agreements" means one or more contracts between a franchised motor vehicle dealer and a manufacturer, factory branch, distributor, or distributor branch, including a written communication from a manufacturer or distributor in which a duty is imposed on the franchised motor vehicle dealer under which:

(1) The franchised motor vehicle dealer is granted the right to sell and service new motor vehicles manufactured or distributed by the manufacturer or distributor or only to service motor vehicles under the contract and a manufacturer's warranty;

(2) The franchised motor vehicle dealer is a component of the manufacturer or distributor's distribution system as an independent business;

(3) The franchised motor vehicle dealer is substantially associated with the manufacturer or distributor's trademark, trade name, and commercial symbol;

(4) The franchised motor vehicle dealer's business substantially relies on the manufacturer or distributor for a continued supply of motor vehicles, parts, and accessories; or

(5) Any right, duty, or obligation granted or imposed by this Chapter is affected.

(b) Notwithstanding the terms of any franchise or agreement, it shall be unlawful for any manufacturer, factory branch, distributor, or distributor branch to offer to a dealer, revise, modify, or replace a franchise-related form agreement, as defined above in this section, which agreement, modification, or replacement may adversely affect or alter the rights, obligations, or liability of a motor vehicle dealer or may adversely impair the sales, service obligations, investment, or profitability of any motor vehicle dealer located in this State, unless:

(1) The manufacturer, factory branch, distributor, or distributor branch provides prior written notice by registered or certified mail to each affected dealer, the Commissioner, and the North Carolina Automobile Dealers Association, Inc., of the modification or replacement in the form and within the time frame set forth within this section and in subsection (c) of this section; and

(2) If a protest is filed under this section, the Commissioner approves the modification or replacement.

(c) The notice required by subdivision (b)(1) of this section shall:

(1) Be given not later than the 60th day before the effective date of the modification or replacement;

(2) Contain on its first page a conspicuous statement that reads: 'NOTICE TO DEALER: YOU MAY BE ENTITLED TO FILE A PROTEST WITH THE COMMISSIONER OF THE NORTH CAROLINA DIVISION OF MOTOR VEHICLES AND HAVE A HEARING IN WHICH YOU MAY PROTEST THE PROPOSED INITIAL OFFERING, MODIFICATION, OR REPLACEMENT OF CERTAIN FRANCHISE-RELATED FORM AGREEMENTS UNDER THE TERMS OF THE MOTOR VEHICLE DEALERS AND MANUFACTURERS LICENSING LAW, IF YOU OPPOSE THIS ACTION'; and

(3) Contain a separate letter or statement that identifies all substantive modifications or revisions and the principal reasons for each such modification or revision.

(d) A franchised dealer may file a protest with the Commissioner of the offering, modification, or replacement pursuant to this section not later than the latter of:

(1) The 60th day after the date of the receipt of the notice; or

(2) The time specified in the notice.

(e) After a protest is filed, the Commissioner shall determine whether the manufacturer, factory branch, distributor, or distributor branch has established by a preponderance of the evidence that there is good cause for the proposed offering, modification, or replacement. The prior franchise-related form agreement, if any, continues in effect until the Commissioner resolves the protest.

(f) The Commissioner is authorized and directed to investigate and prevent violations of this section, including inconsistencies of any franchise-related form agreement with the provisions of this Article.

(g) Nothing contained in this section shall in any way limit a dealer's rights under any other provision of this Article or other applicable law."

SECTION 2. G.S. 20-305(5) reads as rewritten:

"**§ 20-305. Coercing dealer to accept commodities not ordered; threatening to cancel franchise; preventing transfer of ownership; granting additional franchises; terminating franchises without good cause; preventing family succession.**

It shall be unlawful for any manufacturer, factory branch, distributor, or distributor branch, or any field representative, officer, agent, or any representative whatsoever of any of them:

...

(5) To enter into a franchise establishing an additional new motor vehicle dealer or relocating an existing new motor vehicle dealer into a relevant market area where the same line make is then represented without first notifying in writing the Commissioner and each new motor vehicle dealer in that line make in the relevant market area of the intention to establish an additional dealer or to relocate an existing dealer within or into that market area. Within 30 days of receiving such notice or within 30 days after the end of any appeal procedure

provided by the manufacturer, any new motor vehicle dealer may file with the Commissioner a protest to the establishing or relocating of the new motor vehicle dealer. When a protest is filed, the Commissioner shall promptly inform the manufacturer that a timely protest has been filed, and that the manufacturer shall not establish or relocate the proposed new motor vehicle dealer until the Commissioner has held a hearing and has determined that there is good cause for permitting the addition or relocation of such new motor vehicle dealer.

a. This section does not apply:

1. To the relocation of an existing new motor vehicle dealer within that dealer's relevant market area, provided that the relocation not be at a site within 10 miles of a licensed new motor vehicle dealer for the same line make of motor vehicle. If this sub-subdivision is applicable, only dealers trading in the same line-make of vehicle that are located within the 10-mile radius shall be entitled to notice from the manufacturer and have the protest rights afforded under this section; or
2. If the proposed additional new motor vehicle dealer is to be established at or within two miles of a location at which a former licensed new motor vehicle dealer for the same line make of new motor vehicle had ceased operating within the previous two years;
3. To the relocation of an existing new motor vehicle dealer within two miles of the existing site of the new motor vehicle dealership if the franchise has been operating on a regular basis from the existing site for a minimum of three years immediately preceding the relocation;
4. To the relocation of an existing new motor vehicle dealer if the proposed site of the relocated new motor vehicle dealership is further away from all other new motor vehicle dealers of the same line make in that relevant market ~~area.~~area; or
5. To the relocation of an existing new motor vehicle dealer to a location within four and one-half miles of the existing site of the new motor vehicle dealership if the line make has been operating on a regular basis from the existing site for a minimum of 50 years immediately preceding the effective date of this sub-subdivision, provided that the relocation site not be located within four miles of another licensed new motor vehicle dealer for the same line make of motor vehicle."

SECTION 3. G.S. 20-305(30) reads as rewritten:

"**§ 20-305. Coercing dealer to accept commodities not ordered; threatening to cancel franchise; preventing transfer of ownership; granting additional franchises; terminating franchises without good cause; preventing family succession.**

It shall be unlawful for any manufacturer, factory branch, distributor, or distributor branch, or any field representative, officer, agent, or any representative whatsoever of any of them:

...

(30) To vary the price charged to any of its franchised new motor vehicle dealers located in this State for new motor vehicles based on the dealer's purchase of new facilities, supplies, tools, equipment, or other merchandise from the manufacturer, the dealer's relocation, remodeling, repair, or renovation of existing dealerships or construction of a new facility, the dealer's participation in training programs sponsored, endorsed, or recommended by the manufacturer, whether or not the dealer is dualed with one or more other line makes of new motor vehicles, or the dealer's sales penetration. Except as provided in this subdivision, it shall be unlawful for any manufacturer, factory branch, distributor, or distributor branch, or any field representative, officer, agent, or any representative whatsoever of any of them to vary the price charged to any of its franchised new motor vehicle dealers located in this State for new motor vehicles based on the dealer's sales volume, the dealer's level of sales or customer service satisfaction, the dealer's purchase of advertising materials, signage, nondiagnostic computer hardware or software, communications devices, or furnishings, or the dealer's participation in used motor vehicle inspection or certification programs sponsored or endorsed by the manufacturer.

The price of the vehicle, for purposes of this subdivision shall include the manufacturer's use of rebates, credits, or other consideration ~~which~~ that has the effect of causing a variance in the price of new motor vehicles offered to its franchised dealers located in the State.

Notwithstanding the foregoing, nothing in this subdivision shall be deemed to preclude a manufacturer from establishing sales contests or promotions ~~which~~ that provide or award dealers or consumers rebates or incentives; provided, however, that the manufacturer complies with all of the following conditions:

a. With respect to manufacturer to consumer rebates and incentives, the manufacturer's criteria for determining eligibility shall:

1. Permit all of the manufacturer's franchised new motor vehicle dealers in this State to offer the rebate or incentive; and

2. Be uniformly applied and administered to all eligible consumers.

b. With respect to manufacturer to dealer rebates and incentives, the rebate or incentive program shall:

1. Be based solely on the dealer's actual or reasonably anticipated sales volume or on a uniform per vehicle sold or leased basis;
2. Be uniformly available, applied, and administered to all of the manufacturer's franchised new motor vehicle dealers in this State; and
3. Provide that any of the manufacturer's franchised new motor vehicle dealers in this State may, upon written request, obtain the method or formula used by the manufacturer in establishing the sales volumes for receiving the rebates or incentives and the specific calculations for determining the required sales volumes of the inquiring dealer and any of the manufacturer's other franchised new motor vehicle dealers located within 75 miles of the inquiring dealer.

Nothing contained in this subdivision shall prohibit a manufacturer from providing assistance or encouragement to a franchised dealer to remodel, renovate, recondition, or relocate the dealer's existing facilities, provided that this assistance, encouragement, or rewards are not determined on a per vehicle basis.

It is unlawful for any manufacturer to charge or include the cost of any program or policy prohibited under this subdivision in the price of new motor vehicles that the manufacturer sells to its franchised dealers or purchasers located in this State.

In the event that as of October 1, 1999, a manufacturer was operating a program that varied the price charged to its franchised dealers in this State in a manner that would violate this subdivision, or had in effect a documented policy that had been conveyed to its franchised dealers in this State and that varied the price charged to its franchised dealers in this State in a manner that would violate this subdivision, it shall be lawful for that program or policy, including amendments to that program or policy that are consistent with the purpose and provisions of the existing program or policy, or a program or policy similar thereto implemented after October 1, 1999, to continue in effect as to the manufacturer's franchised dealers located in this State until June 30, ~~2006.~~2010.

In the event that as of June 30, 2001, a manufacturer was operating a program that varied the price charged to its franchised dealers in this State in a manner that would violate this subdivision, or had in effect a documented policy that had been conveyed to its franchised dealers in

this State and that varied the price charged to its franchised dealers in this State in a manner that would violate this subdivision, and the program or policy was implemented in this State subsequent to October 1, 1999, and prior to June 30, 2001, and provided that the program or policy is in compliance with this subdivision as it existed as of June 30, 2001, it shall be lawful for that program or policy, including amendments to that program or policy that comply with this subdivision as it existed as of June 30, 2001, to continue in effect as to the manufacturer's franchised dealers located in this State until June 30, ~~2006.~~2010.

Any manufacturer shall be required to pay or otherwise compensate any franchise dealer who has earned the right to receive payment or other compensation under a program in accordance with the manufacturer's program or policy.

The provisions of this subdivision shall not be applicable to multiple or repeated sales of new motor vehicles made by a new motor vehicle dealer to a single purchaser under a bona fide fleet sales policy of a manufacturer, factory branch, distributor, or distributor branch."

SECTION 4. Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-304.1. Prohibited contractual requirements imposed by manufacturer, distributor, or captive finance source.**

It shall be unlawful for any manufacturer, factory branch, distributor, or distributor branch, or any field representative, officer, agent, or any representative of them, notwithstanding the terms, provisions, or conditions of any agreement or franchise, to require any of its franchised dealers located in this State to agree to any terms, conditions, or requirements that are set forth in subdivisions (1) through (6) below in order for any such dealer to floor plan any of the dealer's inventory, finance the sale or lease of any motor vehicles purchased or leased by any of the dealer's customers, finance the acquisition, construction, or renovation of any of the dealer's property or facilities, or to be able to participate in, or otherwise, directly or indirectly, obtain the benefits of any incentive program offered by or through any financial source that provides automotive-related loans or purchases retail installment contracts or lease contracts for motor vehicles in North Carolina and is, directly or indirectly, owned, operated, or controlled by such manufacturer, factory branch, distributor, or distributor branch ("captive finance source").

(1) Require a dealer to grant such captive finance source a power of attorney to do anything on behalf of the dealer other than sign the dealer's name on any check, draft, or other instrument received in payment or proceeds under any contract for the sale or lease of a motor vehicle that is made payable to the dealer but which is properly payable to the captive finance source, is for the purpose of correcting an error in a customer's finance application or title processing document, is for the purpose of processing regular titling of the vehicle

or by signing the dealer's name on the promissory note or other instrument evidences the dealer's obligation to repay the captive finance source for amounts advanced to the dealer, or on behalf of the dealer, in order for the dealer to purchase an inventory of motor vehicles or other items pursuant to a written agreement between the dealer and the captive finance source.

(2) Require a dealer to repurchase, pay off, or guaranty any contract for the sale or lease of a motor vehicle or to require a dealer to indemnify or hold harmless the captive finance source for settlements, judgments, damages, litigation expenses, or other costs or expenses incurred by such captive finance source when it has not been proven or specifically alleged by the customer that such damages or expenses resulted directly from the subject dealer's material breach of the terms of a written agreement with the captive finance source or the subject dealer's violation of applicable law. For purposes of this section, a material breach includes, but is not limited to, a breach of a representation by the dealer that all of the customers' signatures are genuine signatures of the persons they purport to be and there has been no identity fraud with respect to the contract, or that the contract being assigned is a valid, enforceable contract. However, a breach of a representation that requires a dealer to represent the completeness and/or accuracy of the information received from the customer to a standard higher than to the best of the dealer's knowledge is not a material breach.

(3) Require a dealer to waive any defenses that may be available to it under its agreements with the captive finance source or under any applicable laws; provided, however, that the provisions of this subdivision shall not be applicable to waivers of, or indemnification by, the dealer for environmental risks or factors in the context of one or more loans received by the dealer from the captive finance source which are secured by real property.

(4) Require a dealer to settle or contribute any of its own funds or financial resources toward the settlement of any multiparty or class action litigation without obtaining the dealer's voluntary and written consent subsequent to the filing of such litigation.

(5) Require a dealer to contribute to any reserve or contingency account established or maintained by the captive finance source, for the financing of the sale or lease of any motor vehicles purchased or leased by any of the dealer's customers, in any amount or on any basis other than the reasonable expected amount of future finance reserve chargebacks to the dealer's account. This section shall not apply to or limit (i) reasonable amounts reserved and maintained related to the sale or financing of any products ancillary to the sale, lease, or financing of the motor vehicle itself; (ii) a delay or reduction in the

payment of dealer's portion of the finance income pursuant to an agreement between the dealer and a captive finance source under which the dealer agrees to such delay or reduction in exchange for the limitation, reduction, or elimination of the dealer's responsibility for finance reserve chargebacks; or (iii) a chargeback to a dealer (or offset of any amounts otherwise payable to a dealer by the captive finance source) for any indebtedness, that has been agreed upon by both parties specific to the charge in dispute, properly owing from a dealer to the captive finance source.

(6) Require a dealer to repossess or otherwise gain possession of a motor vehicle at the request of or on behalf of the captive finance source. This section shall not apply to any requirements contained in any agreement between the dealer and the captive finance source wherein the dealer agrees to receive and process vehicles that are voluntarily returned by the customer or returned to the lessor at the end of the lease term.

Any clause or provision in any franchise or agreement between a dealer and a manufacturer, factory branch, distributor, or distributor branch, or between a dealer and any captive finance source, that is in violation of or that is inconsistent with any of the provisions of this section shall be voidable at any time at the election of the dealer."

SECTION 5. Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-305.7. Unlawful equipment leases, contracts for computer services, and access to dealership information.**

(a) It shall be unlawful for any person, corporation, or other entity to enter into a contract or agreement with a motor vehicle dealer located in this State, after the effective date of this section, that provides for or relates to the lease of computer-related equipment or computer-related services which contains any terms or conditions that are unreasonable to the dealer as determined by the Commissioner or a court of competent jurisdiction. For purposes of this section, the term "computer-related equipment" is defined as computers, servers, network and digital communications equipment, routers, switches, terminal servers, printers, software, or other computer-related programs, equipment, forms, or supplies excluding Internet Web sites provided by or on behalf of the manufacturer, factory branch, distributor, or distributor branch. For purposes of this section, the term "computer-related services" is defined as repair, maintenance, or update services performed on computer-related equipment. Such unreasonable terms or conditions include, but are not limited to, the following:

(1) Terms or conditions that establish an initial term for the contract or agreement in excess of five years or which require the dealer to pay an unreasonable amount of consideration in order to terminate the agreement within the initial term of the agreement.

(2) Terms or conditions that extend the term of the contract or agreement in excess of three years beyond the initial term of the agreement, or that require the dealer to pay an unreasonable amount of consideration

in order to terminate the agreement within three years beyond the initial term of the agreement; provided, however, that nothing contained in this subdivision shall be deemed to prohibit the term of any such contract or agreement from continuing on a month-to-month basis subsequent to expiration of its initial term or extension, as long as the dealer may terminate the contract or agreement without the payment of any additional consideration upon providing notice not in excess of 30 days to the provider of the computer-related equipment or services. Nothing contained in this subdivision shall be deemed to prohibit a dealer and a provider of computer-related equipment or services from entering into a new or subsequent agreement related to the provision of computer-related equipment or services upon expiration or termination of a prior agreement between the parties, provided, however, that such new or subsequent agreement is in compliance with this subdivision.

(3) Terms or conditions that allow a manufacturer, factory branch, distributor, or distributor branch, or any third party acting on their behalf, to access or obtain data from, or write data to, a dealer's computer system or network that does not enable the dealer to:

a. Maintain the security, integrity, and confidentiality of the customer and dealership information collected or generated by the dealer;

b. Reasonably and continually monitor the specific data accessed from or written to the dealer's computer system or network by the manufacturer, factory branch, distributor, or distributor branch, or any third party acting on their behalf; and

c. Comply with any applicable State and federal laws and any rules or regulations promulgated thereunder.

Any clause or provision in any contract or agreement between a dealer and any person, corporation, or other entity that is in violation of or that is inconsistent with any of the provisions of this section shall be voidable at anytime at the election of the dealer.

(b) Notwithstanding the terms of any franchise or agreement, it shall be unlawful for any manufacturer, factory branch, distributor, or distributor branch to access or obtain data from or write data to a dealer's computer system or network, or require or coerce a dealer to utilize any computer-related services, network design, third-party provider, third-party vendor, or other means of accessing, exchanging, or transferring data relating to the dealer or the dealer's customers that does not enable the dealer to:

(1) Maintain the security, integrity, and confidentiality of the customer and dealership information collected or generated by the dealer;

(2) Reasonably and continually monitor the specific data accessed from or written to the dealer's computer system or network by the manufacturer, factory branch, distributor, or distributor branch; and

(3) Comply with any applicable State and federal laws and any rules or regulations promulgated thereunder.

(c) It shall be unlawful for any vendor of computer-related equipment or any third party acting on behalf of any vendor of computer-related equipment or services, manufacturer, factory branch, distributor, or distributor branch to:

(1) Provide access to any customer or dealership information collected, received, or generated by the dealer without first obtaining the dealer's explicit written consent in an agreement between the dealer and all entities accessing or handling this customer or dealership information. Such consent must:

a. Be in written form, and contain the original signature of the dealer or the dealer's authorized representative and reference by name;

b. Provide consent for a period not to exceed 180 days;

c. Provide authorization for the specific vendor of computer-related equipment, vendor of computer-related services, or third party to whom such consent is given and describe the scope of the consent given;

d. Contain on its first page a conspicuous statement that reads: 'NOTICE TO DEALER: THIS AGREEMENT RELATES TO THE TRANSFER AND ACCESSING OF CONFIDENTIAL INFORMATION AND CONSUMER-RELATED DATA. PROPER SAFEGUARDS SHOULD BE IN EFFECT TO PROTECT THE CONFIDENTIALITY OF THIS DATA.'

No vendor of computer-related equipment or services, or any third party, shall have any right to obtain, utilize, copy, view, or modify information stored in or traversing computer-related equipment owned or utilized by a dealer without first obtaining this explicit written consent; or

(2) Notwithstanding the terms of any contract, agreement, or consent to access or obtain data from or write data to a dealer's computer system or network that does not enable the dealer to:

a. Maintain the security, integrity, and confidentiality of the customer and dealership information collected or generated by the dealer;

b. Reasonably and continually monitor the specific data accessed from or written to the dealer's computer system or network by the vendor of computer-related equipment or services, or the manufacturer, factory branch, distributor, or distributor branch; and

c. Comply with any applicable State and federal laws and any rules or regulations promulgated thereunder.

(d) This section shall not preclude, prohibit, or deny the right of the manufacturer, factory branch, distributor, or distributor branch to receive from the dealer customer or dealership information for the purposes of complying with federal or State safety requirements or implementing steps related to manufacturer recalls at such times as necessary in order to comply with such federal and State requirements or

manufacturer recalls provided that receiving such information from the dealer does not impair, alter, or reduce the security, integrity, and confidentiality of the customer and dealership information collected or generated by the dealer."

SECTION 6. G.S. 20-308.2 is amended by adding a new subsection to read:

"(e) The provisions of this Article shall apply to all written agreements between a manufacturer, wholesaler, or distributor with a motor vehicle dealer including, but not limited to, the franchise offering, the franchise agreement, sales of goods, services or advertising, leases or deeds of trust of real or personal property, promises to pay, security interests, pledges, insurance contracts, advertising contracts, construction or installation contracts, servicing contracts, and all other such agreements between a motor vehicle dealer and a manufacturer, wholesaler, or distributor."

SECTION 7. G.S. 20-286(10) reads as rewritten:

"**§ 20-286. Definitions.**

The following definitions apply in this Article:

...

(10) Motor vehicle. – Any motor propelled vehicle, trailer or semitrailer, required to be registered under the laws of this State.

a. "New motor vehicle" means a motor vehicle ~~which~~ that has never been the subject of a completed, successful, or conditional sale that was subsequently approved ~~sale~~ other than between new motor vehicle dealers, or between manufacturer and dealer of the same franchise.

b. "Used motor vehicle" means a motor vehicle other than described in paragraph (10)a above."

SECTION 8. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 650*

Committee Substitute Favorable 3/28/05

Committee Substitute #2 Favorable 6/14/05

PROPOSED SENATE COMMITTEE SUBSTITUTE H650-PCS60539-MB-46

Short Title: Business Court Cases/Fee. (Public)

Sponsors:

Referred to:

March 16, 2005

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE ASSIGNMENT OF SPECIAL SUPERIOR COURT JUDGES TO HEAR COMPLEX BUSINESS CASES, TO CLARIFY THE PROCEDURE FOR ASSIGNING COMPLEX BUSINESS CASES, TO AUTHORIZE A LARGER FEE FOR COMPLEX BUSINESS CASES, AND TO CHANGE THE DATE DISTRICT COURT JUDGES TAKE OFFICE.

The General Assembly of North Carolina enacts:

PART I. BUSINESS COURT JUDGES AND FEES.

SECTION 1.1. Article 7 of Chapter 7A of the General Statutes is amended by adding a new section to read:

"**§ 7A-45.3. Superior court judges designated for complex business cases.**

The Chief Justice may exercise the authority under rules of practice prescribed pursuant to G.S. 7A-34 to designate one or more of the special superior court judges authorized by G.S. 7A-45.1 to hear and decide complex business cases as prescribed by the rules of practice. Any judge so designated shall be known as a Business Court Judge and shall preside in the Business Court. If there is more than one business court judge, the Chief Justice may designate one of them as the Senior Business Court Judge. If there is no designation by the Chief Justice, the judge with the longest term of service on the court shall serve as Senior Business Court Judge until the Chief Justice makes an appointment to the position."

SECTION 1.2. G.S. 7A-305(a) reads as rewritten:

"(a) In every civil action in the superior or district court, except for actions brought under Chapter 50B of the General Statutes, the following costs shall be assessed:

(1) For the use of the courtroom and related judicial facilities, the sum of twelve dollars ($12.00) in cases heard before a magistrate, and the sum of sixteen dollars ($16.00) in district and superior court, to be remitted to the county in which the judgment is rendered, except that in all cases in which the judgment is rendered in facilities provided by a municipality, the facilities fee shall be paid to the municipality. Funds derived from the facilities fees shall be used in the same manner, for the same purposes, and subject to the same restrictions, as facilities fees assessed in criminal actions.

(2) For support of the General Court of Justice, the sum of sixty-nine dollars ($69.00) in the superior ~~court,~~court, except that if a case is assigned to a special superior court judge as a complex business case under G.S. 7A-45.3, an additional two hundred dollars ($200.00) shall be paid upon its assignment, and the sum of fifty-four dollars ($54.00) in the district court except that if the case is assigned to a magistrate the sum shall be forty-three dollars ($43.00). Sums collected under this subdivision shall be remitted to the State Treasurer. The State Treasurer shall remit the sum of one dollar and five cents ($1.05) of each fee collected under this subdivision to the North Carolina State Bar for the provision of services described in G.S. 7A-474.4, and ninety-five cents ($.95) of each fee collected under this subdivision to the North Carolina State Bar for the provision of services described in G.S. 7A-474.19."

PART II. ASSIGNMENT OF COMPLEX BUSINESS CASES.

SECTION 2. Article 7 of Chapter 7A of the General Statutes is amended by adding a new section to read:

"**§ 7A-45.4. Designation of mandatory complex business cases.**

(a) A mandatory complex business case is an action that involves a material issue related to:

(1) The law governing corporations, except charitable and religious organizations qualified under G.S. 55A-1-40(4) on the grounds of religious purpose, partnerships, limited liability companies, and limited liability partnerships, including issues concerning governance, involuntary dissolution of a corporation, mergers and acquisitions, breach of duty of directors, election or removal of directors, enforcement or interpretation of shareholder agreements, and derivative actions.

(2) Securities law, including proxy disputes and tender offer disputes.

(3) Articles 3, 4, and 5 of the North Carolina General Statutes.

(4) Antitrust law, except claims based solely on unfair competition under G.S. 75-1.1.

(5) State trademark or unfair competition law, except claims based solely on unfair competition under G.S. 75-1.1.

(6) Intellectual property law, including software licensing disputes.

(7) The Internet, electronic commerce, and biotechnology.

(b) Any party may designate a civil action as a mandatory complex business case by filing a Notice of Designation in the Superior Court in which the action has been filed and simultaneously serving the notice on each opposing party or counsel and on the Special Superior Court Judge for Complex Business Cases who is then the senior Business Court Judge. A copy of the notice shall also be sent contemporaneously by e-mail or facsimile transmission to the Chief Justice of the Supreme Court for approval of the designation of the action as a mandatory complex business case and assignment to a specific Business Court Judge.

(c) The Notice of Designation shall, in good faith and based on information reasonably available, succinctly state the basis of the designation and include a certificate by or on behalf of the designating party that the civil action meets the criteria for designation as a mandatory complex business case pursuant to subsection (a) of this section.

(d) The Notice of Designation shall be filed:

(1) By the plaintiff or third-party plaintiff contemporaneously with the filing of the complaint or third-party complaint in the action.

(2) By any intervenor when the intervenor files a motion for permission to intervene in the action.

(3) By any defendant or any other party within 30 days of receipt of service of the pleading seeking relief from the defendant or party.

(e) Within 30 days after service of the Notice of Designation, any other party may, in good faith, file and serve an opposition to the designation of the action as a mandatory business case. Based on the opposition or ex mero motu, the Business Court Judge may determine that the action should not be designated as a mandatory complex business case. If a party disagrees with the decision, the party may appeal to the Chief Justice of the Supreme Court.

(f) Once a designation is filed under subsection (d) of this section, and after preliminary approval by the Chief Justice, a case shall be designated and administered a complex business case. All proceedings in the action shall be before the Business Court Judge to whom it has been assigned unless and until an order has been entered under subsection (e) of this section ordering that the case not be designated a mandatory complex business case or the Chief Justice revokes approval. If complex business case status is revoked or denied, the action shall be treated as any other civil action, unless it is designated as an exceptional civil case or a discretionary complex business case pursuant to Rule 2.1 of the General Rules of Practice for the Superior and District Courts."

PART III. DISTRICT COURT JUDGE TERM.

SECTION 3.1. G.S. 7A-140 reads as rewritten:

"**§ 7A-140. Number; election; term; qualification; oath.**

There shall be at least one district judge for each district. Each district judge shall be elected by the qualified voters of the district court district in which he or she is to serve

at the time of the election for members of the General Assembly. The number of judges for each district shall be determined by the General Assembly. Each judge shall be a resident of the district for which elected, and shall serve a term of four years, beginning on the first ~~Monday in December~~day in January next ~~following his~~after election.

Each district judge shall devote his or her full time to the duties of ~~his~~the office. He or she shall not practice law during ~~his~~the term, nor shall he or she during such term be the partner or associate of any person engaged in the practice of law.

Before entering upon his or her duties, each district judge, in addition to other oaths prescribed by law, shall take the oath of office prescribed for a judge of the General Court of Justice."

SECTION 3.2. The table entries in G.S. 163-1 for the Justices and Judges read as rewritten:

"OFFICE	JURISDICTION	DATE OF ELECTION	TERM OF OFFICE
...			
Justices and Judges of the Appellate Division	State	At the regular election for members of the General Assembly immediately preceding the termination of each regular term	Eight years, from first day of January next after election
Judges of the superior courts	Superior Court District	At the regular election for members of the General Assembly immediately preceding the termination of each regular term	Eight years, from first day of January next after election
Judges of the district courts	District court district	At the regular election for members of the General Assembly immediately preceding the termination of each regular term	Four years, from the first ~~Monday in December next~~ day in January next after election
...."			

PART IV. EFFECTIVE DATES.

SECTION 4. Sections 1.1 and 1.2 of this act become effective January 1, 2006, and apply to fees assessed or collected on or after that date. Section 2 becomes effective January 1, 2006, and applies to cases filed on or after that date. Sections 3.1 and 3.2 of this act are effective when they become law. Judges elected in 2006 and thereafter take office accordingly, and as provided by Section 10 of Article VI of the

North Carolina Constitution and G.S. 128-7, those in office on the first Monday in December of 2006 or 2008 shall continue until their successors' terms begin and are duly qualified.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H **1**

HOUSE BILL 650*

Short Title:	Business Court Cases/Fee.	(Public)
Sponsors:	Representatives Haire, Glazier (Primary Sponsors); and Faison.	
Referred to:	Judiciary IV, if favorable, Finance.	

March 16, 2005

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE ASSIGNMENT OF SPECIAL SUPERIOR COURT JUDGES TO HEAR COMPLEX BUSINESS CASES AND TO AUTHORIZE A LARGER FEE FOR THOSE CASES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 7 of Chapter 7A of the General Statutes is amended by adding a new section to read:

"**§ 7A-45.3. Superior court judges designated for complex business cases.**

The Chief Justice may exercise the authority under rules of practice prescribed pursuant to G.S. 7A-34 to designate one or more of the special superior court judges authorized by G.S. 7A-45.1 to hear and decide complex business cases as prescribed by the rules of practice."

SECTION 2. G.S. 7A-305(a) reads as rewritten:

"(a) In every civil action in the superior or district court, except for actions brought under Chapter 50B of the General Statutes, the following costs shall be assessed:

(1) For the use of the courtroom and related judicial facilities, the sum of twelve dollars ($12.00) in cases heard before a magistrate, and the sum of sixteen dollars ($16.00) in district and superior court, to be remitted to the county in which the judgment is rendered, except that in all cases in which the judgment is rendered in facilities provided by a municipality, the facilities fee shall be paid to the municipality. Funds derived from the facilities fees shall be used in the same manner, for the same purposes, and subject to the same restrictions, as facilities fees assessed in criminal actions.

(2) For support of the General Court of Justice, the sum of sixty-nine dollars ($69.00) in the superior ~~court,~~court except that if a case is assigned to a special superior court judge as a complex business case under G.S. 7A-45.3 the sum shall be two hundred sixty-nine dollars

($269.00), and the sum of fifty-four dollars ($54.00) in the district court except that if the case is assigned to a magistrate the sum shall be forty-three dollars ($43.00). Sums collected under this subdivision shall be remitted to the State Treasurer. The State Treasurer shall remit the sum of one dollar and five cents ($1.05) of each fee collected under this subdivision to the North Carolina State Bar for the provision of services described in G.S. 7A-474.4, and ninety-five cents ($.95) of each fee collected under this subdivision to the North Carolina State Bar for the provision of services described in G.S. 7A-474.19."

SECTION 3. This act becomes effective January 1, 2006, and applies to fees assessed or collected on or after that date.

House Bill 650:
Business Court Cases/Fee.

BILL ANALYSIS

Committee: Senate Judiciary I
Date: August 11, 2005
Version: PCS to 3rd Edition

Sponsors: Reps. Haire and Glazier
Analysis by: Ashley Huffstetler
Bill Drafting

SUMMARY: ***The PCS to the 3rd Edition of House Bill 650 statutorily authorizes the Chief Justice of the North Carolina Supreme Court to assign special superior court judges to hear complex business cases and codifies the practice of assigning mandatory complex business cases. It also increases the filing fee for those cases from $69 to $269, to be paid once the assignment is made. Part II of the bill, as amended in House Finance, provides that district court judges are to assume office on the first day of January following election.***

CURRENT LAW:

Parts I and II.

The North Carolina Business Court is a specialized forum of the North Carolina State Courts' trial division. Under the existing General Rules of Practice for Superior and District Courts, the Chief Justice may designate any case as a complex business case and assign it to a superior court judge to oversee resolution of all matters through trial. This codification of the rule was recommended by the Chief Justice's Commission on the Future of the NC Business Court to clarify the jurisdiction of the business court and "enhance the status of the arrangement and clarify its validity for persons not familiar with the constitutional and statutory structure of our judicial system." At present, there is only one judge and one geographic location for the court. The Commission has recommended that, in order to meet the challenges of an increasing caseload and to remain competitive in attracting new business, the court should, among other things, be expanded into both Wake and Mecklenburg Counties as well as make technological and administrative improvements.

The term "complex business case" is not defined by rule or statute, but one of the key factors in assessing whether a case should be designated as a complex business case is whether the outcome will have implications for business and industry beyond the conflicts of the parties to the litigation.

Part III.

Under existing law, district court judges begin their terms on the first Monday in December following election. Superior court judges begin their terms on the first day in January following election.

BILL ANALYSIS: House Bill 650 does several things.

Parts I and II.

- ***Assignment of Special Judges.*** –The bill provides that the Chief Justice may designate one or more special superior court judges authorized by G.S. 7A-45.1 to hear complex business cases. "Special judges" under G.S. 7A-45.1 are judges appointed by the Governor who are not resident judges of any particular district, but serve around the State as needed. At present, there are 12 such special judges. The judges appointed shall be known as Business Court Judges, and either the Chief Justice will appoint the Senior Business Court Judge or the judge with the longest term is the default senior judge.

Constitution and G.S. 128-7, those in office on the first Monday in December of 2006 or 2008 shall continue until their successors' terms begin and are duly qualified.

- ***Increased Filing Fee.*** – It increases the filing fee for complex business cases to $269 from the current $69. This is an additional $200 fee for cases referred to business court. The purpose of the fee is to fund both geographic expansion and technological advancements for the business court. The bill was amended in Judiciary IV to clarify that the additional fee would not be paid until the case was assigned to a business court. House Finance amender the bill to provide that the money will be remitted to the State Treasurer.

- Part II of the bill sets out the procedure by which a case is designated a mandatory complex business case. As the number of complex business cases have grown, some have expressed concerned about the discretionary nature of the assignment of complex business cases by district and superior court judges. This provision will require designation as a complex business case under certain circumstances, e.g., when the case is one of the seven types of cases specified in G.S. 7A-45.4. Other cases may be deemed complex business despite there not being mandated complex business by this statute so long as they are designated in accordance with existing Rule 2.1 of the General Rules of Practice for the Superior and District Courts.

Part III.

Part III of the bill provides that the terms for district court judges begin on the first day in January following an election. The purpose of this provision is to allow judges more time to transition and/or close their existing legal practices before assuming judicial duties. Superior court judges already begin their terms on January 1st.

PCS CHANGES: The PCS adds Part II to the bill and amends the G.S. 7A-45.3 to clarify (1) that the special judges shall be known as business court judges, and (2) the process by which a senior business court judge is appointed.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 1543

Committee Substitute Favorable 5/31/05

PROPOSED SENATE COMMITTEE SUBSTITUTE H1543-PCS10398-RR-55

Short Title: Autopsy Photos not Public Record. (Public)

Sponsors:

Referred to:

April 21, 2005

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT PHOTOGRAPHS AND VIDEO OR AUDIO RECORDINGS MADE PURSUANT TO AN AUTOPSY ARE NOT PUBLIC RECORDS AND TO ALLOW FOR LIMITED ACCESS TO RECORDED IMAGES OF AN AUTOPSY BY THE PUBLIC.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 132 of the General Statutes is amended by adding the following new section to read:

"**§ 132-1.8. Confidentiality of photographs and video or audio recordings made pursuant to autopsy.**

Except as otherwise provided in G.S. 130A-389.1, a photograph or video or audio recording of an official autopsy is not a public record as defined by G.S. 132-1. However, the text of an official autopsy report, including any findings and interpretations prepared in accordance with G.S. 130A-389(a), is a public record and fully accessible by the public. For purposes of this section, an official autopsy is an autopsy performed pursuant to G.S. 130A-389(a)."

SECTION 2. G.S. 130A-389 reads as rewritten:

"**§ 130A-389. Autopsies.**

(a) If, in the opinion of the medical examiner investigating the case or of the Chief Medical Examiner, it is advisable and in the public interest that an autopsy or other study be made; or, if an autopsy or other study is requested by the district attorney of the county or by any superior court judge, an autopsy or other study shall be made by the Chief Medical Examiner or by a competent pathologist designated by the Chief Medical Examiner. A complete autopsy report of findings and interpretations, prepared on forms designated for the purpose, shall be submitted promptly to the Chief Medical Examiner. ~~Copies of the report shall be furnished the authorizing medical examiner, district attorney or superior court judge. A~~ Subject to the limitations of G.S. 130A-389.1

relating to photographs and video or audio recordings of an autopsy, a copy of the report shall be furnished to ~~other persons~~ any person upon request. A fee for the autopsy or other study shall be paid by the State. However, if the deceased is a resident of the county in which the death or fatal injury occurred, that county shall pay the fee. The fee shall be one thousand dollars ($1,000).

(b) In deaths where the Chief Medical Examiner and the medical examiner investigating the case do not deem it advisable and in the public interest that an autopsy be performed, but the next-of-kin of the deceased requests that an autopsy be performed, the Chief Medical Examiner or a designated pathologist may perform the autopsy and the cost shall be paid by the next-of-kin.

(c) When the next-of-kin of a decedent whose death does not fall under G.S. 130A-383 or 130A-384 requests that an autopsy be performed, the Chief Medical Examiner or a designated pathologist may perform that autopsy and the cost shall be paid by the next-of-kin.

(d) The report of autopsies performed pursuant to subsections (b) and (c) shall be a part of the decedents' medical records and therefore not public records open to inspection."

SECTION 3. Chapter 130A of the General Statutes is amended by adding the following new section to read:

"**§ 130A-389.1. Photographs and video or audio recordings made pursuant to autopsy.**

(a) Except as otherwise provided by law, any person may inspect and examine original photographs or video or audio recordings of an autopsy performed pursuant to G.S. 130A-389(a) at reasonable times and under reasonable supervision of the custodian of the photographs or recordings. Except as otherwise provided by this section, no custodian of the original recorded images shall furnish copies of photographs or video or audio recordings of an autopsy to the public. For purposes of this section, the Chief Medical Examiner shall be the custodian of all autopsy photographs or video or audio recordings unless the photographs or recordings were taken by or at the direction of an investigating medical examiner and the investigating medical examiner retains the original photographs or recordings. If the investigating medical examiner has retained the original photographs or recordings, then the investigating medical examiner is the custodian of the photographs or video or audio recordings and must allow the public to inspect and examine them in accordance with this subsection.

(b) The following public officials may obtain copies of autopsy photographs or video or audio recordings for official use only. These public officials shall not disclose the photographs or video or audio recordings to the public except as provided by law:

(1) The Chief Medical Examiner or a pathologist designated by the Chief Medical Examiner.
(2) Investigating Medical Examiner.
(3) District attorney.
(4) Superior court judge.
(5) Law enforcement officials conducting an investigation relating to the death.

A public official authorized by this subsection to obtain copies may provide a copy of the photograph or videotape to another person for the sole purpose of aiding in the identification of the deceased through publication of the photograph or videotape.

(c) The following persons may obtain copies of autopsy photographs or video or audio recordings but may not disclose the photographs or video or audio recordings to the public unless otherwise authorized by law:

(1) The personal representative of the estate of the deceased.

(2) A person authorized by an order issued in a special proceeding pursuant to subsection (d) of this section.

(3) A physician licensed to practice in North Carolina who uses a copy of the photographs or video or audio recording to confer with attorneys or others with a bona fide professional need to use or understand forensic science, provided that the physician promptly returns the copy to the custodian.

(4) After redacting all information identifying the decedent, including name, address, and social security number, and after anonymizing any physical recognition, a medical examiner, coroner, physician, or their designee who uses such material for:

a. Medical or scientific teaching or training purposes;

b. Teaching or training of law enforcement personnel;

c. Teaching or training of attorneys or others with a bona fide professional need to use or understand forensic science;

d. Conferring with medical or scientific experts in the field of forensic science; or

e. Publication in a scientific or medical journal or textbook.

A medical examiner, coroner, or physician who has in good faith complied with this subsection shall not be subject to any penalty under this section.

Any person who lawfully obtains a copy of a photograph or video or audio recording pursuant to this subsection shall be required to sign a statement acknowledging that they have received notice that any unauthorized disclosure of the photograph or video or audio recording is a Class 2 misdemeanor.

(d) A person who is denied access to copies of photographs or video or audio recordings, or who is restricted in the use the person may make of the photographs or video or audio recordings under this section, may commence a special proceeding in accordance with Article 33 of Chapter 1 of the General Statutes. Upon a showing of good cause, the clerk may issue an order authorizing the person to copy or disclose a photograph or video or audio recording of an autopsy and may prescribe any restrictions or stipulations that the clerk deems appropriate. In determining good cause, the clerk shall consider whether the disclosure is necessary for the public evaluation of governmental performance; the seriousness of the intrusion into the family's right to privacy and whether the disclosure is the least intrusive means available; and the availability of similar information in other public records, regardless of form. In all cases, the viewing, copying, listening to, or other handling of a photograph or video or

audio recording of an autopsy shall be under the direct supervision of the Chief Medical Examiner or the Chief Medical Examiner's designee. A party aggrieved by an order of the clerk may appeal to the appropriate court in accordance with Article 27A of Chapter 1 of the General Statutes.

(e) The petitioner shall provide reasonable notice of the commencement of a special proceeding, as authorized by subsection (d) of this section, and reasonable notice of the opportunity to be present and heard at any hearing on the matter in accordance with Rule 5 of the Rules of Civil Procedure. The notice shall be provided to the personal representative of the estate of the deceased, if any, and to the surviving spouse of the deceased. If there is no surviving spouse, then the notice shall be provided to the deceased's parents, and if the deceased has no living parent, then to the adult child of the deceased or to the guardian or custodian of a minor child of the deceased.

(f) This section does not apply to the use of autopsy photographs or video or audio recordings in a criminal, civil, or administrative proceeding except that nothing in this section prohibits a court or presiding officer, upon good cause shown, from restricting or otherwise controlling the disclosure to persons other than the parties and attorneys to the proceeding of an autopsy, crime scene, or similar photograph or video or audio recordings in the manner provided under this section.

(g) Any person who willfully and knowingly violates this section is guilty of a Class 2 misdemeanor, provided that more than one disclosure of the same item by the same person is not a separate offense.

(h) Any person not authorized by this section to obtain a copy of an autopsy photograph or video or audio recording, who knowingly and willfully removes, copies, or otherwise creates an image of an autopsy photograph or video or audio recording with intent to steal the same, is guilty of a Class 1 misdemeanor."

SECTION 4. This act becomes effective December 1, 2005, and applies to offenses committed on or after that date. This act applies to all unauthorized disclosures of autopsy photographs or video or audio recordings that occur on or after the effective date, regardless of whether the autopsy was performed before or after that date.

HOUSE BILL 1543:
Autopsy Photos not Public Record

BILL ANALYSIS

Committee:	Senate Judiciary I	**Date:**	August 12, 2005
Introduced by:	Rep. Ray	**Summary by:**	William R. Gilkeson
Version:	Second Edition		Committee Co-Counsel

SUMMARY: The Second Edition of House Bill 1543 would provide that photographs and video and audio recordings of official autopsies are not public records. The text of an autopsy report, however, would continue to be a public record and fully accessible to the public. The bill would authorize the custodian of the photographs or recordings to permit any member of the public to view them, but not to provide copies. The bill would allow certain public officials and others to obtain copies for official use or specialized use only. Under the bill, any person could seek an order through a special proceeding to obtain copies of the photos or recordings. The bill would make the unauthorized disclosure of these materials a Class 2 misdemeanor and stealing the materials a Class 1 misdemeanor. The bill would become effective July 1, 2005 and apply to offenses committed on or after that date.

CURRENT LAW: In North Carolina, unlike some other states, the right of public access to governmental records is not in the Constitution. The right is statutory only. The statutory right is very broad, however. The Public Records statute, G.S. Chapter 132, defines a public record to include any "documentary material, regardless of physical form or characteristics, made or received by an agency of North Carolina government or its subdivisions in connection with the transaction of public business". The statute goes on to provide that "it is the policy of this State that the people may obtain copies of their public records and public information free or at minimal cost unless otherwise specifically provided by law." The State's Supreme Court has made clear that any exception to the public records statute must be made by the General Assembly, rather than court-created exceptions. The General Assembly has made several statutory exceptions to the Public Records statute.

Under current law, autopsy reports, including photographs, video and audio recordings made in connection with the autopsy, are public records as defined in G.S. 132-1.

In addition, the law that authorizes the medical examiner to conduct an official autopsy, G.S. 130A-389, also provides that a "copy of the report shall be furnished to other persons upon request." Official autopsies are those authorized by a medical examiner or requested by a district attorney or superior court judge. Private autopsies are those requested and paid for by a decedent's next-of-kin and become part of the decedent's medical records and therefore are not public records.

BILL ANALYSIS:

Section 1:

- Exempts photographs or video or audio recordings of official autopsies from the definition of a "public record."
- Makes clear that the text of an autopsy report is still a public record and fully accessible to the public.

Section 2:

- Amends G.S. 130A-389, Autopsies, to provide that copies of autopsy reports shall be furnished to any person upon request, subject to the limitations on disclosure of photographs and recordings provided under new G.S. 130A-389.1 as provided in section 3 of the bill.

Section 3:

- (a) Authorizes the custodian to permit any member of the public to view original photographs or recordings at reasonable times and under reasonable supervision **but generally prohibits the furnishing of copies**. Specifies that the Chief Medical Examiner or the investigating medical examiner would be the custodian of all autopsy photographs or recordings.
- (b) Provides that the following public officials could obtain copies for official use but would be prohibited from disclosing them to the public except for the purpose of identifying the deceased:

- The Chief Medical Examiner or his designee
- The investigating medical examiner
- District attorney
- Superior court judge
- Law enforcement officials

➢ (c) Provides that after signing a statement acknowledging that they have received notice that unauthorized disclosure of autopsy recorded images is a crime, the following other persons could obtain copies but would be prohibited from disclosing them to the public unless authorized by law:

- Personal representative of the decedent's estate
- A person authorized by court order
- A physician licensed in the State in order to confer with attorneys or others with a bona fide professional need to use or understand forensic science
- After redacting all identifying information, another medical examiner, coroner, or physician, or their designee, for medical or scientific purposes or for teaching or training purposes.

➢ (d) Authorizes a person who is denied access to copies to commence a special proceeding under Article 33 of Chapter 1. A special proceeding is a simplified and expedited judicial proceeding heard by the clerk of superior court. Currently, matters such as probate, adoption and guardianship are handled by special proceeding. Upon a showing of good cause, the clerk could issue an order authorizing the person to copy or disclose the photos or recordings. The bill contains specific criteria for the court to consider in determining good cause. A person aggrieved by the decision of the clerk may appeal to the superior court for a de novo review.

➢ (e) Requires that a petitioner in such a special proceeding must give notice to the decedent's personal representative, if any, and to the next-of-kin.

➢ (f) Provides that the restrictions on disclosure do not apply to the use of autopsy photographs or video or audio recordings in criminal, civil or administrative proceedings. This provision allows autopsy photographs or video or audio recordings to be used as evidence in a criminal or civil trial or an administrative proceeding. Once these documents become part of a court record they become public records and cannot be exempted without violating the Constitution. However, in a specific case, the court or presiding officer may restrict the use of the recorded images.

➢ (g) Provides that the willful and knowing violation of the section is a Class 2 misdemeanor, which is punishable by 1 to 30 days of community punishment, assuming no prior convictions.

➢ (h) Provides that the willful and knowing removal or copying of the photographs with intent to steal is a Class 1 misdemeanor, which is punishable by 1 to 45 days of community punishment, assuming no prior convictions.

Section 4: The bill would be effective July 1, 2005, and apply to unauthorized disclosures made on or after that date.

Karen Cochrane-Brown, counsel to House Judiciary II, and Jennifer McGinnis, counsel to House Judiciary IV, substantially contributed to this summary.

H1543e2-SMRR

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1543

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

H1543-ARR-106 [v.1]

Date 12 August ,2005

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

Senator Nesbitt

moves to amend the bill on page 4, line 26,
by deleting the term "July" and substituting the term "December".

SIGNED Martin Nesbitt
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

HOUSE BILL 1543

Short Title:	Autopsy Photos not Public Record.	(Public)
Sponsors:	Representatives Ray; Culp, England, Folwell, Howard, Johnson, Justus, Pate, Setzer, and Steen.	
Referred to:	Judiciary IV.	

April 21, 2005

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT PHOTOGRAPHS AND VIDEO OR AUDIO RECORDINGS MADE PURSUANT TO AN AUTOPSY ARE NOT PUBLIC RECORDS AND TO ALLOW FOR LIMITED ACCESS TO RECORDED IMAGES OF AN AUTOPSY BY THE PUBLIC.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 132 of the General Statutes is amended by adding the following new section to read:

"**§ 132-1.8. Confidentiality of photographs and video or audio recordings made pursuant to autopsy.**

Except as otherwise provided in G.S. 130A-389.1, a photograph or video or audio recording of an official autopsy is not a public record as defined by G.S. 132-1. However, the text of an official autopsy report including any findings and interpretations prepared in accordance with G.S. 130A-389(a) is a public record and fully accessible by the public. For purposes of this section, an official autopsy is an autopsy performed pursuant to G.S. 130A-389(a)."

SECTION 2. G.S. 130A-389 reads as rewritten:

"**§ 130A-389. Autopsies.**

(a) If, in the opinion of the medical examiner investigating the case or of the Chief Medical Examiner, it is advisable and in the public interest that an autopsy or other study be made; or, if an autopsy or other study is requested by the district attorney of the county or by any superior court judge, an autopsy or other study shall be made by the Chief Medical Examiner or by a competent pathologist designated by the Chief Medical Examiner. A complete autopsy report of findings and interpretations, prepared on forms designated for the purpose, shall be submitted promptly to the Chief Medical Examiner. ~~Copies of the report shall be furnished the authorizing medical examiner, district attorney or superior court judge.A~~ Subject to the limitations of G.S. 130A-389.1 relating to photographs and video or audio recordings of an autopsy, a copy of the report

shall be furnished to ~~other persons~~ any person upon request. A fee for the autopsy or other study shall be paid by the State. However, if the deceased is a resident of the county in which the death or fatal injury occurred, that county shall pay the fee. The fee shall be one thousand dollars ($1,000).

(b) In deaths where the Chief Medical Examiner and the medical examiner investigating the case do not deem it advisable and in the public interest that an autopsy be performed, but the next-of-kin of the deceased requests that an autopsy be performed, the Chief Medical Examiner or a designated pathologist may perform the autopsy and the cost shall be paid by the next-of-kin.

(c) When the next-of-kin of a decedent whose death does not fall under G.S. 130A-383 or 130A-384 requests that an autopsy be performed, the Chief Medical Examiner or a designated pathologist may perform that autopsy and the cost shall be paid by the next-of-kin.

(d) The report of autopsies performed pursuant to subsections (b) and (c) shall be a part of the decedents' medical records and therefore not public records open to inspection."

SECTION 3. Chapter 130A of the General Statutes is amended by adding the following new section to read:

"**§ 130A-389.1. Photographs and video or audio recordings made pursuant to autopsy.**

(a) Any person may inspect and examine original photographs or video or audio recordings of an autopsy performed pursuant to G.S. 130A-389(a) at reasonable times and under reasonable supervision of the custodian of the photographs or recordings. Except as otherwise provided by this section, no custodian of the original recorded images shall furnish copies of photographs or video or audio recordings of an autopsy to the public.

(b) The following public officials may obtain copies of autopsy photographs or video or audio recordings for official use only. These public officials shall not disclose the photographs or video or audio recordings to the public except as provided by law:

(1) The Chief Medical Examiner or a pathologist designated by the Chief Medical Examiner.
(2) Investigating Medical Examiner.
(3) District attorney.
(4) Superior court judge.
(5) Law enforcement officials conducting an investigation relating to the death.

A public official authorized by this subsection to obtain copies may provide a copy of the photograph or videotape to another person for the sole purpose of aiding in the identification of the deceased through publication of the photograph or videotape.

(c) The following persons may obtain copies of autopsy photographs or video or audio recordings, but may not disclose the photographs or video or audio recordings to the public unless otherwise authorized by law:

(1) The personal representative of the estate of the deceased.

(2) A person authorized by an order issued in a special proceeding pursuant to subsection (d) of this section.

(3) After redacting all information identifying the decedent, including name, address, and social security number, and after anonymizing any physical recognition, a medical examiner, coroner, physician, or their designee who uses such material for:

a. Medical or scientific teaching or training purposes;

b. Teaching or training of law enforcement personnel;

c. Teaching or training of attorneys or others with a bona fide professional need to use or understand forensic science;

d. Conferring with medical or scientific experts in the field of forensic science; or

e. Publication in a scientific or medical journal or textbook.

A medical examiner, coroner, or physician who has in good faith complied with this subsection shall not be subject to any penalty under this section.

Any person who lawfully obtains a copy of a photograph or video or audio recording pursuant to this subsection shall be required to sign a statement acknowledging that they have received notice that any unauthorized disclosure of the photograph or video or audio recording is a Class I felony.

(d) A person who is denied access to copies of photographs or video or audio recordings, or who is restricted in the use the person may make of the photographs or video or audio recordings under this section, may commence a special proceeding in accordance with Article 33 of Chapter 1 of the General Statutes. Upon a showing of good cause, the clerk may issue an order authorizing the person to copy or disclose a photograph or video or audio recording of an autopsy and may prescribe any restrictions or stipulations that the clerk deems appropriate. In determining good cause, the clerk shall consider whether the disclosure is necessary for the public evaluation of governmental performance; the seriousness of the intrusion into the family's right to privacy and whether the disclosure is the least intrusive means available; and the availability of similar information in other public records, regardless of form. In all cases, the viewing, copying, listening to, or other handling of a photograph or video or audio recording of an autopsy shall be under the direct supervision of the Chief Medical Examiner or the Chief Medical Examiner's designee. A party aggrieved by an order of the clerk may appeal to the appropriate court in accordance with Article 27A of Chapter 1 of the General Statutes.

(e) The petitioner shall provide reasonable notice of the commencement of a special proceeding, as authorized by subsection (d) of this section, and reasonable notice of the opportunity to be present and heard at any hearing on the matter in accordance with Rule 5 of the Rules of Civil Procedure. The notice shall be provided to the personal representative of the estate of the deceased, if any, and to the surviving spouse of the deceased. If there is no surviving spouse, then the notice shall be provided to the deceased's parents, and if the deceased has no living parent, then to the adult child of the deceased or to the guardian or custodian of a minor child of the deceased.

(f) This section does not apply to the use of autopsy photographs or video or audio recordings in a criminal, civil, or administrative proceeding except that nothing in this section prohibits a court or presiding officer, upon good cause shown, from restricting or otherwise controlling the disclosure of an autopsy, crime scene, or similar photograph or video or audio recordings in the manner provided under this section.

(g) Any person who willfully and knowingly violates this section is guilty of a Class I felony, provided that more than one disclosure of the same item by the same person is not a separate offense.

(h) Any person not authorized by this section to obtain a copy of an autopsy photograph or video or audio recording, who knowingly and willfully removes or copies an autopsy photograph or video or audio recording with intent to steal the same, is guilty of a Class H felony."

SECTION 4. This act becomes effective July 1, 2005, and applies to offenses committed on or after that date. This act applies to all unauthorized disclosures of autopsy photographs or video or audio recordings that occur on or after the effective date, regardless of whether the autopsy was performed before or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 1409

Committee Substitute Favorable 5/23/05

PROPOSED SENATE COMMITTEE SUBSTITUTE H1409-PCS50491-RK-45

Short Title: Bail Bonds/Bond Source. (Public)

Sponsors:

Referred to:

April 21, 2005

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A JUDICIAL HEARING MAY BE CONDUCTED TO DETERMINE THE SOURCE OF MONEY OR PROPERTY FOR A SECURED APPEARANCE BOND, AND WHETHER IT WILL REASONABLY ASSURE THE DEFENDANT'S APPEARANCE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-539 reads as rewritten:

"**§ 15A-539. Modification upon motion of prosecutor.**

(a) A prosecutor may at any time apply to an appropriate district court judge or superior court judge for modification or revocation of an order of release under this Article.

(b) A district or superior court judge may, upon motion of the State or upon the judge's own motion, and for good cause shown, conduct a hearing into the source of money or property to be posted for any defendant who is about to be released on a secured appearance bond. The court may refuse to accept offered money or property as security for the appearance bond that, because of its source, will not reasonably assure the appearance of the person as required. The State shall have the burden of proving, by a preponderance of the evidence, the facts supporting the court's decision to refuse to accept the offered money or property as security for the bond.

(c) Nothing in this section shall affect the legal rights of any surety on a bail bond, bonding company, or a professional bondsman."

SECTION 2. This act becomes effective December 1, 2005, and applies to bond hearings conducted on or after that date, provided that if a pretrial release order has been entered prior to the effective date of this act, the court may not revoke or modify the order of release solely on the basis of this act.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 1409 DATE 8-12-05

S. B. No. _____ Amendment No. 1

(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
Sen.) Jenkins

1 moves to amend the bill on page 1, line 17

2 ( ) WHICH CHANGES THE TITLE

3 by inserting the following at the end of

4 the sentence:

5

6 "The State shall have the burden of

7 proving, by a preponderance of the evidence,

8 the facts supporting the court's decision

9 to refuse to accept the offered money

10 or property as security for the

11 appearance bond."

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SIGNED _____

ADOPTED ✓ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 1409 DATE 12 Aug

S. B. No. _____ Amendment No. 2

(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.) R.C. Soles

Sen.)

moves to amend the bill on page 1, lines 14 and 15

( ) WHICH CHANGES THE TITLE

by rewriting the lines to read:

"money or property to be posted for any defendant who is about to be released on a secured appearance bond. The court may refuse to accept"

SIGNED _____

ADOPTED ✓ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

HOUSE BILL 1409:
Bail Bonds/Bond Source

BILL ANALYSIS

Committee:	Senate Judiciary I	**Date:**	August 10, 2005
Introduced by:	Reps. Dollar, Jones	**Summary by:**	Hal Pell
Version:	Second Edition		Committee Co-Counsel

SUMMARY: House Bill 1409 amends the State bail laws to authorize judges to conduct hearings on the source of money or property posted for a secured appearance bond, and refuse the bond if the money or property was not derived from a lawful source or will not assure appearance.

BILL ANALYSIS: House Bill 1409 amends the current State law on bail bonds to:

- Authorize a judicial officer, upon motion of the State or upon the judicial officer's own motion, and for good cause shown, to conduct a hearing on the source of money or property posted (or to be posted) for a secured appearance bond.
- Authorize the judicial officer to refuse the bond if the judicial officer finds that the money or property posted (or proposed to be posted) for bond was not derived from a lawful source or will not reasonably assure the appearance of the person required.

SECTION 2. This act becomes effective December 1, 2005, and applies to bond hearings conducted on or after that date, provided that if a pretrial release order has been entered prior to the effective date of this act, the court may not revoke or modify the order of release solely on the basis of this act.

BACKGROUND: Washington DC and several states have similar laws: California, Florida, Illinois, Indiana, New Jersey, Pennsylvania, and Tennessee. The federal law relating to release of a defendant pending bail, includes the following consideration for the court:

> In considering the conditions of release described in . . . this section, the judicial officer may upon his own motion, or shall upon the motion of the Government, conduct an inquiry into the source of the property to be designated for potential forfeiture or offered as collateral to secure a bond, and shall decline to accept the designation, or the use as collateral, of property that, because of its source, will not reasonably assure the appearance of the person as required. 18 U.S.C. §3142(g)(4).

Summary contribution by Giles Perry, Staff Attorney.

H1409e2-SMRK

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 1

HOUSE BILL 1409

Short Title: Bail Bonds/Bond Source. (Public)

Sponsors: Representatives Dollar and Jones (Primary Sponsors).

Referred to: Judiciary III.

April 21, 2005

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A JUDICIAL HEARING MAY BE CONDUCTED TO DETERMINE THE SOURCE OF MONEY OR PROPERTY FOR A SECURED APPEARANCE BOND AND THAT THE BOND MAY BE REFUSED IF OBTAINED AS A RESULT OF A VIOLATION OF STATE OR FEDERAL LAW.

The General Assembly of North Carolina enacts:

SECTION 1. Article 26 of Chapter 15A is amended by adding a new section to read:

"**§ 15A-534.6. Source of bail.**

A judicial official may, upon motion of a party or upon his own motion, and with good cause shown, conduct a hearing into the source of money or property posted for any defendant who has been released or is about to be released on a secured appearance bond.

If money or property posted for the appearance bond was obtained as a result of a violation of the laws of this State or of the United States, the judicial official may refuse to accept the appearance bond. The defendant has the burden of production of evidence on the issue of whether the money or property was obtained as a result of such violation of law. The State has the burden of persuasion by the preponderance of the evidence on the issue, but the judicial official may infer that the money or property was obtained as a result of a violation of the laws of this State or of the United States if the defendant fails to produce credible evidence of the source of the money or property."

SECTION 2. This act becomes effective December 1, 2005, and applies to bond hearings conducted on or after that date, provided that if a pretrial release order has been entered prior to the effective date of this act, the court may not revoke or modify the order of release solely on the basis of this act.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 2

HOUSE BILL 1115

Committee Substitute Favorable 5/2/05

Short Title: Election Administration Amendments. (Public)

Sponsors:

Referred to:

April 5, 2005

A BILL TO BE ENTITLED

AN ACT TO ALLOW POLITICAL PARTIES TO USE "RUNNERS" TO PICK UP VOTER LISTS FROM POLLS; TO PROHIBIT A CANDIDATE FROM BEING AN OBSERVER OR RUNNER AT THE POLLS; TO AUTHORIZE THE EXECUTIVE DIRECTOR OF THE STATE BOARD OF ELECTIONS TO PERMIT DIFFERENT VOTING SYSTEMS IN THE SAME PRECINCT; TO ALLOW THE CHANGING OF REGISTERED VOTERS BASED ON ADJUSTED COUNTY LINE; TO CHANGE THE DEADLINE FOR FILING A PROTEST FROM SIX O'CLOCK P.M. TO FIVE O'CLOCK P.M.; TO PERMIT THE SAME KIND OF VOTER ASSISTANCE IN ONE-STOP SITES AS AT VOTING PLACES ON ELECTION DAY; TO CHANGE THE REQUIREMENT FOR A STATEWIDE UNAFFILIATED CANDIDATE TO CONFORM TO A FEDERAL COURT DECISION; TO PROHIBIT PIECE PAYMENT FOR VOTER REGISTRATION DRIVES; TO EXPRESSLY PROVIDE THAT PRECINCT TRANSFER VOTERS AT ONE-STOP SITES NEED NOT VOTE PROVISIONAL BALLOTS; TO DELETE THE REQUIREMENT THAT ONE-STOP VOTERS BE INSTRUCTED IN HOW TO VOTE MAIL ABSENTEE BALLOTS; TO FIX THE SALARY ON WHICH A FILING FEE FOR AN OFFICE IS BASED; TO REMOVE THE OUTDATED REFERENCE IN THE FILING FEE STATUTE TO OFFICES "COMPENSATED ENTIRELY BY FEES"; TO ALLOW FOR THE CANCELLATION OF A VOTER'S REGISTRATION IN A FORMER COUNTY WHEN THE VOTER REGISTERS IN A NEW COUNTY; TO UPDATE AND MAKE MORE TECHNOLOGY-NEUTRAL THE LANGUAGE IN THE STATUTE PROVIDING FOR ACCESS TO VOTER REGISTRATION DATA; TO EXTEND FOR THREE DAYS THE COUNTY CANVASS AFTER A GENERAL ELECTION IN NOVEMBER OF AN EVEN-NUMBERED YEAR AND CHANGE OTHER RELATED DATES; TO CLARIFY HOW WINNERS OF ELECTIONS SHALL BE DETERMINED; AND TO EXPRESSLY ALLOW ELECTRONIC

POLLBOOKS, AS RECOMMENDED BY THE HOUSE COMMITTEE ON ELECTION LAWS AND CAMPAIGN FINANCE REFORM.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 163-45 reads as rewritten:

"**§ 163-45. Observers; appointment.**

The ~~chairman~~ chair of each political party in the county shall have the right to designate two observers to attend each voting place at each primary and election and such observers may, at the option of the designating party ~~chairman,~~ chair, be relieved during the day of the primary or election after serving no less than four hours and provided the list required by this section to be filed by each ~~chairman~~ chair contains the names of all persons authorized to represent such ~~chairman's~~chair's political party. Not more than two observers from the same political party shall be permitted in the voting enclosure at any time. This right shall not extend to the ~~chairman~~ chair of a political party during a primary unless that party is participating in the primary. In any election in which an unaffiliated candidate is named on the ballot, the candidate or the candidate's campaign manager shall have the right to appoint two observers for each voting place consistent with the provisions specified herein. Persons appointed as observers must be registered voters of the county for which appointed and must have good moral character. No person who is a candidate on the ballot in a primary or election may serve as an observer or runner in that primary or election. Observers shall take no oath of office.

Individuals authorized to appoint observers must submit in writing to the chief judge of each precinct a signed list of the observers appointed for that precinct. Individuals authorized to appoint observers must, prior to 10:00 A.M. on the fifth day prior to any primary or general election, submit in writing to the ~~chairman~~ chair of the county board of elections two signed copies of a list of observers appointed by them, designating the precinct for which each observer is appointed. Before the opening of the voting place on the day of a primary or general election, the ~~chairman~~ chair shall deliver one copy of the list to the chief judge for each affected precinct. ~~He~~ The chair shall retain the other copy. The ~~chairman,~~ chair, or the chief judge and judges for each affected precinct, may for good cause reject any appointee and require that another be appointed. The names of any persons appointed in place of those persons rejected shall be furnished in writing to the chief judge of each affected precinct no later than the time for opening the voting place on the day of any primary or general election, either by the ~~chairman~~ chair of the county board of elections or the person making the substitute appointment.

An observer shall do no electioneering at the voting place, and ~~he~~ shall in no manner impede the voting process or interfere or communicate with or observe any voter in casting ~~his~~ a ballot, but, subject to these restrictions, the chief judge and judges of elections shall permit ~~him~~ the observer to make such observation and take such notes as ~~he~~ the observer may desire.

Whether or not the observer attends to the polls for the requisite time provided by this section, each observer shall be entitled to obtain at times specified by the State Board of Elections, but not less than three times during election day with the spacing not less than one hour apart, a list of the persons who have voted in the precinct so far in

that election day. Counties that use an "authorization to vote document" instead of poll books may comply with the requirement in the previous sentence by permitting each observer to inspect election records so that the observer may create a list of persons who have voted in the precinct so far that election day; each observer shall be entitled to make the inspection at times specified by the State Board of Elections, but not less than three times during election day with the spacing not less than one hour apart. Instead of having an observer receive the voting list, the county party chair may send a runner to do so. The runner may be the precinct party chair or any person named by the county party chair. That party chair must notify the chair of the county board of elections or the board chair's designee of the names of all runners to be used in each precinct before the runner goes to the precinct. The runner may receive a voter list from the precinct on the same schedule as an observer. Whether obtained by observer or runner, each party is entitled to only one voter list at each of the scheduled times. No runner may enter the voting enclosure except when necessary to announce that runner's presence. The runner must leave immediately after being provided with the list."

SECTION 1.(b) G.S. 163-166.3 reads as rewritten:

"**§ 163-166.3. Limited access to the voting enclosure.**

During the time allowed for voting in the voting place, only the following persons may enter the voting enclosure:

(1) An election official.

(2) An observer appointed pursuant to G.S. 163-45.

(2a) A runner appointed pursuant to G.S. 163-45, but only to the extent necessary to announce that runner's presence and to receive the voter list as provided in G.S. 163-45.

(3) A person seeking to vote in that voting place on that day but only while in the process of voting or seeking to vote.

(4) A voter in that precinct while entering or explaining a challenge pursuant to G.S. 163-87 or G.S. 163-88.

(5) A person authorized under G.S. 163-166.8 to assist a voter but, except as provided in subdivision (6) of this section, only while assisting that voter.

(6) Minor children of the voter under the age of 18, or minor children under the age of 18 in the care of the voter, but only while accompanying the voter and while under the control of the voter.

(7) Persons conducting or participating in a simulated election within the voting place or voting enclosure, if that simulated election is approved by the county board of elections.

(8) Any other person determined by election officials to have an urgent need to enter the voting enclosure but only to the extent necessary to address that need."

SECTION 2. G.S. 163-165.10 reads as rewritten:

"**§ 163-165.10. Adequacy of voting system for each precinct.**

The county board of elections shall make available for each precinct voting place an adequate quantity of official ballots or ~~equipment so that all voters qualified to vote at~~

~~the precinct may do so.~~ equipment. When the board of county commissioners has decided to adopt and purchase or lease a voting system for voting places under the provisions of G.S. 165-165.8, the board of county commissioners shall, as soon as practical, provide for each of those voting places sufficient equipment of the approved voting system in complete working order. If it is impractical to furnish each voting place with the equipment of the approved voting system, that which has been obtained may be placed in voting places chosen by the county board of elections. In that case, the county board of elections shall choose the voting places and allocate the equipment in a way that as nearly as practicable provides equal access to the voting system for each voter. The county board of elections shall appoint as many voting system custodians as may be necessary for the proper preparation of the system for each election and for its maintenance, storage, and care. The Executive Director of the State Board of Elections may permit a county board of elections to provide more than one type of voting system in a precinct, but only upon a finding that doing so is necessary to comply with federal or State law."

SECTION 3.(a) Article 7A of Chapter 163 of the General Statutes is amended by adding a new section to read:

"**§ 163-82.15A. Administrative change of registration when county line is adjusted.**

When a boundary between counties is established by legislation or under G.S. 153A-18, the Executive Director shall direct the county boards of elections involved to administratively change the voter registration of any voter whose county of residence is altered by the establishment of the boundary. The voter shall not be required to submit a new application to register, and the provisions of G.S. 163-57 shall apply to the determination of residency. The Executive Director shall prescribe a method of notifying the voter of the change of county registration, the correct precinct, and other relevant information."

SECTION 3.(b) G.S. 163-57 reads as rewritten:

"**§ 163-57. Residence defined for registration and voting.**

All election officials in determining the residence of a person offering to register or vote, shall be governed by the following rules, so far as they may apply:

(1) That place shall be considered the residence of a person in which that person's habitation is fixed, and to which, whenever that person is absent, has the intention of returning.

a. In the event that a person's habitation is divided by a State, county, municipal, precinct, ward, or other election district, then the location of the bedroom or usual sleeping area for that person with respect to the location of the boundary line at issue shall be controlling as the residency of that person.

b. If the person disputes the determination of residency, the person may request a hearing before the county board of elections making the determination of residency. The procedures for notice of hearing and the conduct of the hearing shall be as provided in G.S. 163-86. The presentation of an accurate and current determination of a person's residence and the boundary

line at issue by map or other means available shall constitute prima facie evidence of the geographic location of the residence of that person.

(2) A person shall not be considered to have lost that person's residence if that person leaves home and goes into another ~~state or county~~state, county, municipality, precinct, ward, or other election district of this State, for temporary purposes only, with the intention of returning.

(3) A person shall not be considered to have gained a residence in any ~~county~~ county, municipality, precinct, ward, or other election district of this State, into which that person comes for temporary purposes only, without the intention of making that ~~county~~ county, municipality, precinct, ward, or other election district a permanent place of abode.

(4) If a person removes to another ~~state or county~~ state, county, municipality, precinct, ward, or other election district within this State, with the intention of making that ~~state or county~~ state, county, municipality, precinct, ward, or other election district a permanent residence, that person shall be considered to have lost residence in the ~~state or county~~ state, county, municipality, precinct, ward, or other election district from which that person has removed.

(5) If a person removes to another ~~state or county~~ state, county, municipality, precinct, ward, or other election district within this State, with the intention of remaining there an indefinite time and making that ~~state or county~~ state, county, municipality, precinct, ward, or other election district that person's place of residence, that person shall be considered to have lost that person's place of residence in this ~~State or the county~~ State, county, municipality, precinct, ward, or other election district from which that person has removed, notwithstanding that person may entertain an intention to return at some future time.

(6) If a person goes into another ~~state or county~~ state, county, municipality, precinct, ward, or other election district, or into the District of Columbia, and while there exercises the right of a citizen by voting in an election, that person shall be considered to have lost residence in this ~~State or county.~~ State, county, municipality, precinct, ward, or other election district.

(7) School teachers who remove to a ~~county~~ county, municipality, precinct, ward, or other election district for the purpose of teaching in the schools of that county temporarily and with the intention or expectation of returning during vacation periods to live in the ~~county~~ state, county, municipality, precinct, ward, or other election district in which their parents or other relatives reside, and who do not have the intention of becoming residents of the ~~county~~ state, county, municipality, precinct, ward, or other election district to which they have moved to teach, for purposes of registration and voting shall be considered residents of the ~~county~~ state, county, municipality, precinct,

ward, or other election district in which their parents or other relatives reside.

(8) If a person removes to the District of Columbia or other federal territory to engage in the government service, that person shall not be considered to have lost residence in this State during the period of such service unless that person votes in the place to which the person removed, and the place at which that person resided at the time of that person's removal shall be considered and held to be the place of residence.

(9) If a person removes to a ~~county~~ county, municipality, precinct, ward, or other election district to engage in the service of the State government, that person shall not be considered to have lost residence in the ~~county~~ county, municipality, precinct, ward, or other election district from which that person removed, unless that person votes in the place to which the person removed, and the place at which that person resided at the time of that person's removal shall be considered and held to be the place of residence.

(9a) The establishment of a secondary residence by an elected official outside the district of the elected official shall not constitute prima facie evidence of a change of residence.

(10) For the purpose of voting a spouse shall be eligible to establish a separate domicile.

(11) So long as a student intends to make the student's home in the community where the student is physically present for the purpose of attending school while the student is attending school and has no intent to return to the student's former home after graduation, the student may claim the college community as the student's domicile. The student need not also intend to stay in the college community beyond graduation in order to establish domicile there. This subdivision is intended to codify the case law."

SECTION 4. G.S. 163-182.9(b)(4) reads as rewritten:

"(4) The timing for filing a protest shall be as follows:

a. If the protest concerns the manner in which votes were counted or results tabulated, the protest shall be filed before the beginning of the county board of election's canvass meeting.

b. If the protest concerns the manner in which votes were counted or results tabulated and the protest states good cause for delay in filing, the protest may be filed until ~~6:00~~ 5:00 P.M. on the second business day after the county board of elections has completed its canvass and declared the results.

c. If the protest concerns an irregularity other than vote counting or result tabulation, the protest shall be filed no later than ~~6:00~~ 5:00 P.M. on the second business day after the county board has completed its canvass and declared the results.

d. If the protest concerns an irregularity on a matter other than vote counting or result tabulation and the protest is filed before election day, the protest proceedings shall be stayed, unless a party defending against the protest moves otherwise, until after election day if any one of the following conditions exists:

1. The ballot has been printed.
2. The voter registration deadline for that election has passed.
3. Any of the proceedings will occur within 30 days before election day."

SECTION 5.(a) G.S. 163-227.2(e) reads as rewritten:

"(e) The voter shall vote that voter's absentee ballot in a voting booth in the office of the county board of elections, and the county board of elections shall provide a voting booth for that purpose, provided however, that the county board of elections may in the alternative provide a private room for the voter adjacent to the office of the board, in which case the voter shall vote that voter's absentee ballot in that room. ~~If the voter needs assistance in getting to and from the voting booth and in preparing and marking that voter's ballots or if the voter is a blind voter, only a member of the county board of elections, the director of elections, an employee of the board of elections authorized by the board, a near relative of the voter or the voter's verifiable legal guardian shall be entitled to assist the voter.~~ A voter at a one-stop site shall be entitled to the same assistance as a voter at a voting place on election day under G.S. 163-166.8. The State Board of Elections shall, where appropriate, adapt the rules it adopts under G.S. 163-166.8 to one-stop voting."

SECTION 5.(b) G.S. 163-226.3(a) reads as rewritten:

"(a) Any person who shall, in connection with absentee voting in any election held in this State, do any of the acts or things declared in this section to be unlawful, shall be guilty of a Class I felony. It shall be unlawful:

(1) For any person except the voter's near relative or the voter's verifiable legal guardian to assist the voter to vote an absentee ballot when the voter is voting an absentee ballot other than under the procedure described in G.S. 163-227.2; provided that if there is not a near relative or legal guardian available to assist the voter, the voter may request some other person to give assistance;

(2) For any person to assist a voter to vote an absentee ballot under the absentee voting procedure authorized by G.S. 163-227.2 except ~~a member of the county board of elections, the director of elections, an employee of the board authorized by the board, the voter's near relative or the voter's verifiable legal guardian;~~as provided in that section;

(3) For a voter who votes an absentee ballot under the procedures authorized by G.S. 163-227.2 to vote that voter's absentee ballot outside of the voting booth or private room provided to the voter for that purpose in or adjacent to the office of the county board of elections or at the additional site provided by G.S. 163-227.2(f1), or to

receive assistance ~~in getting to and from the voting booth or private room and in preparing and marking that voter's ballots from any person other than a member of the county board of elections, the director of elections, an employee of the board of elections authorized by the board, a near relative of the voter or the voter's verifiable legal guardian;~~except as provided in G.S. 163-227.2;

(4) For any owner, manager, director, employee, or other person, other than the voter's near relative or verifiable legal guardian, to make a written request pursuant to G.S. 163-230.1 or an application on behalf of a registered voter who is a patient in any hospital, clinic, nursing home or rest home in this State or for any owner, manager, director, employee, or other person other than the voter's near relative or verifiable legal guardian, to mark the voter's absentee ballot or assist such a voter in marking an absentee ballot;

(5) Repealed by Session Laws 1987, c. 583, s. 8.

(6) For any person to take into that person's possession for delivery to a voter or for return to a county board of elections the absentee ballot of any voter, provided, however, that this prohibition shall not apply to a voter's near relative or the voter's verifiable legal guardian;

(7) Except as provided in subsections (1), (2), (3) and (4) of this section, G.S. 163-231(a), G.S. 163-250(a), and G.S. 163-227.2(e), for any voter to permit another person to assist the voter in marking that voter's absentee ballot, to be in the voter's presence when a voter votes an absentee ballot, or to observe the voter mark that voter's absentee ballot."

SECTION 6. G.S. 163-122(a) reads as rewritten:

"(a) Procedure for Having Name Printed on Ballot as Unaffiliated Candidate. – Any qualified voter who seeks to have ~~his~~ that voter's name printed on the general election ballot as an unaffiliated candidate shall:

(1) If the office is a statewide office, file written petitions with the State Board of Elections supporting ~~his~~ candidacy for a specified office. These petitions must be filed with the State Board of Elections on or before 12:00 noon on the last Friday in June preceding the general election and must be signed by qualified voters of the State equal in number to two percent (2%) of the total number of ~~registered voters in the State as reflected by the most recent statistical report issued by the State Board of Elections.~~ voters who voted in the most recent general election for Governor. Also the petition must be signed by at least 200 registered voters in each of four congressional districts in North Carolina. No later than 5:00 p.m. on the fifteenth day preceding the date the petitions are due to be filed with the State Board of Elections, each petition shall be presented to the ~~chairman~~ chair of the board of elections of the county in which the signatures were obtained. Provided the petitions are timely submitted, the ~~chairman~~ chair shall

examine the names on the petition and place a check mark on the petition by the name of each signer who is qualified and registered to vote in ~~his~~ that county and shall attach to the petition ~~his~~ the petitioner's signed certificate. Said certificates shall state that the signatures on the petition have been checked against the registration records and shall indicate the number of signers to be qualified and registered to vote in ~~his~~ that county. The ~~chairman~~ chair shall return each petition, together with the certificate required in this section, to the person who presented it ~~to him~~ for checking. Verification by the ~~chairman~~ chair of the county board of elections shall be completed within two weeks from the date such petitions are presented."

SECTION 7.(a) Article 7A of Chapter 163 of the General Statutes is amended by adding a new section to read:

"**§ 163-82.25A. Piece payment in voter registration drives prohibited.**

No person who employs or contracts with another person to register voters or assist or encourage voters to fill out voter registration forms shall pay that person per voter registration application completed. No person shall accept payment per voter registration application. A violation of this section is a Class 2 misdemeanor."

SECTION 7.(b) G.S. 163-274 is amended by adding a new subdivision to read:

"(14) For any person to pay or accept payment per voter registration application completed in violation of G.S. 163-82.25A."

SECTION 8.(a) G.S. 163-227.2 is amended by adding a new subsection to read:

"(e2) A voter who has moved within the county more than 30 days before election day but has not reported the move to the board of elections shall not be required on that account to vote a provisional ballot at the one-stop site, as long as the one-stop site has available all the information necessary to determine whether a voter is registered to vote in the county and which ballot the voter is eligible to vote based on the voter's proper residence address. The voter with that kind of unreported move shall be allowed to vote the same kind of absentee ballot as other one-stop voters."

SECTION 8.(b) G.S. 163-166.11 is amended by adding a new subdivision to read:

"(2a) A voter who has moved within the county more than 30 days before election day but has not reported the move to the board of elections shall not be required on that account to vote a provisional ballot at the one-stop site, as long as the one-stop site has available all the information necessary to determine whether a voter is registered to vote in the county and which ballot the voter is eligible to vote based on the voter's proper residence address. The voter with that kind of unreported move shall be allowed to vote the same kind of absentee ballot as other one-stop voters as provided in G.S. 163-227.2(e2)."

SECTION 9. G.S. 163-227.2(c) reads as rewritten:

"(c) If the application is properly filled out, the authorized member or employee shall enter the voter's name in the register of absentee requests, applications, and ballots ~~issued; shall furnish the voter with the instruction sheets called for by G.S. 163-229(c); and~~ issued and shall furnish the voter with the ballots to which the application for absentee ballots applies. The voter thereupon shall vote in accordance with subsection (e) of this section.

All actions required by this subsection shall be performed in the office of the board of elections, except that the voting may take place in an adjacent room as provided by subsection (e) of this section. The application under this subsection shall be signed in the presence of the ~~chairman~~chair, member, director of elections of the board, or full-time employee, authorized by the board who shall sign the application and certificate as the witness and indicate the official title held by him or her. Notwithstanding G.S. 163-231(a), in the case of this subsection, only one witness shall be required on the certificate."

SECTION 10. G.S. 163-107(a) reads as rewritten:

"(a) Fee Schedule. – At the time of filing a notice of candidacy, each candidate shall pay to the board of elections with which he files under the provisions of G.S. 163-106 a filing fee for the office he seeks in the amount specified in the following tabulation:

Office Sought	**Amount of Filing Fee**
Governor	One percent (1%) of the annual salary of the office sought
Lieutenant Governor	One percent (1%) of the annual salary of the office sought
All State executive offices	One percent (1%) of the annual salary of the office sought
All District Attorneys of the General Court of Justice	One percent (1%) of the annual salary of the office sought
United States Senator	One percent (1%) of the annual salary of the office sought
Members of the United States House of Representatives	One percent (1%) of the annual salary of the office sought
State Senator	One percent (1%) of the annual salary of the office sought
Member of the State House of Representatives	One percent (1%) of the annual salary of the office sought
All county offices not compensated by fees	One percent (1%) of the annual salary of the office sought
~~County commissioners, if compensated entirely by fees~~	~~Ten dollars ($10.00)~~
~~Members of county board of education, if compensated entirely by fees~~	~~Five dollars ($5.00)~~

~~Sheriff, if compensated entirely by fees~~	~~Forty dollars ($40.00), plus one percent (1%) of the income of the office above four thousand dollars ($4,000)~~
~~Clerk of superior court, if compensated entirely by fees~~	~~Forty dollars ($40.00), plus one percent (1%) of the income of the office above four thousand dollars ($4,000)~~
~~Register of deeds, if compensated entirely by fees~~	~~Forty dollars ($40.00), plus one percent (1%) of the income of the office above four thousand dollars ($4,000)~~
~~Any other county office, if compensated entirely by fees~~	~~Twenty dollars ($20.00), plus one percent (1%) of the income of the office above two thousand dollars ($2,000)~~
All county offices compensated partly by salary and partly by fees	One percent (1%) of the first annual salary to be received (exclusive of fees)

The salary of any office that is the basis for calculating the filing fee is the starting salary for the office, rather than the salary received by the incumbent, if different. If no starting salary can be determined for the office, then the salary used for calculation is the salary of the incumbent, as of January 1 of the election year."

SECTION 11. G.S. 163-82.9 reads as rewritten:

"**§ 163-82.9. Cancellation of prior registration.**

If an applicant indicates on an application form described in G.S. 163-82.3 a current registration to vote in any other county, municipality, or state, the county board of elections, upon registering the person to vote, shall send a notice to the appropriate officials in the other county, municipality, or state and shall ask them to cancel the person's voter registration there. If an applicant completes an application form described in G.S. 163-82.3 except that the applicant neglects to complete the portion of the form that authorizes cancellation of previous registration in another county, the State Board of Elections shall notify the county board of elections in the previous county of the new registration, and the board in the previous county shall cancel the registration. The State Board of Elections shall adopt rules to prevent disenfranchisement in the implementation of this section. Those rules shall include adequate notice to the person whose previous registration is to be cancelled."

SECTION 12.(a) G.S. 163-82.10(b) reads as rewritten:

"(b) Access to Registration Records. – Upon request by that person, the county board of elections shall provide to any person a list of the registered voters of the county or of any precinct or precincts in the county. The county board may furnish selective lists according to party affiliation, gender, race, date of registration, precinct name, precinct identification code, congressional district, senate district, representative district, and, where applicable, county commissioner district, city governing board district, fire district, soil and water conservation district, and voter history including primary, general, and special districts, or any other reasonable category. No list produced under this section shall contain a voter's date of birth. However, lists may be produced

according to voters' ages. ~~The~~ Both the following shall apply ~~if a county maintains or has its voter registration list maintained on a computer:~~to all counties:

(1) ~~In addition to the typed, mimeographed, photocopied, computer printout or label lists, the~~ The county board of elections shall make the voter registration information available to the public on electronic or magnetic medium. ~~Magnetic medium for the purpose of this section shall consist of nine track tape or 3.5 inch diskettes and 5.25 inch diskettes readily accessible using MS-DOS or Microsoft Windows operating systems or both such systems; and~~ For purposes of this section, "electronic or magnetic medium" means any of the media in use by the State Board of Elections at the time of the request.

(2) Information requested on electronic or magnetic medium shall contain the following: voter name, county voter identification number, residential address, mailing address, sex, race, age but not date of birth, party affiliation, precinct name, precinct identification code, congressional district, senate district, representative district, and, where applicable, county commissioner district, city governing board district, fire district, soil and water conservation district, and any other district information available, and voter history including primary, general, and special districts, or any other reasonable ~~category;~~category.

~~provided that this subsection shall not require a county to computerize its lists, but if a county does computerize it shall comply with subdivisions (1) and (2) of this subsection.~~ The county board shall require each person to whom a list is furnished to reimburse the board for the actual cost incurred in preparing it, except as provided in subsection (c) of this section. Actual cost for the purpose of this section shall not include the cost of any equipment or any imputed overhead expenses. ~~It may include the actual cost of paper, labels, and magnetic medium. The purchaser at its discretion may provide the magnetic medium.~~ When furnishing information under this subsection to a purchaser on a magnetic medium provided by the county board or the purchaser, the county board may impose a service charge of up to twenty-five dollars ($25.00)."

SECTION 12.(b) G.S. 163-82.10(c) reads as rewritten:

"(c) Free Lists. ~~Free lists of all registered voters in the county shall be provided in the following cases:~~

~~(1)~~ A county board ~~that maintains voter records on computer~~ shall provide, upon written request, one free list ~~to:~~of all the registered voters in the county to

~~a.~~ ~~The~~ the State chair of each political ~~party;~~ party and

~~b.~~ ~~The~~to the county chair of each political party once in every odd-numbered year, once during the first six calendar months of every even-numbered year, and once during the latter six calendar months of every even-numbered year.

~~(2) A county board that does not maintain voter records on computer shall provide one free paper list every two years to the county chair of each political party.~~

Each free list shall include the name, address, gender, age but not date of birth, race, political affiliation, voting history, precinct, precinct name, precinct identification code, congressional district, senate district, representative district, and, where applicable, county commissioner district, city governing board district, fire district, soil and water conservation district, and voter history including primary, general, and special districts of each registered voter. ~~The free paper list to the county party chairs shall group voters by precinct.~~ All free lists shall be provided as soon as practicable on one of any electronic or magnetic media, but no later than 30 days after written request. Each State party chair shall provide ~~the discs or tapes~~ the information on the media received from the county boards or a copy of the media containing the data itself to candidates of that party who request the ~~discs or tapes~~ data in writing. ~~Each State party chair shall return discs and tapes to the county boards within 30 days after receiving them.~~ As used in this section, "political party" means a political party as defined in G.S. 163-96."

SECTION 13.(a) G.S. 163-182.5(b) reads as rewritten:

"(b) Canvassing by County Board of Elections. – The county board of elections shall meet at 11:00 A.M. on the ~~seventh~~ tenth day after every election held on the same day as a general election in November of the even-numbered year, and at 11:00 A.M. on the seventh day after every other election, to complete the canvass of votes cast and to authenticate the count in every ballot item in the county by determining that the votes have been counted and tabulated correctly. If, despite due diligence by election officials, the initial counting of all the votes has not been completed by that time, the county board may hold the canvass meeting a reasonable time thereafter. The canvass meeting shall be at the county board of elections office, unless the county board, by unanimous vote of all its members, designates another site within the county. The county board shall examine the returns from precincts, from absentee official ballots, and from provisional official ballots and shall conduct the canvass."

SECTION 13.(b) G.S. 163-182.7 reads as rewritten:

"**§ 163-182.7. Ordering recounts.**

(a) Discretionary Recounts. – The county board of elections or the State Board of Elections may order a recount when necessary to complete the canvass in an election. The county board may not order a recount where the State Board of Elections has already denied a recount to the petitioner.

(b) Mandatory Recounts for Ballot Items Within the Jurisdiction of the County Board of Elections. – In a ballot item within the jurisdiction of the county board of elections, a candidate shall have the right to demand a recount of the votes if the difference between the votes for that candidate and the votes for a prevailing candidate is not more than one percent (1%) of the total votes cast in the ballot item, or in the case of a multiseat ballot item not more than one percent (1%) of the votes cast for those two candidates. The demand for a recount must be made in writing and must be received by the county board of elections by 5:00 P.M. on the first business day after the canvass. The recount shall be conducted under the supervision of the county board of elections.

(c) Mandatory Recounts for Ballot Items Within the Jurisdiction of the State Board of Elections. – In a ballot item within the jurisdiction of the State Board of Elections, a candidate shall have the right to demand a recount of the votes if the difference between the votes for that candidate and the votes for a prevailing candidate are not more than the following:

(1) For a nonstatewide ballot item, one percent (1%) of the total votes cast in the ballot item, or in the case of a multiseat ballot item, one percent (1%) of the votes cast for those two candidates.

(2) For a statewide ballot item, one-half of one percent (0.5%) of the votes cast in the ballot item, or in the case of a multiseat ballot item, one-half of one percent (0.5%) of the votes cast for those two candidates, or 10,000 votes, whichever is less.

The demand for a recount must be in writing and must be received by the State Board of Elections by noon on the second ~~Thursday after the election.~~ business day after the county canvass. If ~~on that Thursday~~ at that time the available returns show a candidate not entitled to a mandatory recount, but the Executive Director determines subsequently that the margin is within the threshold set out in this subsection, the Executive Director shall notify the eligible candidate immediately and that candidate shall be entitled to a recount if that candidate so demands within 48 hours of notice. The recount shall be conducted under the supervision of the State Board of Elections.

(d) Rules for Conducting Recounts. – The State Board of Elections shall promulgate rules for conducting recounts. Those rules shall be subject to the following guidelines:

(1) The rules shall specify, with respect to each type of voting system, when and to what extent the recount shall consist of machine recounts and hand-to-eye recounts.

(2) The rules shall provide guidance in interpretation of the voter's choice.

(3) The rules shall specify how the goals of multipartisan participation, opportunity for public observation, and good order shall be balanced. "

SECTION 14. G.S. 163-166.7(c) reads as rewritten:

"(c) The State Board of Elections shall promulgate rules for the process of voting. Those rules shall emphasize the appearance as well as the reality of dignity, good order, impartiality, and the convenience and privacy of the voter. Those rules, at a minimum, shall include procedures to ensure that all the following occur:

(1) The voting system remains secure throughout the period voting is being conducted.

(2) Only properly voted official ballots are introduced into the voting system.

(3) Except as provided by G.S. 163-166.9, no official ballots leave the voting enclosure during the time voting is being conducted there.

(4) All improperly voted official ballots are returned to the precinct officials and marked as spoiled.

(5) Voters leave the voting place promptly after voting.

(6) Voters not clearly eligible to vote in the precinct but who seek to vote there are given proper assistance in voting a provisional official ballot or guidance to another voting place where they are eligible to vote.

(7) Information gleaned through the voting process that would be helpful to the accurate maintenance of the voter registration records is recorded and delivered to the county board of elections.

(8) The registration records are kept secure. The State Board of Elections shall permit the use of electronic registration records in the voting place in lieu of or in addition to a paper pollbook or other registration record.

(9) Party observers are given access as provided by G.S. 163-45 to current information about which voters have voted.

(10) The voter, before voting, shall sign that voter's name on the pollbook, other voting record, or voter authorization document. If the voter is unable to sign, a precinct official shall enter the person's name on the same document before the voter votes."

SECTION 15. G.S. 163-182.15 is amended by adding a subsection to read:

"(d) Determining Results. – In a primary for party nomination, the results shall be determined in accordance with G.S. 163-111 and the certificate issued accordingly. In a general election, the individuals having the highest number of votes for each office shall be declared elected to the office, and the certificate shall be issued accordingly. In a referendum, the ballot proposal receiving the highest number of votes shall be declared to have prevailed, and the certificate shall be issued accordingly."

SECTION 16. Sections 2, 6, 8, 9, 10, 12, and 14 of this act are effective when this act becomes law and apply to all primaries and elections held on or after that date. The remainder of this act becomes effective January 1, 2006, and applies to all primaries and elections held on or after that date.

K.

VISITOR REGISTRATION SHEET

10:00 AM

JUDICIARY 1 COMMITTEE
Name of Committee

Friday, August 12, 2005
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
DAVID BARNES	Poyner Spruill
Rob Schofield	NC Justice Ctr.
Anne Winn	AOC
Risa Martin	NC Home Builders
David Sullivan	NCCCS
[illegible]	NCCCS
[illegible]	MOTOROLA
[illegible]	[illegible]
Kathleen Edwards	UNC-CH Institute of Gov't
JOHN GOODMAN	ALLEN ASSOCIATES
Kevin Leonard	WCSR

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE — Friday, August 12, 2005 10:00 AM

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
R. Paul Wilms	NCHBA
Barbara Canada	BSEGR
Joyce Peters	JP Assoc
Roger Bone	Bone Mass
Kathy Hawkins	Progress
P. Gay Hall	General Statutes Commission
Steve Woodson	NCFIB
FRANK W. FOLGER	NCDOJ
CASANDRA SKINNER	NCACPS
Mildred Spearman	NCDOC
Tracy Little	NCDOC

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE — Friday, August 12, 2005 10:00 AM

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
Johnnie McLean	S.B.E.
	JR, AL, PA
Margaret Westbrook	KCLH
Al Kirby	NC Justice Ctr
Chris Kukla	Alf-Mepp
Doug Heron	NC Bar Association
Steve Hall	DENR
Alastair Macaulay	NCHBA
Chris Heagarty	NCCUE
Bill Rowe	NC Justice Ctr
Jon Carr	Jordan Price

TURN OVER

Senate Judiciary I committee — Friday, August 12, 2005

Name	Firm or Agency
Ed Turlington	BPMHL
[illegible]	[illegible]
[illegible]	Bode & Assoc.
Johanna Reese	DENR
[illegible]	[illegible]
[illegible]	NC Family Policy Council
[illegible]	PFFPNC
[illegible]	NBC-17
[illegible]	NCDOT
[illegible]	NCCBI
Chad Hester	JWPCI

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Friday	August 12, 2005	12:00 PM	1027 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 128	Early Prep for Absentee Count.	Representative Preston Representative Insko
HB 327	2005 Technical Corrections Act.	Representative Culpepper, III
HB 650	Business Court Cases/Fee.	Representative Glazier Representative Haire
HB 1115	Election Administration Amendments.	Representative Ross Representative Moore
HB 1128	Campaign Finance Amendments.	Representative Ross Representative Moore
HB 1146	Foreclosure Reform.	Representative Michaux, Jr.
HB 1409	Bail Bonds/Bond Source	Representative Dollar
HB 1527	Clarify MV Dealer Franchise Laws.	Representative Cole
HB-1543	Autopsy Photos Not Public Records	Representative Ray

Senator Daniel G. Clodfelter, Chair

Judiciary 1 Committee

August 12, 2005 p.m.

Minutes

Senator Dan Clodfelter, Chair called the meeting to order at 4:20 p.m. with fourteen members present.

HB-1115 (Election Administration Amendments) Committee Substitute was reintroduced by Senator Clodfelter. The Committee Substitute was adopted at the 10:00 a.m. meeting today. Senator Clodfelter asked staff attorney, Bill Gilkeson to continue explaining the sections of the bill. Senator's Andrew Brock, Harry Brown and Richard Stevens had questions. Rep. Ross, Senator Clodfelter and Mr. Gilkeson answered the questions. Senator Stevens offered an Amendment to the bill page 3, line 20, and asked for adoption of the Amendment. All members voted yes. Motion carried. Page 17, line 17 needed a comma inserted. All members agreed to the insertion of the comma. Senator Clark Jenkins moved for a Favorable Report. All members voted yes. Motion carried.

HB-1128 (Campaign Finance Amendments) Committee Substitute was introduced by Senator Clodfelter. Senator David Hoyle moved for adoption of the Committee Substitute. All members voted yes. Motion carried. Bill sponsor, Representative Deborah Ross explained the bill would make changes to the campaign finance laws, mostly based on proposals made by the staff of t he State Board of Elections. (See attached Bill Summary). Senator's Martin Nesbitt, Ham Horton and David Hoyle had questions. Rep. Ross, Senator Clodfelter and Mr. Gilkeson answered the questions. Senator David Hoyle offered an Amendment to the bill on page 1, line 21 and page 2, line 4 (See attached Amendment), and moved for adoption of the Amendment. All members voted yes. Motion carried. Senator Nesbitt moved for a Favorable Report. All members voted yes. Motion carried.

HB-128 (Early Prep for Absentee Count) Committee Substitute was introduced by Senator Clodfelter. Senator Martin Nesbitt moved for adoption of the Committee Substitute. All members voted yes. Motion carried. In the absence of bill sponsor, Representative Verla Insko, Rep. Deborah Ross explained that the bill would make several election law changes. It would do the following: Allow county boards of elections to take steps to count mail absentee ballots earlier than 2 pm on Election Day. Clarify how a voter must report a move within the county. Clarify residence for certain voters. Amend the statutes relating to challenges. Make changes

involving the marking of provisional ballots. Address how banks can make loans to campaigns. Make a number of changes to the Judicial Campaign Act. Senator's Richard Stevens, Harry Brown, Phillip Berger, and Andrew Brock had questions. Senator Clodfelter, Rep. Ross, and staff attorney, Bill Gilkeson answered the questions. Senator Clark Jenkins moved for a Favorable Report as amended. All members voted yes. Motion carried.

Being no further business the meeting adjourned at 5:15 p.m.

Senator Dan Clodfelter, Chair

Wanda Joyner, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Daniel G. Clodfelter, Chair

Friday, August 12, 2005

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

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

H.B. **128** Early Prep for Absentee Count.

Draft Number:	PCS60542
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **1115** Election Administration Amendments.

Draft Number:	PCS60541
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **1128** Campaign Finance Amendments.

Draft Number:	PCS60543
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 3

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 1115

Committee Substitute Favorable 5/2/05

PROPOSED COMMITTEE SUBSTITUTE H1115-PCS60541-RR-56

Short Title: Election Administration Amendments. (Public)

Sponsors:

Referred to:

April 5, 2005

A BILL TO BE ENTITLED

AN ACT TO ALLOW POLITICAL PARTIES TO USE "RUNNERS" TO PICK UP VOTER LISTS FROM POLLS; TO PROHIBIT A CANDIDATE FROM BEING AN OBSERVER OR RUNNER AT THE POLLS; TO AUTHORIZE THE EXECUTIVE DIRECTOR OF THE STATE BOARD OF ELECTIONS TO PERMIT DIFFERENT VOTING SYSTEMS IN THE SAME PRECINCT; TO ALLOW THE CHANGING OF REGISTERED VOTERS BASED ON ADJUSTED COUNTY LINE; TO CHANGE THE DEADLINE FOR FILING A PROTEST FROM SIX O'CLOCK P.M. TO FIVE O'CLOCK P.M.; TO PERMIT THE SAME KIND OF VOTER ASSISTANCE IN ONE-STOP SITES AS AT VOTING PLACES ON ELECTION DAY; TO EXPRESSLY PROVIDE THAT PRECINCT TRANSFER VOTERS AT ONE-STOP SITES NEED NOT VOTE PROVISIONAL BALLOTS; TO DELETE THE REQUIREMENT THAT ONE-STOP VOTERS BE INSTRUCTED IN HOW TO VOTE MAIL ABSENTEE BALLOTS; TO FIX THE SALARY ON WHICH A FILING FEE FOR AN OFFICE IS BASED; TO REMOVE THE OUTDATED REFERENCE IN THE FILING FEE STATUTE TO OFFICES "COMPENSATED ENTIRELY BY FEES"; TO ALLOW FOR THE CANCELLATION OF A VOTER'S REGISTRATION IN A FORMER COUNTY WHEN THE VOTER REGISTERS IN A NEW COUNTY; TO UPDATE AND MAKE MORE TECHNOLOGY-NEUTRAL THE LANGUAGE IN THE STATUTE PROVIDING FOR ACCESS TO VOTER REGISTRATION DATA; TO EXTEND FOR THREE DAYS THE COUNTY CANVASS AFTER A GENERAL ELECTION IN NOVEMBER OF AN EVEN-NUMBERED YEAR AND CHANGE OTHER RELATED DATES; TO EXPRESSLY ALLOW ELECTRONIC POLLBOOKS; TO CLARIFY HOW WINNERS OF ELECTIONS SHALL BE DETERMINED; TO CLARIFY THAT A VOTER WHOSE NAME HAS BEEN REMOVED FROM THE REGISTRATION LIST MAY VOTE UPON

AFFIRMING THAT THE VOTER HAS NOT MOVED FROM THE COUNTY; TO PROVIDE FOR THE CORRECTION OF AN OMISSION ON THE VOTER REGISTRATION FORM; TO AUTHORIZE PARTICIPATION IN THE 2010 CENSUS REDISTRICTING DATA PROGRAM; AND TO AUTHORIZE BOARDS OF ELECTIONS TO ALLOW KNOWN VOTERS WHOSE VOTES WERE LOST TO RECAST THEIR BALLOTS DURING A TWO-WEEK PERIOD AFTER THE ELECTION.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 163-45 reads as rewritten:

"**§ 163-45. Observers; appointment.**

The ~~chairman~~ chair of each political party in the county shall have the right to designate two observers to attend each voting place at each primary and election and such observers may, at the option of the designating party ~~chairman,~~ chair, be relieved during the day of the primary or election after serving no less than four hours and provided the list required by this section to be filed by each ~~chairman~~ chair contains the names of all persons authorized to represent such ~~chairman's~~chair's political party. Not more than two observers from the same political party shall be permitted in the voting enclosure at any time. This right shall not extend to the ~~chairman~~ chair of a political party during a primary unless that party is participating in the primary. In any election in which an unaffiliated candidate is named on the ballot, the candidate or the candidate's campaign manager shall have the right to appoint two observers for each voting place consistent with the provisions specified herein. Persons appointed as observers must be registered voters of the county for which appointed and must have good moral character. No person who is a candidate on the ballot in a primary or election may serve as an observer or runner in that primary or election. Observers shall take no oath of office.

Individuals authorized to appoint observers must submit in writing to the chief judge of each precinct a signed list of the observers appointed for that precinct. Individuals authorized to appoint observers must, prior to 10:00 A.M. on the fifth day prior to any primary or general election, submit in writing to the ~~chairman~~ chair of the county board of elections two signed copies of a list of observers appointed by them, designating the precinct for which each observer is appointed. Before the opening of the voting place on the day of a primary or general election, the ~~chairman~~ chair shall deliver one copy of the list to the chief judge for each affected precinct. ~~He~~ The chair shall retain the other copy. The ~~chairman,~~ chair, or the chief judge and judges for each affected precinct, may for good cause reject any appointee and require that another be appointed. The names of any persons appointed in place of those persons rejected shall be furnished in writing to the chief judge of each affected precinct no later than the time for opening the voting place on the day of any primary or general election, either by the ~~chairman~~ chair of the county board of elections or the person making the substitute appointment.

An observer shall do no electioneering at the voting place, and ~~he~~ shall in no manner impede the voting process or interfere or communicate with or observe any voter in casting ~~his~~ a ballot, but, subject to these restrictions, the chief judge and judges of

elections shall permit ~~him~~ the observer to make such observation and take such notes as ~~he~~ the observer may desire.

Whether or not the observer attends to the polls for the requisite time provided by this section, each observer shall be entitled to obtain at times specified by the State Board of Elections, but not less than three times during election day with the spacing not less than one hour apart, a list of the persons who have voted in the precinct so far in that election day. Counties that use an "authorization to vote document" instead of poll books may comply with the requirement in the previous sentence by permitting each observer to inspect election records so that the observer may create a list of persons who have voted in the precinct so far that election day; each observer shall be entitled to make the inspection at times specified by the State Board of Elections, but not less than three times during election day with the spacing not less than one hour apart. Instead of having an observer receive the voting list, the county party chair may send a runner to do so. The runner may be the precinct party chair or any person named by the county party chair. That party chair must notify the chair of the county board of elections or the board chair's designee of the names of all runners to be used in each precinct before the runner goes to the precinct. The runner may receive a voter list from the precinct on the same schedule as an observer. Whether obtained by observer or runner, each party is entitled to only one voter list at each of the scheduled times. No runner may enter the voting enclosure except when necessary to announce that runner's presence and to receive the list. The runner must leave immediately after being provided with the list."

SECTION 1.(b) G.S. 163-166.3 reads as rewritten:

"**§ 163-166.3. Limited access to the voting enclosure.**

During the time allowed for voting in the voting place, only the following persons may enter the voting enclosure:

(1) An election official.

(2) An observer appointed pursuant to G.S. 163-45.

(2a) A runner appointed pursuant to G.S. 163-45, but only to the extent necessary to announce that runner's presence and to receive the voter list as provided in G.S. 163-45.

(3) A person seeking to vote in that voting place on that day but only while in the process of voting or seeking to vote.

(4) A voter in that precinct while entering or explaining a challenge pursuant to G.S. 163-87 or G.S. 163-88.

(5) A person authorized under G.S. 163-166.8 to assist a voter but, except as provided in subdivision (6) of this section, only while assisting that voter.

(6) Minor children of the voter under the age of 18, or minor children under the age of 18 in the care of the voter, but only while accompanying the voter and while under the control of the voter.

(7) Persons conducting or participating in a simulated election within the voting place or voting enclosure, if that simulated election is approved by the county board of elections.

(8) Any other person determined by election officials to have an urgent need to enter the voting enclosure but only to the extent necessary to address that need."

SECTION 2. G.S. 163-165.10 reads as rewritten:

"**§ 163-165.10. Adequacy of voting system for each precinct.**

The county board of elections shall make available for each precinct voting place an adequate quantity of official ballots or ~~equipment so that all voters qualified to vote at the precinct may do so.~~ equipment. When the board of county commissioners has decided to adopt and purchase or lease a voting system for voting places under the provisions of G.S. 165-165.8, the board of county commissioners shall, as soon as practical, provide for each of those voting places sufficient equipment of the approved voting system in complete working order. If it is impractical to furnish each voting place with the equipment of the approved voting system, that which has been obtained may be placed in voting places chosen by the county board of elections. In that case, the county board of elections shall choose the voting places and allocate the equipment in a way that as nearly as practicable provides equal access to the voting system for each voter. The county board of elections shall appoint as many voting system custodians as may be necessary for the proper preparation of the system for each election and for its maintenance, storage, and care. The Executive Director of the State Board of Elections may permit a county board of elections to provide more than one type of voting system in a precinct, but only upon a finding that doing so is necessary to comply with federal or State law."

SECTION 3.(a) Article 7A of Chapter 163 of the General Statutes is amended by adding a new section to read:

"**§ 163-82.15A. Administrative change of registration when county line is adjusted.**

When a boundary between counties is established by legislation or under G.S. 153A-18, the Executive Director shall direct the county boards of elections involved to administratively change the voter registration of any voter whose county of residence is altered by the establishment of the boundary. The voter shall not be required to submit a new application to register, and the provisions of G.S. 163-57 shall apply to the determination of residency. The Executive Director shall prescribe a method of notifying the voter of the change of county registration, the correct precinct, and other relevant information."

SECTION 3.(b) G.S. 163-57 reads as rewritten:

"**§ 163-57. Residence defined for registration and voting.**

All election officials in determining the residence of a person offering to register or vote, shall be governed by the following rules, so far as they may apply:

(1) That place shall be considered the residence of a person in which that person's habitation is fixed, and to which, whenever that person is absent, has the intention of returning.

a. In the event that a person's habitation is divided by a State, county, municipal, precinct, ward, or other election district, then the location of the bedroom or usual sleeping area for that

person with respect to the location of the boundary line at issue shall be controlling as the residency of that person.

b. If the person disputes the determination of residency, the person may request a hearing before the county board of elections making the determination of residency. The procedures for notice of hearing and the conduct of the hearing shall be as provided in G.S. 163-86. The presentation of an accurate and current determination of a person's residence and the boundary line at issue by map or other means available shall constitute prima facie evidence of the geographic location of the residence of that person.

(2) A person shall not be considered to have lost that person's residence if that person leaves home and goes into another ~~state or county~~state, county, municipality, precinct, ward, or other election district of this State, for temporary purposes only, with the intention of returning.

(3) A person shall not be considered to have gained a residence in any ~~county~~ county, municipality, precinct, ward, or other election district of this State, into which that person comes for temporary purposes only, without the intention of making that ~~county~~ county, municipality, precinct, ward, or other election district a permanent place of abode.

(4) If a person removes to another ~~state or county~~ state, county, municipality, precinct, ward, or other election district within this State, with the intention of making that ~~state or county~~ state, county, municipality, precinct, ward, or other election district a permanent residence, that person shall be considered to have lost residence in the ~~state or county~~ state, county, municipality, precinct, ward, or other election district from which that person has removed.

(5) If a person removes to another ~~state or county~~ state, county, municipality, precinct, ward, or other election district within this State, with the intention of remaining there an indefinite time and making that ~~state or county~~ state, county, municipality, precinct, ward, or other election district that person's place of residence, that person shall be considered to have lost that person's place of residence in this ~~State or the county~~ State, county, municipality, precinct, ward, or other election district from which that person has removed, notwithstanding that person may entertain an intention to return at some future time.

(6) If a person goes into another ~~state or county~~ state, county, municipality, precinct, ward, or other election district, or into the District of Columbia, and while there exercises the right of a citizen by voting in an election, that person shall be considered to have lost residence in this ~~State or county.~~ State, county, municipality, precinct, ward, or other election district.

(7) School teachers who remove to a ~~county~~ county, municipality, precinct, ward, or other election district for the purpose of teaching in

the schools of that county temporarily and with the intention or expectation of returning during vacation periods to live in the ~~county~~ state, county, municipality, precinct, ward, or other election district in which their parents or other relatives reside, and who do not have the intention of becoming residents of the ~~county~~ state, county, municipality, precinct, ward, or other election district to which they have moved to teach, for purposes of registration and voting shall be considered residents of the ~~county~~ state, county, municipality, precinct, ward, or other election district in which their parents or other relatives reside.

(8) If a person removes to the District of Columbia or other federal territory to engage in the government service, that person shall not be considered to have lost residence in this State during the period of such service unless that person votes in the place to which the person removed, and the place at which that person resided at the time of that person's removal shall be considered and held to be the place of residence.

(9) If a person removes to a ~~county~~ county, municipality, precinct, ward, or other election district to engage in the service of the State government, that person shall not be considered to have lost residence in the ~~county~~ county, municipality, precinct, ward, or other election district from which that person removed, unless that person votes in the place to which the person removed, and the place at which that person resided at the time of that person's removal shall be considered and held to be the place of residence.

(9a) The establishment of a secondary residence by an elected official outside the district of the elected official shall not constitute prima facie evidence of a change of residence.

(10) For the purpose of voting a spouse shall be eligible to establish a separate domicile.

(11) So long as a student intends to make the student's home in the community where the student is physically present for the purpose of attending school while the student is attending school and has no intent to return to the student's former home after graduation, the student may claim the college community as the student's domicile. The student need not also intend to stay in the college community beyond graduation in order to establish domicile there. This subdivision is intended to codify the case law."

SECTION 4. G.S. 163-182.9(b)(4) reads as rewritten:

"(4) The timing for filing a protest shall be as follows:

a. If the protest concerns the manner in which votes were counted or results tabulated, the protest shall be filed before the beginning of the county board of election's canvass meeting.

b. If the protest concerns the manner in which votes were counted or results tabulated and the protest states good cause for delay in filing, the protest may be filed until ~~6:00~~ 5:00 P.M. on the second business day after the county board of elections has completed its canvass and declared the results.

c. If the protest concerns an irregularity other than vote counting or result tabulation, the protest shall be filed no later than ~~6:00~~ 5:00 P.M. on the second business day after the county board has completed its canvass and declared the results.

d. If the protest concerns an irregularity on a matter other than vote counting or result tabulation and the protest is filed before election day, the protest proceedings shall be stayed, unless a party defending against the protest moves otherwise, until after election day if any one of the following conditions exists:

1. The ballot has been printed.
2. The voter registration deadline for that election has passed.
3. Any of the proceedings will occur within 30 days before election day."

SECTION 5.(a) G.S. 163-227.2(e) reads as rewritten:

"(e) The voter shall vote that voter's absentee ballot in a voting booth in the office of the county board of elections, and the county board of elections shall provide a voting booth for that purpose, provided however, that the county board of elections may in the alternative provide a private room for the voter adjacent to the office of the board, in which case the voter shall vote that voter's absentee ballot in that room. ~~If the voter needs assistance in getting to and from the voting booth and in preparing and marking that voter's ballots or if the voter is a blind voter, only a member of the county board of elections, the director of elections, an employee of the board of elections authorized by the board, a near relative of the voter or the voter's verifiable legal guardian shall be entitled to assist the voter.~~ A voter at a one-stop site shall be entitled to the same assistance as a voter at a voting place on election day under G.S. 163-166.8. The State Board of Elections shall, where appropriate, adapt the rules it adopts under G.S. 163-166.8 to one-stop voting."

SECTION 5.(b) G.S. 163-226.3(a) reads as rewritten:

"(a) Any person who shall, in connection with absentee voting in any election held in this State, do any of the acts or things declared in this section to be unlawful, shall be guilty of a Class I felony. It shall be unlawful:

(1) For any person except the voter's near relative or the voter's verifiable legal guardian to assist the voter to vote an absentee ballot when the voter is voting an absentee ballot other than under the procedure described in G.S. 163-227.2; provided that if there is not a near relative or legal guardian available to assist the voter, the voter may request some other person to give assistance;

(2) For any person to assist a voter to vote an absentee ballot under the absentee voting procedure authorized by G.S. 163-227.2 except ~~a member of the county board of elections, the director of elections, an employee of the board authorized by the board, the voter's near relative or the voter's verifiable legal guardian;~~as provided in that section;

(3) For a voter who votes an absentee ballot under the procedures authorized by G.S. 163-227.2 to vote that voter's absentee ballot outside of the voting booth or private room provided to the voter for that purpose in or adjacent to the office of the county board of elections or at the additional site provided by G.S. 163-227.2(f1), or to receive assistance ~~in getting to and from the voting booth or private room and in preparing and marking that voter's ballots from any person other than a member of the county board of elections, the director of elections, an employee of the board of elections authorized by the board, a near relative of the voter or the voter's verifiable legal guardian;~~except as provided in G.S. 163-227.2;

(4) For any owner, manager, director, employee, or other person, other than the voter's near relative or verifiable legal guardian, to make a written request pursuant to G.S. 163-230.1 or an application on behalf of a registered voter who is a patient in any hospital, clinic, nursing home or rest home in this State or for any owner, manager, director, employee, or other person other than the voter's near relative or verifiable legal guardian, to mark the voter's absentee ballot or assist such a voter in marking an absentee ballot;

(5) Repealed by Session Laws 1987, c. 583, s. 8.

(6) For any person to take into that person's possession for delivery to a voter or for return to a county board of elections the absentee ballot of any voter, provided, however, that this prohibition shall not apply to a voter's near relative or the voter's verifiable legal guardian;

(7) Except as provided in subsections (1), (2), (3) and (4) of this section, G.S. 163-231(a), G.S. 163-250(a), and G.S. 163-227.2(e), for any voter to permit another person to assist the voter in marking that voter's absentee ballot, to be in the voter's presence when a voter votes an absentee ballot, or to observe the voter mark that voter's absentee ballot."

SECTION 6.(a) G.S. 163-227.2 is amended by adding a new subsection to read:

"(e2) A voter who has moved within the county more than 30 days before election day but has not reported the move to the board of elections shall not be required on that account to vote a provisional ballot at the one-stop site, as long as the one-stop site has available all the information necessary to determine whether a voter is registered to vote in the county and which ballot the voter is eligible to vote based on the voter's proper residence address. The voter with that kind of unreported move shall be allowed to vote the same kind of absentee ballot as other one-stop voters."

SECTION 6.(b) G.S. 163-166.11 is amended by adding a new subdivision to read:

"(2a) A voter who has moved within the county more than 30 days before election day but has not reported the move to the board of elections shall not be required on that account to vote a provisional ballot at the one-stop site, as long as the one-stop site has available all the information necessary to determine whether a voter is registered to vote in the county and which ballot the voter is eligible to vote based on the voter's proper residence address. The voter with that kind of unreported move shall be allowed to vote the same kind of absentee ballot as other one-stop voters as provided in G.S. 163-227.2(e2)."

SECTION 7. G.S. 163-227.2(c) reads as rewritten:

"(c) If the application is properly filled out, the authorized member or employee shall enter the voter's name in the register of absentee requests, applications, and ballots ~~issued; shall furnish the voter with the instruction sheets called for by G.S. 163-229(c); and~~ issued and shall furnish the voter with the ballots to which the application for absentee ballots applies. The voter thereupon shall vote in accordance with subsection (e) of this section.

All actions required by this subsection shall be performed in the office of the board of elections, except that the voting may take place in an adjacent room as provided by subsection (e) of this section. The application under this subsection shall be signed in the presence of the ~~chairman~~chair, member, director of elections of the board, or full-time employee, authorized by the board who shall sign the application and certificate as the witness and indicate the official title held by him or her. Notwithstanding G.S. 163-231(a), in the case of this subsection, only one witness shall be required on the certificate."

SECTION 8. G.S. 163-107(a) reads as rewritten:

"(a) Fee Schedule. – At the time of filing a notice of candidacy, each candidate shall pay to the board of elections with which he files under the provisions of G.S. 163-106 a filing fee for the office he seeks in the amount specified in the following tabulation:

Office Sought	**Amount of Filing Fee**
Governor	One percent (1%) of the annual salary of the office sought
Lieutenant Governor	One percent (1%) of the annual salary of the office sought
All State executive offices	One percent (1%) of the annual salary of the office sought
All District Attorneys of the General Court of Justice	One percent (1%) of the annual salary of the office sought
United States Senator	One percent (1%) of the annual salary of the office sought
Members of the United States House	One percent (1%) of the annual salary of

of Representatives	the office sought
State Senator	One percent (1%) of the annual salary of the office sought
Member of the State House of Representatives	One percent (1%) of the annual salary of the office sought
All county offices not compensated by fees	One percent (1%) of the annual salary of the office sought
~~County commissioners, if compensated entirely by fees~~	~~Ten dollars ($10.00)~~
~~Members of county board of education, if compensated entirely by fees~~	~~Five dollars ($5.00)~~
~~Sheriff, if compensated entirely by fees~~	~~Forty dollars ($40.00), plus one percent (1%) of the income of the office above four thousand dollars ($4,000)~~
~~Clerk of superior court, if compensated entirely by fees~~	~~Forty dollars ($40.00), plus one percent (1%) of the income of the office above four thousand dollars ($4,000)~~
~~Register of deeds, if compensated entirely by fees~~	~~Forty dollars ($40.00), plus one percent (1%) of the income of the office above four thousand dollars ($4,000)~~
~~Any other county office, if compensated entirely by fees~~	~~Twenty dollars ($20.00), plus one percent (1%) of the income of the office above two thousand dollars ($2,000)~~
All county offices compensated partly by salary and partly by fees	One percent (1%) of the first annual salary to be received (exclusive of fees)

The salary of any office that is the basis for calculating the filing fee is the starting salary for the office, rather than the salary received by the incumbent, if different. If no starting salary can be determined for the office, then the salary used for calculation is the salary of the incumbent, as of January 1 of the election year."

SECTION 9. G.S. 163-82.9 reads as rewritten:

"**§ 163-82.9. Cancellation of prior registration.**

If an applicant indicates on an application form described in G.S. 163-82.3 a current registration to vote in any other county, municipality, or state, the county board of elections, upon registering the person to vote, shall send a notice to the appropriate officials in the other county, municipality, or state and shall ask them to cancel the person's voter registration there. If an applicant completes an application form described in G.S. 163-82.3 except that the applicant neglects to complete the portion of the form that authorizes cancellation of previous registration in another county, the State Board of Elections shall notify the county board of elections in the previous county of the new registration, and the board in the previous county shall cancel the registration. The State Board of Elections shall adopt rules to prevent disenfranchisement in the implementation of this section. Those rules shall include adequate notice to the person whose previous registration is to be cancelled."

SECTION 10.(a) G.S. 163-82.10(b) reads as rewritten:

"(b) Access to Registration Records. – Upon request by that person, the county board of elections shall provide to any person a list of the registered voters of the county or of any precinct or precincts in the county. The county board may furnish selective lists according to party affiliation, gender, race, date of registration, precinct name, precinct identification code, congressional district, senate district, representative district, and, where applicable, county commissioner district, city governing board district, fire district, soil and water conservation district, and voter history including primary, general, and special districts, or any other reasonable category. No list produced under this section shall contain a voter's date of birth. However, lists may be produced according to voters' ages. ~~The~~ Both the following shall apply ~~if a county maintains or has its voter registration list maintained on a computer:~~to all counties:

(1) ~~In addition to the typed, mimeographed, photocopied, computer printout or label lists, the~~ The county board of elections shall make the voter registration information available to the public on electronic or magnetic medium. ~~Magnetic medium for the purpose of this section shall consist of nine track tape or 3.5 inch diskettes and 5.25 inch diskettes readily accessible using MS-DOS or Microsoft Windows operating systems or both such systems; and~~ For purposes of this section, "electronic or magnetic medium" means any of the media in use by the State Board of Elections at the time of the request.

(2) Information requested on electronic or magnetic medium shall contain the following: voter name, county voter identification number, residential address, mailing address, sex, race, age but not date of birth, party affiliation, precinct name, precinct identification code, congressional district, senate district, representative district, and, where applicable, county commissioner district, city governing board district, fire district, soil and water conservation district, and any other district information available, and voter history including primary, general, and special districts, or any other reasonable ~~category;~~category.

~~provided that this subsection shall not require a county to computerize its lists, but if a county does computerize it shall comply with subdivisions (1) and (2) of this subsection.~~ The county board shall require each person to whom a list is furnished to reimburse the board for the actual cost incurred in preparing it, except as provided in subsection (c) of this section. Actual cost for the purpose of this section shall not include the cost of any equipment or any imputed overhead expenses. ~~It may include the actual cost of paper, labels, and magnetic medium. The purchaser at its discretion may provide the magnetic medium.~~ When furnishing information under this subsection to a purchaser on a magnetic medium provided by the county board or the purchaser, the county board may impose a service charge of up to twenty-five dollars ($25.00)."

SECTION 10.(b) G.S. 163-82.10(c) reads as rewritten:

"(c) Free Lists. ~~Free lists of all registered voters in the county shall be provided in the following cases:~~

~~(1)~~ A county board ~~that maintains voter records on computer~~ shall provide, upon written request, one free list ~~to:~~of all the registered voters in the county to

~~a.~~ ~~The~~ the State chair of each political ~~party;~~ party and

~~b.~~ ~~The~~to the county chair of each political party once in every odd-numbered year, once during the first six calendar months of every even-numbered year, and once during the latter six calendar months of every even-numbered year.

~~(2) A county board that does not maintain voter records on computer shall provide one free paper list every two years to the county chair of each political party.~~

Each free list shall include the name, address, gender, age but not date of birth, race, political affiliation, voting history, precinct, precinct name, precinct identification code, congressional district, senate district, representative district, and, where applicable, county commissioner district, city governing board district, fire district, soil and water conservation district, and voter history including primary, general, and special districts of each registered voter. ~~The free paper list to the county party chairs shall group voters by precinct.~~ All free lists shall be provided as soon as practicable on one of any electronic or magnetic media, but no later than 30 days after written request. Each State party chair shall provide ~~the discs or tapes~~ the information on the media received from the county boards or a copy of the media containing the data itself to candidates of that party who request the ~~discs or tapes~~ data in writing. ~~Each State party chair shall return discs and tapes to the county boards within 30 days after receiving them.~~ As used in this section, "political party" means a political party as defined in G.S. 163-96."

SECTION 11.(a) G.S. 163-182.5(b) reads as rewritten:

"(b) Canvassing by County Board of Elections. – The county board of elections shall meet at 11:00 A.M. on the ~~seventh~~ tenth day after every election held on the same day as a general election in November of the even-numbered year, and at 11:00 A.M. on the seventh day after every other election, to complete the canvass of votes cast and to authenticate the count in every ballot item in the county by determining that the votes have been counted and tabulated correctly. If, despite due diligence by election officials, the initial counting of all the votes has not been completed by that time, the county board may hold the canvass meeting a reasonable time thereafter. The canvass meeting shall be at the county board of elections office, unless the county board, by unanimous vote of all its members, designates another site within the county. The county board shall examine the returns from precincts, from absentee official ballots, and from provisional official ballots and shall conduct the canvass."

SECTION 11.(b) G.S. 163-182.7 reads as rewritten:

"**§ 163-182.7. Ordering recounts.**

(a) Discretionary Recounts. – The county board of elections or the State Board of Elections may order a recount when necessary to complete the canvass in an election. The county board may not order a recount where the State Board of Elections has already denied a recount to the petitioner.

(b) Mandatory Recounts for Ballot Items Within the Jurisdiction of the County Board of Elections. – In a ballot item within the jurisdiction of the county board of elections, a candidate shall have the right to demand a recount of the votes if the difference between the votes for that candidate and the votes for a prevailing candidate is not more than one percent (1%) of the total votes cast in the ballot item, or in the case of a multiseat ballot item not more than one percent (1%) of the votes cast for those two candidates. The demand for a recount must be made in writing and must be received by the county board of elections by 5:00 P.M. on the first business day after the canvass. The recount shall be conducted under the supervision of the county board of elections.

(c) Mandatory Recounts for Ballot Items Within the Jurisdiction of the State Board of Elections. – In a ballot item within the jurisdiction of the State Board of Elections, a candidate shall have the right to demand a recount of the votes if the difference between the votes for that candidate and the votes for a prevailing candidate are not more than the following:

(1) For a nonstatewide ballot item, one percent (1%) of the total votes cast in the ballot item, or in the case of a multiseat ballot item, one percent (1%) of the votes cast for those two candidates.

(2) For a statewide ballot item, one-half of one percent (0.5%) of the votes cast in the ballot item, or in the case of a multiseat ballot item, one-half of one percent (0.5%) of the votes cast for those two candidates, or 10,000 votes, whichever is less.

The demand for a recount must be in writing and must be received by the State Board of Elections by noon on the second ~~Thursday after the election.~~ business day after the county canvass. If ~~on that Thursday~~ at that time the available returns show a candidate not entitled to a mandatory recount, but the Executive Director determines subsequently that the margin is within the threshold set out in this subsection, the Executive Director shall notify the eligible candidate immediately and that candidate shall be entitled to a recount if that candidate so demands within 48 hours of notice. The recount shall be conducted under the supervision of the State Board of Elections.

(d) Rules for Conducting Recounts. – The State Board of Elections shall promulgate rules for conducting recounts. Those rules shall be subject to the following guidelines:

(1) The rules shall specify, with respect to each type of voting system, when and to what extent the recount shall consist of machine recounts and hand-to-eye recounts.

(2) The rules shall provide guidance in interpretation of the voter's choice.

(3) The rules shall specify how the goals of multipartisan participation, opportunity for public observation, and good order shall be balanced."

SECTION 12. G.S. 163-166.7(c) reads as rewritten:

"(c) The State Board of Elections shall promulgate rules for the process of voting. Those rules shall emphasize the appearance as well as the reality of dignity, good order, impartiality, and the convenience and privacy of the voter. Those rules, at a minimum, shall include procedures to ensure that all the following occur:

(1) The voting system remains secure throughout the period voting is being conducted.
(2) Only properly voted official ballots are introduced into the voting system.
(3) Except as provided by G.S. 163-166.9, no official ballots leave the voting enclosure during the time voting is being conducted there.
(4) All improperly voted official ballots are returned to the precinct officials and marked as spoiled.
(5) Voters leave the voting place promptly after voting.
(6) Voters not clearly eligible to vote in the precinct but who seek to vote there are given proper assistance in voting a provisional official ballot or guidance to another voting place where they are eligible to vote.
(7) Information gleaned through the voting process that would be helpful to the accurate maintenance of the voter registration records is recorded and delivered to the county board of elections.
(8) The registration records are kept secure. The State Board of Elections shall permit the use of electronic registration records in the voting place in lieu of or in addition to a paper pollbook or other registration record.
(9) Party observers are given access as provided by G.S. 163-45 to current information about which voters have voted.
(10) The voter, before voting, shall sign that voter's name on the pollbook, other voting record, or voter authorization document. If the voter is unable to sign, a precinct official shall enter the person's name on the same document before the voter votes."

SECTION 13. G.S. 163-182.15 is amended by adding a subsection to read:

"(d) Determining Results. – In a primary for party nomination, the results shall be determined in accordance with G.S. 163-111 and the certificate issued accordingly. In a general election, the individuals having the highest number of votes for each office shall be declared elected to the office, and the certificate shall be issued accordingly. In a referendum, the ballot proposal receiving the highest number of votes shall be declared to have prevailed, and the certificate shall be issued accordingly."

SECTION 14. G.S. 163-82.14(d) reads as rewritten:

"(d) Change of Address. – A county board of elections shall conduct a systematic program to remove from its list of registered voters those who have moved out of the county, and to update the registration records of persons who have moved within the county. The county board shall remove a person from its list if the registrant:

(1) Gives confirmation in writing of a change of address for voting purposes out of the county. "Confirmation in writing" for purposes of this subdivision shall include:
a. A report to the county board from the Department of Transportation or from a voter registration agency listed in G.S. 163-82.20 that the voter has reported a change of address for voting purposes outside the county;

b. A notice of cancellation received under G.S. 163-82.9; or
c. A notice of cancellation received from an election jurisdiction outside the State.

(2) Fails to respond to a confirmation mailing sent by the county board in accordance with this subdivision and does not vote or appear to vote in an election beginning on the date of the notice and ending on the day after the date of the second general election for the United States House of Representatives that occurs after the date of the notice. A county board sends a confirmation notice in accordance with this subdivision if the notice:
a. Is a postage prepaid and preaddressed return card, sent by forwardable mail, on which the registrant may state current address;
b. Contains or is accompanied by a notice to the effect that if the registrant did not change residence but remained in the county, the registrant should return the card not later than the deadline for registration by mail in G.S. 163-82.6(c)(1); and
c. Contains or is accompanied by information as to how the registrant may continue to be eligible to vote if the registrant has moved outside the county.

A county board shall send a confirmation mailing in accordance with this subdivision to every registrant after every congressional election if the county board has not confirmed the registrant's address by another means.

(3) Any registrant who is removed from the list of registered voters pursuant to this subsection shall be reinstated if the voter appears to vote and gives oral or written affirmation that the voter has not moved out of the county but has maintained residence continuously within the county. That person shall be allowed to vote as provided in G.S. 163-82.15(f)."

SECTION 15. G.S. 163-82.4 reads as rewritten:

"**§ 163-82.4. Contents of application form.**

(a) Information Requested of Applicant. – The form required by G.S. 163-82.3(a) shall request the applicant's:

(1) Name,
(2) Date of birth,
(3) Residence address,
(4) County of residence,
(5) Date of application,
(6) Gender,
(7) Race,
(7a) Ethnicity,
(8) Political party affiliation, if any, in accordance with subsection (c) of this section,

(9) Telephone number (to assist the county board of elections in contacting the voter if needed in processing the application),

(10) Drivers license number or, if the applicant does not have a drivers license number, the last four digits of the applicant's social security number,

and any other information the State Board finds is necessary to enable officials of the county where the person resides to satisfactorily process the application. The form shall require the applicant to state whether currently registered to vote anywhere, and at what address, so that any prior registration can be cancelled. The portions of the form concerning race and ethnicity shall include as a choice any category shown by the most recent decennial federal census to compose at least one percent (1%) of the total population of North Carolina. The county board shall make a diligent effort to complete for the registration records any information requested on the form that the applicant does not complete, but no application shall be denied because an applicant does not state race, ethnicity, gender, or telephone number. The application shall conspicuously state that provision of the applicant's telephone number is optional. If the county board maintains voter records on computer, the free list provided under this subsection shall include telephone numbers if the county board enters the telephone number into its computer records of voters.

(a1) No Drivers License or Social Security Number Issued. – The State Board shall assign a unique identifier number to an applicant for voter registration if the applicant has not been issued either a current and valid drivers license or a social security number. That unique identifier number shall serve to identify that applicant for voter registration purposes.

(b) Notice of Requirements, Attestation, Notice of Penalty, and Notice of Confidentiality. – The form required by G.S. 163-82.3(a) shall contain, in uniform type, the following:

(1) A statement that specifies each eligibility requirement (including citizenship) and an attestation that the applicant meets each such requirement, with a requirement for the signature of the applicant, under penalty of a Class I felony under G.S. 163-275(13).

(2) A statement that, if the applicant declines to register to vote, the fact that the applicant has declined to register will remain confidential and will be used only for voter registration purposes.

(3) A statement that, if the applicant does register to vote, the office at which the applicant submits a voter registration application will remain confidential and will be used only for voter registration purposes.

(c) Party Affiliation or Unaffiliated Status. – The application form described in G.S. 163-82.3(a) shall provide a place for the applicant to state a preference to be affiliated with one of the political parties in G.S. 163-96, or a preference to be an "unaffiliated" voter. Every person who applies to register shall state his preference. If the applicant fails to declare a preference for a party or for unaffiliated status, that person shall be listed as "unaffiliated", except that if the person is already registered to vote in the county and that person's registration already contains a party affiliation, the

county board shall not change the registrant's status to "unaffiliated" unless the registrant clearly indicates a desire in accordance with G.S. 163-82.17 for such a change. An unaffiliated registrant shall not be eligible to vote in any political party primary, except as provided in G.S. 163-119, but may vote in any other primary or general election. The application form shall so state.

(d) Citizenship and Age Questions. – Voter registration application forms shall include all of the following:

(1) The question "Are you a citizen of the United States of America?" and boxes for the applicant to check to indicate whether the applicant is or is not a citizen of the United States.

(2) The question "Will you be 18 years of age on or before election day?" and boxes for the applicant to check to indicate whether the applicant will be 18 years of age or older on election day.

(3) The statement "If you checked 'no' in response to either of these questions, do not complete this form."

(e) Correcting Registration Forms. – If the voter fails to answer the question set out in subdivision (1) of ~~this~~ subsection (d) of this section, the ~~person filling out the registration~~voter shall be notified of the omission and given the opportunity to complete the form ~~in a timely manner in order to be registered for the next election.~~at any time before casting a vote in the election on election day. If the voter corrects that omission within that time, the voter may vote in the election."

SECTION 16. G.S. 163-132.1 reads as rewritten:

"**§ 163-132.1. Participation in ~~2000~~2010 Census Redistricting Data Program of the United States Bureau of the Census.**

(a) Purpose. – The State of North Carolina shall participate in the ~~2000~~2010 Census Redistricting Data Program, conducted pursuant to P.L. 94-171, of the United States Bureau of the Census, ~~including Phase I (Block Boundary Suggestion Program) and Phase II (concerning the designation of precincts on 2000 Census maps or databases),~~ so that the State will receive ~~2000~~2010 Census data by voting precinct and be able to revise districts at all levels without splitting precincts and in compliance with the United States and North Carolina Constitutions and the Voting Rights Act of 1965, as amended.

~~(b) Phase I (Block Boundary Suggestion Program). – The State shall participate in the Block Boundary Suggestion Program of the United States Bureau of the Census so that the maps the Census Bureau will use in the 2000 Census will contain adequate features to permit reporting of Census data by precinct for use in the 2001 redistricting efforts. The Legislative Services Office shall send preliminary maps produced by the Census Bureau in preparation for the 2000 Census, as soon as practical after the maps are available, to the county boards of elections to determine which of their precincts have boundaries that are not coterminous with a physical feature, a current township boundary, or a current municipal boundary, as shown on those preliminary 2000 Census maps. The Legislative Services Office shall:~~

~~(1) Assist county boards of elections in identifying the precincts with boundaries not shown on the preliminary Census maps and in~~

~~identifying physical features the county boards may wish to have available for future precinct boundaries;~~

~~(2) Place those boundaries and features on maps deemed appropriate by the State Board;~~

~~(3) Request the U.S. Census Bureau to hold for census block identification in the 2000 U.S. Census all physical features the county boards have identified as current or potential precinct boundaries; and~~

~~(4) Request the U.S. Census Bureau to hold for census block identification in the 2000 U.S. Census all other physical features already on 1990 Census maps.~~

~~(c) Phase II. The State shall participate in Phase II of the 2000 Census Redistricting Data Program so that, to the extent practical, the precinct boundaries of all North Carolina counties will appear on the 2000 Census maps or database. The State's effort shall be conducted as follows:~~

~~(1) By January 1, 1998, or as soon thereafter as they become available, the Legislative Services Office shall provide the county boards of elections with access, on paper or electronically, to the Census Bureau's maps for Phase II of the Census Redistricting Data Program.~~

~~(2) After receiving the maps, the county boards of elections shall designate their precinct lines along the lines the Census Bureau indicates on the maps it will hold as block boundaries for the 2000 Census. Where necessary, the county boards of elections shall alter precincts, including any precincts approved under the provisions of G.S. 163-132.1A, 163-132.2, or 163-132.3 or designated by local act, to conform to lines the Census Bureau indicates it will hold as Census block boundaries as shown on the official block maps to be used for the 2000 Census and to consist only of contiguous territory. The county boards of elections, at a time deemed necessary by the Executive Director of the State Board of Elections, shall file with the Legislative Services Office the maps on which they have designated their precincts pursuant to this subsection.~~

~~(3) After examining the maps, the Legislative Services Office shall submit to the Executive Director of the State Board of Elections its opinion as to whether the county board of elections has complied with the provisions of this subsection, with notations as to where those boundaries do not comply with these standards.~~

~~(4) If the Executive Director determines that the county board of elections has complied, he shall approve the precinct boundaries as filed and those precincts shall be the official precincts.~~

~~(5) If the Executive Director determines that the county board of elections has not complied, he shall not approve those precinct boundaries but shall alter the precinct boundaries so that each precinct consists solely of contiguous territory and that each precinct's boundaries are coterminous with 2000 Census block boundaries nearest to the precinct~~

~~boundaries shown by the county boards on the maps. These altered precincts shall then be the official precincts.~~

~~(6) Upon the adoption of a resolution by a county board of elections and instead of altering precinct lines as required by G.S. 163-132.1(c)(5), the Executive Director may combine for Census reporting purposes only two or more adjacent precincts of the county into a Combined Reporting Unit, if the Executive Director finds that:~~

~~a. The boundaries of the Combined Reporting Unit conform with the Census block boundaries as shown on the official block maps to be used in the 2000 Census;~~

~~b. The Combined Reporting Unit consists only of contiguous territory;~~

~~c. The precincts of which the Combined Reporting Unit consists were bounded as of January 1, 1996, by ridgelines, as certified on official county maps by the county manager of the relevant county, or if there is no county manager the chair of the board of commissioners, and the boundaries failed to comply with subdivision (2) of this subsection only because those ridgelines were unrecognized as Census block boundaries in the 2000 official Census maps;~~

~~d. The Combined Reporting Unit does not contain a majority of the territory of more than one township; and~~

~~e. To alter those precinct boundaries would result in significant voter dislocation.~~

~~If the Executive Director recognizes a Combined Reporting Unit for specific precincts, the official boundaries of those individual precincts forming the Combined Reporting Unit shall be those which the Legislative Services Office submitted to the Executive Director under subdivision (3) of this subsection.~~

~~(7) The Executive Director shall file the completed maps with the Census Bureau and request that the Census Bureau provide summaries of 2000 Census data by precinct and Combined Reporting Units.~~

~~(d) Freezing of Precincts.~~

~~(1) Notwithstanding the provisions of G.S. 163-132.3, after the Executive Director approves the precincts in accordance with subsection (c) of this section and before January 2, 2002, no county board of elections may establish, alter, discontinue, or create any precinct except by division of one precinct into two or more precincts using lines that the Census Bureau has indicated it will use as 2000 Census block boundaries for that division. Provided that, whenever an annexation ordinance adopted under Parts 1, 2, or 3 of Article 4A of Chapter 160A of the General Statutes, or a local act of the General Assembly annexing property to a municipality, becomes effective during the period beginning with the date of the annexation as reported through~~

~~the U.S. Census Bureau's 1998 Boundary and Annexation Survey or a subsequent edition of that survey and ending January 2, 2002, and any part of the boundary of the area being annexed which is actually contiguous to the city is also a precinct boundary for elections administered by the county board of elections then the county board of elections may exercise one of the following options:~~

~~a. Direct by resolution that the annexed area is automatically moved into the "city precinct", provided that if the annexed area is adjacent to more than one city precinct, the board of elections shall place the area in any one or more of the adjacent city precincts.~~

~~b. Adopt a resolution moving the precinct boundary to a line that the Census Bureau has indicated it will use as a 2000 block boundary.~~

~~(2) The Executive Director of the State Board of Elections may permit during the freeze a correction to a county's precincts as they were approved pursuant to subsection (c) of this section where one of the following sets of conditions is present:~~

~~a. A precinct was designated pursuant to subsection (c) inaccurately, and the United States Bureau of the Census agrees to include the corrected precinct on its database for the 2000 Census.~~

~~b. The boundary of a precinct designated pursuant to subsection (c) of this section was subsequently removed by the United States Bureau of the Census as an acceptable feature for a precinct line based upon a determination by the Bureau that the feature did not exist as shown, and the county board of elections agrees by resolution to an alternative boundary for the precinct on a feature the Bureau does find acceptable.~~

~~(3) The county board of elections may move a precinct line from a township line to another line the Census Bureau has indicated will be a 2000 block boundary if a Boundary and Annexation Survey issued during the freeze shows that the township line has moved to a location the county board of elections considers unsuitable. This subdivision does not apply if local legislation enacted by the General Assembly governs the relationship between a county's township lines and precinct lines.~~

~~(4) The county board of elections shall submit any proposed change made during the freeze under this subsection to the Legislative Services Office, which shall review the proposal and write a letter advising the Executive Director of its opinion as to the legal compliance of the proposal. If the proposal complies with the law, the Executive Director shall approve the proposal. No newly created or altered precinct~~

~~boundary is effective until approved by the Executive Director as being in compliance with the provisions of this subsection.~~

~~(d1) Right to Postpone Effective Date Until January 1, 2000. A county board of elections may postpone the effective date of the precincts designated in Phase II until January 1, 2000.~~

~~(d2) Special Permission to Postpone Effective Date Until January 1, 2001. The Executive Director may permit a county board of elections to postpone the effective date of precinct lines designated under Phase II until January 1, 2001, upon written application by the county board of elections, if the Executive Director finds both of the following:~~

~~(1) That the Phase II designated lines would create a split precinct in 2000 for county commissioner, board of education, judicial, State legislative, or congressional district elections and that a split could be avoided by using the pre-Phase II precinct.~~

~~(2) That the county can provide reasonably reliable voter registration data for April and October of 2000 by the Phase II designated precincts.~~

~~In granting an exception under this subsection, the Executive Director shall allow an exception only for the precincts that would result in splits and for any adjacent precincts for which pre-Phase II precincts must be used to avoid geographic overlap or discontinuity. Every county board of elections granted an exception under this subsection shall provide to the State Board of Elections voter registration data for April and October of 2000 by the Phase II designated precincts.~~

~~(e) Municipal and Township Boundaries. Notwithstanding the provisions of subsections (c) and (d) of this section, the county boards of elections may designate precinct boundaries on municipal or township boundaries that are not designated on the 2000 official Census block maps, according to directives promulgated by the Executive Director of the State Board of Elections and adopted to insure that all precincts shall be included on the 2000 Census database.~~

(f) Additional Rules. – In addition to the directives promulgated by the Executive Director of the State Board of Elections under G.S. 163-132.4, the Legislative Services Commission may promulgate rules to implement this section."

SECTION 17. G.S. 163-182.12 reads as rewritten:

"**§ 163-182.12. Authority of State Board of Elections over protests.**

The State Board of Elections may consider protests that were not filed in compliance with G.S. 163-182.9, may initiate and consider complaints on its own motion, may intervene and take jurisdiction over protests pending before a county board, and may take any other action necessary to assure that an election is determined without taint of fraud or ~~corruption.~~ corruption and without irregularities that may have changed the result of an election. Where a known group of voters cast votes that were lost beyond retrieval, the State Board of Elections may authorize a county board of elections to allow those voters to recast their ballots during a period of two weeks after the election. If the State Board approves a recasting of votes under this section, any procedures the county board uses to contact those voters and allow them to recast their votes shall be subject to approval by the State Board. Those recast votes shall be added to the returns

and included in the canvass. The recasting of those votes shall not be deemed a new election for purposes of G.S. 163-182.13."

SECTION 18. Sections 2, 6, 7, 8, 10, 12, 13, 14, 15, and 16 of this act are effective when this act becomes law and apply to all primaries and elections held on or after that date. The remainder of this act becomes effective January 1, 2006, and applies to all primaries and elections held on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1115

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

H1115-ARR-107 [v.1]

Date Aug. 12 ,2005

Comm. Sub. [YES]
Amends Title [NO]
H1115-PCS80449-RR-51

Senator Stevens

moves to amend the bill on page 3, line 20,
by inserting after the term "presence" the term "and to receive the list"

SIGNED Richard G Stevens
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 1115 DATE _____

S. B. No. _____ Amendment No. 2
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
Sen.) STEVENS

1 moves to amend the bill on page 17, line 17 & 18

2 ( ) WHICH CHANGES THE TITLE

3 by deleting "the person filling out the

4 registration" and substituting

5 the words the voter".

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SIGNED _____

ADOPTED ✓ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

HOUSE BILL 1115:
Election Administration Amendments

BILL ANALYSIS

Committee:	Senate Judiciary I	**Date:**	August 12, 2005
Introduced by:	Reps. Moore, Ross	**Summary by:**	William R. Gilkeson
Version:	PCS to Second Edition H1115-PCS80449-RR-51		Committee Co-Counsel

SUMMARY: This Proposed Committee Substitute for House Bill 1115 would make several changes to the laws concerning election administration. The changes are based on proposals made by the staff of the State Board of Elections.

Section 1. Legal Recognition of "Runners"; No Candidate as Observer or Runner. Current law allows county political parties to appoint "observers" to be inside a polling place to monitor what is going on, as long as they do not disrupt. One of the things they may do is pick up lists at certain times of the day of the people who have voted at the precinct. A practice has grown up of parties sending "runners," who have not gone through the process of being appointed observers, to pick up the voter lists and nothing more. The bill would write this function into the law, allowing a party chair to send a runner to precinct and pick up the voter list. The runner could be anyone appointed by the party chair. The party chair must provide the county board of elections a list of which runners will go to which precincts before the runners are sent. The runner may enter the voting enclosure only where necessary to announce his or her presence. Upon receiving the list, they must leave immediately. This section also provides that no candidate in an election may be either an observer or runner. Effective 1-1-06.

Section 2. Allow Different Voting Systems in Same Precinct. Current statute does not expressly address whether a county may provide more than one voting system per precinct. The bill says the Executive Director of the State Board of Elections may permit a county to use more than one voting system in a precinct where doing so would be necessary to comply with State or federal law. It is expected that, to comply with the Help America Vote Act's requirement for a fully disabled-accessible station in every precinct, some counties may need to have two systems in the same precinct. Effective when the bill becomes law.

Sections 3. Allow Admin. Voter Reg. Change If County Line Adjusted; Divided Habitation. Currently counties are authorized to settle between themselves a disputed or uncertain county line. In addition, the General Assembly has the authority to change county lines by legislation. It has been known to happen that such a county line change or adjustment has resulted in a voter residing in a county other than the one in which the voter was registered. Because voter registration in NC is county-based, the voter could be disenfranchised without realizing it. The bill would authorize the Executive Director of the State Board of Elections to move the voter's registration to the correct county administratively. The voter, who has not moved, would not need to submit a new voter registration application. Notice to the voter would be required. The bill also includes a provision for deciding what side of a voting-relevant line a voter lives on if the line divides the house: The rule is the bedroom or usual sleeping area for that person controls. Effective 1-1-06.

Section 4. Change Protest Deadline from 6 pm to 5 pm. Current law sets the certain deadlines for filing an election protests at 6 pm on the second day after the county canvass. Most county board of elections offices close at 5 pm. The bill would change the statutory deadline to reflect the boards' regular hours. Effective 1-1-06.

Section 5. Same Voter Assistance Rules for One-Stop as for Election Day. Current law says that at the polls on election day, a voter whose illiteracy or disability requires them to have assistance to vote may receive assistance from anyone other than their employer or union representative. If not illiterate or disabled, a voter may receive assistance from a specified group of relatives. Those provisions reflect federal law. At a one-stop site, however, the law is different: A one-stop voter who needs assistance or who is blind may receive assistance only from a county board of elections member, a county election director, a board employee, a near relative of the voter or the voter's verifiable legal guardian. Anyone else providing assistance to a voter at a one-stop site is subject under G.S. 163-226.3 to prosecution for committing a Class I felony. The bill makes the one-stop rules on assistance the same as those at the polls on election day. It changes the felony statute accordingly.

Section 6. One-Stop Precinct Transfers Need Not Be Provisionals. Currently, if a person moves more than 30 days before an election within the county where registered to vote but does not notify the board of elections of the move, the person may show up at the new voting place and will be allowed to vote. But, since their name is not on the books there, they must vote a provisional ballot. If such a voter with an unreported move went to vote at a one-stop site, however, most counties allowed that person to vote the same kind of retrievable ballot as other one-stop voters rather than a provisional ballot. The reasoning, endorsed by the State Board of Elections, was that the one-stop site had on-line access to the entire county's voter registration database and had all ballot styles available. And the one-stop vote was retrievable anyway. At least one large county, Wake, felt that even at a one-stop site an unreported-move voter was legally required to vote a provisional ballot. This practice slowed down the one-stop voting process and led to Wake having more provisional ballots to count than even its large size warranted. The bill makes clear that a voter who has not reported a move within the county does not, on that account, need to vote a provisional ballot at a one-stop site. Effective when the bill becomes law.

Section 7. Clean Up One-Stop Statute Requiring Instruction in Voting by Mail. For some reason, the statute on one-stop voting requires officials at a one-stop site to furnish one-stop voters, who are there voting in person, with instructions in how to vote mail absentee. The bill removes the language as inappropriate. Effective when the bill becomes law. Effective when it becomes law.

Section 8. Two Changes to Filing Fee Statute. Currently the statute saying how much is a candidate's filing fee sets the fee at 1% of the annual salary of the office sought, except it sets a raw dollar amount for offices "compensated entirely by fees." The bill specifies that the salary is the starting salary for the office, rather than the incumbent's salary, if the two are different. If no starting salary can be determined, then the salary used for the 1% is the incumbent's salary as of January 1 of the election year. The bill also removes the references to offices compensated entirely by fees, since such offices no longer exist. Effective when bill becomes law.

Section 9. Allow Cancellation of Old Registration When New One Appears. Currently the voter registration form calls for a person registering in a new county to cancel any registration they had in a previous county. Sometimes applicants neglect to complete the cancellation part of the form. The bill would direct the State Board of Elections, which runs the statewide computerized voter registration system, to notify the county board in the old county of the new registration. The board in the old county would then be required to cancel the registration. The State Board is required to adopt rules to prevent disenfranchisement, including adequate notice to the voter whose registration is going to be cancelled. Effective 1-1-06.

Section 10. Update Statute About Access to Voter Registration Data. The current statute allowing free and paid access to voter registration data was written in the mid-1990s in language that was specific to the technology of the time. It also contains language implying that a county has an option in having or not having computerized voter registration data. Now all counties are being required to be part of the State computerized voter registration system. The bill updates the access to records statute, removing references old technology and to the option not to have lists on computer. It does not require the county boards to provide its list to county party chairs on paper. Effective when the bill becomes law.

Section 11. Canvass on 10th Day After General Election. Current law requires the county board of elections to hold its canvass on the 7th day after a primary or election. Ten years ago the canvass was the 3rd day after the election. But various federal and State changes in the law have made it difficult for county boards to complete all their pre-canvass work so a succession of extensions have been enacted. After the 2004 presidential election some counties found the 7th day wasn't soon enough. The bill moves the county canvass to the 10th day for even-year general elections only. For other elections ("election" is defined to include primary), the canvass stays on the 7th day. Effective 1-1-06. Conforming changes are made to other dates in the statutes.

Section 12. Clarify that Electronic Pollbooks May Be Used. Traditionally, the list of registered voters in the precinct was a paper book called a pollbook. As time went on, computer printouts were used. The 2001 rewrite of the statutes about voting at the polls gave the State Board of Elections broader authority to design a system, following statutory criteria. The bill adds to the State Board's criteria that it must permit to use of electronic registration records in the voting place in lieu of paper pollbooks or other records. Effective when the bill becomes law.

Section 13. General Election Winner. This section places in statute the rule, assumed to be the case, that in a general election the candidate with the highest number of votes for each office should be declared elected. Effective when the bill becomes law.

Section 14. Purged Voter Reinstated. This section specifies what has been the North Carolina practice ever since the National Voter Registration Act (NVRA) was implemented here: That if a voter has been removed from the rolls in accordance with NVRA mail verification procedures and that person shows up to vote and affirms that the person has never moved from the county, the person shall be reinstated and shall be allowed to vote. Effective when the bill becomes law.

Section 15. Supplying Missing Information on Form. This section provides that if a voter who otherwise properly fills out a voter registration form nonetheless fails to check a box for US citizenship, the voter may correct that omission at any time before voting on election day. The box in question is required by the Help America Vote Act (HAVA) and is duplicative of another US citizenship affirmation that is elsewhere on the NC voter registration form. In 2004, the State Board of Elections found that some voters overlooked the box, but signed the affirmation of citizenship. The Board knew federal law required the boxes had to be checked, and believed that federal law would allow the omission to be corrected up to voting time, but was unsure whether State law permitted such corrections late in the process. This section clarifies that issue. Effective when bill becomes law.

Section 16. Precinct Boundary Program. This section renews for the 2010 Census North Carolina's participation in the Census Redistricting Data Program. That program is in its beginning stages. This section takes 163-132.1, the statutory section that defined our participation in the 2000 Census Redistricting Data Program, updates the first subsection stating NC's intention to participate, leaves the last subsection giving the Legislative Services Commission rulemaking power in administering its role in the program, and strips out the subsections in between, which prescribed the details specific to NC's participation in the 2000 effort. The details of NC's participation could be fleshed out later as the federal program develops. The purpose of the program generally is to try to get the Census Bureau to put block boundaries where NC's precinct lines are and to make sure NC's precinct lines go on Census block boundaries so that in redistricting the General Assembly -- if it wants to -- can draw districts without splitting precincts. The leaders of both parties in both houses of the General Assembly have already signed a letter indicating their approval for NC to participate in the program. Effective when bill becomes law.

Section 17. Recasting Lost Votes. . This section would permit the State Board of Elections to allow a county board to permit a known group of voters whose votes were lost beyond retrieval to recast those votes. The bill would specify that the procedure would not be a "new election." In the case of the 2004 Commissioner of Agriculture race, a majority of the State Board did not believe it had the authority to allow the 4,438 whose votes were lost in Carteret County to recast their votes. This section was the substance of HB 158 and SB 224, recommended by the Joint Select Committee on Electronic Voting Systems.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

HOUSE BILL 1115

Short Title:	Election Administration Amendments.	(Public)
Sponsors:	Representatives Moore, Ross (Primary Sponsors); and Insko.	
Referred to:	Election Law and Campaign Finance Reform.	

April 5, 2005

A BILL TO BE ENTITLED

AN ACT TO ALLOW POLITICAL PARTIES TO USE "RUNNERS" TO PICK UP VOTER LISTS FROM POLLS; TO PROHIBIT A CANDIDATE FROM BEING AN OBSERVER OR RUNNER AT THE POLLS; TO AUTHORIZE THE EXECUTIVE DIRECTOR OF THE STATE BOARD OF ELECTIONS TO PERMIT DIFFERENT VOTING SYSTEMS IN THE SAME PRECINCT; TO ALLOW THE CHANGING OF REGISTERED VOTERS BASED ON ADJUSTED COUNTY LINE; TO CHANGE THE DEADLINE FOR FILING A PROTEST FROM SIX O'CLOCK P.M. TO FIVE O'CLOCK P.M.; TO PERMIT THE SAME KIND OF VOTER ASSISTANCE IN ONE-STOP SITES AS AT VOTING PLACES ON ELECTION DAY; TO CHANGE THE REQUIREMENT FOR A STATEWIDE UNAFFILIATED CANDIDATE TO CONFORM TO A FEDERAL COURT DECISION; TO PROHIBIT PIECE PAYMENT FOR VOTER REGISTRATION DRIVES; TO EXPRESSLY PROVIDE THAT PRECINCT TRANSFER VOTERS AT ONE-STOP SITES NEED NOT VOTE PROVISIONAL BALLOTS; TO DELETE THE REQUIREMENT THAT ONE-STOP VOTERS BE INSTRUCTED IN HOW TO VOTE MAIL ABSENTEE BALLOTS; TO FIX THE SALARY ON WHICH A FILING FEE FOR AN OFFICE IS BASED; TO REMOVE THE OUTDATED REFERENCE IN THE FILING FEE STATUTE TO OFFICES "COMPENSATED ENTIRELY BY FEES"; TO ALLOW THE STATE BOARD OF ELECTIONS TO AUTOMATICALLY CANCEL A VOTER'S REGISTRATION IN A FORMER COUNTY WHEN THE VOTER REGISTERS IN A NEW COUNTY; TO UPDATE AND MAKE MORE TECHNOLOGY-NEUTRAL THE LANGUAGE IN THE STATUTE PROVIDING FOR ACCESS TO VOTER REGISTRATION DATA; TO EXTEND FOR THREE DAYS THE COUNTY CANVASS AFTER A GENERAL ELECTION IN NOVEMBER OF AN EVEN-NUMBERED YEAR; AND TO EXPRESSLY ALLOW ELECTRONIC POLLBOOKS.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 163-45 reads as rewritten:

"**§ 163-45. Observers; appointment.**

The ~~chairman~~ chair of each political party in the county shall have the right to designate two observers to attend each voting place at each primary and election and such observers may, at the option of the designating party ~~chairman,~~ chair, be relieved during the day of the primary or election after serving no less than four hours and provided the list required by this section to be filed by each ~~chairman~~ chair contains the names of all persons authorized to represent such ~~chairman's~~chair's political party. Not more than two observers from the same political party shall be permitted in the voting enclosure at any time. This right shall not extend to the ~~chairman~~ chair of a political party during a primary unless that party is participating in the primary. In any election in which an unaffiliated candidate is named on the ballot, the candidate or the candidate's campaign manager shall have the right to appoint two observers for each voting place consistent with the provisions specified herein. Persons appointed as observers must be registered voters of the county for which appointed and must have good moral character. No person who is a candidate on the ballot in a primary or election may serve as an observer or runner in that primary or election. Observers shall take no oath of office.

Individuals authorized to appoint observers must submit in writing to the chief judge of each precinct a signed list of the observers appointed for that precinct. Individuals authorized to appoint observers must, prior to 10:00 A.M. on the fifth day prior to any primary or general election, submit in writing to the ~~chairman~~ chair of the county board of elections two signed copies of a list of observers appointed by them, designating the precinct for which each observer is appointed. Before the opening of the voting place on the day of a primary or general election, the ~~chairman~~ chair shall deliver one copy of the list to the chief judge for each affected precinct. ~~He~~ The chair shall retain the other copy. The ~~chairman,~~ chair, or the chief judge and judges for each affected precinct, may for good cause reject any appointee and require that another be appointed. The names of any persons appointed in place of those persons rejected shall be furnished in writing to the chief judge of each affected precinct no later than the time for opening the voting place on the day of any primary or general election, either by the ~~chairman~~ chair of the county board of elections or the person making the substitute appointment.

An observer shall do no electioneering at the voting place, and ~~he~~ shall in no manner impede the voting process or interfere or communicate with or observe any voter in casting ~~his~~ a ballot, but, subject to these restrictions, the chief judge and judges of elections shall permit ~~him~~ the observer to make such observation and take such notes as ~~he~~ the observer may desire.

Whether or not the observer attends to the polls for the requisite time provided by this section, each observer shall be entitled to obtain at times specified by the State Board of Elections, but not less than three times during election day with the spacing not less than one hour apart, a list of the persons who have voted in the precinct so far in that election day. Counties that use an "authorization to vote document" instead of poll books may comply with the requirement in the previous sentence by permitting each observer to inspect election records so that the observer may create a list of persons who

have voted in the precinct so far that election day; each observer shall be entitled to make the inspection at times specified by the State Board of Elections, but not less than three times during election day with the spacing not less than one hour apart. Instead of having an observer receive the voting list, the county party chair may send a runner to do so. The runner may be any person named by the county party chair. That party chair must notify the chair of the county board of elections or the board chair's designee of the names of all runners to be used in each precinct before the runner goes to the precinct. The runner may receive a voter list from the precinct on the same schedule as an observer. Whether obtained by observer or runner, each party is entitled to only one voter list at each of the scheduled times. No runner may enter the voting enclosure except when necessary to announce that runner's presence. The runner must leave immediately after being provided with the list."

SECTION 1.(b) G.S. 163-166.3 reads as rewritten:

"**§ 163-166.3. Limited access to the voting enclosure.**

During the time allowed for voting in the voting place, only the following persons may enter the voting enclosure:

(1) An election official.

(2) An observer appointed pursuant to G.S. 163-45.

(2a) A runner appointed pursuant to G.S. 163-45, but only to the extent necessary to announce that runner's presence and to receive the voter list as provided in G.S. 163-45.

(3) A person seeking to vote in that voting place on that day but only while in the process of voting or seeking to vote.

(4) A voter in that precinct while entering or explaining a challenge pursuant to G.S. 163-87 or G.S. 163-88.

(5) A person authorized under G.S. 163-166.8 to assist a voter but, except as provided in subdivision (6) of this section, only while assisting that voter.

(6) Minor children of the voter under the age of 18, or minor children under the age of 18 in the care of the voter, but only while accompanying the voter and while under the control of the voter.

(7) Persons conducting or participating in a simulated election within the voting place or voting enclosure, if that simulated election is approved by the county board of elections.

(8) Any other person determined by election officials to have an urgent need to enter the voting enclosure but only to the extent necessary to address that need."

SECTION 2. G.S. 163-165.10 reads as rewritten:

"**§ 163-165.10. Adequacy of voting system for each precinct.**

The county board of elections shall make available for each precinct voting place an adequate quantity of official ballots or ~~equipment so that all voters qualified to vote at the precinct may do so.~~ equipment. When the board of county commissioners has decided to adopt and purchase or lease a voting system for voting places under the provisions of G.S. 165-165.8, the board of county commissioners shall, as soon as

practical, provide for each of those voting places sufficient equipment of the approved voting system in complete working order. If it is impractical to furnish each voting place with the equipment of the approved voting system, that which has been obtained may be placed in voting places chosen by the county board of elections. In that case, the county board of elections shall choose the voting places and allocate the equipment in a way that as nearly as practicable provides equal access to the voting system for each voter. The county board of elections shall appoint as many voting system custodians as may be necessary for the proper preparation of the system for each election and for its maintenance, storage, and care. The Executive Director of the State Board of Elections may permit a county board of elections to provide more than one type of voting system in a precinct, but only upon a finding that doing so is necessary to comply with federal or State law."

SECTION 3. Article 7A of Chapter 163 of the General Statutes is amended by adding a new section to read:

"**§ 163-82.15A. Administrative change of registration when county line is adjusted.**

When a boundary between counties is changed by legislation, or adjusted by the counties pursuant to G.S. 153A-18, the Executive Director of the State Board of Elections shall direct the county boards of elections involved to administratively change the voter registration of any voter whose residence the change or adjustment places in a different county. The voter shall not be required to submit a new application to register. The Executive Director shall prescribe a method of notifying the voter of the change of county registration, the correct precinct, and other relevant information."

SECTION 4. G.S. 163-182.9(b)(4) reads as rewritten:

"(4) The timing for filing a protest shall be as follows:

a. If the protest concerns the manner in which votes were counted or results tabulated, the protest shall be filed before the beginning of the county board of election's canvass meeting.

b. If the protest concerns the manner in which votes were counted or results tabulated and the protest states good cause for delay in filing, the protest may be filed until ~~6:00~~ 5:00 P.M. on the second day after the county board of elections has completed its canvass and declared the results.

c. If the protest concerns an irregularity other than vote counting or result tabulation, the protest shall be filed no later than ~~6:00~~ 5:00 P.M. on the second day after the county board has completed its canvass and declared the results.

d. If the protest concerns an irregularity on a matter other than vote counting or result tabulation and the protest is filed before election day, the protest proceedings shall be stayed, unless a party defending against the protest moves otherwise, until after election day if any one of the following conditions exists:

1. The ballot has been printed.
2. The voter registration deadline for that election has passed.

3. Any of the proceedings will occur within 30 days before election day."

SECTION 5.(a) G.S. 163-227.2(e) reads as rewritten:

"(e) The voter shall vote that voter's absentee ballot in a voting booth in the office of the county board of elections, and the county board of elections shall provide a voting booth for that purpose, provided however, that the county board of elections may in the alternative provide a private room for the voter adjacent to the office of the board, in which case the voter shall vote that voter's absentee ballot in that room. ~~If the voter needs assistance in getting to and from the voting booth and in preparing and marking that voter's ballots or if the voter is a blind voter, only a member of the county board of elections, the director of elections, an employee of the board of elections authorized by the board, a near relative of the voter or the voter's verifiable legal guardian shall be entitled to assist the voter.~~ A voter at a one-stop site shall be entitled to the same assistance as a voter at a voting place on election day under G.S. 163-166.8. The State Board of Elections shall, where appropriate, adapt the rules it adopts under G.S. 163-166.8 to one-stop voting."

SECTION 5.(b) G.S. 163-226.3(a) reads as rewritten:

"(a) Any person who shall, in connection with absentee voting in any election held in this State, do any of the acts or things declared in this section to be unlawful, shall be guilty of a Class I felony. It shall be unlawful:

(1) For any person except the voter's near relative or the voter's verifiable legal guardian to assist the voter to vote an absentee ballot when the voter is voting an absentee ballot other than under the procedure described in G.S. 163-227.2; provided that if there is not a near relative or legal guardian available to assist the voter, the voter may request some other person to give assistance;

(2) For any person to assist a voter to vote an absentee ballot under the absentee voting procedure authorized by G.S. 163-227.2 except a ~~member of the county board of elections, the director of elections, an employee of the board authorized by the board, the voter's near relative or the voter's verifiable legal guardian;~~as provided in that section;

(3) For a voter who votes an absentee ballot under the procedures authorized by G.S. 163-227.2 to vote that voter's absentee ballot outside of the voting booth or private room provided to the voter for that purpose in or adjacent to the office of the county board of elections or at the additional site provided by G.S. 163-227.2(f1), or to receive assistance ~~in getting to and from the voting booth or private room and in preparing and marking that voter's ballots from any person other than a member of the county board of elections, the director of elections, an employee of the board of elections authorized by the board, a near relative of the voter or the voter's verifiable legal guardian;~~except as provided in G.S. 163-227.2;

(4) For any owner, manager, director, employee, or other person, other than the voter's near relative or verifiable legal guardian, to make a

written request pursuant to G.S. 163-230.1 or an application on behalf of a registered voter who is a patient in any hospital, clinic, nursing home or rest home in this State or for any owner, manager, director, employee, or other person other than the voter's near relative or verifiable legal guardian, to mark the voter's absentee ballot or assist such a voter in marking an absentee ballot;

(5) Repealed by Session Laws 1987, c. 583, s. 8.

(6) For any person to take into that person's possession for delivery to a voter or for return to a county board of elections the absentee ballot of any voter, provided, however, that this prohibition shall not apply to a voter's near relative or the voter's verifiable legal guardian;

(7) Except as provided in subsections (1), (2), (3) and (4) of this section, G.S. 163-231(a), G.S. 163-250(a), and G.S. 163-227.2(e), for any voter to permit another person to assist the voter in marking that voter's absentee ballot, to be in the voter's presence when a voter votes an absentee ballot, or to observe the voter mark that voter's absentee ballot."

SECTION 6. G.S. 163-122(a) reads as rewritten:

"(a) Procedure for Having Name Printed on Ballot as Unaffiliated Candidate. – Any qualified voter who seeks to have ~~his~~ that voter's name printed on the general election ballot as an unaffiliated candidate shall:

(1) If the office is a statewide office, file written petitions with the State Board of Elections supporting ~~his~~ candidacy for a specified office. These petitions must be filed with the State Board of Elections on or before 12:00 noon on the last Friday in June preceding the general election and must be signed by qualified voters of the State equal in number to two percent (2%) of the total number of ~~registered voters in the State as reflected by the most recent statistical report issued by the State Board of Elections.~~ voters who voted in the most recent general election for Governor. Also the petition must be signed by at least 200 registered voters in each of four congressional districts in North Carolina. No later than 5:00 p.m. on the fifteenth day preceding the date the petitions are due to be filed with the State Board of Elections, each petition shall be presented to the ~~chairman~~ chair of the board of elections of the county in which the signatures were obtained. Provided the petitions are timely submitted, the ~~chairman~~ chair shall examine the names on the petition and place a check mark on the petition by the name of each signer who is qualified and registered to vote in ~~his~~ that county and shall attach to the petition ~~his~~ the petitioner's signed certificate. Said certificates shall state that the signatures on the petition have been checked against the registration records and shall indicate the number of signers to be qualified and registered to vote in ~~his~~ that county. The ~~chairman~~ chair shall return each petition, together with the certificate required in this section, to

the person who presented it ~~to him~~ for checking. Verification by the ~~chairman~~ chair of the county board of elections shall be completed within two weeks from the date such petitions are presented."

SECTION 7.(a) Article 7A of Chapter 163 of the General Statutes is amended by adding a new section to read:

"**§ 163-82.25A. Piece payment in voter registration drives prohibited.**

No person who employs or contracts with another person to register voters or assist or encourage voters to fill out voter registration forms shall pay that person per voter registration application completed. No person shall accept payment per voter registration application. A violation of this section is a Class 2 misdemeanor."

SECTION 7.(b) G.S. 163-274 is amended by adding a new subdivision to read:

"(14) For any person to pay or accept payment per voter registration application completed in violation of G.S. 163-82.25A."

SECTION 8.(a) G.S. 163-227.2 is amended by adding a new subsection to read:

"(e2) A voter who has moved within the county more than 30 days before election day but has not reported the move to the board of elections shall not be required on that account to vote a provisional ballot at the one-stop site, as long as the one-stop site has available all the information necessary to determine whether a voter is registered to vote in the county and which ballot the voter is eligible to vote based on the voter's proper residence address. The voter with that kind of unreported move shall be allowed to vote the same kind of absentee ballot as other one-stop voters."

SECTION 8.(b) G.S. 163-166.11 is amended by adding a new subdivision to read:

"(2a) A voter who has moved within the county more than 30 days before election day but has not reported the move to the board of elections shall not be required on that account to vote a provisional ballot at the one-stop site, as long as the one-stop site has available all the information necessary to determine whether a voter is registered to vote in the county and which ballot the voter is eligible to vote based on the voter's proper residence address. The voter with that kind of unreported move shall be allowed to vote the same kind of absentee ballot as other one-stop voters as provided in G.S. 163-227.2(e2)."

SECTION 9. G.S. 163-227.2(c) reads as rewritten:

"(c) If the application is properly filled out, the authorized member or employee shall enter the voter's name in the register of absentee requests, applications, and ballots ~~issued; shall furnish the voter with the instruction sheets called for by G.S. 163-229(c); and~~ issued and shall furnish the voter with the ballots to which the application for absentee ballots applies. The voter thereupon shall vote in accordance with subsection (e) of this section.

All actions required by this subsection shall be performed in the office of the board of elections, except that the voting may take place in an adjacent room as provided by subsection (e) of this section. The application under this subsection shall be signed in

the presence of the ~~chairman~~chair, member, director of elections of the board, or full-time employee, authorized by the board who shall sign the application and certificate as the witness and indicate the official title held by him or her. Notwithstanding G.S. 163-231(a), in the case of this subsection, only one witness shall be required on the certificate."

SECTION 10. G.S. 163-107(a) reads as rewritten:

"(a) Fee Schedule. – At the time of filing a notice of candidacy, each candidate shall pay to the board of elections with which he files under the provisions of G.S. 163-106 a filing fee for the office he seeks in the amount specified in the following tabulation:

Office Sought	**Amount of Filing Fee**
Governor	One percent (1%) of the annual salary of the office sought
Lieutenant Governor	One percent (1%) of the annual salary of the office sought
All State executive offices	One percent (1%) of the annual salary of the office sought
All District Attorneys of the General Court of Justice	One percent (1%) of the annual salary of the office sought
United States Senator	One percent (1%) of the annual salary of the office sought
Members of the United States House of Representatives	One percent (1%) of the annual salary of the office sought
State Senator	One percent (1%) of the annual salary of the office sought
Member of the State House of Representatives	One percent (1%) of the annual salary of the office sought
All county offices not compensated by fees	One percent (1%) of the annual salary of the office sought
~~County commissioners, if compensated entirely by fees~~	~~Ten dollars ($10.00)~~
~~Members of county board of education, if compensated entirely by fees~~	~~Five dollars ($5.00)~~
~~Sheriff, if compensated entirely by fees~~	~~Forty dollars ($40.00), plus one percent (1%) of the income of the office above four thousand dollars ($4,000)~~
~~Clerk of superior court, if compensated entirely by fees~~	~~Forty dollars ($40.00), plus one percent (1%) of the income of the office above four thousand dollars ($4,000)~~
~~Register of deeds, if compensated entirely by fees~~	~~Forty dollars ($40.00), plus one percent (1%) of the income of the office above four thousand dollars ($4,000)~~
~~Any other county office, if compensated~~	~~Twenty dollars ($20.00), plus one percent~~

~~entirely by fees~~	~~(1%) of the income of the office above two thousand dollars ($2,000)~~
All county offices compensated partly by salary and partly by fees	One percent (1%) of the first annual salary to be received (exclusive of fees)

The salary of any office that is the basis for calculating the filing fee is the starting salary for the office, rather than the salary received by the incumbent, if different. If no starting salary can be determined for the office, then the salary used for calculation is the salary of the incumbent, as of January 1 of the election year."

SECTION 11. G.S. 163-82.9 reads as rewritten:

"**§ 163-82.9. Cancellation of prior registration.**

If an applicant indicates on an application form described in G.S. 163-82.3 a current registration to vote in any other county, municipality, or state, the county board of elections, upon registering the person to vote, shall send a notice to the appropriate officials in the other county, municipality, or state and shall ask them to cancel the person's voter registration there. If an applicant completes an application form described in G.S. 163-82.3 except that the applicant neglects to complete the portion of the form that authorizes cancellation of previous registration in another county, the State Board of Elections shall notify the county board of elections in the previous county of the new registration, and the board in the previous county shall cancel the registration. The State Board of Elections shall adopt rules to prevent disenfranchisement in the implementation of this section. Those rules shall include adequate notice to the person whose previous registration is to be cancelled."

SECTION 12.(a) G.S. 163-82.10(b) reads as rewritten:

"(b) Access to Registration Records. – Upon request by that person, the county board of elections shall provide to any person a list of the registered voters of the county or of any precinct or precincts in the county. The county board may furnish selective lists according to party affiliation, gender, race, date of registration, precinct name, precinct identification code, congressional district, senate district, representative district, and, where applicable, county commissioner district, city governing board district, fire district, soil and water conservation district, and voter history including primary, general, and special districts, or any other reasonable category. No list produced under this section shall contain a voter's date of birth. However, lists may be produced according to voters' ages. ~~The~~ Both the following shall apply ~~if a county maintains or has its voter registration list maintained on a computer:~~to all counties:

(1) ~~In addition to the typed, mimeographed, photocopied, computer printout or label lists, the~~ The county board of elections shall make the voter registration information available to the public on electronic or magnetic medium. ~~Magnetic medium for the purpose of this section shall consist of nine track tape or 3.5 inch diskettes and 5.25 inch diskettes readily accessible using MS-DOS or Microsoft Windows operating systems or both such systems; and~~ For purposes of this section, "electronic or magnetic medium" means any of the media in use by the State Board of Elections at the time of the request.

(2) Information requested on electronic or magnetic medium shall contain the following: voter name, county voter identification number, residential address, mailing address, sex, race, age but not date of birth, party affiliation, precinct name, precinct identification code, congressional district, senate district, representative district, and, where applicable, county commissioner district, city governing board district, fire district, soil and water conservation district, and any other district information available, and voter history including primary, general, and special districts, or any other reasonable ~~category;~~category.

~~provided that this subsection shall not require a county to computerize its lists, but if a county does computerize it shall comply with subdivisions (1) and (2) of this subsection.~~ The county board shall require each person to whom a list is furnished to reimburse the board for the actual cost incurred in preparing it, except as provided in subsection (c) of this section. Actual cost for the purpose of this section shall not include the cost of any equipment or any imputed overhead expenses. ~~It may include the actual cost of paper, labels, and magnetic medium. The purchaser at its discretion may provide the magnetic medium.~~ When furnishing information under this subsection to a purchaser on a magnetic medium provided by the county board or the purchaser, the county board may impose a service charge of up to twenty-five dollars ($25.00)."

SECTION 12.(b) G.S. 163-82.10(c) reads as rewritten:

"(c) Free Lists. ~~Free lists of all registered voters in the county shall be provided in the following cases:~~

~~(1)~~ A county board ~~that maintains voter records on computer~~ shall provide, upon written request, one free list ~~to:~~of all the registered voters in the county to

~~a.~~ ~~The~~ the State chair of each political ~~party;~~ party and

~~b.~~ ~~The~~to the county chair of each political party once in every odd-numbered year, once during the first six calendar months of every even-numbered year, and once during the latter six calendar months of every even-numbered year.

~~(2) A county board that does not maintain voter records on computer shall provide one free paper list every two years to the county chair of each political party.~~

Each free list shall include the name, address, gender, age but not date of birth, race, political affiliation, voting history, precinct, precinct name, precinct identification code, congressional district, senate district, representative district, and, where applicable, county commissioner district, city governing board district, fire district, soil and water conservation district, and voter history including primary, general, and special districts of each registered voter. ~~The free paper list to the county party chairs shall group voters by precinct.~~ All free lists shall be provided as soon as practicable on one of any electronic or magnetic media, but no later than 30 days after written request. Each State party chair shall provide ~~the discs or tapes~~ the information on the media received from the county boards or a copy of the media containing the data itself to candidates of that

party who request the ~~discs or tapes~~ data in writing. ~~Each State party chair shall return discs and tapes to the county boards within 30 days after receiving them.~~ As used in this section, "political party" means a political party as defined in G.S. 163-96."

SECTION 13. G.S. 163-182.5(b) reads as rewritten:

"(b) Canvassing by County Board of Elections. – The county board of elections shall meet at 11:00 A.M. on the ~~seventh~~ tenth day after every election held on the same day as a general election in November of the even-numbered year, and at 11:00 A.M. on the seventh day after every other election, to complete the canvass of votes cast and to authenticate the count in every ballot item in the county by determining that the votes have been counted and tabulated correctly. If, despite due diligence by election officials, the initial counting of all the votes has not been completed by that time, the county board may hold the canvass meeting a reasonable time thereafter. The canvass meeting shall be at the county board of elections office, unless the county board, by unanimous vote of all its members, designates another site within the county. The county board shall examine the returns from precincts, from absentee official ballots, and from provisional official ballots and shall conduct the canvass."

SECTION 14. G.S. 163-166.7(c) reads as rewritten:

"(c) The State Board of Elections shall promulgate rules for the process of voting. Those rules shall emphasize the appearance as well as the reality of dignity, good order, impartiality, and the convenience and privacy of the voter. Those rules, at a minimum, shall include procedures to ensure that all the following occur:

(1) The voting system remains secure throughout the period voting is being conducted.

(2) Only properly voted official ballots are introduced into the voting system.

(3) Except as provided by G.S. 163-166.9, no official ballots leave the voting enclosure during the time voting is being conducted there.

(4) All improperly voted official ballots are returned to the precinct officials and marked as spoiled.

(5) Voters leave the voting place promptly after voting.

(6) Voters not clearly eligible to vote in the precinct but who seek to vote there are given proper assistance in voting a provisional official ballot or guidance to another voting place where they are eligible to vote.

(7) Information gleaned through the voting process that would be helpful to the accurate maintenance of the voter registration records is recorded and delivered to the county board of elections.

(8) The registration records are kept secure. The State Board of Elections shall permit the use of electronic registration records in the voting place in lieu of or in addition to a paper pollbook or other registration record.

(9) Party observers are given access as provided by G.S. 163-45 to current information about which voters have voted.

(10) The voter, before voting, shall sign that voter's name on the pollbook, other voting record, or voter authorization document. If the voter is

unable to sign, a precinct official shall enter the person's name on the same document before the voter votes."

SECTION 15. Sections 2, 6, 8, 9, 10, 12, and 14 of this act are effective when this act becomes law and apply to all primaries and elections held on or after that date. The remainder of this act becomes effective January 1, 2006, and applies to all primaries and elections held on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 1128

Committee Substitute Favorable 5/5/05
Third Edition Engrossed 5/19/05
PROPOSED COMMITTEE SUBSTITUTE H1128-PCS60543-RR-59

Short Title: Campaign Finance Amendments. (Public)

Sponsors:

Referred to:

April 6, 2005

A BILL TO BE ENTITLED

AN ACT TO REQUIRE AN AUDIT TRAIL FOR ANY CAMPAIGN CONTRIBUTION MADE BY MONEY ORDER; TO ALLOW CAMPAIGN EXPENDITURES TO BE MADE BY ANY VERIFIABLE FORM OF PAYMENT; TO CLARIFY THE MEANING OF "QUALIFIED TO RECEIVE VOTES ON THE BALLOT AS A CANDIDATE FOR THE OFFICE" AS A PRECONDITION FOR CERTIFICATION UNDER THE PUBLIC CAMPAIGN FINANCING FUND; TO CLARIFY WHAT CANDIDATES UNDER THAT FUND MAY RAISE AND SPEND AFTER FILING NOTICE OF INTENT TO PARTICIPATE; TO PROVIDE FOR EARLIER DISTRIBUTION OF THE JUDICIAL VOTER GUIDE; TO APPLY THE SCOPE AND ADVISORY OPINION SECTIONS OF ARTICLE 22A OF CHAPTER 163 OF THE GENERAL STATUTES TO ARTICLES 22B, 22D, 22E, AND 22F AS WELL; TO EXPRESSLY REQUIRE THAT ORGANIZATIONS EXPENDING FOR "ELECTIONEERING COMMUNICATIONS" MUST DO SO OUT OF A SEGREGATED ACCOUNT THAT CONTAINS NO MONEY FROM PROHIBITED SOURCES AND TO EXPRESSLY PROVIDE FOR DETAILED REPORTING FROM ANY SUCH ACCOUNT; AND TO CLARIFY THE DEFINITION OF "CORPORATION".

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 dollars ($100.00) 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(e) reads as rewritten:

"(e) All expenditures for media expenses shall be made by ~~check only.~~ 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."

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 ~~check only.~~ 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, 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 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 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. 163-278.64(c) reads as rewritten:

"(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, if they apply to that candidate:~~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) ~~Qualified to receive votes on the ballot as a candidate for the office.~~Filed a valid notice of candidacy pursuant to Article 25 of 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."

SECTION 5. G.S. 163-278.64(d) reads as rewritten:

"(d) 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 ten thousand dollars ($10,000) from sources and in amounts permitted by Article 22A of this Chapter and may expend up to ten thousand dollars ($10,000) for any campaign purpose. A candidate who exceeds either of these limits shall be ineligible to file a declaration of intent or receive funds from the Public Campaign Financing Fund.

(2) From the filing of a declaration of intent through the end of the qualifying period, a candidate ~~shall~~ may accept only qualifying contributions, contributions under ten dollars ($10.00) from North Carolina voters, 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 ~~no more than an amount equal to the maximum qualifying contributions for that candidate, not including possible rescue funds or~~ the remaining money raised pursuant to subdivision (1) of this ~~subsection.~~ subsection and possible rescue funds received pursuant to G.S. 163-278.67. ~~Contributions a candidate may use to expend to that limit shall be limited to qualifying contributions, and personal and family contributions permitted by subdivision (4) of this subsection.~~

(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. 163-278.65(b)(4) plus any funds remaining from the qualifying period and possible rescue funds.

(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 and~~ campaign. Debt incurred by the candidate for a campaign expenditure shall count toward that limit. The candidate may accept in contributions one thousand dollars ($1,000) from each member of that candidate's family consisting of spouse, parent, child, brother, and sister.

(5) A candidate and the candidate's committee shall limit the use of all revenues permitted by this subsection to expenditures for campaign-related purposes only. The Board shall publish guidelines outlining permissible campaign-related expenditures. In establishing those guidelines, the Board shall differentiate expenditures that reasonably further a candidate's campaign from expenditures for personal use that would be incurred in the absence of the candidacy. In establishing the guidelines, the Board shall review relevant provisions of G.S. 163-278.42(e), the Federal Election Campaign Act, and rules adopted pursuant to it, and similar provisions in other states.

(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."

SECTION 6. G.S. 163-278.69(a) reads as rewritten:

"(a) Judicial Voter Guide. – The Board shall publish a Judicial Voter Guide that explains the functions of the appellate courts and the laws concerning the election of appellate judges, the purpose and function of the Public Campaign ~~Financing~~ Fund, and the laws concerning voter registration. The Board shall distribute the Guide to as many voting-age individuals in the State as practical, through a mailing to all residences or other means it deems effective. The distribution shall occur no more than ~~28~~14 days nor fewer than seven days before the one-stop voting period provided in G.S. 163-227.2 for the primary and no more than ~~28~~14 days nor fewer than seven days before the one-stop voting period provided in G.S. 163-227.2 for the general election."

SECTION 7. G.S. 163-278.5 reads as rewritten:

"**§ 163-278.5. Scope of Article; severability.**

The provisions of this Article apply to primaries and elections for North Carolina offices and to North Carolina referenda and do not apply to primaries and elections for federal offices or offices in other States or to non-North Carolina referenda. Any provision in this Article that regulates a non-North Carolina entity does so only to the extent that the entity's actions affect elections for North Carolina offices or North Carolina referenda.

The provisions of this Article are severable. If any provision is held invalid by a court of competent jurisdiction, the invalidity does not affect other provisions of the Article that can be given effect without the invalid provision.

This section applies to Articles 22B, 22D, 22E, and 22F of the General Statutes to the same extent that it applies to this Article."

SECTION 8. G.S. 163-278.23 reads as rewritten:

"**§ 163-278.23. Duties of Executive Director of Board.**

The Executive Director of the Board shall inspect or cause to be inspected each statement filed with the Board under this Article within 30 days after the date it is filed. The Executive Director shall advise, or cause to be advised, no more than 30 days and at least five days before each report is due, each candidate or treasurer whose organizational report has been filed, of the specific date each report is due. He shall immediately notify any individual, candidate, treasurer, political committee, referendum

committee, media, or other entity that may be required to file a statement under this Article if:

(1) It appears that the individual, candidate, treasurer, political committee, referendum committee, media, or other entity has failed to file a statement as required by law or that a statement filed does not conform to this Article; or

(2) A written complaint is filed under oath with the Board by any registered voter of this State alleging that a statement filed with the Board does not conform to this Article or to the truth or that an individual, candidate, treasurer, political committee, referendum committee, media, or other entity has failed to file a statement required by this Article.

The entity that is the subject of the complaint will be given an opportunity to respond to the complaint before any action is taken requiring compliance.

The Executive Director of the Board of Elections shall issue written opinions to candidates, the communications media, political committees, referendum committees, or other entities upon request, regarding filing procedures and compliance with this Article. Any such opinion so issued shall specifically refer to this paragraph. If the candidate, communications media, political committees, referendum committees, or other entities rely on and comply with the opinion of the Executive Director of the Board of Elections, then prosecution or civil action on account of the procedure followed pursuant thereto and prosecution for failure to comply with the statute inconsistent with the written ruling of the Executive Director of the Board of Elections issued to the candidate or committee involved shall be barred. Nothing in this paragraph shall be construed to prohibit or delay the regular and timely filing of reports. The Executive Director shall file all opinions issued pursuant to this section with the Codifier of Rules to be published unedited in the North Carolina Register and the North Carolina Administrative Code.

This section applies to Articles 22B, 22D, 22E, and 22F of the General Statutes to the same extent that it applies to this Article."

SECTION 9.(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 for the direct costs of producing and 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, 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.

(2) The principal place of business of the entity making the disbursement if the entity is not an individual.

(3) The amount of each disbursement 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.

(4) The elections to which the electioneering communications pertain and the names, if known, of the candidates identified or to be identified.

(5) ~~If the disbursements were paid out of a segregated bank account that consists of funds contributed solely by individuals directly to that account for electioneering communications, the~~ The names and addresses of all contributors who contributed 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.~~date to a segregated bank account that consists of funds contributed 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.

~~(6) If the disbursements were paid out of funds not described in subdivision (5) of this subsection, the names and addresses of all contributors who contributed an aggregate amount of more than one thousand dollars ($1,000) to the entity making the disbursement during the period beginning on the first day of the preceding calendar year and ending on the disclosure date.~~"

SECTION 9.(b) G.S. 163-278.82 reads as rewritten:

"**§ 163-278.82. Prohibition of corporate and labor disbursements for electioneering communications.**

(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 from a prohibited source may make any disbursement for the costs of producing and airing any electioneering communication. 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 ~~individuals~~ entities other than prohibited sources directly to that account.

(b) Direct or Indirect Disbursement. – An electioneering communication shall be treated as made by a prohibited source if the prohibited source directly or indirectly disburses any amount for any of the costs of the communication.

(c) Segregated Fund. – Any disbursement for an electioneering communication made from an account must be made from a segregated account into which no funds from a prohibited source have been directly or indirectly introduced."

SECTION 9.(c) 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 for the direct costs of producing and 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, 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.

(2) The principal place of business of the entity making the disbursement if the entity is not an individual.

(3) The amount of each disbursement 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.

(4) The elections to which the electioneering communications pertain and the names, if known, of the candidates identified or to be identified.

(5) ~~If the disbursements were paid out of a segregated bank account that consists of funds contributed solely by individuals directly to that account for electioneering communications, the~~ The names and addresses of all contributors who contributed 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.~~date to a segregated bank account that consists of funds contributed 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.

~~(6) If the disbursements were paid out of funds not described in subdivision (5) of this subsection, the names and addresses of all contributors who contributed an aggregate amount of more than one thousand dollars ($1,000) to the entity making the disbursement during~~

~~the period beginning on the first day of the preceding calendar year and ending on the disclosure date.~~"

SECTION 9.(d) G.S. 163-278.92 reads as rewritten:

"**§ 163-278.92. Prohibition of corporate and labor disbursements for electioneering communications.**

(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 from a prohibited source may make any disbursement for the costs of producing and airing any electioneering communication. 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 ~~individuals~~ entities other than prohibited sources directly to that account.

(b) Direct or Indirect Disbursement. – An electioneering communication shall be treated as made by a prohibited source if the prohibited source directly or indirectly disburses any amount for any of the costs of the communication.

(c) Segregated Fund. – Any disbursement for an electioneering communication made from an account must be made from a segregated account into which no funds from a prohibited source have been directly or indirectly introduced."

SECTION 10. G.S. 163-278.6(7) reads as rewritten:

"(7) The term "corporation" means any corporation ~~doing business in this State~~ established under either domestic or foreign charter, and includes a corporate subsidiary and any business entity in which a corporation participates or is a stockholder, a partner or a joint venturer. The term applies regardless of whether the corporation does business in the State of North Carolina."

SECTION 11. This act becomes effective December 1, 2005, and applies to all contributions and expenditures made or accepted on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 1128 DATE Aug 17, 2005

S. B. No. _____ Amendment No. 1

(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
Sen.) Hoyle

moves to amend the bill on page 1, line 21

(✓) WHICH CHANGES THE TITLE ~~through~~ p. 2, line 4,

by by deleting those lines, and re-numbering the remaining sections accordingly, and

on page 1, line 2, by deleting the words "TO REQUIRE TRAINING FOR CAMPAIGN TREASURERS,".

SIGNED _____

ADOPTED ✓ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

HOUSE BILL 1128:
Campaign Finance Amendments

BILL ANALYSIS

Committee:	Senate Judiciary I	**Date:**	August 10, 2005
Introduced by:	Reps. Moore, Ross	**Summary by:**	William R. Gilkeson
Version:	PCS to Third Edition		Committee Counsel
	H1128-PCS50487-RR-52		

SUMMARY: ***This PCS for House Bill 1128 would make several changes to the campaign finance laws. The changes are mostly based on proposals made by the staff of the State Board of Elections.***

Section 1. Training for Treasurers. 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 corporate or union contributions may not in turn contribute to political committees or candidates. The State Board staff would like to train treasurers of political committees as well, feeling that training would prevent many of the most common mistakes treasurers make. The bill, as modified by the House Election Laws Committee, provides that political committee treasurers must receive State Board training, unless the treasurer has already received State Board training or unless the treasurer is the candidate.

Section 2. Audit Trail for Contribution by Money Order. Current law allows contributions to be made 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 staff of the State Board reports that money orders are the form of contribution they find most often associated with questionable practices. The problem, they say, is the difficulty of tracing the original source of the money. The bill directs the State Board to prescribe methods to ensure an audit trail for contributions by money order so that the identity of the contributor can be determined.

Sections 3 and 4. Payment of Expenses by "Any Verifiable Form." Current law says a campaign must pay all media expenses and all other expenses over $50 by check only. The State Board staff says the law should recognize other forms of payment. The bill says the expenses now payable only by check may be paid by "a verifiable form of payment." Mirroring the language about money orders, this section directs the State Board to prescribe methods to ensure an audit trail for every expenditure so that the identity of each payee can be determined.

Sections 5 through 7. Debugging the Judicial Campaign Act. In 2002 the General Assembly established the Public Campaign Financing Fund to support campaigns of candidates for Supreme Court and Court of Appeals who agree to certain limitation on contributions and expenditures. The new system was first implemented in the 2004 election. These sections are the result of bugs the State Board, and judicial candidates, found in that initial implementation.

Section 5. Eligibility for Certification to Receive Funds. Current law says that to certify a candidate to receive funds, the State Board must determine whether a candidate meets certain criteria including whether the candidate is "qualified to receive votes on the ballot as a candidate for the office." The State Board, and judicial candidates, were uncertain what that language meant: Did it mean simply the candidate met the constitutional qualifications for the office, being 21, a NC citizen, and an attorney? Or did it mean the person had to have filed a notice of candidacy? This section specifies that it means the person must have filed a notice of candidacy. (The section also cleans up some language left over from an early draft of the act.)

Section 6. What a Candidate May Raise and Spend During Qualifying Period. After a candidate is certified and the date of the nonpartisan primary (which marks the end of the qualifying period), it is clear that a candidate may spend only money received from the public Fund plus any money leftover from the qualifying period. But the State Board, and some judicial candidates, found the law unclear as to what could be raised and spent during the period that begins when the candidate files a declaration of intent to participate in the program and ends on primary day, when the qualifying period ends. Particularly uncertain were whether candidates could spend leftover money they raised before they filed their intent and whether they could raise or spend amounts under $10. (Qualifying contributions must come in amounts from $10 to $500. This section rewrites the law to make clear that from the declaration of intent to the primary day, a candidate may accept in contributions only:

- Qualifying contributions.
- Contributions under $10 from NC voters.
- Personal and family contributions of $1,000 per person.

Those contributions may not exceed the maximum amount a candidate may receive in qualifying contributions. In addition to those contributions, during this period a candidate may spend only:

- Leftover money of that raised from September 1 before the election year through the filing of intent. During that time a candidate may raise up to $10,000 from any otherwise legal source without foreclosing the chance to be certified under the Fund.
- Any rescue funds triggered by spending by opponents.

Section 6 also provides that debt by a candidate for a campaign expenditure counts toward the candidate's $1,000 limit over contributing to his or her own campaign.

Section 7. Timing of Voter Guide Distribution. Current law calls for the State Board to distribute to as many voters as possible a Voter Guide telling about the nonpartisan candidates for Supreme Court and Court of Appeals. It says this must be done no more than 28 days and no fewer than 7 days before the election. In 2004, many people received the guides after they had already voted during the one-stop (early voting) period, which begins 20 days before the election. This section would change the distribution dates to no more than 14 days and no fewer than 7 days before the beginning of the early voting period.

Sections 8 and 9. Applying Scope and Opinion Provisions to All Campaign Finance Articles. Current law has provisions that limit the scope of Article 22A, the main campaign finance act, to elections to State and local offices in North Carolina and that give the Executive Director of the State Board the duty to provide written opinions about whether an inquired-about practice complies with Article 22A. If a person receives such an opinion and complies with it, that person cannot be prosecuted for an Article 22A violation. In addition to Article 22A, four other Articles in Chapter 163 regulate campaign finance:

- 22B The Political Parties Financing Fund.
- 22D The Public Campaign Financing Act (for Supreme Court and Court of Appeals).
- 22E Electioneering Communications on television and radio.
- 22F Electioneering Communications through mass mailings and phone banks.

The State Board staff requested that the scope and written opinion statutes be applied to the other four Articles as well as to 22A. These sections do that.

Section 10. Reporting Contributions for Electioneering Communications. In 2004 the General Assembly prohibited the use of corporate or union money for an "electioneering communication," a message sent 30 days before a primary or 60 days before a general election where the message targets the relevant electorate through radio, television, mass mailing, or phone bank and where the message refers to a candidate for statewide office or General Assembly. That act, patterned after the federal McCain-Feingold Act, also requires an organization doing electioneering communications to report contributions and expenditures for them. During its initial implementation of the act in 2004, the State Board staff found that one national organization used the wording of the act to argue that it was not required to report contributions to a separate segregated fund. Instead the organization insisted it was only required to make a large, unrevealing report of contributions from all over the nation. This section clarifies that if an organization makes electioneering communications, if must pay for them out of a separate segregated account into which goes only money from legally acceptable sources, and it must report contributions to and spending from that fund.

Section 11. Definition of "Corporation." This section changes the definition of "corporation" in 163-278.6(7) to include corporations whether or not they do business in NC. GS 163-278.15 prohibits corporations from making contributions and expenditures regardless of whether they do business in NC. But the definition, written in the 1970s, says it's not a "corporation" under NC campaign finance law unless it does business in NC.

EFFECTIVE DATE: The bill becomes effective December 1, 2005, and applies to contributions and expenditures made or accepted on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

HOUSE BILL 1128

Short Title:	Campaign Finance Amendments.	(Public)
Sponsors:	Representatives Moore, Ross (Primary Sponsors); and Rapp.	
Referred to:	Election Law and Campaign Finance Reform.	

April 6, 2005

A BILL TO BE ENTITLED

AN ACT TO REQUIRE TRAINING FOR ALL CAMPAIGN TREASURERS; TO REQUIRE AN AUDIT TRAIL FOR ANY CAMPAIGN CONTRIBUTION MADE BY MONEY ORDER; TO ALLOW CAMPAIGN EXPENDITURES TO BE MADE BY ANY VERIFIABLE FORM OF PAYMENT; TO SET A THREE-YEAR TIME LIMIT BEFORE ANY UNPAID DEBT IN A CAMPAIGN IS DEEMED TO BE A CONTRIBUTION; TO INCLUDE VACANCY ELECTIONS AND NONPARTISAN RUNOFFS IN THE DEFINITION OF "ELECTION" FOR PURPOSES OF CONTRIBUTION LIMITS; TO CLARIFY THE MEANING OF "QUALIFIED TO RECEIVE VOTES ON THE BALLOT AS A CANDIDATE FOR THE OFFICE" AS A PRECONDITION FOR CERTIFICATION UNDER THE PUBLIC CAMPAIGN FINANCING FUND; TO CLARIFY WHAT CANDIDATES UNDER THAT FUND MAY RAISE AND SPEND AFTER FILING NOTICE OF INTENT TO PARTICIPATE; TO PROVIDE FOR EARLIER DISTRIBUTION OF THE JUDICIAL VOTER GUIDE; TO LIMIT THE USE OF CREDIT CARDS FOR PAYMENT OF EXPENDITURES IN PUBLICLY FUNDED JUDICIAL CAMPAIGNS; TO APPLY THE SCOPE AND ADVISORY OPINION SECTIONS OF ARTICLE 22A OF CHAPTER 163 OF THE GENERAL STATUTES TO ARTICLES 22B, 22D, 22E, AND 22F AS WELL; AND TO EXPRESSLY REQUIRE THAT ORGANIZATIONS EXPENDING FOR "ELECTIONEERING COMMUNICATIONS" MUST DO SO OUT OF A SEGREGATED ACCOUNT THAT CONTAINS NO MONEY FROM PROHIBITED SOURCES AND TO EXPRESSLY PROVIDE FOR DETAILED REPORTING FROM ANY SUCH ACCOUNT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 163-278.7(e) reads as rewritten:

"(e) Every treasurer of a political committee or referendum committee shall receive, prior to every election in which the political committee or 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."

SECTION 2. 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 dollars ($100.00) 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 3. G.S. 163-278.8(e) reads as rewritten:

"(e) All expenditures for media expenses shall be made by ~~check only.~~ a verifiable form of payment. The State Board of Elections shall prescribe methods to ensure an audit trail for every contribution 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."

SECTION 4. 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 ~~check only.~~ a verifiable form of payment. The State Board of Elections shall prescribe methods to ensure an audit trail for every contribution 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, 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 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 by this subsection, if the expenditure was to an individual, the report shall list the name and address of the individual."

SECTION 5. G.S. 163-278.6(6) reads as rewritten:

"(6) The terms "contribute" or "contribution" mean any advance, conveyance, deposit, distribution, transfer of funds, loan, payment, gift, pledge or subscription of money or anything of value whatsoever, to a candidate to support or oppose the nomination or election of one or more clearly identified candidates, to a political committee, to a political party, or to a referendum committee, whether or not made in an election year, and any contract, agreement, promise or other obligation, whether or not legally enforceable, to make a contribution. These terms include, without limitation, such contributions as labor or personal services, postage, publication of campaign literature or

materials, in-kind transfers, loans or use of any supplies, office machinery, vehicles, aircraft, office space, or similar or related services, goods, or personal or real property. These terms shall also include, without limitation, a debt, or any portion thereof, to pay an expenditure that has been uncollected beyond the three years set in G.S. 1-52 for its collection. These terms also include, without limitation, the proceeds of sale of services, campaign literature and materials, wearing apparel, tickets or admission prices to campaign events such as rallies or dinners, and the proceeds of sale of any campaign-related services or goods. Notwithstanding the foregoing meanings of "contribution," the word shall not be construed to include services provided without compensation by individuals volunteering a portion or all of their time on behalf of a candidate, political committee, or referendum committee. The term "contribution" does not include an "independent expenditure." If:

a. Any individual, person, 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) makes, or contracts to make, any disbursement for any electioneering communication, as defined in G.S. 163-278.80(2) and (3) and G.S. 163-278.90(2) and (3); and

b. That disbursement is coordinated with a candidate, an authorized political committee of that candidate, a State or local political party or committee of that party, or an agent or official of any such candidate, party, or committee that disbursement or contracting shall be treated as a contribution to the candidate supported by the electioneering communication or that candidate's party and as an expenditure by that candidate or that candidate's party."

SECTION 6. G.S. 163-278.13(d) reads as rewritten:

"(d) For the purposes of this section, the term "an election" means any primary, runoff, second primary, ~~or general election~~ general election, or vacancy election in which the candidate or political committee may be involved, without regard to whether the candidate is opposed or unopposed in the election, except that where a candidate is not on the ballot in a runoff or second primary, that runoff or second primary is not "an election" with respect to that candidate."

SECTION 7. G.S. 163-278.64(c) reads as rewritten:

"(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, if they apply to that candidate:

(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) ~~Qualified to receive votes on the ballot as a candidate for the office.~~Filed a valid notice of candidacy pursuant to Article 25 of 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."

SECTION 8. G.S. 163-278.64(d) reads as rewritten:

"(d) 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 ten thousand dollars ($10,000) from sources and in amounts permitted by Article 22A of this Chapter and may expend up to ten thousand dollars ($10,000) for any campaign purpose. A candidate who exceeds either of these limits shall be ineligible to file a declaration of intent or receive funds from the Public Campaign Financing Fund.

(2) From the filing of a declaration of intent through the end of the qualifying period, a candidate ~~shall~~ may accept only qualifying contributions, contributions under ten dollars ($10.00) from North Carolina voters, 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 ~~no more than an amount equal to the maximum qualifying contributions for that candidate, not including possible rescue funds or~~ the remaining money raised pursuant to subdivision (1) of this ~~subsection.~~ subsection and possible rescue funds received pursuant to G.S. 163-278.67. ~~Contributions a candidate may use to expend to that limit shall be limited to qualifying contributions, and personal and family contributions permitted by subdivision (4) of this subsection.~~

(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. 163-278.65(b)(4) plus any funds remaining from the qualifying period and possible rescue funds.

(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 and~~ campaign. Debt incurred by the candidate for a campaign expenditure shall count toward that limit. The candidate may accept in contributions one thousand dollars ($1,000) from each member of that candidate's family consisting of spouse, parent, child, brother, and sister.

(5) A candidate and the candidate's committee shall limit the use of all revenues permitted by this subsection to expenditures for campaign-related purposes only. The Board shall publish guidelines outlining permissible campaign-related expenditures. In establishing those guidelines, the Board shall differentiate expenditures that reasonably further a candidate's campaign from expenditures for personal use that would be incurred in the absence of the candidacy. In establishing the guidelines, the Board shall review relevant provisions of G.S. 163-278.42(e), the Federal Election Campaign Act, and rules adopted pursuant to it, and similar provisions in other states.

(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."

SECTION 9. G.S. 163-278.69(a) reads as rewritten:

"(a) Judicial Voter Guide. – The Board shall publish a Judicial Voter Guide that explains the functions of the appellate courts and the laws concerning the election of appellate judges, the purpose and function of the Public Campaign ~~Financing~~ Fund, and the laws concerning voter registration. The Board shall distribute the Guide to as many voting-age individuals in the State as practical, through a mailing to all residences or other means it deems effective. The distribution shall occur no more than ~~28~~14 days nor fewer than seven days before the one-stop voting period provided in G.S. 163-227.2 for the primary and no more than ~~28~~14 days nor fewer than seven days before the one-stop voting period provided in G.S. 163-227.2 for the general election."

SECTION 10. G.S. 163-278.6(9) reads as rewritten:

"(9) The terms "expend" or "expenditure" mean any purchase, advance, conveyance, deposit, distribution, transfer of funds, loan, payment, gift, pledge or subscription of money or anything of value whatsoever, whether or not made in an election year, and any contract, agreement, promise or other obligation, whether or not legally enforceable, to make an expenditure or to incur an obligation to pay an expenditure, to

support or oppose the nomination, election, or passage of one or more clearly identified candidates, or ballot measure. Supporting or opposing the election of clearly identified candidates includes supporting or opposing the candidates of a clearly identified political party. The term "expenditure" also includes any payment or other transfer made by a candidate, political committee, or referendum committee. The special definition of "expenditure" in G.S. 163-278.12A applies only in that section."

SECTION 11. G.S. 163-278.5 reads as rewritten:

"**§ 163-278.5. Scope of Article; severability.**

The provisions of this Article apply to primaries and elections for North Carolina offices and to North Carolina referenda and do not apply to primaries and elections for federal offices or offices in other States or to non-North Carolina referenda. Any provision in this Article that regulates a non-North Carolina entity does so only to the extent that the entity's actions affect elections for North Carolina offices or North Carolina referenda.

The provisions of this Article are severable. If any provision is held invalid by a court of competent jurisdiction, the invalidity does not affect other provisions of the Article that can be given effect without the invalid provision.

This section applies to Articles 22B, 22D, 22E, and 22F of the General Statutes to the same extent that it applies to this Article."

SECTION 12. G.S. 163-278.23 reads as rewritten:

"**§ 163-278.23. Duties of Executive Director of Board.**

The Executive Director of the Board shall inspect or cause to be inspected each statement filed with the Board under this Article within 30 days after the date it is filed. The Executive Director shall advise, or cause to be advised, no more than 30 days and at least five days before each report is due, each candidate or treasurer whose organizational report has been filed, of the specific date each report is due. He shall immediately notify any individual, candidate, treasurer, political committee, referendum committee, media, or other entity that may be required to file a statement under this Article if:

(1) It appears that the individual, candidate, treasurer, political committee, referendum committee, media, or other entity has failed to file a statement as required by law or that a statement filed does not conform to this Article; or

(2) A written complaint is filed under oath with the Board by any registered voter of this State alleging that a statement filed with the Board does not conform to this Article or to the truth or that an individual, candidate, treasurer, political committee, referendum committee, media, or other entity has failed to file a statement required by this Article.

The entity that is the subject of the complaint will be given an opportunity to respond to the complaint before any action is taken requiring compliance.

The Executive Director of the Board of Elections shall issue written opinions to candidates, the communications media, political committees, referendum committees, or other entities upon request, regarding filing procedures and compliance with this Article. Any such opinion so issued shall specifically refer to this paragraph. If the candidate, communications media, political committees, referendum committees, or other entities rely on and comply with the opinion of the Executive Director of the Board of Elections, then prosecution or civil action on account of the procedure followed pursuant thereto and prosecution for failure to comply with the statute inconsistent with the written ruling of the Executive Director of the Board of Elections issued to the candidate or committee involved shall be barred. Nothing in this paragraph shall be construed to prohibit or delay the regular and timely filing of reports. The Executive Director shall file all opinions issued pursuant to this section with the Codifier of Rules to be published unedited in the North Carolina Register and the North Carolina Administrative Code.

This section applies to Articles 22B, 22D, 22E, and 22F of the General Statutes to the same extent that it applies to this Article."

SECTION 13.(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 for the direct costs of producing and 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, 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.

(2) The principal place of business of the entity making the disbursement if the entity is not an individual.

(3) The amount of each disbursement 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.

(4) The elections to which the electioneering communications pertain and the names, if known, of the candidates identified or to be identified.

(5) ~~If the disbursements were paid out of a segregated bank account that consists of funds contributed solely by individuals directly to that account for electioneering communications, the~~ The names and addresses of all contributors who contributed 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.~~date to a segregated bank account that consists of funds contributed 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.

~~(6) If the disbursements were paid out of funds not described in subdivision (5) of this subsection, the names and addresses of all contributors who contributed an aggregate amount of more than one thousand dollars ($1,000) to the entity making the disbursement during the period beginning on the first day of the preceding calendar year and ending on the disclosure date.~~"

SECTION 13.(b) G.S. 163-278.82 reads as rewritten:

"**§ 163-278.82. Prohibition of corporate and labor disbursements for electioneering communications.**

(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 from a prohibited source may make any disbursement for the costs of producing and airing any electioneering communication. 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 ~~individuals~~ entities other than prohibited sources directly to that account.

(b) Direct or Indirect Disbursement. – An electioneering communication shall be treated as made by a prohibited source if the prohibited source directly or indirectly disburses any amount for any of the costs of the communication.

(c) Segregated Fund. – Any disbursement for an electioneering communication made from an account must be made from a segregated account into which no funds from a prohibited source have been directly or indirectly introduced."

SECTION 13.(c) 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 for the direct costs of producing and 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, 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.

(2) The principal place of business of the entity making the disbursement if the entity is not an individual.

(3) The amount of each disbursement 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.

(4) The elections to which the electioneering communications pertain and the names, if known, of the candidates identified or to be identified.

(5) ~~If the disbursements were paid out of a segregated bank account that consists of funds contributed solely by individuals directly to that account for electioneering communications, the~~ The names and addresses of all contributors who contributed 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.~~date to a segregated bank account that consists of funds contributed 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.

~~(6) If the disbursements were paid out of funds not described in subdivision (5) of this subsection, the names and addresses of all contributors who contributed an aggregate amount of more than one thousand dollars ($1,000) to the entity making the disbursement during the period beginning on the first day of the preceding calendar year and ending on the disclosure date.~~"

SECTION 13.(d) G.S. 163-278.92 reads as rewritten:

"**§ 163-278.92. Prohibition of corporate and labor disbursements for electioneering communications.**

(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 from a prohibited source may make any disbursement for the costs of producing and airing any electioneering communication. 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 ~~individuals~~ entities other than prohibited sources directly to that account.

(b) Direct or Indirect Disbursement. – An electioneering communication shall be treated as made by a prohibited source if the prohibited source directly or indirectly disburses any amount for any of the costs of the communication.

(c) Segregated Fund. – Any disbursement for an electioneering communication made from an account must be made from a segregated account into which no funds from a prohibited source have been directly or indirectly introduced."

SECTION 14. This act becomes effective July 1, 2005, and applies to primaries and elections held on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 128
PROPOSED COMMITTEE SUBSTITUTE H128-PCS60542-RR-58

Short Title: Election Changes. (Public)

Sponsors:

Referred to:

February 9, 2005

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE COUNTY BOARDS OF ELECTIONS TO TAKE STEPS EARLIER TO COUNT MAILED ABSENTEE VOTES; TO CLARIFY HOW A VOTER SHALL REPORT A MOVE; TO CLARIFY THE RESIDENCE FOR VOTING PURPOSES OF CERTAIN PERSONS; TO AMEND THE STATUTES RELATING TO CHALLENGES; TO PROVIDE THAT EXCEPT FOR THEIR ENVELOPE, PROVISIONAL BALLOTS SHALL NOT BE MARKED TO BE IDENTIFIABLE TO A VOTER; AND TO MAKE CHANGES TO THE PUBLIC CAMPAIGN FUND.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 163-234 is amended by adding a new subdivision to read:

"(2a) Notwithstanding the provisions of subdivision (2) of this section, a county board of elections may, at each meeting at which it approves absentee ballot applications pursuant to G.S. 163-230.1(c) and (c1), remove those ballots from their envelopes and have them read by an optical scanning machine, without printing the totals on the scanner. The board shall complete the counting of these ballots at the times provided in subdivision (2) of this section. The State Board of Elections shall provide instructions to county boards of elections for executing this procedure, and the instructions shall be designed to ensure the accuracy of the count, the participation of board members of both parties, and the secrecy of the results before election day. This subdivision applies only in counties that use optical scan devices to count absentee ballots."

SECTION 2. G.S. 163-82.15(a) reads as rewritten:

"(a) Registrant's Duty to Report. – No registered voter shall be required to re-register upon moving from one precinct to another within the same county. Instead, a registrant shall notify the county board of the change of address by the close of

registration for an election as set out in G.S. 163-82.6(c). In addition to any other method allowed by G.S. 163-82.6, the form may be submitted by electronic facsimile, under the same deadlines as if it had been submitted in person. The registrant shall make the notification by means of a voter registration form as described in G.S. 163-82.3, or by another written notice, signed by the registrant, that includes the registrant's full name, former residence address, new residence address, and ~~date of moving~~ the registrant's attestation that the registrant moved at least 30 days before the next primary or election from the old to the new address."

SECTION 2.1. G.S. 163-57(1) is amended by adding a sentence at the end of that subsection to read:

"If a person's residence is not a traditional residence such as a house or apartment, then the location of the person's usual sleeping area shall be controlling as to the residence of that person. Residence requirements shall be broadly construed to provide all persons with the opportunity to register and to vote. As with other voters, voters with nontraditional residences may report a mailing address that is different from their residence address."

SECTION 3. Article 8 of Chapter 163 of the General Statutes reads as rewritten:

"Article 8.

"Challenges.

"§ 163-84. Time for challenge other than on day of primary or election.

~~The registration records of each county shall be open to inspection by any registered voter of the county, including any chief judge or judge of elections, during the normal business hours of the county board of elections on the days when the board's office is open. At those times the right of any person to register, remain registered, or vote shall be subject to objection and challenge.~~ The right of voters to register, remain registered, and vote may be challenged as provided in this Article.

"§ 163-85. Challenge procedure other than on day of primary or election.

(a) Right to Challenge; When Challenge May Be Made. – Any registered voter of the county may challenge the right of any person to register, remain registered or vote in ~~such~~ that county. No such challenge with regard to a particular primary, general, or special election may be made after the twenty-fifth day before ~~each~~ that primary, general, or special election.

(b) Challenges Shall Be Made to the County Board of Elections. – Each challenge to a person shall be made separately, in writing, under oath and on forms prescribed by the State Board of Elections, and shall specify the reasons why the challenged voter is not entitled to register, remain registered, or vote. ~~When a challenge is made, the board of elections shall cause the word "challenged" to be written in pencil on the registration records of the voter challenged.~~ The challenge shall be signed by the challenger and shall set forth the challenger's address.

(c) Grounds for Challenge. – Such challenge may be made only for one or more of the following reasons:

(1) That a person ~~is~~ will not have been a resident ~~of the State of North Carolina, or~~at the address where the person claims residence for 30 days or more at the time of the next election.

~~(2) That a person is not a resident of the county in which the person is registered, provided that no such challenge may be made if the person removed his residency and the period of removal has been less than 30 days, or~~

~~(3) That a person is not a resident of the precinct in which the person is registered, provided that no such challenge may be made if the person removed his residency and the period of removal has been less than 30 days, or~~

(4) That a person is not 18 years of age, or if the challenge is made within 60 days before a primary, that the person will not be 18 years of age by the next general ~~election, or~~election.

(5) That a person has been adjudged guilty of a felony and is ineligible to vote under ~~G.S. 163-55(2), or~~G.S. 163-55(2).

(6), (7) Repealed by Session Laws 1985, c. 563, ss. 11.1, 11.2.

(7a) That a person is ~~dead,~~dead.

(8) That a person is not a citizen of the United ~~States, or~~States.

~~(9) With respect to municipal registration only, that a person is not a resident of the municipality in which the person is registered.~~

(d) Preliminary Hearing. – When a challenge is made, the county board of ~~election~~ elections shall schedule a preliminary hearing on the challenge, and shall take ~~such~~ that testimony under oath and receive such other evidence proffered by the challenger as may be offered. The burden of proof shall be on the challenger, and if no testimony is presented, the board shall dismiss the challenge. If the challenger presents evidence and if the board finds that probable cause exists that the person challenged is not qualified to vote, then the board shall schedule a hearing on the challenge. If the challenge is made for the reason stated in subdivision (1) of subsection (c) of this section and the registrant acknowledges that the address on the registration records is incorrect but the board finds that the registration records can be corrected so that the voter can vote the proper ballot in the coming election, the board shall not schedule a hearing on the challenge but shall correct the records, and the voter shall be allowed to vote the proper ballot.

(e) Prima Facie Evidence That Voter No Longer Resides ~~in Precinct.~~ at an Address. – The presentation of a letter mailed by returnable first-class mail to the voter at the address listed on the voter registration card and returned because the person does not live at the address shall constitute prima facie evidence that the person no longer resides ~~in the precinct.~~at that address.

"**§ 163-86. Hearing on challenge.**

(a) A challenge made under G.S. 163-85 shall be heard and decided before the date of the next primary or election, except that if the board finds that because of the number of challenges, it cannot hold all hearings before the date of the election, it may order the challenges to be heard and decided at the next time the challenged person

appears and seeks to vote, as if the challenge had been filed under G.S. 163-87. Unless the hearing is ordered held under G.S. 163-87, it shall be heard and decided by the board of elections.

(b) At least 10 days prior to the hearing scheduled under G.S. 163-86(c), the board of elections shall mail by first-class mail, a written notice of the challenge to the challenged voter, to the address of the voter listed in the registration records of the county. The notice shall state succinctly the grounds asserted, and shall state the time and place of the hearing. ~~If the hearing is to be held at the polls, the notice shall state that fact and shall list the date of the next scheduled election, the location of the voter's polling place, and the time the polls will be open.~~ A copy of the notice shall be sent to the person making the challenge and to the ~~chairman~~ chair of each political party in the county.

(c) At the time and place set for the hearing on a challenge entered prior to the date of a primary or election, the county board of elections shall explain to the challenged registrant the qualifications for registration and voting in this State. The board chairman, or in his absence the board secretary, shall then administer the following oath to the challenged registrant:

"You swear (or affirm) that the statements and information you shall give in this hearing with respect to your identity and qualifications to be registered and to vote shall be the truth, the whole truth, and nothing but the truth, so help you, God."

After swearing the challenged registrant, the board shall examine ~~him~~ that person as to ~~his~~ that person's qualifications to be registered and to vote. If the challenged registrant insists ~~that he is~~ on being qualified, the board shall tender to ~~him~~ the challenged registrant the following oath or affirmation:

"You do solemnly swear (or affirm) that you are a citizen of the United States; that you are at least 18 years of age or will become 18 by the date of the next general election; that you have or will have resided ~~in this State and in the precinct for which registered~~ at the residence listed on your registration record for 30 days by the date of the next general election; that you are not disqualified from voting by the Constitution or the laws of this State; that your name is _____, and that in such name you were duly registered as a voter ~~of _____ precinct;~~ at the address listed on the voter registration records; and that you are the person you represent yourself to be, so help you, God."

If the challenged registrant refuses to take the tendered oath, or submit to the board the affidavit required by subsection (d), below, the challenge shall be sustained. If the challenged registrant takes the tendered oath, the board may, nevertheless, sustain the challenge if it finds the challenged registrant is not a legal voter.

The board, in conducting hearings on challenges, shall have authority to subpoena any witnesses it may deem appropriate, and administer the necessary oaths or affirmations to all witnesses brought before it to testify to the qualifications of the persons challenged.

(d) Appearance by Challenged Registrant. – The challenged registrant shall appear in person at the challenge hearing. If ~~he~~ the challenged registrant is unable to appear in person, ~~he~~ that person may be represented by another person and must tender

to the county board of elections an affidavit that ~~he~~ the challenged registrant is a citizen of the United States, is at least 18 years of age or will become 18 by the date of the next general election, has or will have resided ~~in this State and in the precinct for which registered~~ at the address listed on the registration record for 30 days by the date of the next general election, is not disqualified from voting by the Constitution or laws of this State, is named _____ and was duly registered as a voter of _____ precinct in such name, and is the person represented to be by the affidavit.

"**§ 163-87. Challenges allowed on day of primary or election.**

On the day of a primary or election, at the time a registered voter offers to vote, any other registered voter of the precinct may exercise the right of challenge, and when he does so may enter the voting enclosure to make the challenge, but he shall retire therefrom as soon as the challenge is heard.

On the day of a primary or election, any other registered voter of the precinct may challenge a person for one or more of the following reasons:

(1) One or more of the reasons listed in G.S. 163-85(c), or

(2) That the person has already voted in that primary or election, or

(3) That the person ~~presenting himself to vote is not who he represents himself~~ is not who the person claims to be.

~~On the day of a party primary, any voter of the precinct who is registered as a member of the political party conducting the primary may, at the time any registrant proposes to vote, challenge his right to vote upon the ground that he does not affiliate with the party conducting the primary or does not in good faith intend to support the candidates nominated in that party's primary, and it shall be the duty of the chief judge and judges of election to determine whether or not the challenged registrant has a right to vote in that primary according to the procedures prescribed in G.S. 163-88; provided that no challenge may be made on the grounds specified in the paragraph against an unaffiliated voter voting in the primary under G.S. 163-74(a1).~~

The chief judge, judge, or assistant appointed under G.S. 163-41 or 163-42 may enter challenges under this section against voters in the precinct for which appointed regardless of the place of residence of the chief judge, judge, or assistant.

If a person is challenged under this subsection, and the challenge is sustained under G.S. ~~163-85(c)(3),~~ 163-85(c)(1), the voter may still transfer ~~his~~ registration under G.S. 163-82.15(e) if eligible under that section, and the registration shall not be cancelled under G.S. 163-90.2(a) if the transfer is made. A person who has transferred his registration under G.S. 163-82.15(e) may be challenged at the precinct to which the registration is being transferred.

"**§ 163-88. Hearing on challenge made on day of primary or election.**

A challenge entered on the day of a primary or election shall be heard and decided ~~by the chief judge and judges of election of the precinct in which the challenged registrant is registered before the polls are closed on the day the challenge is made. When the challenge is heard the precinct officials conducting the hearing shall explain to the challenged registrant the qualifications for registration and voting in this State, and shall examine him as to his qualifications to be registered and to vote. If the challenged registrant insists that he is qualified, and if, by sworn testimony, he shall~~

~~prove his identity with the person in whose name he offers to vote and his continued residence in the precinct since he was registered, one of the judges of election or the chief judge shall tender to him the following oath or affirmation, omitting the portions in brackets if the challenge is heard on the day of an election other than a primary:~~

~~"You do solemnly swear (or affirm) that you are a citizen of the United States; that you are at least 18 years of age [or will become 18 by the date of the next general election]; that you have [or will have] resided in this State and in the precinct for which registered for 30 days [by the date of the next general election]; that you are not disqualified from voting by the Constitution and laws of this State; that your name is _____, and that in such name you were duly registered as a voter of this precinct; that you are the person you represent yourself to be; [that you are affiliated with the _____ party]; and that you have not voted in this [primary] election at this or any other voting place. So help you, God.~~"

~~If the challenged registrant refuses to take the tendered oath, the challenge shall be sustained, and the precinct officials conducting the hearing shall mark the registration records to reflect their decision, and they shall erase the challenged registrant's name from the pollbook if it has been entered therein. If the challenged registrant takes the tendered oath, the precinct officials conducting the hearing may, nevertheless, sustain the challenge unless they are satisfied that the challenged registrant is a legal voter. If they are satisfied that he is a legal voter, they shall overrule the challenge and permit him to vote. Whenever any person's vote is received after having taken the oath prescribed in this section, the chief judge or one of the judges of election shall write on the registration record and on the pollbook opposite the registrant's name the word "sworn."~~

~~Precinct election officials conducting hearings on challenges on the day of a primary or election shall have authority to administer the necessary oaths or affirmations to all witnesses brought before them to testify to the qualifications of the person challenged.~~ by the county board of elections on the day set for the county canvass. When the challenge is made at the voting place, the chief judge shall, in a manner that minimizes disruption to the voting place, explain to the challenged registrant and to the challenger the process by which the county board of elections will decide the challenge. The chief judge shall allow the voter to complete a challenged ballot as provided in G.S. 163-88.1. The chief judge shall transmit the documentation of the challenge, including the challenged ballot, to the county board of elections according to procedures that shall be prescribed by the State Board of Elections. On the day of the canvass, the county board shall conduct a hearing on the challenge according to procedures set forth in subsections (c) and (d) of G.S. 163-86.

A letter or postal card mailed by returnable mail and returned by the United States Postal Service purportedly because the person no longer lives at that address or because a forwarding order has expired shall not be admissible evidence in a challenge heard under this section which was made under G.S. 163-87.

"**§ 163-88.1. Request for challenged ballot.**

(a) ~~If the decision of the chief judge and judges pursuant to G.S. 163-88 is to sustain the challenge, the challenged voter~~ A voter challenged under G.S. 163-88 may

request a challenged ballot by submitting an application to the chief ~~judge, such~~ judge. The application shall include ~~as part thereof~~ an affidavit that ~~such~~ the person possesses all the qualifications for voting and is entitled to vote at the election. The form of ~~such~~ the affidavit shall be prescribed by the State Board of Elections and shall be available at the polls.

(b) ~~Any person requesting a challenged ballot shall have the letter "C" entered at the appropriate place on the voter's permanent registration record. The voter's name shall be entered on a separate page in the pollbook entitled "Challenged Ballot," and serially numbered. The challenged ballot shall be the same type of ballot used for absentee voters, and the chief judge shall write across the top of the ballot "Challenged Ballot #____," and shall insert the same serial number as entered in the pollbook. The chief judge shall deliver to such voter a challenged ballot together with an envelope marked "Challenged Ballot" and serially numbered. The challenged voter shall forthwith mark the ballot in the presence of the chief judge in such manner that the chief judge shall not know how the ballot is marked. He shall then fold the ballot in the presence of the chief judge so as to conceal the markings and deposit and seal it in the serially numbered envelope. He shall then deliver such envelope to the chief judge. The chief judge shall retain all such envelopes in an envelope provided by the county board of elections, which he shall seal immediately after the polls close, and deliver to the board chairman at the canvass.~~The State Board of Elections shall adopt rules for the recording, transmission, and security of challenged ballots, to which the county boards of elections shall adhere.

(c) The ~~chairman of the~~ county board of elections shall preserve ~~such~~ challenged ballots in the sealed envelopes for a period of six months after the election. However, in the case of ~~a contested election,~~ an election protest, either party to such action may request the court to order ~~that the sealed envelopes containing challenged ballots be delivered to the board of elections by the chairman. If so ordered,~~ the board of elections ~~shall then~~ to convene and consider each challenged ballot and rule as to which ballots shall be counted. In ~~such~~ that consideration, the board may take ~~such~~ further evidence as it deems necessary, and shall have the power of subpoena. If any ballots are ordered to be counted, they shall be added to the vote totals.

"§ 163-89. Procedures for challenging absentee ballots.

(a) Time for Challenge. – The absentee ballot of any voter may be challenged on the day of any ~~statewide~~ primary or ~~general~~ election ~~or county bond election~~ beginning no earlier than noon and ending no later than 5:00 P.M., or by the chief judge at the time of closing of the polls as provided in G.S. 163-232 and G.S. 163-251(b).

(b) Who May Challenge. – Any registered voter of the same precinct as the address the absentee voter claims on the affidavit may challenge that voter's absentee ballot.

(c) Form and Nature of Challenge. – Each challenged absentee ballot shall be challenged separately. The burden of proof shall be on the challenger. Each challenge shall be made in writing and, if they are available, shall be made on forms prescribed by the State Board of Elections. Each challenge shall specify the reasons why the ballot does not comply with the provisions of this ~~Article~~ Chapter or why the absentee voter is

not legally entitled to vote in the particular primary or election. The challenge shall be signed by the challenger.

(d) To Whom Challenge Addressed; to Whom Challenge Delivered. – Each challenge shall be addressed to the county board of elections. It may be filed with the board at its offices or with the chief judge of the precinct in which the challenger and absentee voter are registered. If it is delivered to the chief judge, the chief judge shall personally deliver the challenge to the ~~chairman of the~~ county board of elections on the day of the county canvass.

(e) Hearing Procedure. – All challenges filed under this section shall be heard by the county board of elections on the day set for the canvass of the returns. All members of the board shall attend the canvass and all members shall be present for the hearing of challenges to absentee ballots.

Before the board hears a challenge to an absentee ballot, the chairman shall mark the word "challenged" after the voter's name in the register of absentee ballot applications and ballots issued and in the pollbook of absentee voters.

The board then shall hear the challenger's reasons for the challenge, and it shall make its decision without opening the container-return envelope or removing the ballots from it.

The board shall have authority to administer the necessary oaths or affirmations to all witnesses brought before it to testify to the qualifications of the voter challenged or to the validity or invalidity of the ballot.

If the challenge is sustained, the chairman shall mark the word "sustained" after the word "challenged" following the voter's name in the register of absentee ballot applications and ballots issued and in the pollbook of absentee voters; the voter's ballots shall not be counted; and the container-return envelope shall not be opened but shall be marked "Challenge Sustained." All envelopes so marked shall be preserved intact by the chairman for a period of six months from canvass day or longer if any contest then is pending concerning the validity of any absentee ballot.

If the challenge is overruled, the absentee ballots shall be removed from the container-return envelopes and counted by the board of elections, and the board shall adjust the appropriate abstracts of returns to show that the ballots have been counted and tallied in the manner provided for unchallenged absentee ballots.

If the challenge was delivered to the board by the chief judge of the precinct and was sustained, the board shall reopen the appropriate ballot boxes, remove such ballots, determine how those ballots were voted, deduct such ballots from the returns, and adjust the appropriate abstracts of returns.

If the board determines that the challenged voter was eligible to vote part of the challenged ballot but not all of it, the board shall count the part that the voter was eligible to vote and not count the part that the voter was not eligible to vote.

Any voter whose ballots have been challenged may, either personally or through an authorized representative, appear before the board at the hearing on the challenge and present evidence as to the validity of the ballot.

"**§ 163-90. Challenge as felon; answer not to be used on prosecution.**

If any registered voter is challenged as having been convicted of any crime which excludes him from the right of suffrage, he shall be required to answer any question in relation to the alleged conviction, but his answers to such questions shall not be used against him in any criminal prosecution.

"**§ 163-90.1. Burden of proof.**

(a) Challenges shall not be made indiscriminately and may only be made if the challenger knows, suspects or reasonably believes such a person not to be qualified and entitled to vote.

(b) No challenge shall be sustained unless the challenge is substantiated by affirmative proof. In the absence of such proof, the presumption shall be that the voter is properly registered or affiliated.

"**§ 163-90.2. Action when challenge sustained, overruled, or dismissed.**

(a) When any challenge is sustained for any cause listed under G.S. 163-85(c), the board shall cancel the voter registration of the voter and shall remove his card from the book, but shall maintain such record for at least six months and during the pendency of any appeal.

~~(b) When any challenge heard under G.S. 163-88 or 163-89 is sustained on the ground that the voter is not affiliated with the political party shown on his registration record, the board shall change the voter's party affiliation to "unaffiliated".~~

~~(c) When any challenge made under G.S. 163-85 is overruled or dismissed, the board shall erase the word "challenged" which appears on the person's registration records.~~

(d) A decision by a county board of elections on any challenge made under the provisions of this Article shall be appealable to the Superior Court of the county in which the offices of that board are located within 10 days. Only those persons against whom a challenge is sustained or persons who have made a challenge which is overruled shall have standing to file such appeal.

"**§ 163-90.3. Making false affidavit perjury.**

Any person who shall knowingly make any false affidavit or shall knowingly swear or affirm falsely to any matter or thing required by the terms of this Article to be sworn or affirmed shall be guilty of a Class I felony."

SECTION 4. G.S. 163-165(6) reads as rewritten:

"(6) "Provisional official ballot" means an official ballot that is voted and then placed in an envelope that contains an affidavit signed by the voter certifying identity and eligibility to vote. Except for its envelope, a provisional official ballot shall not be marked to make it identifiable to the voter."

SECTION 5. Article 22D of Chapter 163 of the General Statutes is amended by adding a new section to read:

"**§ 163-278.64A. Special participation provisions for candidates in plurality elections.**

(a) Participation Provisions Modified. – Candidates in plurality elections as provided in G.S. 163-329 may participate in the Fund subject to the provisions of G.S. 163-278.64 as modified by this section.

(b) Qualifying. – The State Board of Elections shall designate a special qualifying period for a plurality election of no less than four weeks. That qualifying period shall begin at the close of the notice-of-candidacy filing period for the plurality election. To receive certification, a participating candidate shall raise at least 225 qualifying contributions, totaling at least 20 times the amount of the filing fee for the office, for a four-week qualifying period. If the State Board of Elections sets a longer qualifying period, then for each additional week that the qualifying period extends beyond four weeks, the minimum number of qualifying contributions required for certification shall increase by 25, and the minimum amount of the qualifying contributions shall increase by two times the filing fee. The minimum qualifying contributions shall not exceed the limit set by G.S. 163-278.64(b).

(c) Allocations. – Certified candidates in plurality elections shall receive one percent (1%) of the funding to which they would be eligible under G.S. 163-278.65 times the number of calendar days between the end of the special qualifying period and the day of the general elections. That amount shall not exceed one hundred percent (100%) of the funding to which they would be eligible under G.S. 163-278.65."

SECTION 6. G.S. 163-278.65(c) reads as rewritten:

"(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.~~ 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."

SECTION 7. G.S. 163-278.66(a) reads as rewritten:

"(a) Reporting by Noncertified Candidates and Independent Expenditure Entities. – Any noncertified candidate with a certified opponent shall report total income, expenses, and obligations to the Board by facsimile machine or electronically within 24 hours after the total amount of campaign expenditures or obligations made, or funds raised or borrowed, exceeds eighty percent (80%) of the trigger for rescue funds as defined in G.S. 163-278.62(18). Any entity making independent expenditures ~~in excess of three thousand dollars ($3,000)~~ in support of or opposition to a certified candidate or in support of a candidate opposing a certified candidate shall report the total funds received, spent, or obligated for those expenditures to the Board by facsimile machine or electronically within 24 hours after the total amount of expenditures or obligations made, or funds raised or borrowed, for the purpose of making the independent expenditures, exceeds ~~fifty percent (50%) of the trigger for rescue funds.~~ five thousand dollars ($5,000). After this 24-hour filing, the noncertified candidate or independent expenditure entity shall comply with an expedited reporting schedule by filing additional reports after receiving each additional amount in excess of one thousand dollars ($1,000) or after making or obligating to make each additional expenditure(s) in

excess of one thousand dollars ($1,000). The schedule and forms for reports required by this subsection shall be made according to procedures developed by the Board."

SECTION 8. G.S. 163-278.68(b) reads as rewritten:

"(b) Advisory Council for the Public Campaign ~~Financing~~ Fund. – There is established under the Board the Advisory Council for the Public Campaign ~~Financing~~ Fund to advise the Board on the rules, procedures, and opinions it adopts for the enforcement and administration of this Article and on the funding needs and operation of the Public Campaign ~~Financing~~ Fund. The Advisory Council shall consist of five members to be appointed as follows:

(1) The Governor shall name two members from a list of individuals nominated by the State Chair of the political party with which the greatest number of registered voters is affiliated. The State Chair of that party shall submit to the Governor the names of five nominees.

(2) The Governor shall name two members from a list of individuals nominated by the State Chair of the political party with which the second greatest number of registered voters is affiliated. The State Chair of that party shall submit to the Governor the names of five nominees.

(3) The Board shall name one member by unanimous vote of all members of the Board. If the Board cannot reach unanimity on the appointment of that member, the Advisory Council shall consist of the remaining members.

No individual shall be eligible to be a member of the Advisory Council who would be ineligible to serve on a county board of elections in accordance with G.S. 163-30. The initial members shall be appointed by December 1, 2002. Of the initial appointees, two are appointed for one-year terms, two are appointed for two-year terms, and one is appointed for a three-year term according to random lot. Thereafter, appointees are appointed to serve four-year terms. An individual may not serve more than two full ~~terms.~~ terms, except that regardless of the time of appointment each term shall end on December 31. A member shall continue on the Advisory Council beyond the expired term until a successor is appointed. The appointed members receive the legislative per diem pursuant to G.S. 120-3.1. One of the Advisory Council members shall be elected by the members as Chair. A vacancy during an unexpired term shall be filled in the same manner as the regular appointment for that term, but a vacancy appointment is only for the unexpired portion of the term."

SECTION 9. G.S. 163-278.69(c) reads as rewritten:

"(c) Disclaimer. – The Judicial Voter Guide shall contain the following statement: '~~The above statements~~Statements by candidates do not express or reflect the opinions of the State Board of Elections.'"

SECTION 10.(a) 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 10.(b) G.S. 163-278.13(e2) reads as rewritten:

"(e2) In order to make meaningful the provisions of Article 22D of this Chapter, the following provisions shall apply with respect to candidates for justice of the Supreme Court and judge of the Court of Appeals:

(1) No candidate shall accept, and no contributor shall make to that candidate, a contribution in any election exceeding one thousand dollars ($1,000) except as provided for elsewhere in this subsection.

(2) A candidate may accept, and a family contributor may make to that candidate, a contribution not exceeding two thousand dollars ($2,000) in an election if the contributor is that candidate's parent, child, brother, or sister.

(3) No candidate 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.~~ election if that contribution causes the candidate to exceed the "trigger for rescue funds" defined in G.S. 163-278.62(18). This subdivision applies with respect to a candidate opposed in the general election by a certified candidate as defined in Article 22D of this Chapter who has not received the maximum rescue funds available under G.S. 163-278.67. The recipient of a contribution that apparently violates this subdivision 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 subdivision.

As used in this subsection, "candidate" is also a political committee authorized by the candidate for that candidate's election. Nothing in this subsection shall prohibit a candidate or the spouse of that candidate from making a contribution or loan secured entirely by that individual's assets to that candidate's own campaign."

SECTION 10.(c) G.S. 163-278.13 is amended by adding a new subsection to read:

"(e3) Notwithstanding the provisions of subsections (a) and (b) of this section, no candidate for superior court judge or district court judge shall accept, and no contributor shall make to that candidate, a contribution in any election exceeding one thousand dollars ($1,000), except as provided in subsection (c) of this section. As used in this subsection, "candidate" is also a political committee authorized by the candidate for that candidate's election. Nothing in this subsection shall prohibit a candidate or the spouse of that candidate from making a contribution or loan secured entirely by that individual's assets to that candidate's own campaign."

SECTION 11. G.S. 105-159.2 reads as rewritten:

"**§ 105-159.2. Designation of tax to North Carolina Public Campaign ~~Financing~~ Fund.**

(a) Allocation to the North Carolina Public Campaign ~~Financing~~ Fund. – To ensure the financial viability of the North Carolina Public Campaign ~~Financing~~ Fund established in Article 22D of Chapter 163 of the General Statutes, the Department must allocate to that Fund three dollars ($3.00) from the income taxes paid each year by each

individual with an income tax liability of at least that amount, if the individual agrees. A taxpayer must be given the opportunity to indicate an agreement or objection to that allocation in the manner described in subsection (b) of this section. In the case of a married couple filing a joint return, each individual must have the option of agreeing or objecting to the allocation. The amounts allocated under this subsection to the Fund must be credited to it on a ~~quarterly~~ monthly basis.

(b) Returns. – Individual income tax returns must give an individual an opportunity to agree to the allocation of three dollars ($3.00) of the individual's tax liability to the North Carolina Public Campaign ~~Financing~~ Fund. The Department must make it clear to the taxpayer that the dollars will support a nonpartisan court system, that the dollars will go to the Fund if the taxpayer marks an agreement, and that allocation of the dollars neither increases nor decreases the individual's tax liability. The following statement ~~satisfies the intent of~~ must be used to meet this requirement: ~~"Three dollars ($3.00) will go to the North Carolina Public Campaign Financing Fund to support a nonpartisan court system, if you agree. Your tax remains the same whether or not you agree."~~ 'This Fund pays for a nonpartisan voter guide and helps judicial candidates who accept strict fund-raising limits. Do you agree to direct $3.00 to this Fund from the taxes you pay anyway? Marking Yes will not increase your tax or reduce your refund.' The Department must consult with the State Board of Elections to ensure that the information given to taxpayers complies with the intent of this section.

The Department must inform the entities it approves to reproduce the return ~~of~~ that they must comply with the requirements of this section and that a return may not reflect an agreement or objection unless the individual completing the return decided to agree or object after being presented with the statement required by subsection (b) of this section and, as available background information or instructions, the information required by subsection (c) of this section. No software package used in preparing North Carolina income tax returns may default to an agreement or objection. A paid preparer of tax returns may not mark an agreement or objection for a taxpayer without the taxpayer's consent.

(c) Instructions. – The instruction for individual income tax returns must include the following explanatory statement: 'The North Carolina Public Campaign ~~Financing~~ Fund provides campaign money to nonpartisan candidates for the ~~North Carolina~~ N.C. Supreme Court and Court of Appeals who voluntarily accept strict campaign spending and fund-raising limits. The Fund also helps finance a Voter Guide with educational materials about voter registration, the role of the appellate courts, and the candidates seeking election as appellate judges in North Carolina. Three dollars ~~($3.00)~~ from the taxes you pay will go to the Fund if you mark an agreement. Regardless of what choice you make, your tax will not increase, nor will any refund you are entitled to be reduced.'"

SECTION 12. Sections 3 and 4 of this act becomes effective January 1, 2006. Section 10(c) of this act become effective January 1, 2006, and applies to contributions made or accepted on or after that date. Contributions made or accepted prior to that date shall count toward the cumulative limit after that date. The remainder of this act is effective when it becomes law.

HOUSE BILL 128: Election Changes

BILL ANALYSIS

Committee:	Senate Judiciary I	**Date:**	August 12, 2005
Introduced by:	Reps. Insko, Preston	**Summary by:**	William R. Gilkeson
Version:	PCS to First Edition		Committee Co-Counsel
	H128-PCS60531-RR-53		

SUMMARY: This Proposed Committee Substitute for House Bill 128 would make several election law changes. It would allow county boards of elections to take steps to count mail absentee ballots earlier than 2 pm on election day. It would clarify how a voter must report a move within the county. It would clarify residence for certain voters. It would amend the statutes relating to challenges. It would make changes involving the marking of provisional ballots. It would address how banks can make loans to campaigns. And it would make a number of changes to the Judicial Campaign Act.

Section 1 – Early Prep for Absentee Count. This would allow county boards of elections to begin the process of counting mailed absentee ballots before election day. If the county board uses an optical scan voting system to count the ballots, it could open the absentee envelopes at the pre-election meetings at which it approves the absentee applications. It could at that time it could run the approved ballots through the scanner, without printing the totals readout. This section was originally the sole content of H 128 and was recommended by the Joint Select Committee on Electronic Voting Systems. The bill passed the House, and its Senate companion, S 226, passed the Senate.

Section 2 – Reporting Move Within a County. This section changes the statute about how a voter shall report a move within the county. Current law says, in one place but not in others, they must report the date that they move. The current voter registration form, one of whose purposes is to provide a vehicle for voters to report moves, doesn't ask on what date the voter moved -- it simply has the voter attest that they will have lived at the new address for at least 30 days before the coming election. The bill would change 163-82.14(a) to say that a voter reporting a move need not provide the date of the move, just to attest that the move occurred at least 30 days before the next election. That would conform 163-82.14(a) to language that already exists in 163-82.14(e).

Section 2.1 – Clarifying Residence. This section says that, in the case of voters who live in places other than traditional residences such as houses or apartments, the person's residence for voting purposes is that person's usual sleeping area. Following an Iowa statute, it says the law should be broadly construed to provide persons with the opportunity to register and vote. It notes that, like other voters, the voters in question may report a different mailing address from their residence address. House Bill 1115 already contains a provision concerning residence, stating that if a line splits a house, the voter for voting purposes resides in the part of the house that is that person's usual sleeping area.

Section 3 – Challenges. This section makes several changes to the Article of Chapter 163 on challenges. In a challenge, a voter can initiate a proceeding asserting that another voter is not eligible to vote. Before election day, any voter in a county may challenge another registered voter in the same county before election day. At the polls on election day, any voter in a precinct may challenge another voter attempting to vote in person at the same precinct or a person of the same precinct who has voted an absentee ballot. Among other things, this section:

- States that the grounds for a challenge of residency is not that the voter does not live in the precinct or other place, but that the person does not live at the address given.
- Moves the initial authority to decide election day challenges from the precinct judges to the county board of elections. Currently, when a voter challenges another voter at the polls, the chief judge and the two judges of the precinct are supposed to stop what they are doing and conduct a mini-trial at the polling place. This rarely happens, but it has the potential to gridlock the polling place on a busy election day. The bill moves that authority to the county BOE.
- Deletes provisions that allow a voter in a primary to challenge a voter who is registered with a party on the grounds that the voter "does not affiliate with party" or "does not in good faith intend to support" the winners of the party primary. I think this isn't used very often either.

Section 4 – Provisional Ballots Not Marked. This section provides that except for the envelope in which they are placed, a provisional ballot shall not be marked to make it identifiable to the voter.

Section 4.1 – Bank Loans to Candidates and Campaigns. Current campaign finance law prohibits corporate contributions and defines a loan as a contribution, but exempts bank loans to candidates if the bank loan is made in the ordinary course of business. This section changes that exemption to say that a bank may make a loan to a candidate or political committee, but the loan must be in the ordinary course of business and be fully secured by collateral or guaranteed by an individual or individual or another entity that is eligible to make contributions. The collateral or guarantee is counted as a contribution by the person making it, and is treated as such under the applicable dollar limit and reporting laws.

Sections 5 through 11 – Public Campaign Fund Amendments. These sections were part of S 539, which has been presented to this committee.

§ 5. Candidates in Plurality Elections. The 2002 act set up for candidates for Supreme Court and Court of Appeals a nonpartisan primary and election system. If a vacancy occurs in one of those judgeships in the middle of the election year, the State Constitution requires an election for the remainder of the term if the vacancy occurs more than 60 days from the general election. In some cases that vacancy comes too late for the nonpartisan primary to narrow the field to two candidates. The 2002 act dealt with that situation only by saying the vacancy election would be filled by one plurality election. In 2004, a vacancy did occur and eight candidates filed. Most of them sought public financing. This section provides a compressed procedure for candidates in a plurality vacancy election to participate in public funding. The State Board is to set a special qualifying period of no less than four weeks, and the candidates are required to raise qualifying contributions proportionate to the length of the period. If they are certified, the vacancy candidates are entitled to funding equal to 1% of what they could have received in a conventional situation, multiplied by the number of calendar days between the end of the special qualifying period and the general election.

§ 6. Conventional Fundraising When Public Funds Are Insufficient. Current law says that if insufficient money is available in the Fund to give a candidate what the law provides, the State Board shall give them a proportionate share of what is available. This section provides that if candidates receive less than the statutory formula provides, they may fill the gap by raising money as nonparticipating candidates are allowed to raise it.

§ 7. Reporting Independent Expenditures for Rescue Fund Purposes. This section changes the formula for requiring reporting of independent expenditures for rescue fund purposes. Currently, an independent expender who has spent more than $3,000 in an appellate judicial race must report funds within 24 hours of exceeding 50% of the "trigger for rescue funds" in the race. For a primary, the trigger is the maximum qualifying contributions. For a general election, the trigger is the base level of funding a certified candidate may receive from the Fund. This section simplifies that formula by saying an independent expender must report within 24 hours of exceeding $5,000.

§8. Clarifying Terms on Advisory Council. The 2002 act sets up a 5-member Advisory Council to advise the State Board in administering the Fund and the program. The terms are for four years, and they are staggered. The initial appointees were given terms of uneven length to phase in the staggering. No member may serve more than two terms. This section provides that regardless when a member was appointed, that member's term continues until Dec. 31 of the year when the term is to end. It also contains a holdover provision, saying that a member continues until a successor is appointed.

§ 9. Technical Change about Position of Candidate Statement. Current law requires the State Board to publish and distribute a Judicial Voter Guide containing statements of no more than 150 words provided by each candidate. The Guide must contain the following statement: "The above statements do not express or reflect the opinions of the State Board of Elections." To give the State Board more flexibility about page layout, this section changes the statement to "Statements by candidates do not express or reflect the opinions of the State Board of Elections."

§10. No Unlimited Party Gifts; Narrowing Scope of 21-day Moratorium; Same Lower Limit for Trial Judgeships. The current statute on contribution limitations exempts political party executive committees from the $4,000 limit. That statute also contains a special exception to the $4,000 for candidates for Supreme Court and Court of Appeals, saying they may accept only $1,000. The question arose whether the statute should be read to say that parties could make unlimited contributions to Supreme Court and Court of Appeals

candidates as they could to other candidates. The State Board determined that they could not. This section codifies that determination, saying that the party exemption does not apply to the judicial races. Section 9(c) applies the $1,000 contribution limit – without a party exception -- to candidates for superior and district court judge as well. It does not, however, apply to superior and district judges the $2,000 limit from non-spouse family members that is imposed on appellate judges. Superior and district judges could still receive unlimited amounts from close family members. The application to superior and district judge candidates is effective for contributions made or accepted on or after January 1, 2006. This section, in Sec. 10(b), also narrows the application of a 21-day moratorium imposed on candidates for Supreme Court and Court of Appeals. Currently, the moratorium says no candidate may accept a contribution within 21 days before the general election if the candidate has an opponent who has opted for public financing and who has not received the maximum in rescue funds. Sec. 9(b) would add that a candidate is covered by the moratorium only if accepting contributions would cause the candidate to receive more in contributions than would have been available in money from the Fund if the candidate had opted in.

§ 11. Changes in $3 Income Tax Checkoff. Currently the principal source of funding for the program is a $3 checkoff on the State Income Tax return. The current statute says a taxpayer must be given the opportunity to agree to the allocation. This section changes that wording to say the taxpayer must be given the opportunity to agree or object. It changes – and requires the Department of Revenue to use verbatim – an explanatory statement to the taxpayer about the checkoff. This section changes from quarterly to monthly the frequency with which checkoff money must be allocated to the Fund.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

HOUSE BILL 128

Short Title:	Early Prep for Absentee Count.	(Public)
Sponsors:	Representatives Insko, Preston (Primary Sponsors); Alexander, Coates, Farmer-Butterfield, Luebke, Weiss, and Wilkins.	
Referred to:	Election Law and Campaign Finance Reform.	

February 9, 2005

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE COUNTY BOARDS OF ELECTIONS TO TAKE STEPS EARLIER TO COUNT MAILED ABSENTEE VOTES, AS RECOMMENDED BY THE JOINT SELECT COMMITTEE ON ELECTRONIC VOTING SYSTEMS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 163-234 reads as rewritten:

"**§ 163-234. Counting absentee ballots by county board of elections.**

All absentee ballots returned to the county board of elections in the container-return envelopes shall be retained by the board to be counted by the county board of elections as herein provided.

(1) Only those absentee ballots returned to the county board of elections no later than 5:00 p.m. on the day before election day in a properly executed container-return envelope shall be counted, except to the extent federal law requires otherwise.

(2) The county board of elections shall meet at 5:00 p.m. on election day in the board office or other public location in the county courthouse for the purpose of counting all absentee ballots except those which have been challenged before 5:00 p.m. on election day. Any elector of the county shall be permitted to attend the meeting and allowed to observe the counting process, provided the elector shall not in any manner interfere with the election officials in the discharge of their duties.

Provided, that the county board of elections is authorized to begin counting absentee ballots between the hours of 2:00 p.m. and 5:00 p.m. upon the adoption of a resolution at least two weeks prior to the election wherein the hour and place of counting absentee ballots shall be stated. A copy of the resolutions shall be published once a week for two weeks prior to the election, in a newspaper having general circulation in the county. Notice may additionally be made on a radio

or television station or both, but such notice shall be in addition to the newspaper and other required notice. The count shall be continuous until completed and the members shall not separate or leave the counting place except for unavoidable necessity, except that if the count has been completed prior to the time the polls close, it shall be suspended until that time pending receipt of any additional ballots, and except that one-stop ballots under G.S. 163-227.2 counted electronically shall not be counted until the polls close; provided, however, that if there are outstack ballots in the counting device, they may be counted at the same time as other ballots are counted under this subdivision. The county board of elections may begin putting them in the tabulator at the same time as other ballots are counted under this subdivision if the system for counting one-stop ballots requires them to be put in a tabulator but the process has the voter place them in a ballot box. The board shall not announce the result of the count before 7:30 p.m.

(2a) Notwithstanding the provisions of subdivision (2) of this section, a county board of elections may, at each meeting at which it approves absentee ballot applications pursuant to G.S. 163-230.1(c) and (c1), remove those ballots from their envelopes and have them read by an optical scanning machine, without printing the totals on the scanner. The board shall complete the counting of these ballots at the times provided in subdivision (2) of this section. The State Board of Elections shall provide instructions to county boards of elections for executing this procedure, and the instructions shall be designed to ensure the accuracy of the count, the participation of board members of both parties, and the secrecy of the results before election day. This subdivision applies only in counties that use optical scan devices to count absentee ballots.

(3) The counting of absentee ballots shall not commence until a majority and at least one board member of each political party represented on the board is present and that fact is publicly declared and entered in the official minutes of the county board.

(4) The county board of elections may employ such assistants as deemed necessary to count the absentee ballots, but each board member present shall be responsible for and observe and supervise the opening and tallying of the ballots.

(5) As each ballot envelope is opened, the board shall cause to be entered into a pollbook designated "Pollbook of Absentee Voters" the name of the absentee voter, or if the pollbook is computer-generated, the board shall check off the name. Preserving secrecy, the ballots shall be placed in the appropriate ballot boxes, at least one of which shall be provided for each type of ballot. The "Pollbook of Absentee Voters" shall also contain the names of all persons who voted under

G.S. 163-227.2, but those names may be printed by computer for inclusion in the pollbook.

After all ballots have been placed in the boxes, the counting process shall begin.

If one-stop ballots under G.S. 163-227.2 are counted electronically, that count shall commence at the time the polls close. If one-stop ballots are paper ballots counted manually, that count shall commence at the same time as other absentee ballots are counted.

If a challenge transmitted to the board on canvass day by a chief judge is sustained, the ballots challenged and sustained shall be withdrawn from the appropriate boxes, as provided in G.S. 163-89(e).

As soon as the absentee ballots have been counted and the names of the absentee voters entered in the pollbook as required herein, the board members and assistants employed to count the absentee ballots shall each sign the pollbook immediately beneath the last absentee voter's name entered therein. The county board of elections shall be responsible for the safekeeping of the pollbook of absentee voters.

(6) Upon completion of the counting process the board members shall cause the results of the tally to be entered on the absentee abstract prescribed by the State Board of Elections. The abstract shall be signed by the members of the board in attendance and the original mailed immediately to the State Board of Elections. The county board of elections may have a separate count on the abstract for one-stop absentee ballots under G.S. 163-227.2.

(7) One copy of the absentee abstract shall be retained by the county board of elections and the totals appearing thereon shall be added to the final totals of all votes cast in the county for each office as determined on the official canvass.

(8) In the event a political party does not have a member of the county board of elections present at the meeting to count absentee ballots due to illness or other cause of the member, the counting shall not commence until the county party chairman of said absent member, or a member of the party's county executive committee, is in attendance. Such person shall act as an official witness to the counting and shall sign the absentee ballot abstract as an "observer."

(9) The county board of elections shall retain all container-return envelopes and absentee ballots, in a safe place, for at least four months, and longer if any contest is pending concerning the validity of any ballot."

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

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Monday	August 22, 2005	3:00 P.M.	1027 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 327	2005 Technical Corrections Act.	Representative Culpepper, III

Senator Daniel G. Clodfelter, Chair

Judiciary 1 Committee

August 22, 2005

Minutes

Senator Dan Clodfelter, Chair called the meeting together at 3:29 p.m. with sixteen members present.

HB-327 (2005 Technical Corrections Act) Committee Substitute was introduced by Senator Clodfelter. Senator Charlie Albertson moved for adoption of the Committee Substitute. All members voted yes. Motion carried. Staff attorney, Walker Reagan explained the organization of the bill. Sen. Martin Nesbitt had a question. Sen. Clodfelter answered the question. Ms. Bly Hall, Staff Attorney, NC General Statutes Commission, explained the Sections 1 through 27 of the bill. Staff Attorney, Walker Reagan explained Sections 28 through 102 of the bill. Senator Clodfelter stated that if anyone had a question about any Section, it would be flagged for discussion. Senator Martin Nesbitt had a question on page 24. Mr. Chip Killian, NC Banking Association, answered the question. Sen. Phillip Berger offered Amendment #1, page 24, lines 4 through 8, to restore stricken language. All members voted yes. Amendment adopted. Sen. Martin Nesbitt offered Amendment #2, page 25, lines 8 through 22, deleting those lines in their entirety. With a majority-voting no, Amendment failed. Sen. Keith Presnell offered Amendment #3, page 25, lines 23 through 30, deleting those lines in their entirety. All members voted yes. Amendment adopted. Sen. Janet Cowell offered Amendment #4, page 28, lines 23 through 31, deleting those lines in their entirety. All members voted yes. Amendment adopted. Sen. David Hoyle offered Amendment #5, page 30 line 11, deleting the word "an" and substituting "the". All members voted yes. Amendment adopted. Sen. Tony Rand offered Amendment #6, pages 34, lines 40 through 44 and page 35, lines 1 through 6, by deleting those lines I their entirety. All members voted yes. Amendment adopted. Sen. Richard Stevens offered Amendment #7, page 38, lines 24 through 42, deleting those lines in their entirety. Majority of members voted no. Amendment failed. Sen. Tony Rand offered Amendment #8, page 38, line 30, deleting "appropriate" and substituting" approved". Al l members voted yes. Amendment adopted. Sen. Jeanne Lucas offered Amendment #9, page 54, line 3, deleting that line, and renumber Subsection 87 (a) to 87. All members voted yes. Amendment adopted. Sen. Martin Nesbitt offered Amendment #10, page 60, lines 5-26, deleting those lines in their entirety. (Substituted by Amendment #11). Sen. David Hoyle offered Amendment #11 page 60, line 13, deleting "one Year" and substituting "nine months". All members voted yes. Amendment adopted. Sen. David Hoyle offered Amendment #12, S327-ARAY-2 (v-1). (See attached Amendment) All members voted yes. Amendment adopted. Sen. David Hoyle offered Amendment #13, S327-ARG-12 (v.3). (See attached Amendment). All

members voted yes. Amendment adopted. Sen. Tony Rand offered Amendment #14, Page 56, lines 32-33, inserting "Section 91.5. Section 45-1. (b) of S.L. 2005-276 reads as rewritten: "Section 45.1. (b). This Section becomes effective March 1, 2006. All members voted yes. Amendment adopted. Sen. Jeanne Lucas offered Amendment #15, H327-ARH-54 (v.1). (See attached Amendment). Majority of members voted no, Amendment failed. Sen. Clark Jenkins offered Amendment #16, H327-ARH-57 (v.1). (See attached Amendment). All members voted yes. Amendment adopted. Sen. Tony Rand offered Amendment #17, page 50, line29, inserting after that line the following: "Section 76. (e). If Senate Bill 223, 2005 Regular Session becomes law, then Section 7 of that act is repealed"; and on page 49, line 28, page 50, line 5, and page 50, line 24 by deleting the term"233" and substituting the term "223". All members voted yes. Amendment adopted. Sen. Phillip Berger offered Amendment #18, page 47, line 26, inserting after that line the following; "Section 75.5. (a) If House Bill 1115, 2005 Regular Session becomes law, then Section 16 of that bill is repealed", and on page 47, line 27, by deleting "75.5." and substituting "75.5. (b)". All members voted yes. Amendment adopted. Sen. Tony Rand offered Amendment #19, page 28, lines 42 & 43, and page 29, lines 1-8, deleting those lines in their entirety. All members voted yes. Amendment adopted. Sen. Martin Nesbitt offered Amendment #20, H327-ARH-58 (v.1) (See attached Amendment). All members voted yes. Amendment adopted. Sen. Tony Rand offered Amendment #21, inserting between the lines a new section G.S.58-36-65 (e) reads as rewritten: "(e) Records of convictions for moving violations to be considered under this section may be may be obtained at least annually from the Division of Motor Vehicles and applied by the Bureau's member companies I accordance with rules to be established by the Bureau." All members voted yes. Amendment adopted. During discussion, and Amendments made to different Sections of the bill, the following people spoke and answered questions. Judge Walker, NC Supreme Court, Mr. John Hoomani, NC Dept. of Labor, Ms. Robin Smith, Assistant Secretary, DENR, Mr. Mike Mangum, NC Department of Purchasing, Mr., Joe McClees, McClees Consulting, Inc., Mr. Douglas Lassiter, NC Septic Tank Association, Ms. Connie Williams, NC Waste Water Division, Mr., John Bowder, American Diabetes Association, Mr. Stanley Moore, NC Retirement System, Mr. George Teague, NC Hospital Association, Mr. David Haskins, NC Association of Towers Industry, Mr. Kenneth Spaulding, and Mr. Mike Horn, and Mr. John Nance, Division Engineer's, with Div. 5, NC Highways Department. Senator thanked those who spoke and members of the committee for their input on the bill.

Being no further business the meeting adjourned at 6:25 p.m.

Senator Dan Clodfelter, Chair

Wanda Joyner, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Daniel G. Clodfelter, Chair

CORRECTED REPORT

Monday, August 22, 2005

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

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **327** 2005 Technical Corrections Act.

Draft Number:	PCS 60545
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comments:

SENATE
COMMITTE SUBSTITUTE

GENERAL ASSEMBLY OF NORTH CAROLINA
AUG 23 '2005
SESSION 2005

H

ADOPTED

D

HOUSE BILL 327*

Committee Substitute Favorable 5/31/05

PROPOSED SENATE COMMITTEE SUBSTITUTE H327-PCS60545-RU-83

Short Title: 2005 Technical Corrections Act. (Public)

Sponsors:

Referred to:

February 22, 2005

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 RECOMMENDED BY THE GENERAL STATUTES COMMISSION

SECTION 1.(a) G.S. 7A-775(a)(4) reads as rewritten:

"(4) Arranging for an annual audit, in accordance with ~~G.S. 143-6.1;~~G.S. 143-6.2;".

SECTION 1.(b) G.S. 143B-168.12(c) reads as rewritten:

"(c) The North Carolina Partnership shall require each local partnership to place in each of its contracts a statement that the contract is subject to monitoring by the local partnership and North Carolina Partnership, that contractors and subcontractors shall be fidelity bonded, unless the contractors or subcontractors receive less than one hundred thousand dollars ($100,000) or unless the contract is for child care subsidy services, that contractors and subcontractors are subject to audit oversight by the State Auditor, and that contractors and subcontractors shall be audited as required by ~~G.S. 143-6.1.~~G.S. 143-6.2. Organizations subject to G.S. 159-34 shall be exempt from this requirement."

SECTION 2. G.S. 14-226(b) reads as rewritten:

"(b) A defendant in a criminal proceeding who threatens a witness in the defendant's case with the assertion or denial of parental rights shall be ~~a~~ in violation of this section."

SECTION 3.(a) G.S. 14-309.15(a) reads as rewritten:

"(a) It is lawful for any nonprofit organization or association, recognized by the Department of Revenue as tax-exempt pursuant to G.S. 105-130.11(a), and for any government entity within the State, to conduct raffles in accordance with this section. Any person who conducts a raffle in violation of any provision of this section shall be guilty of a Class 2 misdemeanor. Upon conviction that person shall not conduct a raffle for a period of one year. It is lawful to participate in a raffle conducted pursuant to this section. It shall not constitute a violation of State law to advertise a raffle conducted in accordance with this section. A raffle conducted pursuant to this section is not "gambling"."

SECTION 3.(b) Section 2 of Chapter 219 of the 1993 Session Laws is repealed.

SECTION 4. G.S. 14-404(a) reads as rewritten:

"(a) Upon application, the sheriff shall issue the license or permit to a resident of that ~~county~~ county, unless the purpose of the permit is for collecting, in which case a sheriff can issue a permit to a ~~nonresident~~ nonresident, when the sheriff has done all of the following:

(1) Verified by a criminal history background investigation that it is not a violation of State or federal law for the applicant to purchase, transfer, receive, or possess a handgun. The sheriff shall determine the criminal history of any applicant by accessing computerized criminal history records as maintained by the State Bureau of Investigation and the Federal Bureau of Investigation, by conducting a national criminal history records check, and by conducting a criminal history check through the Administrative Office of the Courts.

(2) Fully satisfied himself or herself by affidavits, oral evidence, or otherwise, as to the good moral character of the applicant.

(3) Fully satisfied himself or herself that the applicant desires the possession of the weapon mentioned for (i) the protection of the home, business, person, family or property, (ii) target shooting, (iii) collecting, or (iv) hunting."

SECTION 5. G.S. 14-407.1 reads as rewritten:

"**§ 14-407.1. Sale of blank cartridge pistols.**

The provisions of ~~G.S. 14-402 and 14-405 to 14-407~~ G.S. 14-402, 14-405, and 14-406 shall apply to the sale of pistols suitable for firing blank cartridges. The ~~clerks of the superior courts~~ sheriffs of all the counties of this State are authorized and may in their discretion issue to any person, firm or corporation, in any such county, a license or permit to purchase or receive any pistol suitable for firing blank cartridges from any person, firm or corporation offering to sell or dispose of the same, which said permit shall be in substantially the following form:

North Carolina

_____ County

I, _____, ~~Clerk of the Superior Court~~ sheriff of said county, do hereby certify that _____, whose place of residence is _____ Street in _____ (or) in _____ Township in _____ County,

North Carolina, having this day satisfied me that the possession of a pistol suitable for firing blank cartridges will be used only for lawful purposes, a permit is therefore given said _____ to purchase said pistol from any person, firm or corporation authorized to dispose of the same, this _____ day of _____, _____.

_____

~~Clerk of Superior Court~~ Sheriff

The ~~clerk~~ sheriff shall charge for ~~his~~ the sheriff's services, upon issuing such permit, a fee of fifty cents (50¢)."

SECTION 6. G.S. 20-158(b)(2) reads as rewritten:

"(2) ~~Approaching with traffic signal traffic signal the approaching~~

a. When a ~~steady or strobe beam stoplight~~ steady-beam traffic signal is emitting a red light controlling traffic ~~passing through~~ approaching an intersection, an approaching vehicle facing the red light shall come to a stop and shall not enter the intersection. After coming to a complete stop and unless prohibited by an appropriate sign, that approaching vehicle may make a right turn.

b. Any vehicle that turns right under this subdivision shall yield the right-of-way to:

1. Other traffic and pedestrians using the intersection; and
2. Pedestrians who are moving towards the intersection, who are in reasonably close proximity to the intersection, and who are preparing to cross in front of the traffic that is required to stop at the red light.

c. Failure to yield to a pedestrian under this subdivision shall be an infraction, and the court may assess a penalty of not more than five hundred dollars ($500.00) and not less than one hundred dollars ($100.00).

d. The Department of Transportation shall collect data regarding the number of individuals who are found responsible for violations of sub-subdivision b. of this subdivision and the number of pedestrians who are involved in accidents at intersections because of a driver's failure to yield the right-of-way while turning right at a red light. The data shall include information regarding the number of disabled pedestrians, including individuals with visual or mobility-related disabilities, who are involved in right turn on red accidents. The Department shall report the data annually to the Joint Legislative Transportation Oversight Committee beginning January 1, 2006."

SECTION 7. G.S. 58-31-66(b) reads as rewritten:

"(b) (1) Repealed by Session Laws 2004-203, s. 74(b), effective October 1, 2004.

~~(2)~~ ~~because~~".

SECTION 8. G.S. 66-58(b)(13a) is repealed.

SECTION 9. G.S. 95-265(a)(2)b. reads as rewritten:

"b. The complainant certified to the court that there is good cause to grant the remedy because the harm that the remedy is intended to prevent would ~~like~~ likely occur if the respondent were given any prior notice of the complainant's efforts to obtain judicial relief."

SECTION 10. G.S. 120-231(b) reads as rewritten:

"(b) The Committee may consult with the State Chief Information Officer on statewide technology strategies and initiatives and review all legislative proposals and other recommendations of the State Chief Information Officer.

~~Office of Information Technology Services~~".

SECTION 11. G.S. 126-5(e) reads as rewritten:

"(e) An exempt employee may be transferred, demoted, or separated from his or her position by the department head authorized to designate the exempt position except:

(1) When an employee who has the minimum service requirements described in ~~subsection (c)(1) above~~ G.S. 126-1.1 but less than 10 years of cumulative service in subject positions prior to placement in an exempt position is removed from an exempt position, for reasons other than just cause, the employee shall have priority to any position that becomes available for which the employee is qualified, according to rules and regulations regulating and defining priority as promulgated by the State Personnel Commission; or

(2) When an employee who has 10 years or more cumulative service, including the immediately preceding 12 months, in subject positions prior to placement in an exempt position is removed from an exempt position, for reasons other than just cause, the employee shall be reassigned to a subject position within the same department or agency, or if necessary within another agency, and within a 35 mile radius of the exempt position, at the same grade and salary, including all across-the-board increases since placement in the position designated as exempt, as his most recent subject position."

SECTION 12. G.S. 126-14.4(g) reads as rewritten:

"(g) A career State employee with:

(1) Less than 10 years of service who was placed in an exempt managerial position, as defined by G.S. 126-5(b)(2), shall be given priority consideration for a position at the same salary grade equal to that held in the most recent position ~~prior to the promotion~~ before being placed in the exempt managerial position if he or she has to vacate because of violation of G.S. 126-14.2.

(2) 10 or more years of service who was placed in an exempt managerial position, as defined by G.S. 126-5(b)(2), shall be placed in a comparable position at the same grade and salary equal to that held in the most recent position ~~prior to the promotion~~ before being placed in

the exempt managerial position if he or she had to vacate because of violation of G.S. 126-14.2."

SECTION 13. G.S. 126-15.1 reads as rewritten:

"**§ 126-15.1. Probationary State employee defined.**

As used in this Article, "probationary State employee" means a State employee who is exempt from the Personnel Act only because he has not been continuously employed by the State for the period required by ~~G.S. 126-5(c).~~G.S. 126-1.1."

SECTION 14. G.S. 135-4A is recodified as G.S. 135-4.1.

SECTION 15. G.S. 143B-405 reads as rewritten:

"**§ 143B-405. North Carolina State Commission of Indian Affairs – purposes for creation.**

~~The purposes of the Commission shall be~~ The purposes of the Commission shall be as follows:

(1) To deal fairly and effectively with Indian affairs.

(2) To bring local, State, and federal resources into focus for the implementation or continuation of meaningful programs for Indian citizens of the State of North Carolina.

(3) To provide aid and protection for Indians as needs are demonstrated; to prevent undue hardships.

(4) To hold land in trust for the benefit of State-recognized Indian tribes. This subdivision shall not apply to federally recognized Indian tribes.

(5) To assist Indian communities in social and economic development.

(6) To promote recognition of and the right of Indians to pursue cultural and religious traditions considered by them to be sacred and meaningful to Native Americans."

SECTION 16. G.S. 153A-129 reads as rewritten:

"**§ 153A-129. Firearms.**

A county may by ordinance regulate, restrict, or prohibit the discharge of firearms at any time or place except when used to take birds or animals pursuant to Chapter 113, Subchapter ~~III,~~IV, when used in defense of person or property, or when used pursuant to lawful directions of law-enforcement officers. A county may also regulate the display of firearms on the public roads, sidewalks, alleys, or other public property. This section does not limit a county's authority to take action under Chapter 14, Article 36A."

SECTION 17.(a) G.S. 160A-37(f1) reads as rewritten:

"(f1) Property Subject to Present-Use Value Appraisal. – If an area described in an annexation ordinance includes agricultural land, horticultural land, or forestland that meets either of the conditions listed below on the effective date of annexation, then the annexation becomes effective as to that property pursuant to subsection (f2) of this section:

(1) ~~Land that~~ The land is being taxed at present-use value pursuant to G.S. 105-277.4.

(2) ~~Land that~~ The land meets both of the following conditions:

a. On the date of the resolution of intent for annexation it was being used for actual production and is eligible for present-use

value taxation under G.S. 105-277.4, but the land ~~has~~ had not been in use for actual production for the required time under G.S. 105-277.3.

b. The assessor for the county where the land subject to annexation is located has certified to the city that the land meets the requirements of this subdivision."

SECTION 17.(b) G.S. 160A-37(f2) reads as rewritten:

"(f2) Effective Date of Annexation for Certain Property. – Annexation of property subject to annexation under subsection (f1) of this section becomes effective as provided in this ~~subsection.~~subsection:

(1) Upon the effective date of the annexation ordinance, the property is considered part of the city only (i) for the purpose of establishing city boundaries for additional annexations pursuant to this Article and (ii) for the exercise of city authority pursuant to Article 19 of this Chapter.

(2) For all other purposes, the annexation becomes effective as to each tract of the property or part thereof on the last day of the month in which that tract or part thereof becomes ineligible for classification pursuant to G.S. 105-277.4 or no longer meets the requirements of subdivision (f1)(2) of this section. Until annexation of a tract or a part of a tract becomes effective pursuant to this subdivision, the tract or part of a tract is not subject to taxation by the city under Article 12 of Chapter 105 of the General Statutes nor is the tract or part of a tract entitled to services provided by the city."

SECTION 17.(c) G.S. 160A-37(h) reads as rewritten:

"(h) Remedies for Failure to Provide Services. – If, not earlier than one year from the effective date of annexation, and not later than 15 months from the effective date of annexation, any person owning property in the annexed territory shall believe that the municipality has not followed through on its service plans adopted under the provisions of G.S. 160A-35(3) and ~~160A-37(e), such~~ subsection (e) of this section, the person may apply for a writ of mandamus under the provisions of Article 40, Chapter 1 of the General Statutes. Relief may be granted by the judge of superior court

(1) If the municipality has not provided the services set forth in its plan submitted under the provisions of G.S. 160A-35(3)a on substantially the same basis and in the same manner as such services were provided within the rest of the municipality prior to the effective date of annexation, and

(2) If at the time the writ is sought such services set forth in the plan submitted under the provisions of G.S. 160A-35(3)a are still being provided on substantially the same basis and in the same manner as on the date of annexation of the municipality.

Relief may also be granted by the judge of superior court

(1) If the plans submitted under the provisions of ~~G.S. 160A-35(3)c~~ G.S. 160A-35(3)b. require the construction of major trunk water mains and sewer outfall lines and

(2) If contracts for such construction have not yet been let.

If a writ is issued, costs in the action, including a reasonable attorney's fee for such aggrieved person, shall be charged to the municipality."

SECTION 18. G.S. 160A-49(f2) reads as rewritten:

"(f2) Effective Date of Annexation for Certain Property. – Annexation of property subject to annexation under subsection (f1) of this section shall become effective:

(1) Upon the effective date of the annexation ordinance, the property is considered part of the city only (i) for the purpose of establishing city boundaries for additional annexations pursuant to this Article and (ii) for the exercise of city authority pursuant to Article 19 of this Chapter.

(2) For all other purposes, the annexation becomes effective as to each tract of such property or part thereof on the last day of the month in which that tract or part thereof becomes ineligible for classification pursuant to ~~G.S. 105-227.4~~ G.S. 105-277.4 or no longer meets the requirements of subdivision (f1)(2) of this section. Until annexation of a tract or a part of a tract becomes effective pursuant to this subdivision, the tract or part of a tract is not subject to taxation by the city under Article 12 of Chapter 105 of the General Statutes nor is the tract or part of a tract entitled to services provided by the city."

SECTION 19. G.S. 160A-215(g) as amended by S.L. 2005-16, S.L. 2005-46, S.L. 2005-49, S.L. 2005-220, and S.L. 2005-233, reads as rewritten:

"(g) This section applies only to Beech Mountain District W, to the Cities of Gastonia, Goldsboro, Greensboro, High Point, Kings Mountain, Lexington, Lincolnton, Lumberton, Monroe, Mount Airy, Shelby, Statesville, Washington, and Wilmington, to the Towns of Beech Mountain, Blowing Rock, Carolina Beach, Carrboro, Franklin, Jonesville, Kure Beach, ~~Jonesville,~~ Mooresville, North Topsail Beach, Selma, Smithfield, St. Pauls, Wilkesboro, and Wrightsville Beach, and to the municipalities in Avery and Brunswick Counties."

SECTION 20. G.S. 163-128(a) reads as rewritten:

"(a) Each county shall be divided into a convenient number of precincts for the purpose of voting. Upon a resolution adopted by the county board of elections and approved by the ~~Secretary-Director~~ Executive Director of the State Board of Elections voters from a given precinct may be temporarily transferred, for the purpose of voting, to an adjacent precinct. Any such transfers shall be for the period of time equal only to the term of office of the county board of elections making such transfer. When such a resolution has been adopted by the county board of elections to assign voters from more than one precinct to the same precinct, then the county board of elections shall maintain separate registration and voting records, consistent with the procedure prescribed by the State Board of Elections, so as to properly identify the precinct in which such voters reside. The polling place for a precinct shall be located within the precinct or on a lot or tract adjoining the precinct.

Except as provided by Article 12A of this Chapter, the county board of elections shall have power from time to time, by resolution, to establish, alter, discontinue, or create such new election precincts or voting places as it may deem expedient. Upon

adoption of a resolution establishing, altering, discontinuing, or creating a precinct or voting place, the board shall give 45 days' notice thereof prior to the next primary or election. Notice shall be given by advertisement in a newspaper having general circulation in the county, by posting a copy of the resolution at the courthouse door and at the office of the county board of elections, and by mailing a copy of the resolution to the chairman of every political party in the county. Notice may additionally be made on a radio or television station or both, but such notice shall be in addition to the newspaper and other required notice. No later than 30 days prior to the primary or election, the county board of elections shall mail a notice of precinct change to each registered voter who as a result of the change will be assigned to a different voting place."

SECTION 21. G.S. 163-296 reads as rewritten:

"**§ 163-296. Nomination by petition.**

In cities conducting partisan elections, any qualified voter who seeks to have his name printed on the regular municipal election ballot as an unaffiliated candidate may do so in the manner provided in G.S. 163-122, except that the petitions and affidavits shall be filed not later than 12:00 noon on the Friday preceding the seventh Saturday before the election, and the petitions shall be signed by a number of qualified voters of the municipality equal to at least four percent (4%) of the whole number of voters qualified to vote in the municipal election according to the voter registration records of the State Board of Elections as of January 1 of the year in which the general municipal election is held. A person whose name appeared on the ballot in a primary election is not eligible to have his name placed on the regular municipal election ballot as an unaffiliated candidate for the same office in that year. The Board of Elections shall examine and verify the signatures on the petition, and shall certify only the names of signers who are found to be qualified registered voters in the municipality. Provided that in the case where a qualified voter seeks to have his name printed on the regular municipal election ballot as an unaffiliated candidate for election from an election district within the municipality, the petition shall be signed by four percent (4%) of the voters qualified to vote for that office."

SECTION 22.(a) Section 18.2(e) of S.L. 2004-124 reads as rewritten:

"**SECTION 18.2.(e).** ~~The~~ With the exception of G.S. 143-655, the word "Commission" shall be replaced with "Division" every place that word appears in Article 68 of Chapter 143 of the General Statutes."

SECTION 22.(b) G.S. 143-655 reads as rewritten:

"**§ 143-655. Fees; State Boxing ~~Commission~~ Revenue Account.**

(a) License Fees. – The ~~Commission~~ Division shall collect the following license fees:

Announcer	$50.00
Contestant	$25.00
Judge	$50.00
Manager	$100.00
Matchmaker	$200.00

Promoter	$300.00
Referee	$50.00
Timekeeper	$50.00
Second	$25.00.

The annual license renewal fees shall not exceed the initial license fees.

(b) Permit Fees. – The ~~Commission~~ Division may establish a fee schedule for permits issued under this Article. The fees may vary depending on the seating capacity of the facility to be used to present a match. The fee may not exceed the following amounts:

Seating Capacity	Fee Amount
Less than 2,000	$100.00
2,000 – 5,000	$200.00
Over 5,000	$300.00.

(c) State Boxing ~~Commission~~ Revenue Account. – There is created the State Boxing ~~Commission~~ Revenue Account within the Department of Crime Control and Public Safety. Monies [moneys] collected pursuant to the provisions of this Article shall be credited to the Account and applied to the administration of the Article."

SECTION 22.(c) G.S. 143-651(23b) reads as rewritten:

"(23b) Sanctioned amateur match. – Any boxing or kickboxing match regulated by an amateur sports organization that has been recognized and approved by the Division.

~~North Carolina Boxing Commission.~~"

SECTION 23. The introductory language of Section 15 of S.L. 2004-127 reads as rewritten:

"**SECTION 15.** ~~G.S. 163-278(9)~~ G.S. 163-278.6(9) reads as rewritten:".

SECTION 24. The introductory language of Section 27(e) of S.L. 2004-199 reads as rewritten:

"**SECTION 27.(e)** ~~G.S. 106-577~~ G.S. 106-557 reads as rewritten:".

SECTION 25. Section 44 of S.L. 2004-203 is repealed.

SECTION 26. Section 68 of S.L. 2004-203 is repealed.

SECTION 27. The introductory language of Section 1 of S.L. 2005-5 reads as rewritten:

"**SECTION 1.** Section 6 of Chapter 1191 of the 1957 Session Laws, as amended by Section 2 of Chapter 292 of the 1985 Session Laws, reads as rewritten:"

PART II. OTHER CHANGES

SECTION 28.(a) G.S. 7A-38.3B, as enacted by Section 8 of S.L. 2005-150, is recodified as G.S. 7A-38.3C.

SECTION 28.(b) G.S. 160A-331.1, as enacted by Section 3 of S.L. 2005-150, reads as rewritten:

"**§ 160A-331.1. Construction of lines between June 1, 2005, and May 31, 2007.**

During the period beginning June 1, 2005, and ending May 31, 2007, a city shall not construct or extend an electric distribution line outside of its corporate limits as of June

1, 2005, in territory assigned to an electric membership corporation by the North Carolina Utilities Commission without the written consent of the electric membership corporation. Provided, however, that the consent of an electric membership corporation shall not be required in connection with the proposed construction of an electric distribution line solely to serve a facility owned by a city. The electric membership corporation shall give its consent unless the electric membership corporation, in good faith, believes that the construction of the electric distribution line is not necessary to satisfy the reasonable needs of the public for the delivery of an adequate and reliable supply of electric energy and that, when compared with reasonable, alternative courses of action and locations, construction of the electric distribution line in the proposed location is not reasonable, preferred, in the public interest, and the most economical and practically feasible route to deliver electric energy in accordance with prudent utilities practice. Any dispute concerning the failure of the electric membership corporation to give its written consent shall be submitted to prelitigation mediation in accordance with ~~the provisions of G.S. 7A-38.3B.~~G.S. 7A-38.3C."

SECTION 28.(c) G.S. 160A-331.2(b), as enacted by Section 3 of S.L. 2005-150, reads as rewritten:

"(b) During the period beginning June 1, 2005, and ending May 31, 2007, electric membership corporations and cities that own and maintain their own electric distribution lines shall undertake good faith negotiations concerning the provision of future electric services within areas outside of the corporate limits of such cities as of June 1, 2005, and the development of agreements relating to the provision of electric services, the location of lines, and the areas within which electric services may be provided by such electric suppliers. To the extent such negotiations produce any agreements between the affected electric suppliers, such agreements shall be submitted to the North Carolina Utilities Commission for approval under this section. To the extent such negotiations do not produce an agreement and disputes among the suppliers remain as of May 31, 2007, such disputes shall be resolved ~~pursuant to the provisions of G.S. 7A-38.3B(i).~~under G.S. 7A-38.3C(i)."

SECTION 28.(d) G.S. 117-10.3, as enacted by Section 7 of S.L. 2005-150, reads as rewritten:

"**§ 117-10.3. Construction of lines between June 1, 2005, and May 31, 2007.**

During the period beginning June 1, 2005, and ending May 31, 2007, an electric membership corporation shall not construct or extend an electric distribution line in territory assigned to it by the North Carolina Utilities Commission without the written consent of the municipality that owns and maintains its own electric system whose corporate limits, as of June 1, 2005, are within three miles of any part of the line or extension proposed to be constructed by the electric membership corporation. The municipality shall give its consent unless the municipality, in good faith, believes that the construction or extension of the electric distribution line is not necessary to satisfy the reasonable needs of the public for the delivery of an adequate and reliable supply of electric energy and that, when compared with reasonable, alternative courses of action and locations, construction of that part of the electric distribution line in the proposed location within three miles of the city is not reasonable, preferred, in the public interest,

and the most economical and practically feasible route to deliver electric energy in accordance with prudent utilities practice. Any dispute concerning the failure of the municipality to give its written consent shall be submitted to prelitigation mediation in accordance with ~~the provisions of G.S. 7A-38.3B.~~G.S. 7A-38.3C."

SECTION 29.(a) G.S. 7A-177(a) reads as rewritten:

"(a) Within six months of taking the oath of office as a magistrate for the first time, a magistrate is required to attend and satisfactorily complete a course of basic training of at least 40 hours in the civil and criminal duties of a magistrate. The Administrative Office of the Courts is authorized to contract with the ~~Institute of Government~~ School of Government at the University of North Carolina at Chapel Hill or with any other qualified educational organization to conduct this training, and to reimburse magistrates for travel and subsistence expenses incurred in taking such training."

SECTION 29.(b) G.S. 7A-413(a)(4) reads as rewritten:

"(a) The Conference may:

.....

(4) Cooperate with the Administrative Office of the Courts and the ~~Institute of Government~~ School of Government at the University of North Carolina at Chapel Hill concerning education and training programs for prosecutors and staff."

SECTION 29.(c) G.S. 17C-3(a)(5) reads as rewritten:

"(a) There is established the North Carolina Criminal Justice Education and Training Standards Commission, hereinafter called "the Commission." The Commission shall be composed of 33 members as follows:

...

(5) Citizens and Others. – The President of The University of North Carolina; the ~~Director of the Institute of Government;~~ Dean of the School of Government at the University of North Carolina at Chapel Hill; and two citizens, one of whom shall be selected by the Governor and one of whom shall be selected by the Attorney General. The General Assembly shall appoint four persons, two upon the recommendation of the Speaker of the House of Representatives and two upon the recommendation of the President Pro Tempore of the Senate. Appointments by the General Assembly shall be made in accordance with G.S. 120-122. Appointments by the General Assembly shall be for two-year terms to conclude on June 30th in odd-numbered years.

...."

SECTION 29.(d) G.S. 17C-3(b) reads as rewritten:

"(b) The members shall be appointed for staggered terms. The initial appointments shall be made prior to September 1, 1983, and the appointees shall hold office until July 1 of the year in which their respective terms expire and until their successors are appointed and qualified as provided hereafter:

For the terms of one year: one member from subdivision (1) of subsection (a) of this section, serving as a police chief; three members from subdivision (2) of subsection (a) of this section, one serving as a police official, and two criminal justice officers; one member from subdivision (4) of subsection (a) of this section, appointed by the North Carolina Law-Enforcement Training Officers' Association; and two members from subdivision (5) of subsection (a) of this section, one appointed by the Governor and one appointed by the Attorney General.

For the terms of two years: one member from subdivision (1) of subsection (a) of this section, serving as a police chief; one member from subdivision (2) of subsection (a) of this section, serving as a police official; and two members from subdivision (4) of subsection (a) of this section, one appointed by the League of Municipalities and one appointed by the North Carolina Association of District Attorneys.

For the terms of three years: two members from subdivision (1) of subsection (a) of this section, one police chief appointed by the North Carolina Association of Chiefs of Police and one police chief appointed by the Governor; one member from subdivision (2) of subsection (a) of this section, serving as a police official; and three members from subdivision (4) of subsection (a) of this section, one appointed by the North Carolina Law-Enforcement Women's Association, one appointed by the North Carolina Criminal Justice Association, and one appointed by the North State Law-Enforcement Officers' Association.

Thereafter, as the term of each member expires, his successor shall be appointed for a term of three years. Notwithstanding the appointments for a term of years, each member shall serve at the will of the appointing authority.

The Attorney General, the Secretary of Crime Control and Public Safety, the Secretary of Correction, the President of The University of North Carolina, the ~~Director of the Institute of Government,~~ Dean of the School of Government at the University of North Carolina at Chapel Hill, the President of the North Carolina Community Colleges System, and the Secretary of Juvenile Justice and Delinquency Prevention shall be continuing members of the Commission during their tenure. These members of the Commission shall serve ex officio and shall perform their duties on the Commission in addition to the other duties of their offices. The ex officio members may elect to serve personally at any or all meetings of the Commission or may designate, in writing, one member of their respective office, department, university or agency to represent and vote for them on the Commission at all meetings the ex officio members are unable to attend.

Vacancies in the Commission occurring for any reason shall be filled, for the unexpired term, by the authority making the original appointment of the person causing the vacancy. A vacancy may be created by removal of a Commission member by majority vote of the Commission for misconduct, incompetence, or neglect of duty. A Commission member may be removed only pursuant to a hearing, after notice, at which the member subject to removal has an opportunity to be heard."

SECTION 29.(e) G.S. 17E-3(a)(4) reads as rewritten:

"(a) There is hereby established the North Carolina Sheriffs' Education and Training Standards Commission. The Commission shall be composed of 17 members as follows:

...

(4) Others. – The President of the Department of Community Colleges or ~~his~~ the President's designee and the ~~Director of the Institute of Government~~ Dean of the School of Government at the University of North Carolina at Chapel Hill or ~~his~~ the Dean's designee shall be ex officio, nonvoting members of the Commission."

SECTION 29.(f) G.S. 105-501 reads as rewritten:

"**§ 105-501. Distribution of additional taxes.**

The Secretary shall, on a monthly basis, allocate the net proceeds of the additional one-half percent (1/2%) sales and use taxes levied under this Article to the taxing counties on a per capita basis according to the most recent annual population estimates certified to the Secretary by the State Budget Officer. The Secretary shall then adjust the amount allocated to each county as provided in G.S. 105-486(b). The amount allocated to each taxing county shall then be divided among the county and the municipalities located in the county in accordance with the method by which the one percent (1%) sales and use taxes levied in that county pursuant to Article 39 of this Chapter or Chapter 1096 of the 1967 Session Laws are distributed. No municipality may receive any funds under this section if it was incorporated with an effective date of on or after January 1, 2000, and is disqualified from receiving funds under G.S. 136-41.2. No municipality may receive any funds under this section, incorporated with an effective date on or after January 1, 2000, unless a majority of the mileage of its streets are open to the public. The previous sentence becomes effective with respect to distribution of funds on or after July 1, 1999.

In determining the net proceeds of the tax to be distributed, the Secretary shall deduct from the collections to be allocated an amount equal to one-twelfth of the costs during the preceding fiscal year of:

(1) The Department of Revenue in performing the duties imposed by G.S. 105-275.2 and by Article 15 of this Chapter.

(1a) Seventy percent (70%) of the expenses of the Department of Revenue in performing the duties imposed by Article 2D of this Chapter.

(2) The Property Tax Commission.

(3) The ~~Institute of Government~~ School of Government at the University of North Carolina at Chapel Hill in operating a training program in property tax appraisal and assessment.

(4) The personnel and operations provided by the Department of State Treasurer for the Local Government Commission."

SECTION 29.(g) G.S. 113A-4(3) reads as rewritten:

"**§ 113A-4. Cooperation of agencies; reports; availability of information.**

The General Assembly authorizes and directs that, to the fullest extent possible:

...

(3) The Governor, and any State agency charged with duties under this Article, may call upon any of the public institutions of higher education of this State for assistance in developing plans and procedures under this Article and in meeting the requirements of this Article, including without limitation any of the following units of the University of North Carolina: the Water Resources Research Institute, the Institute for Environmental Studies, the Triangle Universities Consortium on Air Pollution, and the ~~Institute of Government.~~ School of Government at the University of North Carolina at Chapel Hill."

SECTION 29.(h) G.S. 115C-50 reads as rewritten:

"**§ 115C-50. Training of board members.**

All members of local boards of education shall receive a minimum of 12 clock hours of training annually. The training shall include but not be limited to public school law, public school finance, and duties and responsibilities of local boards of education. The training may be provided by the North Carolina School Boards Association, the ~~Institute of Government,~~ School of Government at the University of North Carolina at Chapel Hill, or other qualified sources at the choice of the local board of education."

SECTION 29.(i) G.S. 120-129 reads as rewritten:

"**§ 120-129. Definitions.**

As used in this Article:

(1) "Document" means all records, papers, letters, maps, books, photographs, films, sound recordings, magnetic or other tapes, electronic data-processing records, artifacts, or other documentary material regardless of physical form or characteristics.

(1a) "Legislative commission" means any commission or committee which the Legislative Services Commission is directed or authorized to staff by law or resolution and which it does, in fact, staff.

(2) "Legislative employee" means employees and officers of the General Assembly, consultants and counsel to members and committees of either house of the General Assembly or of legislative commissions who are paid by State funds, and employees of the ~~Institute of Government;~~ School of Government at the University of North Carolina at Chapel Hill; but does not mean legislators and members of the Council of State.

(3) "Legislator" means a member-elect, member-designate, or member of the North Carolina Senate or House of Representatives."

SECTION 29.(j) G.S. 120-161 reads as rewritten:

"**§ 120-161. Facilities and staff.**

The Commission may meet in the Legislative Building or the Legislative Office Building. Staff for the Commission shall be provided by the Legislative Services Commission. The Commission may contract with the ~~Institute of Government,~~ School of Government at the University of North Carolina at Chapel Hill, the Local Government Commission, the Department of Environment and Natural Resources, or

other agencies as may be necessary in completing any required studies, within the funds appropriated to the Commission."

SECTION 29.(k) G.S. 122C-412.2 reads as rewritten:

"**§ 122C-412.2. Planning Council; planning responsibility.**

The Butner Planning Council shall, in consultation with the Department of Health and Human Services, the Community Assistance Division of the Department of Commerce, the ~~Institute of Government,~~ School of Government at the University of North Carolina at Chapel Hill, and other State and local agencies, prepare a long-range plan for the future development of the Camp Butner Reservation. This plan shall provide a blueprint for the development of the Reservation and the adjoining areas of Granville, Durham, and Person Counties and shall consider issues such as:

(1) The possible incorporation of a municipality on the Camp Butner Reservation;

(2) The provision of housing, public safety services, water and sewer services, school facilities, and park and recreational services for the increasing Butner population;

(3) The possible transfer of State-owned property for the future development in and around Butner;

(4) The growth and development of business and industrial areas within the Camp Butner Reservation, including planning and zoning issues; and

(5) How to maximize the utility of the Camp Butner Reservation to the State of North Carolina as a site for future State facilities and still meet the needs and improve the quality of life for the residents of Butner.

Copies of the long-range plan shall be submitted to the Secretary of Health and Human Services, the Joint Legislative Commission on Governmental Operations, the Fiscal Research Division of the General Assembly, and to each member of the General Assembly representing the area no later than December 31, 1998. The Department of Health and Human Services, through the Butner Town Manager, shall provide necessary financial and personnel support for the preparation of this plan."

SECTION 29.(l) G.S. 143-64.24 reads as rewritten:

"**§ 143-64.24. Applicability of Article.**

This Article shall not apply to the General Assembly, special study commissions, the Research Triangle Institute, or the ~~Institute of Government,~~ School of Government at the University of North Carolina at Chapel Hill, nor shall it apply to attorneys employed by the North Carolina Department of Justice, or physicians or doctors performing contractual services for any State agency. This Article shall not apply to Independent Review Organizations selected by the Commissioner of Insurance pursuant to G.S. 58-50-85."

SECTION 29.(m) G.S. 143-151.9 reads as rewritten:

"**§ 143-151.9. North Carolina Code Officials Qualification Board established; members; terms; vacancies.**

(a) There is hereby established the North Carolina Code Officials Qualification Board in the Department of Insurance. The Board shall be composed of 20 members appointed as follows:

(1) One member who is a city or county manager;
(2) Two members, one of whom is an elected official representing a city over 5,000 population and one of whom is an elected official representing a city under 5,000 population;
(3) Two members, one of whom is an elected official representing a county over 40,000 population and one of whom is an elected official representing a county under 40,000 population;
(4) Two members serving as building officials with the responsibility for administering building, plumbing, electrical and heating codes, one of whom serves a county and one of whom serves a city;
(5) One member who is a registered architect;
(6) One member who is a registered engineer;
(7) Two members who are licensed general contractors, at least one of whom specializes in residential construction;
(8) One member who is a licensed electrical contractor;
(9) One member who is a licensed plumbing or heating contractor;
(10) One member selected from the faculty of the North Carolina State University School of Engineering and one member selected from the faculty of the School of Engineering of the North Carolina Agricultural and Technical State University;
(11) One member selected from the faculty of the ~~Institute of Government;~~ School of Government at the University of North Carolina at Chapel Hill;
(12) One member selected from the Community Colleges System Office;
(13) One member selected from the Division of Engineering and Building Codes in the Department of Insurance; and,
(14) One member who is a local government fire prevention inspector and one member who is a citizen of the State.

The various categories shall be appointed as follows: (1), (2), (3), and (14) by the Governor; (4), (5), and (6) by the General Assembly upon the recommendation of the President Pro Tempore in accordance with G.S. 120-121; (7), (8), and (9) by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121; (10) by the deans of the respective schools of engineering of the named universities; (11) by the ~~Director of the Institute of Government;~~ Dean of the School of Government at the University of North Carolina at Chapel Hill; (12) by the President of the Community College System; and (13) by the Commissioner of Insurance."

SECTION 29.(n) G.S. 143B-350(m) reads as rewritten:

"(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 and shall include input from the ~~Institute of Government,~~ School of Government at the University of North Carolina at Chapel Hill, 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."

SECTION 29.(o) G.S. 143B-394.15(c)(4) reads as rewritten:

"(c) Membership. – The Commission shall consist of 39 members, who reflect the geographic and cultural regions of the State, as follows:

...

(4) The following persons or their designees, ex officio:

a. The Governor.
b. The Lieutenant Governor.
c. The Attorney General.
d. The Secretary of the Department of Administration.
e. The Secretary of the Department of Crime Control and Public Safety.
f. The Superintendent of Public Instruction.
g. The Secretary of the Department of Correction.
h. The Secretary of the Department of Health and Human Services.
i. The Director of the Office of State Personnel.
j. The Executive Director of the North Carolina Council for Women.
k. The ~~Director of the Institute of Government.~~Dean of the School of Government at the University of North Carolina at Chapel Hill.
l. The Chairman of the Governor's Crime Commission."

SECTION 29.(p) G.S. 147-54 reads as rewritten:

"**§ 147-54. Printing, distribution and sale of the North Carolina Manual.**

The Secretary of State shall have printed biennially for distribution and sale, two thousand three hundred fifty (2,350) copies of the North Carolina Manual, and shall make distribution to the State agencies, individuals, institutions and others as herein set forth.

NORTH CAROLINA STATE GOVERNMENT:

Members of the General Assembly	1 ea.
Officers of the General Assembly	1 ea.
Offices of the Clerk of each House of the General Assembly	1 ea.
Legislative Services Officer	1
Legislative Library	6
Members of the Council of State	2 ea.
Appointed Secretaries of Executive Departments	2 ea.
Personnel of the Department of the Secretary of State	1 ea.
State Board of Elections	2

Divisions of Archives and History, Director 1
Search Room 3
Publications Section 2
State Library 10
Libraries within State Agencies ..... 1 ea.
Justices of the North Carolina Supreme Court ..... 1 ea.
Judges of the North Carolina Court of Appeals ..... 1 ea.
Judges of the North Carolina Superior Court ..... 1 ea.
Supreme Court Library 12
Court of Appeals Library 2
Clerk of the Supreme Court 1
Clerk of the Court of Appeals 1
Reporter of the Supreme Court and Court of Appeals 1
Administrative Office of the Courts 5
NORTH CAROLINA EDUCATIONAL INSTITUTIONS:
University of North Carolina System
General Administration Offices 12
Chancellors of the Constituent Institutions ..... 1 ea.
University of North Carolina – Chapel Hill Library 15
North Carolina State University Library 5
East Carolina University Library 5
North Carolina Central University Library 5
Appalachian State University Library 4
University of North Carolina – Charlotte Library 4
University of North Carolina – Greensboro Library 4
Western Carolina University Library 4
Other Constituent Institutions Libraries ..... 3 ea.
North Carolina School of the Arts 2
~~Institute of Government~~ ..... ~~2~~
University of North Carolina-Chapel Hill School of Government 2
Community Colleges and Technical Institutes ..... 2 ea.
Private Colleges and Universities
Duke University Library 6
Wake Forest University 6
Campbell University Library 5
Davidson College Library 4
All other Libraries of Senior and Junior Colleges ..... 2 ea.
Public and Private Schools containing grades 8-12 ..... 1 ea.
COUNTY GOVERNMENT:
Clerks of Court ..... 1 ea.
Registers of Deeds ..... 1 ea.
Public Libraries of North Carolina ..... 1 ea.
FEDERAL GOVERNMENT:
President of the United States 1

North Carolina Members of the Presidential Cabinet ..... 1 ea.
North Carolina Members of the United States Congress ..... 2 ea.
Library of Congress 3
Resident Judges of the Federal Judiciary
and United States Attorneys in North Carolina ..... 1 ea.
Secretaries of State of the United States
and Territories ..... 1 ea.

After making the above distribution, the remainder shall be sold at the cost of publication plus tax and postage and the proceeds from such sales deposited with the State Treasurer for use by the Publications Division of the Secretary of State's Office to defray the expense of publishing the North Carolina Manual. Libraries and educational institutions not covered in the above distribution shall be entitled to a twenty percent (20%) discount on the cost of any purchase(s)."

SECTION 30.(a) 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 30.(b) This section becomes effective October 1, 2005, and applies to persons summoned for jury service on or after that date.

SECTION 31. G.S. 14-269.2(h) reads as rewritten:

"(h) No person shall be guilty of a criminal violation of this section with regard to the possession or carrying of a ~~firearm~~ weapon so long as both of the following apply:

(1) The person comes into possession of a weapon by taking or receiving the weapon from another person or by finding the weapon.

(2) The person delivers the weapon, directly or indirectly, as soon as practical to law enforcement authorities."

SECTION 32.(a) G.S. 14-404(a)(1), as amended by Section 4 of this act, reads as rewritten:

"(a) Upon application, the sheriff shall issue the license or permit to a resident of that county, unless the purpose of the permit is for collecting, in which case a sheriff can issue a permit to a nonresident, when the sheriff has done all of the following:

(1) ~~Verified~~ Verified, before the issuance of a permit, by a criminal history background investigation that it is not a violation of State or federal law for the applicant to purchase, transfer, receive, or possess a handgun. The sheriff shall determine the criminal and background history of any applicant by accessing computerized criminal history records as maintained by the State Bureau of Investigation and the Federal Bureau of Investigation, by conducting a national criminal history records check, by conducting a check through the National Instant Criminal Background Check System (NICS), and by

conducting a criminal history check through the Administrative Office of the Courts.

(2) Fully satisfied himself or herself by affidavits, oral evidence, or otherwise, as to the good moral character of the applicant.

(3) Fully satisfied himself or herself that the applicant desires the possession of the weapon mentioned for (i) the protection of the home, business, person, family or property, (ii) target shooting, (iii) collecting, or (iv) hunting."

SECTION 32.(b) G.S. 14-415.13(b) reads as rewritten:

"(b) The sheriff shall submit the fingerprints to the State Bureau of Investigation for a records check of State and national databases. The State Bureau of Investigation shall submit the fingerprints to the Federal Bureau of Investigation as necessary. The sheriff shall determine the criminal and background history of an applicant also by conducting a check through the National Instant Criminal Background Check System (NICS). The cost of processing the set of fingerprints shall be charged to an applicant as provided by G.S. 14-415.19."

SECTION 33. 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, 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 34. G.S. 15A-1371(b) reads as rewritten:

"(b) (1), (2) Repealed by Session Laws 1993, c. 538, s. 22.

(3) Whenever the Post-Release Supervision and Parole Commission will be considering for parole a prisoner serving a sentence of life imprisonment the Commission must notify, at least 30 days in advance of considering the parole, by first class mail at the last known address:

a. The prisoner;
b. The district attorney of the district where the prisoner was convicted;
c. The head of the law enforcement agency that arrested the ~~prisoner, if the head of the agency has requested in writing that~~

~~he be notified;~~ prisoner and the sheriff of the county where the crime occurred;

d. Any of the victim's immediate family members who have requested in writing to be notified; and

e. Repealed by Session Laws 1993, c. 538, s. 22.

f. As many newspapers of general circulation and other media in the county where the defendant was convicted and if different, in the county where the prisoner was charged, as reasonable.

The Post-Release Supervision and Parole Commission must consider any information provided by any such parties before consideration of parole. The Commission must also give the district attorney, the head of the law enforcement agency who has requested in writing to be notified, the victim, any member of the victim's immediate family who has requested to be notified, and as many newspapers of general circulation and other media in the county or counties designated in sub-subdivision f. of this section as reasonable, written notice of its decision within 10 days of that decision. The Parole Commission shall not, however, include the name of any victim in its notification to the newspapers and other media."

SECTION 35. G.S. 18B-500(a) reads as rewritten:

"(a) Appointment. – The Secretary of Crime Control and Public Safety shall appoint alcohol law-enforcement agents and other enforcement personnel. The Secretary of Crime Control and Public Safety may also appoint regular employees of the Commission as alcohol law-enforcement agents. Alcohol law-enforcement agents shall be designated as "alcohol law-enforcement agents". Persons serving as reserve alcohol law-enforcement agents are considered employees of the Division of Alcohol Law Enforcement for workers' compensation purposes while performing duties assigned or approved by the Director of Alcohol Law Enforcement or the Director's designee."

SECTION 35.5. If House Bill 1136, 2005 Regular Session, becomes law, then G.S. 20-85(b) reads as rewritten:

"(b) ~~The~~ Except as otherwise provided in subsection (a1) of this section, the fees collected under subdivisions (a)(1) through (a)(9) of this section shall be credited to the North Carolina Highway Trust Fund. The fees collected under subdivision (a)(10) of this section shall be credited to the Highway Fund. Fifteen dollars ($15.00) of each title fee credited to the Trust Fund under subdivision (a)(1) shall be added to the amount allocated for secondary roads under G.S. 136-176 and used in accordance with G.S. 136-44.5."

SECTION 36.(a) G.S. 20-114.2, as enacted by Section 1 of S.L. 2004-108, reads as rewritten:

"**§ 20-114.2. Law enforcement motorized all-terrain vehicles permitted on highways with speed limits of 35 miles per hour or less.**

Law enforcement officers enforcing the laws of the State may use motorized all-terrain vehicles, as defined in G.S. 14-159.3(b) and owned or leased by the governmental agency, on public highways where the speed limit is 35 miles per hour or

less. Law enforcement officers may operate motorized all-terrain vehicles on nonfully controlled access highways with higher speeds for the purpose of traveling from a speed zone to an adjacent speed zone where the speed limit is 35 miles per hour or less."

SECTION 36.(b) G.S. 20-114.3, as enacted by Section 2 of S.L. 2004-108, reads as rewritten:

"**§ 20-114.3. Law enforcement and municipal employee motorized all-terrain vehicles permitted on highways with speed limits of 35 miles per hour or less.**

Law enforcement officers enforcing the laws of the State and municipal employees may use motorized all-terrain vehicles, as defined in G.S. 14-159.3(b) and owned or leased by the governmental agency, on public highways where the speed limit is 35 miles per hour or less. Law enforcement officers and municipal employees may operate motorized all-terrain vehicles on nonfully controlled access highways with higher speeds for the purpose of traveling from a speed zone to an adjacent speed zone where the speed limit is 35 miles per hour or less."

SECTION 36.(c) Section 3 of S.L. 2004-108 reads as rewritten:

"**SECTION 3.** Section 1 of this act applies to the County of Surry and the Town of Mint Hill only. Section 2 of this act applies to the City of Kings Mountain only."

SECTION 37. G.S. 20-118(c)(14) reads as rewritten:

"(c) Exceptions. – The following exceptions apply to G.S. 20-118(b) and 20-118(e).

...

(14) Subsections (b) and (e) of this section do not apply to a vehicle that meets all of the conditions below, but all other enforcement provisions of this Article remain applicable:

a. Is hauling aggregates from a distribution yard or a State-permitted production site located within a North Carolina county contiguous to the North Carolina State border to a destination in another state adjacent to that county as verified by a weight ticket in the driver's possession and available for inspection by enforcement personnel.

b. Does not operate on an interstate highway or posted bridge.

c. Does not exceed 69,850 pounds gross vehicle weight and 53,850 pounds per axle grouping for tri-axle vehicles. For purposes of this subsection, a tri-axle vehicle is a single power unit vehicle with a three consecutive axle group on which the respective distance between any two consecutive axles of the group, measured longitudinally center to center to the nearest foot, does not exceed eight feet. For purposes of this subsection, the tolerance provisions of subsection (h) of this section do not apply, and vehicles must be licensed in accordance with G.S. 20-88.

d. Repealed by Session Laws 2001-487, s. 10, effective December 16, 2001.

...."

SECTION 38. G.S. 20-309 is amended by adding a new subsection to read:

"(h) Notwithstanding the penalty and restoration fee provisions of this section, any monetary penalty or restoration fee shall be waived for any person who, at the time of notification of a lapse in coverage, was deployed as a member of the United States Armed Forces outside of the continental United States for a total of 45 or more days. In addition, no insurance points under the Safe Driver Incentive Plan shall be assessed for any violation for which a monetary penalty or restoration fee is waived pursuant to this subsection."

SECTION 39.(a) G.S. 32A-37(g), as enacted by Section 1 of S.L. 2005-178, reads as rewritten:

"(g) Nothing in this Article requires a person who accepts a power of attorney to permit an attorney-in-fact to conduct business not authorized by the terms of the power of ~~attorney.~~attorney, or otherwise not permitted by applicable statute or regulation."

SECTION 39.(b) This section becomes effective October 1, 2005, and applies to powers of attorney created before, on, or after that date."

SECTION 40.(a) G.S. 45-36.6(b), as enacted by Section 1 of S.L. 2005-123, reads as rewritten:

"(b) If a person records a satisfaction or affidavit of satisfaction of a security instrument in error or if a security instrument is satisfied of record erroneously by any other means, the person or the secured creditor may execute and record a document of rescission. The document of rescission must be duly acknowledged before an officer authorized to make acknowledgments. Upon recording, the document rescinds an erroneously recorded satisfaction or affidavit and the erroneous satisfaction of record of the security instrument and reinstates the security instrument."

SECTION 40.(b) G.S. 45-37(a), as amended by Section 1 of S.L. 2005-123, 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.

...

(4) By presentation to the register of deeds of any original security instrument given to secure the bearer or holder of any negotiable instruments transferable by delivery, together with all the evidences of indebtedness secured thereby, marked paid and satisfied in full and signed by the bearer or holder thereof.

Only upon presentation of the original security instruments, and the originals of evidences of indebtedness properly marked shall the register of deeds record a record of satisfaction as described in

G.S. 45-37.2(b), which record of satisfaction shall be valid and binding upon all persons, if no person rightfully entitled to the security instrument or evidences of indebtedness has previously notified the register of deeds by means of a written affidavit of the loss or theft of the security instrument or evidences of indebtedness and has caused the register of deeds to record the affidavit of loss or theft as a separate document, as required by G.S. 161-14.1.

Upon receipt of an affidavit of loss or theft of the security instrument or evidences of indebtedness that identify the security instrument, the original parties to the security instrument, and the recording data for the security instrument, the register of deeds shall record a record of satisfaction, as described in G.S. 45 37.2(b). The security instrument shall not be presented for satisfaction after such recording of a record of satisfaction or marginal entry until the ownership of said instrument shall have been lawfully determined. Nothing in this subdivision (4) shall be construed to impair the negotiability of any instrument otherwise properly negotiable, nor to impair the rights of any innocent purchaser for value thereof.

(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 40.(c) G.S. 47-14(a), as amended by Section 2 of S.L. 2005-123, 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 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, ~~or~~ (iii) the legal sufficiency of any document presented for ~~registration.~~registration, or (iv) whether the original document has been changed or altered."

SECTION 40.(d) This section becomes effective October 1, 2005.

SECTION 41. G.S. 50C-8(c) reads as rewritten:

"(c) Any order may be extended one or more times, as required, provided that the requirements of G.S. 50C-6 or G.S. 50C-7, as appropriate, are satisfied. The court may renew an order, including an order that previously has been renewed, upon a motion by the complainant filed before the expiration of the current order. The court may renew the order for good cause. The commission of an act of unlawful conduct by the respondent after entry of the current order is not required for an order to be renewed. If the motion for extension is uncontested and the complainant seeks no modification of the order, the order may be extended if the complainant's motion or affidavit states that there has been no material change in relevant circumstances since entry of the order and states the reason for the requested extension. Extensions may be granted only in open court and not under the provisions of ~~G.S. 50D-6(c).~~G.S. 50D-6(d)."

SECTION 42. G.S. 51-1 reads as rewritten:

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

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

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

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

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

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

SECTION 44.(a) G.S. 55-8-03(b), as amended by Section 7 of S.L. 2005-268, reads as rewritten:

"(b) 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) ~~applies,~~applies in which shares are entitled to be voted cumulatively, 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~~ entitled to be voted cumulatively that vote against the proposal for decrease would not be sufficient to elect a director by cumulative voting.

(2) 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."

SECTION 44.(b) G.S. 55-11-05(d), as enacted by Section 22 of S.L. 2005-268, 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 44.(c) G.S. 55-11-06(a)(1), as amended by Section 23 of S.L. 2005-268, reads as rewritten:

"(1) Each other merging corporation merges into the surviving corporation and the separate existence of each merging corporation except the surviving corporation ceases."

SECTION 44.(d) G.S. 55A-11-04(d), as enacted by Section 40 of S.L. 2005-268, reads as rewritten:

"(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)~~(a1) of this section to ~~"corporation", other than references to "domestic corporation",~~"corporation" shall include a foreign nonprofit corporation, a domestic business corporation, and a foreign business ~~corporation,~~corporation as applicable."

SECTION 44.(e) G.S. 55A-11-05, as amended by Section 41 of S.L. 2005-268, reads as rewritten:

"**§ 55A-11-05. Effect of merger.**

(a) When a merger pursuant to G.S. 55A-11-01, 55A-11-06, or 55A-11-08 takes effect:

(1) Each other merging corporation merges into the surviving corporation and the separate existence of each merging corporation except the surviving corporation ceases.

(2) The title to all real estate and other property owned by each merging corporation 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.

(3) The surviving corporation has all liabilities and obligations of each merging corporation.

(4) A proceeding pending by or against any merging corporation may be continued as if the merger did not occur or the surviving corporation may be substituted in the proceeding for a merging corporation whose separate existence ceases in the merger.

(5) If a domestic corporation survives the merger, its articles of incorporation are amended to the extent provided in the 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).

(b) 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)~~(c) 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,~~corporation as applicable."

SECTION 44.(f) G.S. 55A-11-06(c), as enacted by Section 42 of S.L. 2005-268, 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 44.(g) G.S. 57C-9A-02(a2), as enacted by Section 47 of S.L. 2005-268, 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 44.5. G.S. 58-36-65(e) reads as rewritten:

"(e) Records of convictions for moving traffic violations to be considered under this section ~~shall~~ may be obtained at least annually from the Division of Motor Vehicles and applied by the Bureau's member companies in accordance with rules to be established by the Bureau."

SECTION 45.(a) G.S. 58-40-50, as amended by Section 7 of S.L. 2005-210, is amended by adding the following new subsection to read:

"(i) A statistical organization is considered an insurance company for purposes of the applicability of G.S. 58-6-7."

SECTION 45.(b) G.S. 58-36-4, as enacted by Section 18 of S.L. 2005-210, is amended by adding the following new subsection to read:

"(g) A statistical organization is considered an insurance company for purposes of the applicability of G.S. 58-6-7."

SECTION 45.(c) This section becomes effective October 1, 2005.

SECTION 47. G.S. 90-171.21(d)(3) reads as rewritten:

"(3) A public member appointed by the Governor shall not be a provider of health ~~services,~~services or employed in the health services ~~field, or hold a vested interest at any level in the provision of health services as defined by the North Carolina Board of Ethics.~~ field. No public member appointed by the Governor or person in the public member's immediate family as defined by G.S. 90-405(8) shall be currently employed as a licensed nurse or been previously employed as a licensed nurse."

SECTION 49.(a) G.S. 93A-4A is recodified as G.S. 93A-4.1. If House Bill 1284, 2005 Regular Session, becomes law and also recodifies G.S. 93A-4A, this section is repealed.

SECTION 49.(b) G.S. 115D-5(h) reads as rewritten:

"(h) Whenever a community college offers real estate continuing education courses ~~pursuant to G.S. 93A-4A,~~ under G.S. 93A-4.1, the courses shall be offered on a self-supporting basis."

SECTION 50. The title to Article 12 of Chapter 95 of the General Statutes reads as rewritten:

"Article 12.

~~Public Employees Prohibited from Becoming Members of Trade Unions or Labor Unions.~~Units of Government and Labor Unions, Trade Unions, and Labor Organizations, and Public Employee Strikes."

SECTION 51. G.S. 95-138(a), as amended by Section 8 of S.L. 2005-133, reads as rewritten:

"(a) The Commissioner, upon recommendation of the Director, or the North Carolina Occupational Safety and Health Review Commission in the case of an appeal, ~~may~~ shall have the authority to assess penalties against any employer who violates the requirements of this Article, or any standard, rule, or order ~~promulgated pursuant to~~ adopted under this Article, as follows:

(1) A minimum penalty of five thousand dollars ($5,000) to a maximum penalty of seventy thousand dollars ($70,000) may be assessed for each willful or repeat violation.

(2) A ~~maximum~~ penalty of up to seven thousand dollars ($7,000) shall be assessed for each ~~nonserious or~~ serious violation.

(2a) A penalty of up to seven thousand dollars ($7,000) may be assessed for each violation that is adjudged not to be of a serious nature.

(3) A ~~maximum~~ penalty of up to seven thousand dollars ($7,000) may be assessed ~~for each day that~~ against an employer who fails to correct and abate a violation, within the period allowed for its correction and abatement, which period shall not begin to run until the date of the final Order of the Commission in the case of any appeal proceedings in this Article initiated by the employer in good faith and not solely for the delay of avoidance of penalties. The assessment shall be made to apply to each day during which the failure or violation continues.

(4) A ~~maximum~~ penalty of up to seven thousand dollars ($7,000) shall be assessed for violating the posting requirements, as required under the provisions of this Article."

SECTION 52. G.S. 95-232(c)(1) reads as rewritten:

"(1) Performing the screening test ~~on-site for prospective employees,~~on-site, provided that samples which demonstrate a positive drug test result are sent to an approved laboratory for confirmation, or"

SECTION 53. G.S. 113A-57 is amended by adding a new subdivision to read:

"(5) The land-disturbing activity shall be conducted in accordance with the approved erosion and sedimentation control plan."

SECTION 54.(a) G.S. 115C-81(e1)(1) reads as rewritten:

"(e1) School Health Education Program to Be Developed and Administered.

(1) A comprehensive school health education program shall be developed and taught to pupils of the public schools of this State from kindergarten through ninth grade. This program includes age-appropriate instruction in the following subject areas, regardless of whether this instruction is described as, or incorporated into a description of, "family life education", "family health education",

"health education", "family living", "health", "healthful living curriculum", or "self-esteem":

a. Mental and emotional health;
b. Drug and alcohol abuse prevention;
c. Nutrition;
d. Dental health;
e. Environmental health;
f. Family living;
g. Consumer health;
h. Disease control;
i. Growth and development;
j. First aid and emergency care, including the teaching of cardiopulmonary resuscitation (CPR) and the Heimlich maneuver by using hands-on training with mannequins so that students become proficient in order to pass a test approved by the American Heart Association, or American Red Cross;
k. Preventing sexually transmitted diseases, including ~~Acquired Immune Deficiency Syndrome (AIDS) virus infection,~~ HIV/AIDS, and other communicable diseases;
l. Abstinence until marriage education; and
m. Bicycle safety.

As used in this subsection, "HIV/AIDS" means Human Immunodeficiency Virus/Acquired Immune Deficiency Syndrome."

SECTION 54.(b) G.S. 115C-81(e1)(3), (4), and (5) read as rewritten:

"(3) The State Board of Education shall develop objectives for instruction in the prevention of sexually transmitted diseases, including ~~Acquired Immune Deficiency Syndrome (AIDS) virus infection,~~ HIV/AIDS, that ~~includes~~include emphasis on the importance of parental involvement, abstinence from sex until marriage, and avoiding intravenous drug use. Any program developed under this subdivision shall present techniques and strategies to deal with peer pressure and to offer positive reinforcement and shall teach reasons, skills, and strategies for remaining or becoming abstinent from sexual activity; for appropriate grade levels and classes, shall teach that abstinence from sexual activity until marriage is the only certain means of avoiding out-of-wedlock pregnancy, sexually transmitted ~~diseases,~~ diseases when transmitted through sexual contact, and other associated health and emotional problems, and that a mutually faithful monogamous heterosexual relationship in the context of marriage is the best lifelong means of avoiding diseases transmitted by sexual contact, including ~~Acquired Immune Deficiency Syndrome (AIDS);~~HIV/AIDS, shall teach how alcohol and drug use lower inhibitions, which may lead to risky sexual behavior, and shall teach the positive benefits of abstinence until marriage and the risks of premarital sexual activity.

~~Any instruction concerning the causes of sexually transmitted diseases, including Acquired Immune Deficiency Syndrome (AIDS), in cases where homosexual acts are a significant means of transmission, shall include the current legal status of those acts.~~

(4) The State Board of Education shall evaluate abstinence until marriage curricula and their learning materials and shall develop and maintain a recommended list of one or more approved abstinence until marriage curricula. The State Board may develop an abstinence until marriage program to include on the recommended list. The State Board of Education shall not select or develop a program for inclusion on the recommended list that does not include the positive benefits of abstinence until marriage and the risks of premarital sexual activity as the primary focus. The State Board shall include on the recommended list only programs that include, in appropriate grades and classes, instruction that:

a. Teaches that abstinence from sexual activity outside of marriage is the expected standard for all school-age children;

b. Presents techniques and strategies to deal with peer pressure and offering positive reinforcement;

c. Presents reasons, skills, and strategies for remaining or becoming abstinent from sexual activity;

d. Teaches that abstinence from sexual activity is the only certain means of avoiding out-of-wedlock pregnancy, sexually transmitted diseases when transmitted through sexual contact, including ~~Acquired Immune Deficiency Syndrome (AIDS),~~ HIV/AIDS, and other associated health and emotional problems;

e. Teaches that a mutually faithful monogamous heterosexual relationship in the context of marriage is the best lifelong means of avoiding sexually transmitted diseases, including ~~Acquired Immune Deficiency Syndrome (AIDS);~~ HIV/AIDS;

f. Teaches the positive benefits of abstinence until marriage and the risks of premarital sexual activity;

g. Provides opportunities that allow for interaction between the parent or legal guardian and the student; ~~and~~

h. Provides factually - accurate biological or pathological information that is related to the human reproductive system.

(5) The State Board of Education shall make available to all local school administrative units for review by the parents and legal guardians of students enrolled at that unit any State-developed objectives for instruction, any approved textbooks, the list of reviewed materials, and any other State-developed or approved materials that pertain to or are intended to impart information or promote discussion or understanding in regard to the prevention of sexually transmitted diseases, including

~~Acquired Immune Deficiency Syndrome (AIDS),~~ HIV/AIDS, to the avoidance of out-of-wedlock pregnancy, or to the abstinence until marriage curriculum. The review period shall extend for at least 60 days before use."

SECTION 54.(c) G.S. 115C-81(e1)(7) and (8) read as rewritten:

"(7) Each school year, before students may participate in any portion of (i) a program that pertains to or is intended to impart information or promote discussion or understanding in regard to the prevention of sexually transmitted diseases, including ~~Acquired Immune Deficiency Syndrome (AIDS),~~ HIV/AIDS, or to the avoidance of out-of-wedlock pregnancy, (ii) an abstinence until marriage program, or (iii) a comprehensive sex education program, whether developed by the State or by the local board of education, the parents and legal guardians of those students shall be given an opportunity to review the objectives and materials. Local boards of education shall adopt policies to provide opportunities either for parents and legal guardians to consent or for parents and legal guardians to withhold their consent to the students' participation in any or all of these programs.

(8) Students may receive information about where to obtain contraceptives and abortion referral services only in accordance with a local board's policy regarding parental consent. Any instruction concerning the use of contraceptives or prophylactics shall provide accurate statistical information on their effectiveness and failure rates for preventing pregnancy and sexually transmitted diseases, including ~~Acquired Immune Deficiency Syndrome (AIDS),~~ HIV/AIDS, in actual use among adolescent populations and shall explain clearly the difference between risk reduction and risk elimination through abstinence. The Department of Health and Human Resources shall provide the most current available information at the beginning of each school year."

SECTION 54.(d) This section applies beginning with the 2006-2007 school year.

SECTION 56.(a) Article 19A of Chapter 115C of the General Statutes is repealed.

SECTION 56.(b) G.S. 115C-284(c) reads as rewritten:

"(c) The State Board of Education shall have entire control of certifying all applicants for supervisory and professional positions in all public elementary and high schools of North Carolina; and it shall prescribe the rules and regulations for the renewal and extension of all certificates, and shall determine and fix the salary for each grade and type of certificate which it authorizes. The State Board of Education shall require each applicant for an initial certificate or graduate ~~certificate, other than an applicant who is qualified under Article 19A of this Chapter,~~ certificate to demonstrate the applicant's academic and professional preparation by achieving a prescribed minimum score at least equivalent to that required by the Board on November 30, 1972, on a standard examination appropriate and adequate for that purpose. If the Board shall

specify the National Teachers Examination for this purpose, the required minimum score shall not be lower than that which the Board required on November 30, 1972. ~~The Board may not require an applicant who is qualified under Article 19A of this Chapter to take an additional exam to demonstrate academic competence.~~ The Board shall not issue provisional certificates for principals."

SECTION 57.(a) Article 26A of Chapter 115C of the General Statutes, as enacted by Section 1 of S.L. 2005-22, is recodified as Article 25A of Chapter 115C of the General Statutes.

SECTION 57.(b) G.S. 115C-375.2(g), as enacted by Section 1 of S.L. 2005-22, reads as rewritten:

"(g) No local board of education, nor its members, employees, designees, agents, or volunteers, shall be liable in civil damages to any party for any act authorized by this ~~subsection,~~ section, or for any omission relating to that act, unless that act or omission amounts to gross negligence, wanton conduct, or intentional wrongdoing."

SECTION 57.(c) The introductory language of Section 2(b) of S.L. 2005-22 reads as rewritten:

"**SECTION 2.(b)** ~~Article 26A,~~ Article 25A of Chapter 115C of the General Statutes, as created in Section 1 of this act, is amended by adding the following new section to read:

"**SECTION 58.** G.S. 115C-391.1(d)(3), as enacted by Section 2 of S.L. 2005-205, reads as rewritten:

"(3) Nothing in this subsection shall be construed to prevent the use of mechanical restraint ~~devices,~~ devices such as handcuffs by law enforcement officers in the lawful exercise of their law enforcement duties."

SECTION 59.(a) G.S. 115C-566(a) reads as rewritten:

"(a) The Secretary of Administration, upon consideration of the advice of the Division of Nonpublic Education in the ~~Office of the Governor~~ Department of Administration and representatives of nonpublic schools, shall adopt rules for the procedures a person who is or was enrolled in a home school, in a nonpublic school that is not accredited by the State Board of Education, or in an educational program found by a court, prior to July 1, 1998, to comply with the compulsory attendance law, must follow and the requirements that person must meet to obtain a driving eligibility certificate. The procedures shall provide that the person who is required under G.S. 20-11(n) to sign the driving eligibility certificate must provide the certificate if he or she determines that one of the following requirements is met:

(1) The person seeking the certificate is eligible for the certificate under G.S. 20-11(n)(1) and is not subject to G.S. 20-11(n1).

(2) The person seeking the certificate is eligible for the certificate under G.S. 20-11(n)(1) and G.S. 20-11(n1).

The rules shall define exemplary student behavior, define what constitutes the successful completion of a drug or alcohol treatment counseling program, and provide for an appeal to an appropriate educational entity by a person who is denied a driving eligibility certificate. The Division of Nonpublic Education also shall develop policies

as to when it is appropriate to notify the Division of Motor Vehicles that a person who is or was enrolled in a home school or in a nonpublic school that is not accredited by the State Board of Education no longer meets the requirements for a driving eligibility certificate."

SECTION 59.(b) G.S. 143-49(4) is repealed.

SECTION 59.(c) G.S. 143-55 reads as rewritten:

"**§ 143-55. Requisitioning for supplies by agencies; must purchase through sources certified.**

~~After~~ Unless otherwise provided by law, after sources of supply have been established by contract and certified by the Secretary of Administration to the said departments, institutions and agencies as herein provided for, it shall be the duty of all departments, institutions and agencies to make requisition or issue orders on forms to be prescribed by the Secretary of Administration, for all supplies, materials and equipment required by them upon the sources of supply so certified, and, except as herein otherwise provided for, it shall be unlawful for them, or any of them, to purchase any supplies, materials or equipment from other sources than those certified by the Secretary of Administration. One copy of such requisition or order shall be furnished to and when requested by the Secretary of Administration."

SECTION 60. G.S. 120-32.1(d) reads as rewritten:

"(d) For the purposes of this section, the term "State legislative buildings and grounds" means:

(1) At all times:

a. The State Legislative Building;

a1. Repealed by Session Laws 1998-156, s. 1, effective September 24, 1998.

a2. The areas between the outer walls of the State Legislative Building and the far curbline of those sections of Jones, Wilmington, Salisbury, and Lane Streets that border the land on which it is situated;

b. The Legislative Office Building, which shall include the following areas:

1. The garden area and outer stairway;

2. The loading dock area bounded by the wall on the east abutting the ~~State Government~~Halifax Street Mall, the southern edge of the southernmost exit lane on Salisbury Street for the parking deck, and the Salisbury Street sidewalk;

3. The area between its outer wall and the near curbline of that section of Lane Street that borders the land on which it is situated; and

4. The area bounded by its western outer wall, the extension of a line along its northern outer wall to the middle of Salisbury Street, following the middle line of Salisbury Street to the nearest point of the intersection of

Lane and Salisbury Streets, and thence east to the near curbline of the Legislative Office Building at its southwestern corner;

c. Any State-owned parking lot which is leased to the General Assembly;

d. The bridge between the State Legislative Building and the ~~State Governmental~~Halifax Street Mall; and

e. A portion of the brick sidewalk surface area of the ~~State Government~~ Halifax Street Mall, described as follows: beginning at the northeast corner of the Legislative Office Building, thence east across the brick sidewalk to the inner edge of the sidewalk adjacent to the grassy area of the Mall, thence south along the inner edge of the sidewalk to the southwest outer corner of the ~~Mall water fountain,~~ grassy area of the Mall, thence east along the inner edge of the sidewalk adjacent to the southern outer edge of the ~~fountain~~ grassy area of the Mall to a point north of the northeast corner of the pedestrian surface of the Lane Street pedestrian bridge, thence south from that point to the northeast corner of the pedestrian surface of the bridge, thence west along the southern edge of the brick sidewalk area of the Mall to the southeast corner of the Legislative Office Building, thence north along the east wall of the Legislative Office Building, to the point of beginning.

f. From the center of Lane Street to the far curbline on the south side of the street; between the western edge of the Lane Street driveway to the gardens behind the State Records Center, and Wilmington Street.

(2) Repealed by Session Laws 1998-156, s. 1, effective September 24, 1998."

SECTION 61.(a) G.S. 122C-270 reads as rewritten:

"**§ 122C-270. Attorneys to represent the respondent and the State.**

(a) In a superior court district or set of districts as defined in G.S. 7A-41.1 in which a State facility for the mentally ill is located, the Commission on Indigent Defense Services shall appoint an attorney licensed to practice in North Carolina as special counsel for indigent respondents who are mentally ill. These special counsel shall serve at the pleasure of the Commission, may not privately practice law, and shall receive annual compensation within the salary range for assistant public defenders as fixed by the Office of Indigent Defense Services. The special counsel shall represent all indigent respondents at all hearings, rehearings, and supplemental hearings held at the State ~~facility and on appeals held under this Article.~~ facility. Special counsel shall determine indigency in accordance with G.S. 7A-450(a). Indigency is subject to redetermination by the presiding judge. If the respondent appeals, counsel for the appeal shall be appointed in accordance with rules adopted by the Office of Indigent Defense Services.

(b) The State facility shall provide suitable office space for the counsel to meet privately with respondents. The Office of Indigent Defense Services shall provide secretarial and clerical service and necessary equipment and supplies for the office.

(c) In the event of a vacancy in the office of special counsel, counsel's incapacity, or a conflict of interest, counsel for indigents at hearings or rehearings may be assigned in accordance with rules adopted by the Office of Indigent Defense Services. No mileage or compensation for travel time is paid to a counsel appointed pursuant to this subsection. Counsel may also be so assigned when, in the opinion of the Director of the Office of Indigent Defense Services, the volume of cases warrants.

(d) At hearings held in counties other than those designated in subsection (a) of this section, counsel for indigent respondents shall be appointed in accordance with rules adopted by the Office of Indigent Defense Services.

(e) ~~Counsel assigned to represent an indigent respondent at the initial district court hearing is also responsible for perfecting and concluding an appeal, if there is one. Upon completion of an appeal, or upon transfer of the respondent to a State facility for the mentally ill, if there is no appeal, assigned counsel is discharged.~~ If the respondent is committed to a non-State 24-hour facility, assigned counsel remains responsible for ~~his~~ the respondent's representation at the trial level until discharged by order of district court, until the respondent is unconditionally discharged from the facility, or until the respondent voluntarily admits himself or herself to the facility. If the respondent is transferred to a State facility for the mentally ill, assigned counsel is discharged. If the respondent appeals, counsel for the appeal shall be appointed in accordance with rules adopted by the Office of Indigent Defense Services.

(f) The Attorney General may employ four attorneys, one to be assigned by him full-time to each of the State facilities for the mentally ill, to represent the State's interest at commitment hearings, rehearings and supplemental hearings held under this Article at the State facilities for respondents admitted to those facilities pursuant to Part 3, 4, 7, or 8 of this Article or G.S. 15A-1321 and to provide liaison and consultation services concerning these matters. These attorneys are subject to Chapter 126 of the General Statutes and shall also perform additional duties as may be assigned by the Attorney General. The attorney employed by the Attorney General in accordance with G.S. 114-4.2B shall represent the State's interest at commitment hearings, rehearings and supplemental hearings held for respondents admitted to the University of North Carolina Hospitals at Chapel Hill pursuant to Part 3, 4, 7, or 8 of this Article or G.S. 15A-1321."

SECTION 61.(b) G.S. 122C-289 reads as rewritten:

"**§ 122C-289. Duty of assigned counsel; discharge.**

~~Counsel assigned to represent an indigent respondent at the initial district court hearing is also responsible for perfecting and concluding an appeal. Upon completion of an appeal, assigned counsel is discharged.~~ If the respondent is committed, assigned counsel remains responsible for ~~his~~ the respondent's representation at the trial level until discharged by order of district court or until the respondent is otherwise unconditionally discharged. If the respondent appeals, counsel for the appeal shall be appointed in accordance with rules adopted by the Office of Indigent Defense Services."

SECTION 61.(c) This section becomes effective October 1, 2005, and applies to appeals filed on or after that date."

SECTION 62. Effective January 1, 2006, G.S. 130A-209 reads as rewritten:

"§ 130A-209. **Incidence reporting of cancer; charge for collection if failure to report.**

(a) All health care facilities and health care providers that detect, diagnose, or treat cancer or benign brain or central nervous system tumors shall report to the central cancer registry each diagnosis of cancer or benign brain or central nervous system tumors in any person who is screened, diagnosed, or treated by the facility or provider. The reports shall be made within six months of diagnosis. Diagnostic, demographic and other information as prescribed by the rules of the Commission shall be included in the report.

(b) If a health care facility or health care provider fails to report as required under this section, then the central cancer registry may conduct a site visit to the facility or provider or be provided access to the information from the facility or provider and report it in the appropriate format. The Commission may adopt rules requiring that the facility or provider reimburse the registry for its cost to access and report the information in an amount not to exceed one hundred dollars ($100.00) per case. Thirty days after the expiration of the six-month period for reporting under subsection (a) of this section, the registry shall send notice to each facility and provider that has not submitted a report as of that date that failure to file a report within 30 days shall result in collection of the data by the registry and liability for reimbursement imposed under this section. Failure to receive or send the notice required under this section shall not be construed as a waiver of the reporting requirement. For good cause, the central cancer registry may grant an additional 30 days for reporting.

(c) As used in this section, the term:

(1) "Health care facility" or "facility" means any hospital, clinic, or other facility that is licensed to administer medical treatment or the primary function of which is to provide medical treatment in this State. The term includes health care facility laboratories and independent pathology laboratories;

(2) "Health care provider" or "provider" means any person who is licensed or certified to practice a health profession or occupation under Chapter 90 of the General Statutes and who diagnoses or treats ~~cancer.~~cancer or benign brain or central nervous system tumors."

SECTION 63. G.S. 130A-335.1(a) reads as rewritten:

"(a) The manufacturer ~~of each~~ of, or the person who installs, repairs, or pumps, any septic tank to be installed in this State as a part of a septic tank system that is designed to treat 3,000 gallons per day or less of sewage shall provide an effluent filter approved by the Department pursuant to the requirements of G.S. 130A-335, this section, and rules adopted by the Commission. Any person who installs, repairs, or pumps systems described in this section may purchase and install any approved filters on the systems. The person who installs the ~~septic tank system~~ effluent filter shall install

the effluent filter as a part of the septic tank system in accordance with the specifications provided by the manufacturer of the effluent filter. An effluent filter shall:

(1) Be made of materials that are capable of withstanding the corrosives to which septic tank systems are normally subject.

(2) Prevent solid material larger than one-sixteenth of an inch, as measured along the shortest axis of the material, from entering the drainfield.

(3) Be designed and constructed to allow for routine maintenance.

(4) Be designed and constructed so as not to require maintenance more frequently than once in any three-year period under normally anticipated use."

SECTION 64.(a) G.S. 130A-480(d) reads as rewritten:

"(d) For purposes of this section, "hospital" means a hospital, as defined in G.S. 131E-214.1(3), that operates an emergency room on a 24-hour basis. The term does not include a psychiatric hospital ~~subject to Article 2 of Chapter 122C of the General Statutes~~ that operates an emergency room."

SECTION 64.(b) G.S. 131E-14.2(d), as amended by Section 1 of S.L. 2005-70, reads as rewritten:

"(d) Subsection (a) of this section shall not apply to any member of the board of directors of a public hospital if (i) the undertaking or contract or series of undertakings or contracts between the public hospital and one of its officials is approved by specific resolution of the board adopted in an open and public meeting and recorded in its minutes; (ii) the official entering into the contract or undertaking with the public hospital does not in an official capacity participate in any way or vote; and (iii) the amount does not exceed twelve thousand five hundred dollars ($12,500) for medically related services and twenty-five thousand dollars ($25,000) for other goods or services within a 12-month ~~period;~~ period, or the contract is for medically related or administrative services that are provided by a director who serves on the board as an ex officio representative of the hospital medical staff pursuant to a hospital bylaw adopted prior to January 1, 2005, or that are provided by the spouse of that director."

SECTION 65. G.S. 131D-21.2(b) reads as rewritten:

"(b) The proceedings of a quality assurance, medical, or peer review committee, the records and materials it produces and the materials it considers shall be confidential and not considered public records within the meaning of G.S. 132-1, "Public records' defined", and shall not be subject to discovery or introduction into evidence in any civil action against ~~a nursing~~ an adult care home or a provider of professional health services that results from matters that are the subject of evaluation and review by the committee. No person who was in attendance at a meeting of the committee shall be required to testify in any civil action as to any evidence or other matters produced or presented during the proceedings of the committee or as to any findings, recommendations, evaluations, opinions, or other actions of the committee or its members. However, information, documents, or records otherwise available are not immune from discovery or use in a civil action merely because they were presented during proceedings of the committee. Documents otherwise available as public records within the meaning of

G.S. 132-1 do not lose their status as public records merely because they were presented or considered during proceedings of the committee. A member of the committee or a person who testifies before the committee may testify in a civil action but cannot be asked about the person's testimony before the committee or any opinions formed as a result of the committee hearings."

SECTION 66.(a) G.S. 135-40.13A reads as rewritten:

"**§ 135-40.13A. Liability of third person; right of subrogation; right of first recovery.**

(a) ~~Whenever the Plan pays benefits for hospital, surgical, medical, or prescription drug expenses, with respect to any Plan member, the Plan shall be subrogated, to the extent of any payments under the Plan, to all of the Plan member's rights of recovery against liable third parties, regardless of the entity or individual from whom recovery may be due.~~The Plan shall have the right of subrogation upon all of the Plan member's right to recover from a liable third party for payment made under the Plan, for all medical expenses, including provider, hospital, surgical, or prescription drug expenses, to the extent those payments are related to an injury caused by a liable third party. The Plan member shall do nothing to prejudice these rights. The Plan has the right to first recovery on any amounts so recovered, whether by the Plan or the Plan member, and whether recovered by litigation, arbitration, mediation, settlement, or otherwise. Notwithstanding any other provision of law to the contrary, the recovery limitation set forth in G.S. 28A-18-2 shall not apply to the Plan's right of subrogation of Plan members.

(b) If the Plan is precluded from exercising its right of subrogation, it may exercise its rights of recovery ~~to the extent allowed by law.~~pursuant to G.S. 135-40.13(g). If the Plan recovers damages from a liable third party in excess of the claims paid, any excess will be paid to the member, less a proportionate share of the costs of collection.

(c) In the event a Plan member recovers any amounts from a liable third party to which the Plan is entitled under this section, the Plan may recover the amounts directly from the Plan member. The Plan has a lien, for not more than the value of claims paid related to the liability of the third party, on any damages subsequently recovered against the liable third party. If the Plan member fails to pursue the remedy against a liable third party, the Plan is subrogated to the rights of the Plan member and is entitled to enforce liability in the Plan's own name or in the name of the Plan member for the amount paid by the Plan.

(d) In no event shall the Plan's lien exceed fifty percent (50%) of the total damages recovered by the Plan member, exclusive of the Plan member's reasonable costs of collection as determined by the Plan in the Plan's sole discretion. The decision by the Plan as to the reasonable cost of collection is conclusive and is not a "final agency decision" for purposes of a contested case under Chapter 150B of the General Statutes. Notice of the Plan's lien or right to recovery shall be presumed when a Plan member is represented by an attorney, and the attorney shall disburse proceeds pursuant to this section."

SECTION 66.(b) G.S. 28A-18-2(a) reads as rewritten:

"(a) When the death of a person is caused by a wrongful act, neglect or default of another, such as would, if the injured person had lived, have entitled him to an action for damages therefor, the person or corporation that would have been so liable, and his or their personal representatives or collectors, shall be liable to an action for damages, to be brought by the personal representative or collector of the decedent; and this notwithstanding the death, and although the wrongful act, neglect or default, causing the death. amounts in law to a felony. The personal representative or collector of the decedent who pursues an action under this section may pay from the assets of the estate the reasonable and necessary expenses, not including attorneys' fees, incurred in pursuing the action. At the termination of the action, any amount recovered shall be applied first to the reimbursement of the estate for the expenses incurred in pursuing the action, then to the payment of attorneys' fees, and shall then be distributed as provided in this section. The amount recovered in such action is not liable to be applied as assets, in the payment of debts or legacies, except as to burial expenses of the deceased, and reasonable hospital and medical expenses not exceeding four thousand five hundred dollars ($4,500) incident to the injury resulting in death, except that the amount applied for hospital and medical expenses shall not exceed fifty percent (50%) of the amount of damages recovered after deducting attorneys' fees, but shall be disposed of as provided in the Intestate Succession Act. The limitations on recovery for hospital and medical expenses under this subsection do not apply to subrogation rights exercised pursuant to G.S. 135-40.13A. All claims filed for such services shall be approved by the clerk of the superior court and any party adversely affected by any decision of said clerk as to said claim may appeal to the superior court in term time."

SECTION 66.(c) This section is effective when it becomes law and applies to payments made by the Plan after July 20, 2004, for which reimbursement is sought on or after the effective date. Subsection (b) of this section applies to wrongful deaths occurring on or after the effective date.

SECTION 67. G.S. 143-3.3(g), as amended by Section 6.35 of S.L. 2005-276, reads as rewritten:

"(g) Payroll Deduction for Payments to Certain Employees' Associations Allowed. – An employee of the State or any of its political subdivisions, institutions, departments, bureaus, agencies or commissions, or any of its local boards of education or community colleges, who is a member of a domiciled employees' association that has at least 2,000 members, 500 of whom are employees of the State, a political subdivision of the State, or public school employees, may authorize, in writing, the periodic deduction each payroll period from the employee's salary or wages a designated lump sum to be paid to the employees' association. A political subdivision may also allow periodic deductions for a domiciled employees' association that does not otherwise meet the minimum membership requirements set forth in this paragraph.

An employee of any local board of education who is a member of a domiciled employees' association that has at least 40,000 members, the majority of whom are public school teachers, may authorize in writing the periodic deduction each payroll period from the employee's salary or wages a designated lump sum or sums to be paid for dues and voluntary contributions for the employees' association.

An authorization under this subsection shall remain in effect until revoked by the employee. A plan of payroll deductions pursuant to this subsection for employees of the State and other association members shall become void if the employees' association engages in collective bargaining with the State, any political subdivision of the State, or any local school administrative unit. This subsection does not apply to county or municipal governments or any local governmental unit, except for local boards of education."

SECTION 68. G.S. 143-717(b) reads as rewritten:

"(b) Membership. – The Commission shall consist of 18 members. The Commission shall be appointed as follows: six members by the Governor, six members by the President Pro Tempore of the Senate, and six members by the Speaker of the House of Representatives. The members shall be appointed as follows:

(1) The Governor shall make the following appointments:
   a. A flue-cured tobacco farmer.
   b. A flue-cured tobacco farmer.
   c. A person in or displaced from tobacco-related employment.
   d. An at-large appointee.
   e. An at-large appointee.
   f. An at-large appointee.

(2) The President Pro Tempore of the Senate shall make the following appointments:
   a. A flue-cured tobacco farmer.
   b. A flue-cured tobacco farmer.
   c. A ~~burley allotment holder who is also a~~ burley tobacco farmer.
   d. An at-large appointee.
   e. An at-large appointee.
   f. An at-large appointee.

(3) The Speaker of the House of Representatives shall make the following appointments:
   a. A flue-cured tobacco farmer.
   b. A former flue-cured allotment holder who is not also a flue-cured tobacco farmer.
   c. A burley tobacco farmer.
   d. An at-large appointee.
   e. An at-large appointee.
   f. An at-large appointee.

It is the intent of the General Assembly that the appointing authorities, in appointing members, shall appoint members who represent the geographic, political, gender, and racial diversity of the State. It is the intent of the General Assembly that at least one-half of the members of the Commission be tobacco farmers.

Except as provided for the initial members under subsection (c) of this section, members shall serve four-year terms beginning July 1. No member may serve more than two full consecutive terms. Members may continue to serve beyond their terms until their successors are duly appointed, but any holdover shall not affect the expiration date

of the succeeding term. Vacancies shall be filled by the designated appointing authority for the remainder of the unexpired term. A member may be removed from office for cause by the authority that appointed that member."

SECTION 68.5. G.S. 143B-216.67(b), as enacted by Section 10.59F(d) of S.L. 2005-276, reads as rewritten:

"(b) The Commission shall consist of ~~six~~ seven members appointed as follows:

(1) Two ~~optometrists and~~ optometrists, two ophthalmologists, and one pediatrician, each of whom is licensed to practice in this State, appointed by the Governor;

(2) One optometrist licensed to practice in this State appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives; and

(3) One ophthalmologist licensed to practice in this State appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate.

The initial members appointed by the General Assembly shall each serve a one-year term. The initial members appointed by the Governor shall each serve a two-year term. Subsequent appointments shall be for three-year terms. Vacancies shall be filled by the original appointing authority."

SECTION 69.(a) G.S. 143B-437.51 reads as rewritten:

"**§ 143B-437.51. Definitions.**

The following definitions apply in this Part:

(1) Agreement. – A community economic development agreement under G.S. 143B-437.57.

(2) Base ~~years~~ period. – The ~~first 24 months following the date set by the Committee for performance to begin under the agreement~~ period of time set by the Committee during which new employees are to be hired for the positions on which the grant shall be based.

(3) Business. – A corporation, sole proprietorship, cooperative association, partnership, S corporation, limited liability company, nonprofit corporation, or other form of business organization, located either within or outside this State.

(4) Committee. – The Economic Investment Committee established pursuant to G.S. 143B-437.54.

(5) Eligible position. – A position created by a business and filled by a new ~~full-time~~ employee in this State during the base ~~years or in subsequent years of a grant~~ period.

(5a) Enterprise tier. – The classification assigned to an area pursuant to G.S. 105-129.3.

(6) Full-time employee. – A person who is employed for consideration for at least 35 hours a week, whose wages are subject to withholding under Article 4A of Chapter 105 of the General Statutes, and who is determined by the Committee to be employed in a permanent position according to criteria it develops in consultation with the Attorney

General. The term does not include any person who works as an independent contractor or on a consulting basis for the business.

(7) New employee. – A full time employee who represents a net increase in the number of the business's employees statewide. The term includes an employee who previously filled an eligible position who is rehired or called back from a layoff that occurs during or following the base years to a vacant position previously held by that employee or to a new position established during or following the base years.

(8) Overdue tax debt. – Defined in G.S. 105-243.1.

(9) Related member. – Defined in G.S. 105-130.7A.

(10) Withholdings. – The amount withheld by a business from the wages of employees in eligible positions under Article 4A of Chapter 105 of the General Statutes."

SECTION 69.(b) G.S. 143B-437.52(d) reads as rewritten:

"(d) Measuring Employment. – For the purposes of subdivision (a)(1) of this section and G.S. 143B-437.51(5), 143B-437.51(7), and 143B-437.57(a)(11), the Committee may designate that the increase or maintenance of employment is measured at the level of a division or another operating unit of a business, rather than at the business level, if both of the following conditions are met:

(1) The Committee makes an explicit finding that the designation is necessary to secure the project in this State.

(2) The ~~designation~~ agreement contains terms to ensure that the business does not create eligible positions by transferring or shifting to the project existing positions from another project of the business or a related member of the business."

SECTION 69.(c) G.S. 143B-437.55(a) reads as rewritten:

"(a) Application. – A business shall apply, under oath, to the Committee for a grant on a form prescribed by the Committee that includes at least all of the following:

(1) The name of the business, the proposed location of the project, and the type of activity in which the business will engage at the project site or sites.

(2) The names and addresses of the principals or management of the business, the nature of the business, and the form of business organization under which it is operated.

(3) The financial statements of the business prepared by a certified public accountant and any other financial information the Committee considers necessary.

(4) The number of eligible positions proposed to be created ~~during the base years and thereafter~~ for the project and the salaries for these positions."

SECTION 69.(d) G.S. 143B-437.56(c) reads as rewritten:

"(c) The grant may be based only on eligible positions created during the base ~~years, unless the Committee makes an explicit determination that the grant shall also be~~

~~based on additional eligible positions created during the remainder of the term of the grant~~ period set by the Committee."

SECTION 69.(e) G.S. 143B-437.57(a) reads as rewritten:

"(a) Terms. – Each community economic development agreement shall include at least the following:

(1) A detailed description of the proposed project that will result in job creation and the number of new employees to be hired ~~in~~ during the base ~~years and later years~~ period.

(2) The term of the grant and the criteria used to determine the first year for which the grant may be claimed.

(3) The number of eligible positions that are subjects of the grant and a description of those positions and the location of those positions.

(4) The amount of the grant based on a percentage of withholdings.

(5) A method for determining the number of new employees hired during a grant year.

(6) A method for the business to report annually to the Committee the number of eligible positions for which the grant is to be made.

(7) A requirement that the business report to the Committee annually the aggregate amount of withholdings during the grant year.

(8) A provision permitting an audit of the payroll records of the business by the Committee from time to time as the Committee considers necessary.

(9) A provision that requires the Committee to amend an agreement pursuant to G.S. 143B-437.59.

(10) A provision that requires the business to maintain operations at the project location or another location approved by the Committee for at least one hundred fifty percent (150%) of the term of the grant and a provision to permit the Committee to recapture all or part of the grant at its discretion if the business does not remain at the site for the required term.

(11) A provision that requires the business to maintain employment levels in this State at the level of the year immediately preceding the base ~~years~~ period."

SECTION 69.(f) G.S. 143B-437.58(a) reads as rewritten:

"(a) No later than March 1 of each year, for the preceding grant year, every business that is awarded a grant under this Part shall submit to the Committee a report showing withholdings as a condition of its continuation in the grant program. In addition, during the base period, the business shall submit to the Committee an annual payroll report showing the eligible positions that ~~are~~ have been created during the ~~base years and the new eligible positions created during each subsequent~~ preceding calendar year and, subsequent to the base period, the business shall submit to the Committee an annual report showing the eligible positions that remain filled at the end of each year of the grant. Upon request of the Committee, the business shall also submit a copy of its State and federal tax returns. Payroll and tax information and State and federal tax

returns of individual taxpayers submitted under this subsection is tax information subject to G.S. 105-259. Aggregated payroll or withholding tax information submitted or derived under this subsection is not tax information subject to G.S. 105-259. When making a submission under this section, the business must pay the Committee a fee of one thousand five hundred dollars ($1,500). The fee is due at the time the submission is made. The Secretary of Commerce, the Secretary of Revenue, and the Director of the Office of State Budget and Management shall determine the allocation of the fee imposed by this section among their agencies. The proceeds of the fee are receipts of the agency to which they are credited."

SECTION 70. G.S. 145-23, as enacted by S.L. 2005-78, reads as rewritten:

"**§ 145-23. State birthplace of traditional pottery.**

The Seagrove area, including portions of Randolph, Chatham, Lee, Moore, and Montgomery Counties, is designated as the official location of the birthplace of North Carolina traditional pottery."

SECTION 71. G.S. 147-33.72F reads as rewritten:

"**§ 147-33.72F. Procurement procedures; cost savings.**

Pursuant to Part 4 of this Article, the Office of ~~State~~ Information Technology Services shall establish procedures for the procurement of information technology. The procedures may include aggregation of hardware purchases, the use of formal bid procedures, restrictions on supplemental staffing, enterprise software licensing, hosting, and multiyear maintenance agreements. The procedures may require agencies to submit information technology procurement requests to the Office of ~~State~~ Information Technology Services on October 1, January 1, and June 1 of each fiscal year in order to allow for bulk purchasing."

SECTION 72.(a) G.S. 147-33.97 reads as rewritten:

"**§ 147-33.97. Information technology procurement policy; reporting requirements.**

(a) Policy. – In order to further the policy of the State to encourage and promote the use of small, minority, physically handicapped, and women contractors in State purchasing of goods and services, all State agencies covered by this Part shall cooperate with the Office in efforts to encourage the use of small, minority, physically handicapped, and women contractors in achieving the purpose of this Part, which is to provide for the effective and economical acquisition, management, and disposition of information technology.

(a1) A vendor submitting a bid shall disclose in a statement, provided contemporaneously with the bid, where services will be performed under the contract sought, including any subcontracts and whether any services under that contract, including any subcontracts, are anticipated to be performed outside the United States. Nothing in this section is intended to contravene any existing treaty, law, agreement, or regulation of the United States.

(a2) The State Chief Information Officer shall retain the statements required by subsection (a1) of this section regardless of the State entity that awards the contract and shall report annually to the Secretary of Administration on the number of contracts which are anticipated to be performed outside the United States.

(b) Reporting. – Every State agency that makes a direct purchase of information technology using the services of the Office shall report directly to the Department of Administration all information required by G.S. 143-48(b).

(c) The Department of Administration shall collect and compile the data described in this section and report it annually to the Office."

SECTION 72.(b) This section becomes effective October 1, 2005, and applies to all bids submitted on or after that date.

SECTION 73. G.S. 160A-164.2 reads as rewritten:

"**§ 160A-164.2. Criminal history record check of employees permitted.**

The council may adopt or provide for rules and regulations or ordinances concerning a requirement that any applicant for employment be subject to a criminal history record check of State and National Repositories of Criminal Histories conducted by the Department of Justice in accordance with G.S. ~~114-19.12.~~114-19.14. The city may consider the results of these criminal history record checks in its hiring decisions."

SECTION 74. G.S. 160A-270(c), as amended by Section 4 of S.L. 2005-227, reads as rewritten:

"(c) The council may conduct auctions of real or personal property electronically by authorizing the establishment of an electronic auction procedure or by authorizing the use of existing private or public electronic auction services. Notice of an electronic auction of property shall identify, in addition to the information required in subsections (a) and (b) of this section, the electronic address where information about the property to be sold can be found and the electronic address where electronic bids may be posted. Notice may be published in a newspaper having general circulation in the political subdivision or by electronic means, or both. A decision to publish notice solely by electronic means for a particular ~~contract~~ auction or for all ~~contracts~~ auctions under this subsection shall be approved by the governing board of the political subdivision. Except as provided in this subsection, all requirements of subsections (a) and (b) of this section apply to electronic auctions."

SECTION 75. Part 8 of Article 19 of Chapter 160A of the General Statutes is amended by adding a new section to read:

"**§ 160A-459. Stormwater control.**

A city may adopt and enforce a stormwater control ordinance as authorized by Part 1 of Article 21 of Chapter 143 of the General Statutes. A stormwater control ordinance adopted pursuant to this section must at least meet all of the minimum requirements of Part 1 of Article 21 of Chapter 143 of the General Statutes."

SECTION 75.5.(a) If House Bill 1115, 2005 Regular Session, becomes law, then Section 16 of that act is repealed.

SECTION 75.5.(b) Article 12A of Chapter 163 of the General Statutes is amended by adding a new section to read:

"**§ 163-132.1B. Participation in 2010 Census Redistricting Data Program of the United States Bureau of the Census.**

(a) Purpose. – The State of North Carolina shall participate in the 2010 Census Redistricting Data Program, conducted pursuant to P.L. 94-171, of the United States Bureau of the Census, so that the State will receive 2010 Census data by voting precinct

and be able to revise districts at all levels without splitting precincts and in compliance with the United States and North Carolina Constitutions and the Voting Rights Act of 1965, as amended.

(b) Additional Rules. – In addition to directives promulgated by the Executive Director of the State Board of Elections under G.S. 163-132.4, the Legislative Services Commission may promulgate rules to implement this section."

SECTION 76.(a) If Senate Bill 223, 2005 Regular Session, becomes law, then G.S. 163-165.7(a) as enacted by that act reads as rewritten:

"(a) Only voting systems that have been certified by the State Board of Elections in accordance with the procedures and subject to the standards set forth in this section and that have not been subsequently decertified shall be permitted for use in elections in this State. Those certified voting systems shall be valid in any election held in the State or in any county, municipality, or other electoral district in the State. Subject to all other applicable rules adopted by the State Board of Elections and, with respect to federal elections, subject to all applicable federal regulations governing voting systems, paper ballots marked by the voter and counted by hand shall be deemed a certified voting system. The State Board of Elections shall certify optical scan voting systems, optical scan with ballot markers voting systems, and direct record electronic voting systems if any of those systems meet all applicable requirements of federal and State law. The State Board may certify additional voting systems only if they meet the requirements of the request for proposal process set forth in this section and only if they generate either a paper ballot or a paper record by which voters may verify their votes before casting them and which provides a backup means of counting the vote that the voter casts. Those voting systems may include optical scan and direct record electronic (DRE) voting systems. In consultation with the Office of Information Technology Services, the State Board shall develop the requests for proposal subject to the provisions of this Chapter and other applicable State laws. Among other requirements, the request for proposal shall require at least all of the following elements:

(1) That the vendor post a bond or letter of credit to cover damages resulting from defects in the voting system. Damages shall include, among other items, any costs of conducting a new election attributable to those defects.

(2) That the voting system comply with all federal requirements for voting systems.

(3) That the voting system must have the capacity to include in precinct returns the votes cast by voters outside of the voter's precinct as required by G.S. 163-132.5G.

(4) With respect to electronic voting systems, that the voting system generate a paper record of each individual vote cast, which paper record shall be maintained in a secure fashion and shall serve as a backup record for purposes of any hand-to-eye count, hand-to-eye recount, or other audit. Electronic systems that employ optical scan technology to count paper ballots shall be deemed to satisfy this requirement.

(5) With respect to DRE voting systems, that the paper record generated by the system be viewable by the voter before the vote is cast electronically, and that the system permit the voter to correct any discrepancy between the electronic vote and the paper record before the vote is cast.

(6) With respect to all voting systems using electronic means, that the vendor provide access to all of any information required to be placed in escrow by a vendor pursuant to G.S. 163-165.9A for review and examination by the State Board of Elections; the Office of Information Technology Services; the State chairs of each political party recognized under G.S. 163-96; the purchasing county; and designees as provided in subdivision (9) of subsection (d) of this section.

(7) That the vendor must quote a statewide uniform price for each unit of the equipment.

(8) That the vendor must separately agree with the purchasing county that if it is granted a contract to provide software for an electronic voting system but fails to debug, modify, repair, or update the software as agreed or in the event of the vendor having bankruptcy filed for or against it, the source code described in G.S. 163-165.9A(a) shall be turned over to the purchasing county by the escrow agent chosen under G.S. 163-165.9A(a)(1) for the purposes of continuing use of the software for the period of the contract and for permitting access to the persons described in subdivision (6) of this subsection for the purpose of reviewing the source code.

In its request for proposal, the State Board of Elections shall address the mandatory terms of the contract for the purchase of the voting system and the maintenance and training related to that voting system.

~~No~~ If a voting system was acquired or upgraded by a county before August 1, 2005, ~~shall be used in an election during or after 2006 unless~~the county shall not be required to go through the purchasing process described in this subsection if the county can demonstrate to the State Board of Elections compliance with the requirements in subdivisions (1) through (6) and subdivision (8) of this subsection, where those requirements are applicable to the type of voting system involved. If the county cannot demonstrate to the State Board of Elections that the voting system is in compliance with those subdivisions, the county board shall not use the system in an election during or after 2006, and the county shall be subject to the purchasing requirements of this subsection."

SECTION 76.(b) .If Senate Bill 223, 2005 Regular Session, becomes law, then G.S. 163-182.1(b)(1), as enacted by Section 5 of that act, reads as rewritten:

"(1) Provide for a sample hand-to-eye count of the paper ballots or paper records of a statewide ballot item in every county. The presidential ballot item shall be the subject of the sampling in a presidential election. If there is no statewide ballot item, the State Board shall provide a process for selecting district or local ballot items to

adequately sample the electorate. The sample chosen by the State Board shall be of one or more full precincts, full counts of mail absentee ballots, ~~and~~ full counts of one or more one-stop early voting ~~sites.~~ sites, or a combination. The size of the sample of each category shall be chosen to produce a statistically significant result and shall be chosen after consultation with a statistician. The actual units shall be chosen at random. In the event of a material discrepancy between the electronic or mechanical count and a hand-to-eye count, the hand-to-eye count shall control, except where paper ballots or records have been lost or destroyed or where there is another reasonable basis to conclude that the hand-to-eye count is not the true count. If the discrepancy between the hand-to-eye count and the mechanical or electronic count is significant, a complete hand-to-eye count shall be conducted."

SECTION 76.(c) If Senate Bill 223, 2005 Regular Session, becomes law, then G.S. 163-182.2(b)(1a), as enacted by Section 5 of that act, reads as rewritten:

"(1a) For optical scan and direct record electronic voting systems, and for any other voting systems in which ballots are counted other than on paper by hand and eye, those rules shall provide for a sample hand-to-eye count of the paper ballots or paper records of a sampling of a statewide ballot item in every county. The presidential ballot item shall be the subject of the sampling in a presidential election. If there is no statewide ballot item, the State Board shall provide a process for selecting district or local ballot items to adequately sample the electorate. The sample chosen by the State Board shall be of one or more full precincts, full counts of mailed absentee ballots, and full counts of one or more one-stop early voting sites. The size of the sample of each category shall be chosen to produce a statistically significant result and shall be chosen after consultation with a statistician. The actual units shall be chosen at random. In the event of a material discrepancy between the electronic or mechanical count and a hand-to-eye count, the hand-to-eye count shall control, except where paper ballots or records have been lost or destroyed or where there is another reasonable basis to conclude that the hand-to-eye count is not the true count. If the discrepancy between the hand-to-eye count and the mechanical or electronic count is significant, a complete hand-to-eye count shall be conducted. The sample count need not be done on election night."

SECTION 76.(d) If Senate Bill 223, 2005 Regular Session, becomes law, then Section 2(b) of that act reads as rewritten:

"**SECTION 2.(b)** This section applies with respect to purchase or upgrade of any voting system on or after August 1, 2005. The criminal and civil penalties enacted in this section become effective December 1, 2005, and apply to violations on or after that date."

SECTION 76.(e) If Senate Bill 223, 2005 Regular Session, becomes law, then Section 7 of that act is repealed.

SECTION 77. Section 11 of Chapter 149 of the 1931 Session Laws, as amended by Chapter 255 of the 1947 Session Laws and Chapter 745 of the 1953

Session Laws and Chapter 20 of the 1985 Session Laws and Section 42 of Chapter 199 of the 2004 Session Laws, is rewritten to read:

"Sec. 1. The term of the School Board shall be for four years and the governing body of the City of Asheville shall, during the month of March 2007 and quadrennially thereafter, appoint or elect two persons to the Board for four-year terms or until their successors are elected and qualified, and, during the month March 2009 and quadrennially thereafter, appoint or elect three persons to the Board for four-year terms or until their successors are elected and qualified. All Board members shall be residents of the Asheville City School District and shall be persons known to be in favor of public education and interested in the welfare of the schools and shall be appointed or elected with the sole object in view of maintaining the efficiency of the schools of said district and without any partisan prejudice or bias. If any vacancy in the membership of said board occurs by reasons of death or resignation or otherwise the governing body of the City of Asheville shall fill the same appointment or election. Terms shall begin on April 1 and in April 2007, and each biennial year thereafter, the Board shall meet and elect a chairman, who will preside over the meetings of the Board. A majority of the members of the Board shall constitute a quorum and the chairman or two members may call a meeting.

Sec. 2. That all laws and clauses in conflict with this Act are hereby repealed.

Sec. 3. That this Act shall be effective when it becomes law."

SECTION 78. Chapter 273 of the 1983 Session Laws, as amended by Section 127 of Chapter 1034 of the 1983 Session Laws, is amended by adding the following new sections to read:

"Section 1.2. Beginning with fiscal year 2007-2008 and every fiscal year thereafter, the Burke County Board of Commissioners may appropriate up to ten percent (10%) of the anticipated revenues in Section 1(2) of the Act to the local current expense fund of the Burke County Board of Education. All remaining revenues shall be appropriated by the Burke County Board of Commissioners to the local capital outlay fund of the Burke County Board of Education.

Section 1.3. In the alternative to Section 1.2 above, during any fiscal year in which the anticipated revenues by the Burke County Board of Commissioners for appropriation under Section 1(2) of the Act exceed the amount of seven million dollars ($7,000,000.00), the Burke County Board of Commissioners may appropriate an amount equal to fifty percent (50%) of the revenues designated for school capital expenditures and debt under Article 42 of Chapter 105 of the North Carolina General Statutes from the anticipated revenues appropriated under Section 1(2) of the Act to (1) the Burke County Board of Commissioners' general fund, (2) the local current expense fund of the Burke County Board of Education as part of its appropriation to that fund, or (3) both funds.

Section 1.4. In the event that the Burke County Board of Education receives additional capital outlay revenues from a fund or source other than those in existence on or before August 3, 2005 ("the Additional Capital Revenue"), then, to the extent permitted by applicable law, the Board of Commissioners may appropriate up to fifty percent (50%) of the value of the Additional Capital Revenue appropriated for use to or

used by the Board of Education in any fiscal year from the revenues appropriated under Section 1(2) of the Act to (1) the Burke County Board of Commissioners' general fund, (2) the local current expense fund of the Board of Education as part of its appropriation to that fund, or (3) both funds. In no event shall the amount of this appropriation exceed the anticipated revenues appropriated under Section 1(2) of the Act."

SECTION 79. Section 4 of S.L. 1991-1012 is repealed.

SECTION 80. Section 11.69 of S.L. 1997-443, as rewritten by Section 3 of S.L. 2001-234, reads as rewritten:

"**SECTION 3.** Section 11.69(b2) of S.L. 1997-443, as amended by Section 12.16C(a) of S.L. 1998-212, and as further amended by Section 1 of S.L. 1999-135 as amended by Section 11.9(a) of S.L. 2000-67, reads as rewritten:

"(b2) Notwithstanding the provisions of subsection (b1) of this section, any person who obtained an exemption under subsection (b) of this section for the construction of a new building that is not connected to any other existing structure by more than a protected walkway, and who obligated one or more Qualifying Financial Commitments for the construction of the building of a value totaling at least twenty-five thousand dollars ($25,000), before January 1, 2001, may proceed to develop the beds and obtain a license for the operation of the beds if all of the following conditions are met. Exemptions that were received for increases in bed capacity of existing buildings must meet the requirements set forth in subsection (b1) of this section.

(1) No later than the close of business on June 1, 2004, the person granted the exemption shall submit to the Department of Health and Human Services fully executed copies of loan closing papers for a loan to the exempted person or a letter from a certified public accountant which states that liquid reserves have been placed in a separately identified account for the exempted person that document sufficient funding to cover the entire capital cost of the project for which the exemption was granted.

(2) Not later than the close of business on December 1, 2004, the person granted the exemption shall submit to the Department of Health and Human Services documentation from the builder or architect that the foundation and footings of the facility for which the exemption was granted have been completed.

(3) Not later than the close of business on June 30, 2006, the person granted the exemption who has met the requirements set forth in subdivisions (1) and (2) of this subsection shall submit to the Department of Health and Human Services a copy of the certificate of occupancy from the building inspector for the facility for which the exemption was granted.

For the purposes of this subsection, "Qualifying Financial Commitments" includes any and all of the following expenses: (i) zoning fees and expenses; (ii) marketing and other demographic research and studies; (iii) site preparation costs including soil testing and soil boring costs; (iv) water and sewer improvements; (v) professional fees associated with the foregoing activities and which are otherwise connected to the

development of the site, including accounting, architectural, engineering, and legal fees."

SECTION 81.(a) Section 4 of S.L. 2005-16 reads as rewritten:

"**SECTION 4.** This act ~~is effective when it becomes law.~~becomes effective July 1, 2005."

SECTION 81.(b) This section becomes effective April 26, 2005.

SECTION 82. 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 as rewritten:"

SECTION 83. The prefatory language in Section 19 of S.L. 2005-210 is amended by deleting: "58-37(l)" and substituting "58-37-35(l)".

SECTION 84.(a) Section 1 of S.L. 2005-256 is amended by adding a new subdivision to read:

"(13) If any polling place that had been a satellite voting place in 2004 under G.S. 163-130 is designated as a voting center, the county board of elections may provide in its Plan of Implementation that only voters assigned to the satellite voting place may vote at the voting center there, and that such voters may not vote at any other voting center on election day."

SECTION 84.(b) S.L. 2005-256 is amended by adding a new section to read:

"**SECTION 1.1.** If no elections are conducted under this act in 2005, then any or all elections occurring in 2007 may also be held under this act in addition to those in 2006."

SECTION 85. S.L. 2005-276 is amended by adding the following two new sections to read:

"**BIENNIAL REPORT THAT HIGHLIGHTS THE IMPACT OF EDUCATION PREPARATION ON ECONOMIC GROWTH**

SECTION 7.44. The North Carolina Board of Science and Technology shall prepare a biennial report by county on the status of trends that reflect the impact of education on economic growth for the twenty-first century. This report shall contain information about the status of each county with regard to education and economic growth.

The Board shall report to the 2007 Regular Session of the 2007 General Assembly on or before April 1, 2007, and biennially thereafter, and shall make the report available for citizens.

"**PLANNING FOR BETTER COLLECTION OF INFRASTRUCTURE INFORMATION**

SECTION 7.45.(a) The Office of State Budget and Management shall conduct a study to determine the best methods to collect, manage, and provide access to information about technology, water, sewer, and other modern infrastructures needed to assist communities in becoming and remaining economically viable.

SECTION 7.45.(b) The Office of State Budget and Management shall report the results of this study to the 2006 Regular Session of the 2005 General Assembly. The

report shall include legislative proposals, including a proposal to define the term "infrastructure" in the General Statutes to include modern communication technologies."

SECTION 87.(a) Section 10.40D of S.L. 2005-276 is amended by adding a new subsection to read:

"**SECTION 10.40D.(e)** The Department of Health and Human Services, the Department of Public Instruction, and representatives of local school administrative units shall examine the policies regarding the administration of medications in school and make recommendations regarding the use of medication aides in the public schools. The Secretary of Health and Human Services and the Chair of the Board of Education shall convene a task force consisting of representatives of the agencies listed above and other interested parties. The Task Force shall develop recommendations for the Secretary and the Chair by April 1, 2006."

SECTION 87.(b) Section 10.40D(f) of S.L. 2005-276 is repealed.

SECTION 88. Section 10.11(t) of S.L. 2005-276 reads as rewritten:

"**SECTION 10.11.(t)** For the purposes of determining eligibility for Medical Assistance, the Department of Health and Human Services may apply federal transfer of assets policies, as described in Title XIX, section 1917(c) of the Social Security Act, including the attachment of liens, to (i) life estates purchased by or on behalf of the recipient, ~~other than life estates excluded from countable resources under this section,~~ and (ii) to real property excluded as "income producing", tenancy-in-common, or as nonhomesite property made "income producing" under Title XIX, section 1902(r)(2) of the Social Security Act. The transfer of assets policy shall apply only to an institutionalized individual or the individual's spouse as defined in Title XIX, section 1917(c) of the Social Security Act. The Department shall exclude from countable resources ~~any~~ only a life estate in real property that ~~is in the recipient's home,~~ meets the definition of homesite and is measured by the recipient's ~~life, and is the result of the transfer of a remainder interest.~~life.

Federal transfer of assets policies applied to "income producing" real property under Title XIX, section 1902(r)(2) of the Social Security Act shall become effective not earlier than October 1, 2001. Federal transfer of assets policies and attachment of liens applied to real property excluded as tenancy-in-common, or as nonhomesite property made "income producing" in accordance with this subsection shall become effective not earlier than November 1, 2002. Federal transfer of assets policies applied to life estates in accordance with this subsection shall become effective not earlier than October 1, 2005."

SECTION 89.(a) G.S. 143B-267, as amended by Section 17.25(a) of S.L. 2005-276, reads as rewritten:

"**§ 143B-267. Post-Release Supervision and Parole Commission – members; selection; removal; chairman; compensation; quorum; services.**

Effective ~~August 1, 2005,~~September 1, 2005, the Post-Release Supervision and Parole Commission shall consist of one full-time member and two half-time members. The three members shall be appointed by the Governor from persons whose recognized ability, training, experience, and character qualify them for service on the Commission.

The terms of office of any members serving on the Commission on ~~June 30, 2005,~~August 31, 2005, shall expire on that date. The terms of office of persons appointed by the Governor as members of the Commission shall be for four years or until their successors are appointed and qualify. Any appointment to fill a vacancy on the Commission created by the resignation, removal, death or disability of a member shall be for the balance of the unexpired term only.

The Governor shall have the authority to remove any member of the Commission from office for misfeasance, malfeasance or nonfeasance, pursuant to the provisions of G.S. 143B-13. The Governor shall designate a member of the Commission to serve as chair of the Commission at the pleasure of the Governor.

The granting, denying, revoking, or rescinding of parole, the authorization of work-release privileges to a prisoner, or any other matters of business coming before the Commission for consideration and action shall be decided by majority vote of the full Commission.

The members of the Commission shall receive the salary fixed by the General Assembly in the Current Operations Appropriations Act and shall receive necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-6. Notwithstanding any other provision of law, the half-time members of the Commission shall not be subject to the provisions of G.S. 135-3(8)(c).

All clerical and other services required by the Commission shall be supplied by the Secretary of Correction."

SECTION 89.(b) Section 17.25 of S.L. 2005-276 reads as rewritten:

"**SECTION 17.25.(b)** This section becomes effective ~~June 30, 2005.~~September 1, 2005."

SECTION 89.5. Section 17.30 of S.L. 2005-276 reads as rewritten:

"**SECTION 17.30.** The Department of Correction ~~may~~ shall adjust the current contract for 100 female residential substance abuse treatment beds to guarantee a one hundred percent (100%) occupancy rate. The Department may use available funds for this contract adjustment if necessary. Any contract adjustments shall be effective as soon as practical but no later than October 1, 2005, and shall extend only through June 30, 2006."

SECTION 90. Section 28.10 of S.L. 2005-276 reads as rewritten:

"**DEPARTMENT OF TRANSPORTATION PERFORMANCE-BASED CONTRACTS**

SECTION 28.10.(a) The Department of Transportation may implement up to two performance-based contracts for routine maintenance and operations, exclusive of resurfacing. Selection of firms to perform this work shall be made using a best-value procurement process.

Prior to any advertisement for a proposed project, the Department shall report to the Joint Legislative Transportation Oversight Committee on the contractor selection criteria to be used.

SECTION 28.10.(b) For contracts authorized under this section, notwithstanding G.S. 44A-26(a)(1) and (a)(2), the Department of Transportation may require the bonds issued pursuant to Article 3 of Chapter 44A of the General Statutes

for public construction to be provided on a periodic basis and in the amount to cover that specific period rather than for the entire project duration."

SECTION 91.(a) 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 91.(b) If G.S. 105-163.2B, as enacted by S.L. 2005-276, becomes law, then 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 91.(c) If G.S. 114-19.16, as enacted by S.L. 2005-276, becomes law, then 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 91.(d) S.L. 2005-276 is amended by adding a new section to read:

"**SECTION 31.1.(kk)** If House Bill 1023, 2005 Regular Session becomes law, then that act 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 91.5. Section 45.1(b) of S.L. 2005-276 reads as rewritten:

"**SECTION 45.1.(b)** This section ~~is effective when it becomes law.~~becomes effective March 1, 2006."

SECTION 91.7. If House Bill 99, 2005 Regular Session, becomes law, then G.S. 97-18, as enacted by Section 4 of that act, reads as rewritten:

"**§ 97-18. Prompt payment of compensation required; installments; payment without prejudice; notice to Commission; penalties.**

...

(c) If the employer or insurer denies the employee's right to compensation, the employer or insurer shall notify the Commission, on or before the fourteenth day after it has written or actual notice of the injury or death, or within such reasonable additional time as the Commission may allow, and advise the employee in writing of its refusal to pay compensation on a form prescribed by the Commission. This notification shall (i) include the name of the employee, the name of the employer, the date of the alleged injury or death, the insurer on the risk, if any, and a detailed statement of the grounds upon which the right to compensation is denied, and (ii) advise the employee of the employee's right to request a hearing pursuant to G.S. 97-83. If the employer or insurer, in good faith, is without sufficient information to admit the employee's right to compensation, the employer or insurer may deny the employee's right to compensation.

(d) In any claim for compensation in which the employer or insurer is uncertain on reasonable grounds whether the claim is compensable or whether it has liability for the claim under this Article, the employer or insurer may ~~deny the claim in good faith or~~ initiate compensation payments without prejudice and without admitting liability. The initial payment shall be accompanied by a form prescribed by and filed with the Commission, stating that the payments are being made without prejudice. Payments made pursuant to this subsection may continue until the employer or insurer contests or accepts liability for the claim or 90 days from the date the employer has written or actual notice of the injury or death, whichever occurs first, unless an extension is granted pursuant to this section. Prior to the expiration of the 90-day period, the employer or insurer may upon reasonable grounds apply to the Commission for an extension of not more than 30 days. The initiation of payment does not affect the right of the employer or insurer to continue to investigate or deny the compensability of the claim or its liability therefor during this period. If at any time during the 90-day period or extension thereof, the employer or insurer contests the compensability of the claim or its liability therefor, it may suspend payment of compensation and shall promptly notify the Commission and the employee on a form prescribed by the Commission. The employer or insurer must provide on the prescribed form a detailed statement of its

grounds for denying compensability of the claim or its liability therefor. If the employer or insurer does not contest the compensability of the claim or its liability therefor within 90 days from the date it first has written or actual notice of the injury or death, or within such additional period as may be granted by the Commission, it waives the right to contest the compensability of and its liability for the claim under this Article. However, the employer or insurer may contest the compensability of or its liability for the claim after the 90-day period or extension thereof when it can show that material evidence was discovered after that period that could not have been reasonably discovered earlier, in which event the employer or insurer may terminate or suspend compensation subject to the provisions of G.S. 97-18.1.

...."

SECTION 91.8. If House Bill 99, 2005 Regular Session, becomes law, then G.S. 97-25.6, as enacted by Section 6.1 of that act, reads as rewritten:

"**§ 97-25.6. Reasonable access to medical information.**

Notwithstanding the provisions of G.S. 8-53, any law relating to the privacy of medical records or information, and the prohibition against ex parte communications at common law, an employer or insurer paying medical compensation to a provider rendering treatment under this Article may obtain records of the treatment without the express authorization of the employee. In addition, with written notice to the employee, the employer or insurer may obtain directly from a medical provider medical records of evaluation or treatment restricted to a current injury or current condition for which an employee is claiming compensation from that employer under this Article.

Any medical records or reports, restricted to conditions related to the injury or illness for which the employee is seeking compensation, in the possession of the employee shall be furnished by the employee to the employer when requested in writing by the employer.

An employer or insurer paying compensation for an admitted claim or paying without prejudice pursuant to G.S. 97-18(d) may communicate with an employee's medical provider in writing, limited to specific questions promulgated by the Commission, to determine, among other information, the diagnosis for the employee's condition, the reasonable and necessary treatment, the anticipated time that the employee will be out of work, the relationship, if any, of the employee's condition to the employment, the restrictions from the condition, the kind of work for which the employee may be eligible, the anticipated time the employee will be restricted, and the permanent impairment, if any, as a result of the condition. When these questions are used, a copy of the written communication shall be provided to the employee at the same time and by the same means as the communication is provided to the provider.

Other forms of communication with a medical provider may be authorized by (i) a valid written authorization voluntarily given and signed by the employee, (ii) by agreement of the parties, or (iii) by order of the Commission issued upon a showing that the information sought is necessary for the administration of the employee's claim and is not otherwise reasonably obtainable under this section or through other provisions for discovery authorized by the Commission's rules. In adopting rules or authorizing employer communications with medical providers, the Commission shall protect the

employee's right to a confidential physician-patient relationship while facilitating the release of information necessary to the administration of the employee's claim.

Upon motion by an employee or provider from whom medical records or reports are sought or upon its own motion, for good cause shown, the Commission may make any order which justice requires to protect an employee or other person from unreasonable annoyance, embarrassment, oppression, or undue burden or expense.

A health care provider may charge reasonable fees in accordance with G.S. 97-26.1 for services caused by this section subject to the approval of the Commission."

SECTION 92. If House Bill 105, 2005 Regular Session, becomes law, then the lead-in language for Section 59.2(a) of that act reads as rewritten:

"**SECTION 59.2.(a)** G.S. 105-114(a4) reads as rewritten:".

SECTION 93.(a) If House Bill 128, 2005 Regular Session, becomes law, then G.S. 163-278.19(a2), as enacted by Section 4.1(b) of that act, reads as rewritten:

"(a2) A financial institution may make a loan to a candidate or political committee if all of the following conditions are met:

(1) The loan is made in accordance with applicable laws governing financial institutions.

(2) The loan is made in the ordinary course of business.

(3) ~~The~~ If the loan is secured, the loan is secured in the full amount by collateral ~~placed by~~placed, or guaranties ~~given~~ given, by one or more individuals or entities who are not prohibited by this Article from making contributions to the candidate or political committee (subsequently referred to in this subsection as "guarantor").

(4) ~~The~~ If the loan is guaranteed, the amount of each guaranty or the value of the collateral posted by each guarantor does not exceed the contribution limitations applicable under this Article to that guarantor, except that the value of collateral posted by a guarantor may exceed the contribution limitations applicable under this Article in cases where the amount of the loan secured by that collateral does not itself exceed the contribution limitations applicable to the guarantor.

(5) If the loan is unsecured, only the candidate and the candidate's spouse may be liable for the loan.

During the time that any loan made under this subsection remains outstanding and unpaid, then the amount of any guaranty or the value of any collateral posted for that loan shall be considered to be a contribution by the guarantor for purposes of determining the eligibility of any additional contributions made by that guarantor. If the loan, or any portion of the loan, is repaid by the candidate or political committee to whom the loan was made during the contribution limitation period for the same "election" as defined in G.S. 163-278.13(d), in which the loan was made, the guarantor shall be eligible to further contribute to that candidate or political committee up to the amount of the repayment, as prorated to the amount of the guarantee or collateral repaid. That amount of the collateral or loan guarantee shall be treated as a refunded contribution and shall no longer count against the contribution limits under G.S. 163-278.13 for that election for that guarantor.

Only the ~~candidate~~ candidate, the candidate's spouse, or political committee to whom the loan was made may repay the loan.

The candidate or political committee shall report the loan on its campaign report required by G.S. 163-278.9, but if the loan meets the criteria of this subsection, the loan shall not be reported or otherwise treated as a contribution. The candidate or political committee shall report the collateral or loan guaranties as contributions from the entities providing them and shall indicate on the report the loan to which they relate. The State Board of Elections shall develop methods of reporting to implement this subsection."

SECTION 93.(b) If House Bill 128, 2005 Regular Session, becomes law, then Section 12 of that act reads as rewritten:

"**SECTION 12.** Sections 3 and 4 of this act ~~becomes~~ become effective January 1, 2006. ~~Section 10(c)~~ Sections 4.1 and 10 of this act become effective January 1, 2006, and ~~applies~~ apply to contributions and loans made or accepted on or after that date. Contributions and loans made or accepted prior to that date shall count toward the cumulative limit after that date. The remainder of this act is effective when it becomes law."

SECTION 93.5. If House Bill 253, 2005 Regular Session, becomes law, then G.S. 136-183B, as enacted by that act, reads as rewritten:

"**§ 136-89.183B. Accelerated Herbert C. Bonner Bridge Replacement Project.**

(a) Contract for Accelerated Construction of the Herbert C. Bonner Replacement Bridge Project. – The Department of Transportation shall implement all reasonable measures to expedite completion of environmental reviews required by the National Environmental Policy Act. Within 90 days of receiving an approved Record of Decision from the Federal Highway Administration, the Department shall contract with a single private firm to ~~design, obtain all necessary permits for, and construct~~design and build a replacement bridge for the Herbert C. Bonner Bridge at Oregon Inlet, in accordance with G.S. 136-28.11, in order to ~~provide accelerated,~~expedite and accelerate the efficient, ~~and~~ cost-effective completion of the project.

(b) Replacement Bridge; Termini. – The General Assembly recommends that the replacement bridge constructed pursuant to this section shall be ~~a replacement bridge,~~located with north and south termini located in general proximity to the termini of the existing Herbert C. Bonner Bridge. It is recognized, however, that the preferred alternative for the bridge location cannot be determined prior to compliance with all federal and State laws and regulations.

(c) Department to Report on Project. – ~~The Department shall prepare a request for proposals from private firms to complete the bridge project described in this section, and submit the request for proposals to the Joint Legislative Transportation Oversight Committee for review and comment, within 90 days after the effective date of this act. The Department shall issue the request for proposals to the public 30 days after submittal to the Committee for review.~~ The Department shall report to the Committee on December 1, 2005, and each December 1 thereafter until completion, on the progress of the accelerated bridge project described in this section."

SECTION 94.(a) If House Bill 328, 2005 Regular Session, becomes law, then Section 5 of House Bill 328, 2005 Regular Session, is repealed.

SECTION 94.(b) The Town of Matthews may adopt ordinances, only after holding public hearings, to regulate the removal of trees from public and private property within the town in order to preserve, protect, and enhance one of the most valuable natural resources of the community and to protect the health, safety, and welfare of its citizens.

SECTION 95. If House Bill 392, 2005 Regular Session, becomes law, then G.S. 18B-101(9), as amended by Section 1 of that act, reads as rewritten:

"(9) 'Malt beverage' means beer, lager, malt liquor, ale, porter, and any other brewed or fermented beverage except unfortified or fortified wine as defined by this Chapter, containing at least one-half of one percent (0.5%), and not more than fifteen percent (15%), alcohol by volume. Any malt beverage containing more than six percent (6%) alcohol by volume shall bear a label clearly indicating the alcohol content of the malt beverage."

SECTION 96. If House Bill 646, 2005 Regular Session, becomes law, then Section 3 of that act reads as rewritten:

"**SECTION 3.** Part I of this act becomes effective ~~January 1, 2006,~~October 1, 2005, and applies to applications filed, licenses issued, and licenses continued on or after that date. The remainder of this act is effective when it becomes law."

SECTION 97. If House Bill 1375, 2005 Regular Session, becomes law, then Section 6 of House Bill 1375, 2005 Regular Session, reads as rewritten:

"**SECTION 6.** Section 1 of this act becomes effective ~~July 1, 2007.~~January 1, 2007. The remainder of the act is effective 90 days after it becomes law."

SECTION 98. If both House Bill 1389, 2005 Regular Session, and House Bill 1500, 2005 Regular Session, become law, then Section 4 of House Bill 1500, 2005 Regular Session, is repealed.

SECTION 99. If House Bill 1466, 2005 Regular Session, becomes law, then G.S. 14-112.2(c), as enacted by Section 2 of that act, reads as rewritten:

"(c) It is unlawful for a person, who knows or reasonably should know that an elder adult or disabled adult lacks the capacity to consent, to obtain or use, endeavor to obtain or use, or conspire with another to obtain or use an elder adult's or disabled adult's funds, assets, or property with the intent to temporarily or permanently deprive the elder adult or disabled adult of the use, benefit, or possession of the funds, assets, or property, or benefit someone other than the elder adult or disabled adult. This subsection shall not apply to a person acting within the scope of ~~their~~ that person's lawful authority as the agent for the elder adult or disabled adult."

SECTION 100. If Senate Bill 974, 2005 Regular Session, becomes law, Section 4 of Senate Bill 974, 2005 Regular Session, reads as rewritten:

"**SECTION 4.** The Commission shall issue a special occasion permit under G.S. 18B-1001(8) to a mixed beverage permittee in a sports facility occupied by a major league professional sports team with suites available for sale or lease to patrons of the facility to authorize patrons to make available alcoholic beverages in those suites as if the patron were a host of a reception, party or other special occasion. If the patron occupying the suite so desires, alcoholic beverages by self-service may be made

available to any person at least 21 years of age possessing a valid ticket to the event authorizing that person to occupy the suite. At no event may the patron make available a quantity of alcoholic beverages in excess of the amount a person is allowed to buy under G.S. 18B-303(a). A mixed beverage permittee who holds a permit shall provide mixed beverage tax paid spirituous liquor for resale by the container in approved sizes of no larger than 750 milliliters to the host or patron of the suite. This section does not authorize any person possessing a valid ticket to an event at the facility to bring alcoholic beverages onto the premises and consume those alcoholic beverages on the premises, or to remove those beverages from the suite.

SECTION 101. Section 10.40B of S.L. 2005-276 reads as rewritten:

"**SECTION 10.40B.(a)** Notwithstanding provisions to the contrary in Chapter 150B and Article 9 of Chapter 131E of the General Statutes, a licensed health care facility in operation on July 1, 2005, developed under a certificate of need issued by the Department of Health and Human Services prior to that ~~date and subsequently invalidated based on a procedural defect in the awarding of the certificate of need, may remain in operation for the purpose of applying for a new certificate of need in accordance with Article 9 of Chapter 131E of the General Statutes. The health care facility may remain in operation for the period pending the decision of the Department on the application for the new certificate of need.~~date, may remain in operation until the final disposition of any appeals, including remanded proceedings, of the Department's decision awarding the certificate of need. If the final disposition after exhaustion of all appeals and remanded proceedings is to reverse the Department's decision awarding the certificate of need, the health care facility may remain in operation for the time necessary to apply for a new certificate of need and during the pendency of the Department's review of that application and any subsequent appeals of the Department's final decision on that application.

SECTION 10.40B.(b) This section expires 30 days from the date of the Department's decision on the new certificate of need or adjournment sine die of the 2005 General Assembly, whichever occurs later."

SECTION 102.(a) The Department of Labor shall adopt rules in connection with its requirements regarding fall protection for tower climbers as follows:

(1) With regard to employer-provided rescue procedures, employers must ensure that at least two trained and designated rescue employees are on-site when employees are working at heights over six feet on the tower, except that where only two employees are on-site, then an employer may comply with this requirement if one employee is a trained and designated rescue employee and one employee has been employed for less than nine months and has received documented orientation from the employer outlining steps to take in an emergency.

(2) With regard to third-party-provided rescue procedures, the employer must obtain verification from the third-party rescue service that the service is able to respond to a rescue summons in a timely manner and that the service is proficient in rescue-related tasks and equipment needed to rescue climbers from elevated heights on communication

structures. The employer must also provide the selected third-party rescue service with contact information regarding the tower site and allow the service to conduct whatever preparation for rescue it deems necessary.

SECTION 102.(b). Notwithstanding G.S. 150B-21.1(a), the Department of Labor may adopt the rules provided for by this section as temporary rules within 270 days after the effective date of this act.

PART III. EFFECTIVE DATE

SECTION 103. Except as otherwise provided, this act is effective when it becomes law.

HOUSE BILL 327:
2005 Technical Corrections Act

BILL ANALYSIS

Committee:	Senate Judiciary I	**Date:**	August 22, 2005
Introduced by:	Rep. Culpepper	**Summary by:**	Brenda J. Carter
Version:	PCS to Second Edition H327-CSRU-83[v.3]		Staff Attorney

SUMMARY: House Bill 327 makes technical corrections and other changes to various statutes and session laws. PART I of the PCS (Sections 1 through 27) were recommended by the General Statutes Commission and have been summarized in a separate document by the Commission's staff. This summary covers PART II of the PCS (Sections 28 through 102), which contains changes identified by legislative staff, agency staff, and others.

BILL ANALYSIS:

Sections 1-27. Pages 1-9.

- Please see the separate summary on these sections, which are recommended by the General Statutes Commission.

Section 28. – Pages 9-11.

- Corrects a conflict created when two bills enacted in the 2005 Session each added a new G.S. 7A-38.3B, and each included cross-references to the duplicated statute. (a) recodifies one of the provisions, and (b)-(d) correct various cross-references to the recodified provision.

Section 29. – Pages 11-19.

- Changes numerous statutory references to properly refer to the "School of Government at the University of North Carolina at Chapel Hill" and the "Dean of the School of Government at the University of North Carolina at Chapel Hill".

Section 30. – Page 19.

- (a) Makes a conforming amendment to G.S. 9-10, which prescribes information that must be included on a jury summons with regard to the right to request exemption based upon the juror's age. The change is necessary to conform with amendments to G.S. 9-6.1 raising the age of eligibility for juror exemption on account of age from 65 to 72 effective October 1, 2005 (SL 2005-149). (b) This section becomes effective October 1, 2005 and applies to persons summoned for jury service on or after that date.

Section 31. – Page 19.

- Restores an exception that applied to persons who find or confiscate weapons on educational property and turn them over to law enforcement, by making it clear that the exception applies not only to firearms but to other weapons as well. A 2004 enactment amended the exception, to provide that a person would not be guilty of a criminal violation "with regard to the possession or carrying of a firearm" so that the exception would not apply to a person who finds a firearm and then discharges it. However, because the word "firearm" is used, the exception now seems to apply only to the possession or carrying of a firearm and not to the possession or carrying of other weapons that are turned in.

Section 32. – Pages 19-20.

- Makes changes necessary for compliance with Federal regulations promulgated under the Brady Handgun Violence Prevention Act. The Bureau of Alcohol, Tobacco, Firearms and Explosives is requiring North Carolina make a technical change to pistol purchase and concealed carry permits to explicitly require that a check be conducted through the National Instant Criminal Background Check System (NICS) prior to the issuance of a permit.

Section 33. – Page 20.

- Corrects punctuation in a statute relating to the testing of certain persons for sexually transmitted infections.

Section 34. – Pages 20-21

- Requires the Post-Release Supervision and Parole Commission, when considering parole of a prisoner serving a sentence of life imprisonment, to notify the sheriff of the county where the crime occurred. Eliminates the requirement that the head of the law enforcement agency that arrested the prisoner request make a written request for notification.

Section 35. – Page 21.

- Amends a statute concerning alcohol law enforcement (ALE) agents, to specify that reserve ALE agents are employees of the Division of ALE for workers' comp purposes while performing duties assigned or approved by the ALE Director.

Section 36. – Pages 21-22.

- Clarifies an act to permit law enforcement officers in Mint Hill and municipal employees and law enforcement officers of the City of Kings Mountain to operate unregistered all-terrain vehicles on highways with speed limits of thirty-five miles per hour or less, by making it clear that the law applies to the operation of motorized all-terrain vehicles and by making it also applicable to law enforcement officers of Surry County.

Section 37. – Page 22.

- Clarifies an exception that applies to weight limitations and penalties for vehicles operating on highways; the addition of the word "located" more clearly defines the exception that applies to trucks hauling aggregates from sites within North Carolina counties contiguous to the State border.

Section 38. – Page 22-23

- Amends the statute that requires the owner of an automobile to maintain automobile liability insurance coverage by waiving the penalty and restoration fee for persons who are notified of a lapse in coverage while deployed as a member of the US Armed Forces outside of the continental US for a total of 45 or more days. Also provides that no insurance points will be assessed under the Safe Driver Incentive Plan for any violation for which a penalty or restoration fee is waived under this provision.

Section 39. – Pages 23

- Amends a recently enacted statute concerning powers of attorney to clarify that a person who accepts a power of attorney may permit an attorney-in-fact to conduct business as permitted by applicable statute or law. This section becomes effective October 1, 2005 and applies to powers of attorney created before, on, or after that date.

Section 40. – Pages 23-24

- Addresses issues raised by Registers of Deeds concerning implementation of the Mortgage Satisfaction Act (SL 2005-123, Senate Bill 734) that becomes effective October 1, 2005.
    - (a) Requires a document of rescission to be duly acknowledged before it can be recorded; this is consistent with the general law requiring a document to be acknowledged before it can be recorded.
    - (b) Makes it clear that the recording of an affidavit of loss or theft of a security instrument or evidence of indebtedness effectively preserves the status quo until owner of the bearer paper is determined. Also clarifies validity of certain cancellations of security instruments satisfied of record prior to October 1, 2005.
    - (c) Clarifies responsibilities of Register of Deeds when accepting a document for recordation that has been previously recorded or that is a certified copy of a previously recorded document, making it clear that the Register of Deeds is not required to verify whether the original document has been changed or altered.
    - (d) Makes this section effective October 1, 2005.

Section 41. – Page 24-25

- Corrects a cross-reference in a statute concerning civil no-contact orders.

Section 42. – Page 25

- Amends statute concerning solemnization of marriage to allow a superior or district court judge to perform marriages in this State.

Section 43. – Page 25

- Removes the qualifying date for validation of marriages performed by ministers of the Universal Life Church, thereby making any such marriage valid.

Section 44. – Pages 25-28

- Makes numerous technical and clarifying changes to the Business Corporation Act, the Nonprofit Corporation Act, and the Limited Liability Company Act, as amended by SL 2005-268:
  - (a)-(c) Amend the Business Corporation Act:
    - (a) Clarifies statute under which shareholders of a corporation having the right to cumulate their votes for directors can decrease the number of directors. G.S. 55-8-03(b), prior to amendment by S.L. 2005-268, limited its protection to corporations that both were covered by G.S. 55-7-28(e) and in fact had cumulative voting. This section adds language to ensure that the protection for corporations with cumulative voting under G.S. 55-7-28(e) is limited to corporations that in fact have cumulative voting under that section as distinguished from corporations which are covered by G.S. 55-7-28(e) but which do not have cumulative voting because, for example, of an amendment to the articles of incorporation denying cumulative voting.
    - (b) Corrects a cross-referencing error in a statute concerning mergers or share exchanges between domestic corporations and foreign corporations. Makes additional changes to conform with G.S. 55-11-06(c) as added by S.L. 2005-268.
    - (c) Amends statute concerning the effect of a merger or share exchange by insertion of the word "other" to avoid any implication that the surviving corporation in a merger is not considered a "merging corporation" for purposes of the many references in G.S. 55-11-06 to "merging corporation".
  - (d)-(f) Amend the Nonprofit Corporation Act:
    - (d) Corrects a cross-referencing error in a statute concerning articles of merger. Makes additional changes to conform to G.S. 55-11-05(d) and 55-11-06(c) as added by S.L. 2005-268.
    - (e) Amends statute concerning the effect of merger by insertion of the word "other" to avoid any implication that the surviving corporation in a merger is not considered a "merging corporation" for purposes of the many references in G.S. 55A-11-05 to "merging corporation". Deletes the subsection designation "(b)" and the reference to "subsection (a)" as there is no subsection (a) designation in G.S. 55A-11-05.
    - (f) Corrects a drafting error by replacing references to "shares" with "memberships" in a statute concerning the power of a foreign corporation. Nonprofit corporations do not have shares but may have memberships. The changes conform the wording of G.S. 55A-11-06(c) to existing 55A-11-08(c).
  - (g) Amends a new provision in the Limited Liability Company Act to correct a cross- referencing error.

Section 45. – Page 28

- Makes technical and clarifying changes to laws concerning licensed organizations that assist the property and casualty insurance industry in aggregating data and formulating rates and policy forms for submission to the various state insurance regulators. Makes it clear that those organizations will continue to pay required licensure fees, but will not result in the imposition of a new fee or a change in the fee. Becomes effective October 1, 2005.

Section 46. – Page 28

- Exempts certain safety patrols operating on public property from statutes regulating private protective services.

Section 47. – Page 28

- Deletes a proviso that public members appointed by the Governor to serve on the Board of Nursing not hold a vested interest in the provision of health services as defined by the NC Board of Ethics, because the determination of whether a person has "a vested interest" is beyond the scope and purpose of the Ethics Board.

Section 48. – Pages 28-29

- With certain exceptions, the Real Estate License Law set out in Chapter 93A of the General Statutes makes it unlawful for any person to list, sell, buy, auction, or negotiate the purchase or sale or exchange of real estate, or to lease or rent any real estate without first obtaining a license issued by the North Carolina Real Estate Commission. The provisions of Chapter 93A do not apply to any business entity who, as owner or lessor, performs any of the specified activities with reference to property owned or leased by them, when the acts are performed in the regular course of or as incident to the

management of that property. This section of the bill clarifies this exception to the Real Estate License Law to include salaried employees of such businesses.

Section 49. – Page 29
- Recodifies a statute concerning continuing education for real estate brokers and salespersons, and makes a conforming change to a cross-reference to that provision.

Section 50. – Page 29
- Amends the title of Article 12 of Chapter 95 of the General Statutes to conform with applicable law. The prohibition against public employees joining unions was repealed in 1998 because it was held to be unconstitutional.

Section 51. – Page 29-30
- Amends a statute concerning civil penalties for OSHA violations, restoring a distinction between serious violations and nonserious violations for purposes of determining whether the imposition of a penalty is mandatory or discretionary; the distinction was made ambiguous in a 2004 rewrite of the statute. Does not provide for a new fee or penalty.

Section 52. – Page 30
- Amends the law regulating drug testing by employers to allow the examiners the option of performing any screening test on-site; the option is currently available only for prospective employees.

Section 53. – Page 30
- Amends the law concerning mandatory standards for land-disturbing activity to require that the activity be conducted in accordance with an approved erosion and sedimentation control plan.

Section 54. – Pages 30-33
- Corrects terms pertaining to the component of the school health education program that deals with the prevention of sexually transmitted diseases, and requires the Department of Health and Human Services to provide current information. Applies beginning with the 2006-2007 school year

Section 56. – Page 33
- Repeals Article 19A of Chapter 115C, relating to the Standards Board for Public School Administration. The Board was abolished in 2001 (SL 2001-424, sec. 28.25), and the remaining provisions have been determined to be unnecessary.
- Amends statute concerning the method of selection of principals and supervisors to eliminate references to the repealed Article.

Section 57. – Page 33
- Recodifies and makes technical changes to law concerning special medical needs of students.

Section 58. – Page 33-34
- Eliminates a stray comma.

Section 59. – Page 34-35
- Amends various statutes dealing with the authority of the Secretary of Administration
  - (a) Amends a statute dealing with driving eligibility certificates, to correct a reference to the Division of Nonpublic Education, located in the Department of Administration.
  - (b) Repeals a provision giving the Secretary of Administration general supervision of all storerooms and stores operated by the State government or any of its departments, institutions or agencies.
  - (c) Adds a qualifying phrase to the statute requiring State agencies to purchase through sources certified by the Secretary of Administration.
  - (d) Deletes a requirement that the Secretary of Administration report to the Division of Purchase and Contract any expenditure in excess of $10,000 for the purchase of articles in emergencies involving contractor delay, equipment failure, unexpected workloads, etc.

Section 60. – Pages 35-36

- Amends the statute concerning the use and maintenance of the State Legislative building and grounds to redefine its boundaries by deleting references to the no longer existing water fountain, and to substitute references to the "State Government Mall" with "Halifax Street Mall".

Section 61. – Pages 36-37

- Provides that counsel for appeals in civil commitment cases will be appointed in accordance with rules adopted by the Office of Indigent Defense Services (OIDS) and that trial counsel will no longer be responsible for handling those appeals. According to the Office of Indigent Defense Services (OIDS), this corrects an oversight that occurred when the legislation creating OIDS was enacted. This section becomes effective October 1, 2005, and applies to appeals filed on or after that date.

Section 62. – Pages 37-38

- Adds brain cancer to the NC Cancer Registry in accordance with federal law.

Section 63. – Page 38

- Amends the statute that deals with effluent filters and access devices for certain septic tank systems to require that persons who install, repair, or pump those systems comply with State law and applicable rules.

Section 64. – Pages 38-39

- Excludes psychiatric hospital emergency rooms from having to report emergency department data on a daily basis.
- Includes physicians who provide "administrative services" to the conflict of interest law that applies to the board of directors or employees of a public hospital

Section 65. – Page 39

- Substitutes the term "adult care home" for "nursing home" in the confidentiality provision that applies to quality assurance, medical, or peer review committees. This is a conforming, technical change that amends Chapter 131D which governs licensing of adult care homes. Comparable language for nursing homes is found in Chapter 131E. This section was enacted at the end of 2004 as part of the peer review protections for medical malpractice purposes, but the language from the nursing home section was copied and dropped in without conforming it to the adult care home statute.

Section 66. – Pages 39-41

- Amends laws pertaining to subrogation rights of the Teachers' and State Employees' Comprehensive Major Medical Plan upon a Plan member's right to recover from a liable third party. This section is effective when it becomes law and applies to payments made by the Plan after July 20,2004 for which reimbursement is sought on or after the effective date. Subsection (b) applies to wrongful deaths occurring on or after the effective date.

Section 67. – Page 41

- Amends the law concerning the assignments of claims against the State to provide that a political subdivision of the state may allow periodic deductions for a domiciled employees' association that does not otherwise meet specified minimum membership requirements.

Section 68. – Page 41-42

- Amends the law concerning the membership of the Tobacco Trust Fund Commission to eliminate the requirement that a burley tobacco farmer appointed by the President Pro Tempore of the Senate also be a burley allotment holder and to allow for the appointment of a former flue-cured allotment holder, who is not also a flue-cured tobacco farmer, by the Speaker of the House.

Section 69. – Pages 43-45

- Amends statutes concerning the Job Development Investment Grant Program. Streamlines statutory provisions governing the job creation period during which eligible positions may be created, utilizing a "base period" would be the actual period of time that is approved by the Economic Investment Committee for eligible job creation at the time it awards a grant. Makes additional "clean-up" changes to more accurately express what is intended in the statute, and makes clear that individual taxpayer information is protected, but aggregated payroll and withholding tax information is not protected

Section 70. – Page 45-46

- Adds "Lee" county as part of the Seagrove area, recently designated as the official location of the birthplace of NC traditional pottery

Section 71. – Page 46

- Corrects a reference to the Office of Information Technology Services.

Section 72. – Page 46

- Amends the law concerning information technology procurement to require that a vendor submitting a bid disclose where services will be performed under the contract sought and indicate whether any such services are expected to be performed outside the US. The State Chief Information Officer is to make an annual report to the Secretary of Administration on the number of contracts expected to be performed outside the US. This section becomes effective October 1,2005 and applies to bids submitted on or after that date.

Section 73. – Page 46-47

- Corrects a cross-reference in a statute concerning criminal history record checks of employees.

Section 74. – Page 47

- Makes technical correction to the law concerning public auctions conducted electronically, makes clear that publication of notice by electronic means applies to "auctions" rather than "contracts".

Section 75. – Page 47

- Authorizes a city to adopt and enforce a stormwater control ordinance; a city's ordinance must be at least as strong as what the State requires.

Section 75.5. – Page

- Requires the State to participate in the federal 2010 Census Redistricting Data Program so that the State will receive 2010 census date by voting precinct and be able to revise districts at all levels without splitting precincts. The Legislative Services Commission is authorized to promulgate rules to implement the provision.

Section 76. – Pages 47-50

- Makes several amendments to Senate Bill 233 (Public Confidence in Elections), should that bill be enacted. Concerning voting systems acquired or upgraded prior to August 1, 2005, exempts a county from having to comply with the requirement that a vendor quote a statewide uniform price for each unit of the equipment. If the county cannot demonstrate to the State Board of Elections that the voting system is in compliance with other applicable requirements the county board cannot use the system in an election during or after 2006, and will be subject to all applicable purchasing requirements. Makes clear that new hand-to-eye sample count provisions do not have to include all one-stop sites. Makes civil and criminal penalties effective December 1 and applicable to offenses occurring on or after that date.

Section 77. – Pages 50-51

- Restores to the Asheville City School Board Charter a provision that required members of the Board to reside within the City of Asheville taxing district. The provision was apparently erroneously deleted in the 2004 Technical Corrections Act (Section 42) in an amendment intended to modernize the Charter by deleting some older and outdated language and to allow Board members to receive reimbursement for expenses.

Section 78. – Page 51

- Amends Chapter 273 of the 1983 Session Laws, as amended by Section 127 of Chapter 1034 of the 1983 Session Laws, to clarify the use of the one-cent local sales and use tax in Burke County.

Section 79. – Page 51

- Repeals a 1991 law related to construction of a Student Activities Center at UNC-Charlotte, which provides that until the debt incurred for the Student Activities Center has been retired, the total required fees at the University of North Carolina at Charlotte may not exceed the average required fees for all of the constituent institutions of The University of North Carolina.

Section 80 – Pages 51-52

- Rewrites the law concerning adult care home bed vacancies to require that persons granted certain exemptions for the construction of a new building may proceed to develop the beds and obtain a license for the operation of the beds if applicable conditions are met. Extends from December 1, 2005 until June 30, 2006 the date by which the person granted the exemption must submit to DHHS a copy of the certificate of occupancy from the building inspector for the facility.

Section 81. – Page 52

- Makes act to modify the occupancy tax for Pasquotank County and Elizabeth City effective July 1, 2005 rather than April 26, 2005 when it became law.

Sections 82 & 83 – Page 52

- Both sections make technical changes to correct prefatory language in acts passed in the 2005 Session.

Section 84. – Page 52-53

- Amends the law authorizing the Orange County Board of Elections to conduct a pilot program in Chapel Hill Township in which the methods used in one-stop voting would continue on election day. If the pilot includes a polling place that had been a satellite voting place in 2004, the Board may provide in its Plan of Implementation that only voters assigned to the satellite voting place may vote at that voting center. If no elections are conducted under the pilot in 2005, then elections in both 2006 and 2007 may be held under the pilot program.

Section 85. – Page 53

- Makes the following amendments to the 2005 Appropriations Act (SB622):
  - Requires the NC Board of Science and Technology to report biennially on the status of trends that reflect the impact of education on economic growth for the 21st century. The reports, which are to contain information on the status of each county, will be made to the 2007 General Assembly and biennially thereafter.
  - Requires the Office of State Budget and Management to conduct a study to determine the best methods to collect, manage, and provide access to infrastructures needed for economic viability of communities. The results of the study, including any recommended legislation, are to be reported to the 2006 Regular Session

Section 87. – Page 53

- Makes the following amendments to the 2005 Appropriations Act (SB622) the use of medication aides in the public schools:
  - (a) Directs the Dept of Health & Human Services, DPI, and representatives of local school administrative units to examine existing policies and make recommendations regarding the use of medication aides in the public schools. The Secretary of Health & Human Services and the Chair of the State Board of Education are directed to convene a task force that will develop recommendations by April 1, 2006.
  - (b) Eliminates a proposed statutory change to the powers and duties of local boards of education with regard to the utilization of unlicensed health care personnel to perform the technical aspects of medication administration to students.

Section 88. – Pages 54

- Amends the 2005 Appropriations Act (SB622) concerning the exclusion of life estates in determining a person's eligibility for Medical Assistance.

Section 89. – Page 54-55

- Amends the 2005 Appropriations Act (SB622) concerning members of the Post-Release Supervision and Parole Commission to provide that the terms of the members of the Commission serving on August 31, 2005 (was June 30, 2005) will expire on that date, and to restructure the commission to consist of one full-time member and two half-time members effective September 1, 2005 (was August 1, 2005). Specifies that half-time members of the Commission will not be subject to certain provisions concerning the suspension of retirement allowance for persons who are 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. Makes the provisions effective September 1, 2005 rather than June 30, 2005.

Section 90. – Page 55

- Amends the 2005 Appropriations Act (SB622), which authorized the Department of Transportation to implement up to two performance-based contracts for routine maintenance and operations. Provides that DOT may require bonds issued for public construction under those contracts to be provided on a periodic basis and in the amount to cover that specific period rather than for the entire project duration.

Section 91. – Pages 55-56

- Makes several changes that would be effective if the State Lottery Act proposed in House Bill 1023 of the 2005 Session becomes law:
  - (a) Provisions relating to the taxing of income from gambling activities would be effective for taxable years beginning on or after January 1, 2005.
  - (b) Requires that the Lottery Commission deduct and withhold State income tax from winnings of $600 or more.
  - (c) Clarifies authority of Department of Justice to charge for conducting criminal history record checks for Lottery Commission and its Director.
  - (d) Requires the State Education Assistance Authority to report annually to the Joint Legislative Commission on Governmental Operations regarding the use of allocated funds.

Section 92. – Page 56

- Makes technical change to correct prefatory language in a 2005 act.

Section 93. – Page 56-57

- If House Bill 128 of the 2005 Session (Election Law Changes) becomes law, clarifies a provision concerning when a financial institution may make a loan to a candidate or political committee. Specifies that if a loan is unsecured, only the candidate and the candidate's spouse may be liable for the loan. Makes the provision effective January 1, 2006 and applicable to loans made on or after that date.

Section 94. – Page 58

- If House Bill 328 of the 2005 Session (Omnibus Local Law) becomes law, the provision authorizing the Town of Matthews to adopt ordinances to regulate the planting, removal, and preservation of trees on public and private property within the municipality is repealed. Authorizes the Town of Matthews to adopt ordinances, only after holding public hearings, to regulate the removal of trees from public and private property.

Section 95. – Page 58

- Retains the distinction between malt beverages and unfortified and fortified wine.

Section 96. – Page 58-59

- If House Bill 646 of the 2005 Session (Insurance Company Fee Consolidation) becomes law, the provisions concerning Insurance Fees become effective October 1, 2005 rather than January 1, 2006 and apply to application filed, licenses issued, and licenses continued on or after that date.

Section 97. – Page 59

- If House Bill 1375 of the 2005 Session (Child Support Reforms) becomes law, changes to G.S. 50-13.9 concerning procedure to insure payment of child support would become effect January 1, 2007 rather than June 1, 2007.

Section 98– Page 59

- Repeals a duplicate provision concerning wine wholesalers. The identical provision was contained in both House Bill 1389 and House Bill 1500.

Section 99. – Page 59

- Makes clarifying change to newly enacted statute concerning exploitation of an elder or disabled adult.

Section 100. – Page 59

- Clarifies a provision concerning the ABC Commission's authority to issue a special occasion permit to sports facilities occupied by a major league professional sports team, with suites available for sale or lease to patrons. The

permit may be issued to a mixed beverage permittee, and authorizes the permit holder to provide mixed beverage tax paid spirituous liquor for resale by the container in approved sizes to the host or patron of the suite.

Section 101. – Page 59-60

- Provides that a licensed health care facility in operation on July 1, 2005 developed under a certificate of need issued by DHHS prior to that date may remain in operation until the disposition of any appeals of the Department's decision awarding the certificate of need. If the final disposition, is to reverse the Department's decision awarding the certificate, the facility may remain in operation for such time as is necessary to apply for a new certificate of need - including pendency of the Department's review of that application and any subsequent appeals.

Section 102. – Page 60

- Directs the Department of Labor to adopt rules in connection with its requirements regarding fall protection for tower climbers to specifically address employer provided rescue procedures and third party provided rescue procedures as specified in this section. This addresses concerns raised by the National Association of Tower Erectors (NATE), which contends the existing rule adopted in 2004 concerning Fall Protection Standards for the communication and broadcast tower erection/maintenance industry in this State endangers workers and is not consistent with safety procedures. The Department is authorized to adopt temporary rules within 270 days of the effective date.

EFFECTIVE DATE: Except as specified, effective when it becomes law.

H0327e2-SMRV-CS

State of North Carolina
General Statutes Commission
9001 Mail Service Center
RALEIGH, NORTH CAROLINA
27699-9001

MEMORANDUM

TO: Senate Judiciary I Committee

FROM: General Statutes Commission

DATE: August 22, 2005

RE: House Bill 327 (2005 Technical Corrections Act)

General Comments

Part I of the proposed committee substitute for this bill contains corrections of a technical nature to the General Statutes that are recommended by the General Statutes Commission. These amendments correct typographical, grammatical, redlining, punctuation, and other obvious drafting errors, repeal obsolete provisions, conform terminology, update or correct statutory references and official titles, update archaic drafting language, provide for gender neutral terminology, renumber a section of the General Statutes to conform to the section numbers currently used, codify a previously uncodified provision that is both general and permanent, and correct a 45-year-old codification error.

Specific Comments

Section 1. This section amends G.S. 7A-775(a)(4) and G.S. 143B-168.12(c) to update a statutory reference from G.S. 143-6.1 to G.S. 143-6.2. G.S. 143-6.1 was repealed and replaced with G.S. 143-6.2 by S.L. 2004-196.

Section 2. This section corrects a grammatical error in G.S. 14-226(b). Structurally, subsection (b) reads, "A defendant . . . shall be *a* violation of this section." (italics added for emphasis). Because a defendant is not a violation, the wording should have been, "A defendant . . . shall be *in* violation of this section."

Section 3. This section amends G.S. 14-309.15(a) to codify Section 2 of Chapter 219 of the 1993 Session Laws. Chapter 219 amended G.S. 14-309.15 and, in an uncodified provision in Section 2, clarified that it applies to government entities within the State. The provision should be codified because it is general and permanent.

Section 4. This section amends G.S. 14-404(a) to correct the punctuation. At minimum, there should be a comma after "nonresident."

Section 5. This section makes three amendments to G.S. 14-407.1.

First, it removes a reference to former G.S. 14-407, which was repealed by S.L. 1997-6.

Second, it makes a reference to "his" ("his services") gender neutral.

Third, it corrects a 45-year-old codification error by changing the existing references to "clerk" and "clerk of superior court" to refer to "sheriff".

In 1959, the General Assembly enacted Chapter 1068 of the 1959 Session Laws, which added to former Article 53 of Chapter 14 of the General Statutes (Sale of Weapons) a new statute requiring permits for the sale of blank cartridge pistols. Chapter 1068 was effective on June 17, 1959. Effective July 1, 1959, in Chapter 1073 of the 1959 Session Laws, the General Assembly further amended Article 53 to transfer responsibility for the issuance of weapons permits from the clerks of court to the sheriffs. Chapter 1073 in essence directed that the terms "clerk" and "clerk of superior court" be replaced by "sheriff" throughout Article 53. The change was not statewide, however; Chapter 1073 also contained a long list of counties that were excepted from its application. The result was two articles that differed only in the identity of the official that issued the permit, with the revised article applying to a majority of counties and the original article applying to the rest. The then-codifier left Article 53 as it was and codified the revised article as Article 52A (this procedure is standard, and both articles remained in the General Statutes until Article 53 was repealed in 1995 as a result of the federal Brady handgun law). The then-codifier correctly included the new statute enacted by Chapter 1068 in both Article 53 and the new Article 52A, where it appears as G.S. 14-407.1, but the substitution from "clerk" and "clerk of court" to "sheriff" that was directed by Chapter 1073 was not made in G.S. 14-407.1. The substitution should have been made because Article 53 already contained the new section enacted by Chapter 1068 when Chapter 1073 became effective. The failure to make the substitution was an error that has continued to the present day. The current Codifier of Statutes is reluctant to direct correction of the error after the lapse of 45 years. She reported the problem to the General Statutes Commission, which decided to recommend correction in this bill. As far as the Commission can determine, to the extent these permits are still being issued, they are apparently being issued by the sheriffs.

Section 6. This section amends G.S. 20-158(b)(2) to eliminate "garbage language" created due to conflicts in the redlining of the two acts that amended G.S. 20-158 last year and to standardize terminology in G.S. 20-158(b).

G.S. 20-158(b) was amended by both S.L. 2004-141 and S.L. 2004-171. The former changed references to "steady or strobe beam" "stoplights" to "steady-beam" "traffic lights" and references to "passing straight through" an intersection to "approaching" an intersection. The latter rewrote subdivision (b)(2) by dividing it into two subsubdivisions and adding explicit

language requiring drivers turning right on a red light to yield the right of way to pedestrians. Although there was no conflict between the goals of each act, the redlining in the latter act conflicted with the redlining in the former. This section resolves the conflict and effectuates the intent of both acts.

Section 7. This section amends G.S. 58-31-66(b) to eliminate the left-over word "because." S.L. 2004-203, s. 74(b), was intended to repeal G.S. 58-31-66(b) and (c) by lining them out. For some reasons, however, the line striking through the word "because" in subsection (b) was inadvertently converted to underlining, thus adding the word back into the law.

Section 8. This section repeals G.S. 66-58(b)(13a), which is obsolete. The General Assembly eliminated the State Farms Operating Commission in Chapter 500, s. 107(a), of the 1989 Session Laws. State-owned farms are now managed by the Department of Agriculture and Consumer Affairs for research purposes. The Department has informed the General Statutes Commission that nothing needs to be substituted for the State Farms Operating Commission in this subdivision and that a simple repeal is the appropriate correction.

Section 9. This section amends G.S. 95-265(a)(2)b. to make a grammatical correction. The phrase "would like occur" should be "would likely occur."

Section 10. This section amends G.S. 120-231(b) to eliminate "garbage language" that resulted from redlining conflicts. S.L. 2004-129 amended G.S. 120-231(b) twice (in ss. 7A(c) and 36) in conflicting ways, resulting in an extra reference to "Office of Information Technology Services."

Section 11. This section amends G.S. 126-5(e) to update the citation to "subsection (c)(1) above" to read "G.S. 126-1.1." Chapter 141 of the 1995 Session Laws rewrote G.S. 126-5(c)(1) and enacted a new G.S. 126-1.1 that covers the subject matter previously covered by G.S. 126-5(c)(1). Chapter 141, however, failed to make a conforming change to G.S. 126-5(e). This section makes that change.

Section 12. This section amends G.S. 126-14.4(g) to correct what appears to be an obvious drafting error.

G.S. 126-14.4 was enacted by S.L. 1997-520 as part of a set of statutes intended to limit political hiring. G.S. 126-14.2, enacted by that act, requires that in selecting a person for a job, State departments, agencies, and institutions must choose from the pool of the most qualified persons for the position. G.S. 126-14.4 provides that if the State Personnel Commission finds that G.S. 126-14.2 was violated and the chosen applicant was in fact not among the most qualified persons for the job but was selected because of political affiliation or influence, the State Personnel Commission can declare the job vacant and either direct selection from the most qualified initial applicants or direct that the vacancy be reposted. Subsection (g) of G.S. 126-14.4 is intended to provide protection for a career state employee in an exempt managerial position whose job is declared vacant under this statute. As set out in more detail in subsection (g), if the employee has less than 10 years' service, the person must be given priority

consideration in future hiring; if the employee has 10 or more years of service, the person must be provided with another job.

However, in describing the position in which a "bumped" employee must either be actually placed or given priority consideration, subsection (g) assumes that this person was promoted when he or she was improperly given the exempt managerial position. This assumption is not actually always the case; the move may in fact be a lateral transfer. There appears no reason to afford protection to persons who were improperly promoted into an exempt managerial position while providing no protection at all to persons who make a lateral move. The amendment in this section deletes the reference to "the promotion" and replaces it with a reference to "being placed in the exempt managerial position."

Section 13. This section amends G.S. 126-15.1 to make a conforming change similar to the one in Section 11. The time periods formerly found in G.S. 126-5(c) were removed to a newly-enacted G.S. 126-1.1 by Chapter 141 of the 1995 Session Laws, so the reference in G.S. 126-15.1 to G.S. 126-5(c) should now be a reference to G.S. 126-1.1.

Section 14. This section recodifies G.S. 135-4A as G.S. 135-4.1. G.S. 135-4A is not a proper G.S. section number.

Section 15. This section deletes duplicated phrases in the introductory language of G.S. 143B-405. The duplication was created when S.L. 2001-344, s. 1, amended G.S. 143B-405 by inserting new introductory language while failing to delete the preexisting introductory language.

Section 16. This section amends G.S. 153A-129 to update a citation. Subchapter III of Chapter 113, which formerly governed hunting and fishing, was repealed by Session Laws 1979, Chapter 830, and replaced with Subchapter IV of Chapter 113 as part of a revision and consolidation of the statutes relating to the conservation of wildlife resources. This section replaces the reference to "Subchapter III" with a reference to "Subchapter IV."

Section 17. This section amends three different subsections of G.S. 160A-37.

Subsection (a) amends G.S. 160A-37(f1) to correct redlining errors from S.L. 2001-487, s. 36. In amending G.S. 160A-37(f1), S.L. 2001-487, s. 36, simply dropped the words "Land that" at the beginning of subdivisions (f1)(1) and (2) instead of showing them as stricken through and added the language in brackets in subdivision (f1)(2) without underlining it.

Subsection (b) amends G.S. 160A-37(f2) to correct the punctuation at the end of the introductory language. The period should have been a semicolon.

Subsection (c) amends G.S. 160A-37(h) to update the language of one citation and a typographical error in another. "G.S. 160A-37(e)" is another subsection in G.S. 160A-37, and modern drafting practice is to describe it as "subsection (e) of this section." The reference to "G.S. 160A-35(3)c." is incorrect and should be a reference to "G.S. 160A-35(3)b."

Section 18. This section amends G.S. 160A-49(f2) to correct a typographical error. "G.S. 105-227.4" should be "G.S. 105-277.4."

Section 19. This section amends G.S. 160A-215(g) to place "Jonesville" in proper alphabetical order.

Section 20. This section amends G.S. 163-128 to update the title "Secretary Director" of the State Board of Elections to the current title, "Executive Director."

Section 21. This section amends G.S. 163-296 to insert two words that were inadvertently not included when G.S. 163-296 was amended last year by S.L. 2004-127, s. 8(b). In the process of inserting new language, the word "Elections" in the name of the State Board of Elections in the first sentence was not underlined as it should have been. In addition, further on in that sentence, the phrase "general election" should read, "general municipal election." This section inserts the missing words.

Section 22. This section contains three related amendments. S.L. 2004-124, s. 18.2, repealed the North Carolina State Boxing Commission and transferred its functions to the Alcohol Law Enforcement Division of the Department of Crime Control and Public Safety. Subsection 18.2(e) directed that the word "Commission" be replaced throughout Article 68 of Chapter 143 of the General Statutes (the article regulating boxing). The directive could not be properly implemented in two places, and this section corrects the problems in those places.

First, subsections (a) and (b) update the name of the revenue account to which the fees collected under Article 68 are credited. G.S. 143-655 contains references to the "State Boxing Commission Revenue Account." Section 18.2(e)'s directive to substitute "Division" for "Commission" has not been implemented in this statute because the result would be plainly incorrect (there is no "State Boxing Division"). Subsection (a) amends Section 18.2(e) to except G.S. 143-655 from its application. Subsection (b) in turn updates the name of the account to "State Boxing Revenue Account," which is the name the General Statutes Commission is informed is currently being used for this account.

Second, subsection (c) completes the substitution of "Division" for "Commission" in G.S. 143-651(23b), the definition of "sanctioned amateur match." This definition contained a reference to the "North Carolina Boxing Commission" rather than simply referring to "Commission." The extra words are not covered by Section 18.2(e)'s general directive, and subsection (c) deletes them.

Section 23. This section amends Section 15 of S.L. 2004-127 to correct a typographical error. Section 15 states that it amends "G.S. 163-278(9)" (which does not exist). The text set out is that of G.S. 163-278.6(9), which was the intended reference.

Section 24. This section amends Section 27(e) of S.L. 2004-199 to correct a typographical error. Section 27(e) states that it amends "G.S. 106-577" but sets out the text of G.S. 106-557, which was the intended reference.

Section 25. This section repeals an unnecessary and potentially confusing section of S.L. 2004-203 (the 2003 technical corrections bill, which was not enacted until 2004). Section 44 of S.L. 2004-203 purported to delete a sentence from G.S. 115C-84.2(d). There is no such sentence in subsection (d), although the sentence appears in G.S. 115C-84.2(a). According to information from the General Assembly's staff, Section 44 was included in S.L. 2004-203 in error because of a report to the staff that the sentence from subsection (a) was incorrectly duplicated in subsection (d) (the section may have been misprinted at some point in some publication). Because the sentence appears in subsection (a), and there was no intention to delete the sentence from that subsection, the General Statutes Commission agreed to recommend that Section 44 be repealed to eliminate any possible confusion over what was intended.

Section 26. This section repeals a provision in S.L. 2004-203 (the 2003 technical corrections bill, which was not enacted until 2004) that was obsolete when it was enacted.

In 2002, the General Assembly enacted S.L. 2002-96, which, as enacted, created a § 47-113.1, applicable only to Craven, Nash, and Pamlico Counties, that allowed the registers of deeds of those counties to remove military discharge papers from their files on application of specific persons. These documents can be filed with the registers of deeds as a backup safety measure in the event the federal repository for these records is destroyed or the repository otherwise loses the records. The records, however, include personal information that the subject may no longer wish to have on the public record. S.L. 2002-96 as enacted was effective when it became law (August 28, 2002). After S.L. 2002-96 was enacted, the General Assembly amended it in S.L. 2002-162, s. 1.1, which made S.L. 2002-96 apply statewide by removing its limitation to Craven, Nash, and Pamlico Counties, and S.L. 2002-159, s. 61.5, which altered S.L. 2002-96's effective date so that it was effective for counties other than Craven, Nash, and Pamlico on July 1, 2003.

In 2003, the General Assembly repealed G.S. 47-113.1 and replaced it with G.S. 47-113.2, effective January 1, 2004. The technical corrections bill for 2003 was amended during the 2003 session to add a section repealing S.L. 2002-162, s. 1.1, and S.L. 2002-159, s. 61.5, in order to return S.L. 2002-96 to the status of a local act applying only to Craven, Nash, and Pamlico Counties that would continue in effect until the repeal of G.S. 47-113.1 on January 1, 2004. However, the technical amendments bill from 2003 was not enacted until 2004 (S.L. 2004-203, effective August 17, 2004). The section that repealed S.L. 2002-162, s. 1.1, and S.L. 2002-159, s. 61.5, was inadvertently retained as Section 68(a) and (b) of the act, although Section 68 had become obsolete by that time. Because the enactment of Section 68 at a time when it was ineffective to serve its original purpose could raise a question as to the General Assembly's intent and allow a possible argument that the General Assembly intended to recreate G.S. 47-113.1 for Craven, Nash, and Pamlico Counties, the General Statutes Commission agreed to recommend that Section 68 be repealed.

Section 27. This section inserts missing language in the introductory language to S.L. 2005-5. "Section 2 of the 1985 Session Laws" should read, "Section 2 of Chapter 292 of the 1985 Session Laws."

The sections in Part I are effective when the act becomes law.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. H327-CSRU-83

H. B. No. 327 DATE 8-22-05

S. B. No. _____ Amendment No. # 1
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
) Berger
Sen.)

1 moves to amend the bill on page 24, lines 4-8

2 ( ) WHICH CHANGES THE TITLE

3 by restoring the stricken language

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SIGNED

ADOPTED X FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. H 327-CSRU-83

H. B. No. _____ DATE 8-22-05

S. B. No. 327 Amendment No. #2
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
) Nesbitt
Sen.)

moves to amend the bill on page 25, line 8-22

( ) WHICH CHANGES THE TITLE

by deleting those lines in their entirety

SIGNED Martha Nesbitt

ADOPTED _____ FAILED X V TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. H327-CSRH-83

H. B. No. _____ DATE 8-22-05

S. B. No. _____ Amendment No. 3
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
) Presnell
Sen.)

1 moves to amend the bill on page 25, line 23-30

2 ( ) WHICH CHANGES THE TITLE

3 by deleting those lines in their entirety

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SIGNED Keith Presnell

ADOPTED ✓ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. H327-CSRU-83

H. B. No. 327 DATE 8-22-05

S. B. No. _____ Amendment No. 4
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
) Cowell
Sen.)

moves to amend the bill on page 28, line 23-31

( ) WHICH CHANGES THE TITLE

by deleting those lines in their entirety

SIGNED _____

ADOPTED ✓ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. H327-CSRU-83

H. B. No. 327 DATE 8-22-05

S. B. No. _____ Amendment No. 5
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.) Hoyle
)
Sen.)

moves to amend the bill on page 30, line 11

( ) WHICH CHANGES THE TITLE

by deleting the word "an" and substituting "the"

SIGNED _____

ADOPTED ✓ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. H327-CSRU-83

H. B. No. 327 DATE 8-22-05

S. B. No. _____ Amendment No. 10
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.) Rand
) _____
Sen.)

1 moves to amend the bill on page 34, lines 40-44
2 ( ) WHICH CHANGES THE TITLE through page 35, lines 1-10
3 by _____
4 by deleting those lines in their entirety.
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SIGNED Tom Rand

ADOPTED ✓ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. H327-CSRU-83

H. B. No. 327 DATE 8-22-05

S. B. No. _____ Amendment No. #87
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
) Stevens
Sen.)

moves to amend the bill on page 38, lines 24-42

( ) WHICH CHANGES THE TITLE

by deleting those lines in their entirety.

SIGNED _____

ADOPTED _____ FAILED X TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. H327-CSRU-83

H. B. No. 327 DATE 8-22-05

S. B. No. _____ Amendment No. #8
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.) Sen.) Rand

1 moves to amend the bill on page 38, line 30

2 ( ) WHICH CHANGES THE TITLE

3 by deleting "appropriate" and substituting

4 "approved"

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SIGNED Tony Rand

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PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. H327-CSRU-83

H. B. No. 327 DATE 8-22-05

S. B. No. _____ Amendment No. #9
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
) Lucas
Sen.)

1 moves to amend the bill on page 54, line 3
2 ( ) WHICH CHANGES THE TITLE
3 by deleting that line
4 AND RENUMBER SUBSECTION 87(a) TO 87
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SIGNED Jeanne Lucas

ADOPTED ✓ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. H327-CSRU-83

H. B. No. 327 DATE 8-22-05

S. B. No. _____ Amendment No. 10
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
) Nesbitt
Sen.)

moves to amend the bill on page 60, line 5-26

( ) WHICH CHANGES THE TITLE

by deleting those lines in their entirety

(substituted by amendment #11)

SIGNED Martin Nesbitt

SUBSTITUTED BY #11

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. H327-CSRY-83

H. B. No. 327 DATE 8-22-05

S. B. No. _____ Amendment No. 11
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
) Hoyle
Sen.)

1 moves to amend the bill on page 60, line 13
2 ( ) WHICH CHANGES THE TITLE
3 by deleting "one year" and substituting
4 "nine months"
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SIGNED _____

ADOPTED ✓ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 327

AMENDMENT NO. 12
(to be filled in by
Principal Clerk)

S327-ARY-2 [v.1]

Date 8-92 ,2005

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

Senator Hoyle

moves to amend the bill on page , lines through by inserting the following:

"**SECTION** . If House Bill 99, 2005 Regular Session, becomes law then G.S. 97-25.6, as enacted by Section 6.1 of that act, reads as rewritten:

'**§ 97 25.6. Reasonable access to medical information.**

Notwithstanding the provisions of G.S. 8-53, any law relating to the privacy of medical records or information, and the prohibition against ex parte communications at common law, an employer or insurer paying medical compensation to a provider rendering treatment under this Article may obtain records of the treatment without the express authorization of the employee. In addition, with written notice to the employee, the employer or insurer may obtain directly from a medical provider medical records of evaluation or treatment restricted to a current injury or current condition for which an employee is claiming compensation from that employer under this Article.

Any medical records or reports, restricted to conditions related to the injury or illness for which the employee is seeking compensation, in the possession of the employee shall be furnished by the employee to the employer when requested in writing by the employer.

An employer or insurer paying compensation for an admitted claim or paying without prejudice pursuant to G.S. 97 18(d) may communicate with an employee's medical provider in writing, limited to specific questions promulgated by the Commission, to determine, among other information, the diagnosis for the employee's condition, the reasonable and necessary treatment, the anticipated time that the employee will be out of work, the relationship, if any, of the employee's condition to the employment, the restrictions from the condition, the kind of work for which the employee may be eligible, the anticipated time the employee will be restricted, and the

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 327

AMENDMENT NO. 12
(to be filled in by Principal Clerk)

S327-ARY-2 [v.1]

permanent impairment, if any, as a result of the condition. When these questions are used, a copy of the written communication shall be provided to the employee at the same time and by the same means as the communication is provided to the provider.

Other forms of communication with a medical provider may be authorized by (i) a valid written authorization voluntarily given and signed by the employee, (ii) by agreement of the parties, or (iii) by order of the Commission issued upon a showing that the information sought is necessary for the administration of the employee's claim and is not otherwise reasonably obtainable under this section or through other provisions for discovery authorized by the Commission's rules. In adopting rules or authorizing employer communications with medical providers, the Commission shall protect the employee's right to a confidential physician patient relationship while facilitating the release of information necessary to the administration of the employee's claim.

Upon motion by an employee or provider from whom medical records or reports are sought or upon its own motion, for good cause shown, the Commission may make any order which justice requires to protect an employee or other person from unreasonable annoyance, embarrassment, oppression, or undue burden or expense.

A health care provider may charge reasonable fees in accordance with G.S. 97-26.1 for services caused by this section subject to the approval of the Commission'"

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED X FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 327

AMENDMENT NO. #13
(to be filled in by
Principal Clerk)

S327-ARG-12 [v.3]

Date 8-22 ,2005

Comm. Sub. [YES]
Amends Title [NO]
Third Edition

Senator _____

moves to amend the bill on page , lines through by inserting the following:

"**SECTION** . If House Bill 99, 2005 Regular Session, becomes law then G.S. 97-18, as enacted by Section 4 of that act, reads as rewritten:

'**§ 97 18. Prompt payment of compensation required; installments; payment without prejudice; notice to Commission; penalties.**

(a) Compensation under this Article shall be paid periodically, promptly and directly to the person entitled thereto unless otherwise specifically provided.

(b) When the employer or insurer admits the employee's right to compensation, the first installment of compensation payable by the employer shall become due on the fourteenth day after the employer has written or actual notice of the injury or death, on which date all compensation then due shall be paid. Compensation thereafter shall be paid in installments weekly except where the Commission determines that payment in installments should be made monthly or at some other period. Upon paying the first installment of compensation and upon suspending, reinstating, changing, or modifying such compensation for any cause, the insurer shall immediately notify the Commission, on a form prescribed by the Commission, that compensation has begun, or has been suspended, reinstated, changed, or modified. A copy of each notice shall be provided to the employee. The first notice of payment to the Commission shall contain the date and nature of the injury, the average weekly wages of the employee, the weekly compensation rate, the date the disability resulting from the injury began, and the date compensation commenced.

(c) If the employer or insurer denies the employee's right to compensation, the employer or insurer shall notify the Commission, on or before the fourteenth day after it has written or actual notice of the injury or death, or within such reasonable

additional time as the Commission may allow, and advise the employee in writing of its refusal to pay compensation on a form prescribed by the Commission. This notification shall (i) include the name of the employee, the name of the employer, the date of the alleged injury or death, the insurer on the risk, if any, and a detailed statement of the grounds upon which the right to compensation is denied, and (ii) advise the employee of the employee's right to request a hearing pursuant to G.S. 97 83. If the employer or insurer, in good faith, is without sufficient information to admit the employee's right to compensation, the employer or insurer may deny the employee's right to compensation.

(d) In any claim for compensation in which the employer or insurer is uncertain on reasonable grounds whether the claim is compensable or whether it has liability for the claim under this Article, the employer or insurer may ~~deny the claim in good faith or~~ initiate compensation payments without prejudice and without admitting liability. The initial payment shall be accompanied by a form prescribed by and filed with the Commission, stating that the payments are being made without prejudice. Payments made pursuant to this subsection may continue until the employer or insurer contests or accepts liability for the claim or 90 days from the date the employer has written or actual notice of the injury or death, whichever occurs first, unless an extension is granted pursuant to this section. Prior to the expiration of the 90 day period, the employer or insurer may upon reasonable grounds apply to the Commission for an extension of not more than 30 days. The initiation of payment does not affect the right of the employer or insurer to continue to investigate or deny the compensability of the claim or its liability therefor during this period. If at any time during the 90 day period or extension thereof, the employer or insurer contests the compensability of the claim or its liability therefor, it may suspend payment of compensation and shall promptly notify the Commission and the employee on a form prescribed by the Commission. The employer or insurer must provide on the prescribed form a detailed statement of its grounds for denying compensability of the claim or its liability therefor. If the employer or insurer does not contest the compensability of the claim or its liability therefor within 90 days from the date it first has written or actual notice of the injury or death, or within such additional period as may be granted by the Commission, it waives the right to contest the compensability of and its liability for the claim under this Article. However, the employer or insurer may contest the compensability of or its liability for the claim after the 90 day period or extension thereof when it can show that material evidence was

discovered after that period that could not have been reasonably discovered earlier, in which event the employer or insurer may terminate or suspend compensation subject to the provisions of G.S. 97 18.1.

(e) The first installment of compensation payable under the terms of an award by the Commission, or under the terms of a judgment of the court upon an appeal from such an award, shall become due 10 days from the day following expiration of the time for appeal from the award or judgment or the day after notice waiving the right of appeal by all parties has been received by the Commission, whichever is sooner. Thereafter compensation shall be paid in installments weekly, except where the Commission determines that payment in installments shall be made monthly or in some other manner.

(f) The employer's or insurer's grounds for contesting the employee's claim or its liability therefor as specified in the notice suspending compensation under subsection (d) of this section are the only bases for the employer's or insurer's defense on the issue of compensability in a subsequent proceeding, unless the defense is based on newly discovered material evidence that could not reasonably have been discovered prior to the notice suspending compensation.

(g) If any installment of compensation is not paid within 14 days after it becomes due, there shall be added to such unpaid installment an amount equal to ten per centum (10%) thereof, which shall be paid at the same time as, but in addition to, such installment, unless such nonpayment is excused by the Commission after a showing by the employer that owing to conditions over which he had no control such installment could not be paid within the period prescribed for the payment.

(h) Within 16 days after final payment of compensation has been made, the employer or insurer shall send to the Commission and the employee a notice, in accordance with a form prescribed by the Commission, stating that such final payment has been made, the total amount of compensation paid, the name of the employee and of any other person to whom compensation has been paid, the date of the injury or death, and the date to which compensation has been paid. If the employer or insurer fails to so notify the Commission or the employee within such time, the Commission shall assess against such employer or insurer a civil penalty in the amount of twenty five dollars ($25.00). The clear proceeds of civil penalties assessed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C 457.2.

(i) If any bill for services rendered under G.S. 97 25 by any provider of health care is not paid within 60 days after it has been approved by the Commission and returned to the responsible party, or within 60 days after it was properly submitted, in accordance with the provisions of this Article, to an insurer or managed care organization responsible for direct reimbursement pursuant to G.S. 97 26(g), there shall be added to such unpaid bill an amount equal to ten per centum (10%) thereof, which shall be paid at the same time as, but in addition to, such medical bill, unless such late payment is excused by the Commission.

(j) The employer or insurer shall promptly investigate each injury reported or known to the employer and at the earliest practicable time shall admit or deny the employee's right to compensation or commence payment of compensation as provided in subsections (b), (c), or (d) of this section. When an employee files a claim for compensation with the Commission, the Commission may order reasonable sanctions against an employer or insurer which does not, within 30 days following notice from the Commission of the filing of a claim, or within such reasonable additional time as the Commission may allow, do one of the following:

(1) Notify the Commission and the employee in writing that it is admitting the employee's right to compensation and, if applicable, satisfy the requirements for payment of compensation under subsection (b) of this section.

(2) Notify the Commission and the employee that it denies the employee's right to compensation consistent with subsection (c) of this section.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 327

AMENDMENT NO. 13
(to be filled in by
Principal Clerk)

S327-ARG-12 [v.3]

(3) Initiate payments without prejudice and without liability and satisfy the requirements of subsection (d) of this section.

For purposes of this subsection, reasonable sanctions shall not prohibit the employer or insurer from contesting the compensability of or its liability for the claim.'"

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED X FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 327 - CSRV - 83 DATE 8-22-05

S. B. No. _____ Amendment No. #14
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.) RAND
Sen.)

moves to amend the bill on page 56, lines 32-33,

( ) WHICH CHANGES THE TITLE

by inserting between the lines the following section to read:

" SECTION 91.5. Section 45.1.(b) ~~reads as~~ of S.L. 2005-276 reads as rewritten:

" SECTION 45.1.(b) This section ~~is effective when it becomes law.~~ becomes effective March 1, 2006. "

SIGNED Tony Rand

ADOPTED X FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 327*

AMENDMENT NO. #15
(to be filled in by
Principal Clerk)

H327-ARH-54 [v.1]

Date 8-22 ,2005

Comm. Sub. [YES]
Amends Title [NO]
Second Edition

Senator Lucas

moves to amend the bill on page xx, lines xx, by inserting between the lines the following new section to read:

"**SECTION X.** Section 28.23(b) of S.L. 2005-276 is repealed.".

SIGNED Jeanne Lucas
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED X TABLED _____

Re: S. Lucas Amendment #15

LAW OFFICES OF KENNETH SPAULDING

2530 MERIDIAN PARKWAY, SUITE 300
DURHAM, NORTH CAROLINA 27713
TELEPHONE (919) 489-8900
TELEPHONE (919) 806-4622
FAX (919) 881-0095

August 18, 2005

Senator Daniel G. Clodfelter
100 N. Tryon Street
47th Floor
Charlotte, NC 28202-4003

Dear Senator Clodfelter:

As the N.C. Board of Transportation representative for Division 5, I wish to apprise you of a special provision (Special Provision 28.23 (b)) that surfaced in the Special Provisions section of recently passed conference report of the N.C. Budget. There was no public hearing, committee hearing or full legislative body debate or hearing on this special provision since it allegedly surfaced within twenty-four hours prior to the printing of said report.

I am bringing this matter to your attention due to the very negative impact that the inclusion of this road will have on our seven counties and their priority roads. None of the cities, counties, towns or their elected officials placed this road as a high priority to be included on the State T.I.P. for approval of funding.

In short, I wish to urge you to delete this special provision through your established vehicle for such action, the Technical Corrections Legislation.

The justification, I contend, for deletion is as follows:

1) The proponent has estimated the cost of the road to be $10 million.

2) The Capital Area Metropolitan Planning Organization and Kenneth Withrow, their Senior Transportation Planner, estimate the road to cost $37.5 million.

3) It has been alleged that the developer would donate his property as his portion of the private contribution to the State.

4) The difference, a minimum of $32.5 million, could very well be borne by the NC taxpayers for this alleged out of state developer's benefit.

5) This Extension would not qualify under the State Department of Transportation's Public-Private Policy due to the fact that all of the right of way for the extension will not be conveyed to the State.

6) A 30-acre farm lies in the path of the proposed extension. The owner, a Wake County farmer, refuses to give up his farm for this developer's Alexander Drive Extension right- of-way.

7) This provision undermines and circumvents the entire road building process of the State Department of Transportation and the Board of Transportation which is legislated to set road priorities.

8) All local governments in the 7 counties of Wake, Durham, Person, Granville, Vance, Warren and Franklin are being overruled and circumvented by this legislation since this road was not presented as a recommended priority in Division 5.

9) This last minute special provision was never discussed in committee or debated on the Senate or House floor.

10) This precedent for building legislative non-priority roads will be a never-ending occurrence if allowed under this provision.

In conclusion, we North Carolinians respect the hard work and wisdom of the N.C. General Assembly. Upon careful review, we are sure that you would agree that this is not the way to build roads in North Carolina.

I respectfully request your most serious consideration of this most important matter.

Yours sincerely,

Kenneth B. Spaulding
N.C. Board of Transportation
Division 5

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 327*

AMENDMENT NO. 16
(to be filled in by
Principal Clerk)

H327-ARH-57 [v.1]

Date 8-22 ,2005

Comm. Sub. [YES]
Amends Title [NO]
Second Edition

Senator Jenkins

moves to amend the bill on page ___, lines ___, by inserting between the lines the following new section to read:

"**SECTION .** Section 17.30 of S.L. 2005-276 reads as rewritten:

"**SECTION 17.30.** The Department of Correction ~~may~~ shall adjust the current contract for 100 female residential substance abuse treatment beds to guarantee a one hundred percent (100%) occupancy rate. The Department may use available funds for this contract adjustment if necessary. Any contract adjustments shall be effective as soon as practical but no later than October 1, 2005, and shall extend only through June 30, 2006."".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED X FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 237 DATE 8-22-05

S. B. No. _____ Amendment No. #17
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE H237-CSRU-83[v.3]

Rep.) RAND
Sen.)

1 moves to amend the bill on page 50, line 29
2 ( ) WHICH CHANGES THE TITLE
3 by
4 inserting after that line the following:
5
6 "Section 76.(e) If Senate Bill 228,
7 2005 Regular Session becomes law,
8 then Section 7 of that act is repealed;"
9
10 and on page 49, line 28, page 50, line 5,
11 and page 50, line 24, by deleting the term "233"
12 and substituting
13
14 the term "223".
15
16
17
18
19

SIGNED _____

ADOPTED X FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 327 DATE 8-22-05

S. B. No. _____ Amendment No. #18
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE H327-CSRU-83 [v.3]

Rep.) BERGER
Sen.)

moves to amend the bill on page 47, line 26

( ) WHICH CHANGES THE TITLE

by inserting after that line the following:

"Section 75.5.(a) If House Bill 915, 2005 Regular Session, becomes law, then Section 16 of that bill is repealed."

and on page 47 line 27

by deleting "75.5." and substituting "75.5.(b)".

SIGNED _____

ADOPTED X FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. H327-CSRU-83

H. B. No. 327 DATE 8-22-05

S. B. No. _____ Amendment No. #19
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.) Rand
) _____
Sen.)

moves to amend the bill on page 28, line 42 & 43
( ) WHICH CHANGES THE TITLE Page 29, lines 1-8
by deleting those lines in their entirety

SIGNED Tony Rand

ADOPTED X FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 327*

AMENDMENT NO. #20
(to be filled in by
Principal Clerk)

H327-ARH-58 [v.1]

Date 8-22 ,2005

Comm. Sub. [YES]
Amends Title [NO]
Second Edition

Senator Nesbitt

moves to amend the bill on page 59, line 38, through page 60, line 4, by rewriting the lines to read:

"**SECTION 101.** Section 10.40B of S.L. 2005-276 reads as rewritten:

"**SECTION 10.40B.(a)** Notwithstanding provisions to the contrary in Chapter 150B and Article 9 of Chapter 131E of the General Statutes, a licensed health care facility in operation on July 1, 2005, developed under a certificate of need issued by the Department of Health and Human Services prior to that ~~date and subsequently invalidated based on a procedural defect in the awarding of the certificate of need, may remain in operation for the purpose of applying for a new certificate of need in accordance with Article 9 of Chapter 131E of the General Statutes. The health care facility may remain in operation for the period pending the decision of the Department on the application for the new certificate of need.~~date, may remain in operation until the final disposition of any appeals, including remanded proceedings, of the Department's decision awarding the certificate of need. If the final disposition after exhaustion of all appeals and remanded proceedings is to reverse the Department's decision awarding the certificate of need, the health care facility may remain in operation for the time necessary to apply for a new certificate of need and during the pendency of the Department's review of that application and any subsequent appeals of the Department's final decision on that application.

SECTION 10.40B.(b) This section expires 30 days from the date of the Department's decision on the new certificate of need or adjournment sine die of the 2005 General Assembly, whichever occurs later."".

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 327*

AMENDMENT NO. 20
(to be filled in by
Principal Clerk)

H327-ARH-58 [v.1]

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED X FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 327 DATE 8-22-05

S. B. No. _____ Amendment No. #21
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE H327-CSRV-83

Rep.) RAND
Sen.)

moves to amend the bill on page _____, line _____

( ) WHICH CHANGES THE TITLE

by INSERTING BETWEEN THE LINES A NEW SECTION TO READ

SECTION ___. G.S. 58-36-65 (e) READS AS REWRITTEN:

"(e) RECORDS OF CONVICTIONS FOR MOVING VIOLATIONS TO BE CONSIDERED UNDER THIS SECTION ~~SHALL~~ MAY BE OBTAINED AT LEAST ANNUALLY FROM THE DIVISION OF MOTOR VEHICLES AND APPLIED BY THE BUREAU'S MEMBER COMPANIES IN ACCORDANCE WITH RULES TO BE ESTABLISHED BY THE BUREAU. "

SIGNED _____

ADOPTED X FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 327

Short Title:	NC State Bar Changes/Fees.	(Public)
Sponsors:	Senators Rand; Berger of Franklin, Boseman, Clodfelter, Hartsell, Horton, Kerr, Smith, Snow, Soles, Stevens, and Thomas.	
Referred to:	Judiciary I.	

March 3, 2005

A BILL TO BE ENTITLED

AN ACT TO MAKE CHANGES TO THE STATUTES REGARDING THE NORTH CAROLINA STATE BAR AND TO PROVIDE THE STATE BAR WITH EXPLICIT STATUTORY AUTHORITY TO IMPOSE FEES TO SUPPORT ITS WORK.

The General Assembly of North Carolina enacts:

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

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

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

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

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

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

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

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

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

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

(7) A fee in the amount of one hundred dollars ($100.00) for support of the General Court of Justice to be remitted to the State Treasurer.

(8) A fee in the amount of twenty-five dollars ($25.00) to be remitted to the Administrative Office of the Courts for transmission to the North Carolina State Bar to regulate the practice of out-of-state attorneys as provided in this section.

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

SECTION 2. G.S. 84-18.1(b) reads as rewritten:

"(b) Any district bar may from time to time by a majority vote of the members present at a duly called meeting prescribe an annual membership fee to be paid by its active members as a service charge to promote and maintain its administration, activities and programs. The fee shall be in addition to, but shall not exceed, the amount of the membership fee prescribed by G.S. 84-34 for active members of the North Carolina State Bar. The district bar may also charge a late fee, which shall not exceed thirty dollars ($30.00), for the failure to pay judicial district bar dues on time. The district bar shall mail a written notice to every active member of the district bar at least 30 days before any meeting at which an election is held to impose or increase mandatory district bar dues. Every active member of a district bar which has prescribed an annual membership fee shall keep its secretary-treasurer notified of his correct mailing address and shall pay the prescribed fee at the time and place set forth in the demand for payment mailed to him by its secretary-treasurer. The name of each active member of a district bar who is more than 12 full calendar months in arrears in the payment of any fee shall be furnished by the secretary-treasurer of the district bar to the Council. In the exercise of its powers as set forth in G.S. 84-23, the Council shall thereupon take disciplinary or other action with reference to the delinquent as it considers necessary and proper."

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

"(b) The disciplinary hearing commission of the North Carolina State Bar, or any ~~committee thereof,~~ committee of the disciplinary hearing commission, ~~is authorized to~~ may hold hearings in discipline, incapacity and disability matters, ~~to~~ make findings of fact and conclusions of law after ~~such~~ these hearings, ~~and to~~ enter orders necessary to carry out the duties delegated to it by the ~~council.~~ Council, and tax the costs to an attorney who is disciplined or is found to be incapacitated or disabled."

SECTION 4. G.S. 84-23(a) reads as rewritten:

"(a) The Council is vested, as an agency of the State, with the authority to regulate the professional conduct of licensed lawyers and State Bar certified paralegals. Among other powers, the Council shall administer this Article; take actions that are necessary to ensure the competence of lawyers and State Bar certified paralegals; formulate and adopt rules of professional ethics and conduct; investigate and prosecute matters of professional misconduct; grant or deny petitions for reinstatement; resolve questions pertaining to membership status; arbitrate disputes concerning legal fees; certify legal specialists and paralegals and charge fees to applicants and participants necessary to administer these certification programs; determine whether a member is disabled; maintain an annual registry of interstate and international law firms doing business in this State; and formulate and adopt procedures for accomplishing these purposes. The Council may do all things necessary in the furtherance of the purposes of this Article that are not otherwise prohibited by law."

SECTION 5. G.S. 84-23.1(b1) reads as rewritten:

"(b1) All organizations offering prepaid legal services plans shall register those plans with the North Carolina State Bar Council on forms provided by the Council. Each plan shall be registered prior to its implementation or operation in this ~~State.~~State and shall renew its registration with the State Bar annually."

SECTION 6. G.S. 84-23.1 is amended by adding a new subsection to read:

"(b2) Every plan shall pay an administrative fee to the Council for the initial registration and an annual renewal fee in amounts determined by the Council."

SECTION 7. G.S. 84-28(h) reads as rewritten:

"(h) There shall be an appeal of right to the North Carolina Court of Appeals by either party from any final order of the Disciplinary Hearing Commission and from any final order of the Council in a reinstatement case. ~~imposing admonition, reprimand, censure, suspension, stayed suspension, or disbarment upon an attorney, or involuntarily transferring a member of the North Carolina State Bar to disability inactive status to the North Carolina Court of Appeals.~~ Review by the appellate division shall be upon matters of law or legal inference. The procedures governing any appeal shall be as provided by statute or court rule for appeals in civil cases. A final order ~~which~~ that imposes disbarment or suspension for 18 months or more shall not be stayed except upon application, under the rules of the Court of Appeals, for a writ of supersedeas. A final order imposing suspension for less than 18 months or any other discipline except disbarment shall be stayed pending determination of any appeal of right."

SECTION 8. G.S. 84-34 reads as rewritten:

"**§ 84-34. ~~Membership fees~~ Fees and list of members.**

(a) Every active member of the North Carolina State Bar shall, prior to the first day of July of each year, pay to the secretary-treasurer an annual membership fee in an amount determined by the Council but not to exceed ~~two~~ three hundred dollars ~~($200.00),~~ ($300.00), and every member shall notify the secretary-treasurer of the member's correct mailing address. Any member who fails to pay the required dues by the last day of June of each year shall be subject to a late fee in an amount determined by the Council but not to exceed thirty dollars ($30.00). ~~All dues for prior years shall be as were set forth in the General Statutes then in effect.~~ The membership fee shall be regarded as a service charge for the maintenance of the several services authorized by this Article, and shall be in addition to all fees required in connection with admissions to practice, and in addition to all license taxes required by law. The fee shall not be ~~prorated: Provided, that no~~ prorated. No fee shall be required of an attorney licensed after this Article shall have gone into effect until the first day of January of the calendar year following that in which the attorney was licensed; but this proviso shall not apply to attorneys from other states admitted on certificate. The fees shall be disbursed by the secretary-treasurer on the order of the Council.

(b) The Council may charge and collect the following additional fees in amounts determined by the Council:

(1) A reinstatement fee for any attorney seeking reinstatement from inactive status, administrative suspension, or suspension for failure to comply with the annual continuing legal education requirements.

(2) A registration fee and annual renewal fee for an interstate or international law firm.

(3) An attendance fee for continuing legal education programs that may include a fee to support the Chief Justice's Commission on Professionalism.

(4) A late fee for failing to file timely the continuing legal education annual report form, for failure to pay attendance fees, or failure to complete the annual continuing legal education requirements.

(5) An administrative fee for any attorney against whom discipline has been imposed.

(c) The secretary-treasurer shall annually, at a time and in a law magazine or daily newspaper to be prescribed by the Council, publish an account of the financial transactions of the Council in a form to be prescribed by it. The secretary-treasurer shall compile and keep currently correct from the names and mailing addresses forwarded to the secretary-treasurer and from any other available sources of information a list of members of the North Carolina State Bar and furnish to the clerk of the superior court in each county, not later than the first day of October in each year, a list showing the name and address of each attorney for that county who has not complied with the provisions of this Article. The name of each of the active members who are in arrears in the payment of membership fees shall be furnished to the presiding judge at the next term of the superior court after the first day of October of each year, by the clerk of the superior court of each county wherein the member or members reside, and the court shall thereupon take action that is necessary and proper. The names and addresses of

attorneys so certified shall be kept available to the public. The Secretary of Revenue ~~is hereby directed to~~ shall supply the secretary-treasurer, from records of license tax payments, with any information for which the secretary-treasurer may call in order to enable the secretary-treasurer to comply with this requirement.

The list submitted to several clerks of the superior court shall also be submitted to the Council at its October meeting of each year and it shall take the action thereon that is necessary and proper."

SECTION 9. This act becomes effective July 1, 2005.

VISITOR REGISTRATION SHEET

Senate Judiciary I
Name of Committee

08/22/05
Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Mike Horn	Kimley-Horn & Assoc. INC
John Long	Martin Marietta
Fred Allen	NC Aggregates Assn.
Bill Webb	NCGA
Jim Farmer	WCBS
[illegible]	[illegible]
Ken Melton	D.O.R.
Al [illegible]	NL Justice Ctr
Robin Smith	DENR
Kevin Leonard	WCSR
Doug Hebon	NC BAR ASSOCIATION
Bill Hale	ACLI
Michelle Frazier	NC Bar Ass'n
[illegible]	[illegible]
Donald Trump	Trump Towers
Amy Fullbright	Hanson / Wms -
Elizabeth Dutton	NCCBI
Erica Peterson	NC AgriBusiness Council
John Goodman	Allen Associates
Kathy Hawkins	Progress Energy
Butch Gunnells	NCSDA
Kathleen Edwards	UNC-CH Institute of Gov't
Paula A. Wolf	PPHS; El Pueblo
Beverly [illegible]	Supreme Court
Holly Bryan	NCATL
C. McCann	NCATL
Christine Mumma	NC Actual Innocence Commission
Bill Wilson	AARP

VISITOR REGISTRATION SHEET

Senate Judiciary I
Name of Committee

08/22/05
Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jim Blackburn	Assn. of Co. Comm.
Donna Rochfield	DCR
Sharon Miller	UCA
JAMES L. FORTE	OSA
Joe McClees	McClees Consulting Inc
Casandra Skinner	CCPS
Tracy Little	NCDOC
Stephanie Simpson	NCAJ
Joe Sapp	NCHC
Jennifer Tulian	NASW-NC
Joanne Stevens	Tmsi
[illegible]	AJO
[illegible]	JPWS, DC
[illegible]	CFSA
Noah Huffstetler	Nelson Mullins
R F Sede	Action Audits, LLC
Renée Boyette	Triangle Council of Governments
[illegible]	Progress Energy
Mark Fancier	UNC Wilmington
Catherine B Rice	Action Audits, LLC Cary, NC.
Charles J. Vilcinskas	Action Audits, LLC
Jeanne Bonds	Electricities of NC
Connie J Ruh	NCDENR - DEH OSWM
Gary McCloud	NCAGO
[illegible]	NCCCS
[illegible]	UNC - Cari
Liz Troxler	NCGA
Lisa F. Martin	NC Home Builders

VISITOR REGISTRATION SHEET

Senate Judiciary I
Name of Committee

08/22/05
Date

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Malcolm B Hunter	IDS
John Hamon	NCDOL
Andy Romanet	NCLM